



CGHC010120382026



2026:CGHC:33824-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 823 of 2026

1 - Birbal Singh S/o Ramkishun Singh Aged About 40 Years R/o Village - Hardibahra Police Station Ragunathnagar District- Balrampur-Ramanujganj (C.G.)

... Appellant

Versus

1 - State of Chhattisgarh Through The Station House Officer, Police Station Ragunathnagar District- Balrampur- Ramanujganj (C.G.)

... Respondent(s)

(Cause-title taken from Case Information System)

For Appellant	:	Ms. Aditi Singhvi, Advocate.
For State	:	Shri Jitendra Shrivastava, Govt. Advocate.

Hon'ble Shri Justice Ramesh Sinha, CJ

Hon'ble Shri Justice Ravindra Kumar Agrawal, J

Judgment on Board

04.08.2026

Per, Ramesh Sinha, CJ.

- 1 Though the matter was listed for consideration on application for suspension of sentence and grant of bail to the appellant, however, with the consent of the parties, the appeal is heard finally.
- 2 This appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 17.02.2026 passed by 1st Additional Sessions Judge, Ramanujganj, District Balrampur-

Ramanujganj, in Sessions Case No.50 of 2020 ,whereby the appellant has been convicted and sentenced as under:

Conviction Under Section		Sentence
Section 302 IPC	:	RI for Life and fine of Rs.500/-, in default of payment of fine amount , additional SI for three months.
Section 506-B IPC	:	RI for six months with fine of Rs.300/-, in default of payment of fine amount, additional SI for one month.

- 3** Prosecution case in brief is that, on 17.04.2020 the complainant Chhotelal, PW-1 lodged a report to the police that at about 4 PM when they were celebrating Pujai festival, his cousin brother Birbal (appellant) came there and created nuisance by demanding more liquor and took a wooden plank which was lying there and assaulted the deceased on his head by which the deceased Babulal received injuries on his head and appellant fled away from the place of occurrence. FIR Ex.P/1 was registered by the police against the appellant for the offence under Sections 294, 506-B and 323 IPC. The injured was sent for his medical examination to Primary Health Centre, Raghunath Nagar. PW-11, Dr. Abhay Kumar Sharma, medically examined him and found cut injury on his occipital region and after giving primary treatment he referred him for further treatment and gave his MLC report Ex.P/25. During treatment, the deceased Babulal died on 29.04.2020 at Medical College Hospital, Ambikapur and thereafter Merg intimation Ex.P/15 was given to Police Station Raghunath Nagar. Inquest of the dead body of the deceased Ex.P/3 was prepared and the dead body of deceased was sent for its postmortem to Medical

College Hospital Ambikapur where PW-5, Dr. J.S. Saruta, conducted postmortem of the dead body of the deceased and gave his report Ex.P/11. During postmortem, the doctor noticed one stitched wound on the head of the deceased on parietal region, superficial abrasion on the left shoulder. The doctor opined that cause of death is not confirmed and viscera was preserved for chemical analysis and histopathological examination. A query was made from the doctor who conducted postmortem in which report Ex.P/12 was given by the Dr. J.S. Saruta, PW-5 that mode and nature of death of deceased could be ascertained after viscera report. Another query was raised to the doctor who initially treated the deceased at Community Health Ramanujnagar and Dr. Abhay Kumar Sharma, PW-11 gave the query report that, due to deep injury, it required CT Scan as per comment in MLC and excessive blood loss can cause patient hypovolumic shock which can cause death or other reason due to head injury, it can cause death and the query report is Ex.P/17. Spot map Ex.P/9 was prepared by the police whereas P/13 by Patwari. Bloodstained & plain soil and Towel of the deceased were seized vide seizure memo Ex.P/10. The appellant was arrested on 02.05.2020 and his memorandum statement Ex.P/5 was recorded. Based on his memorandum statement, one wooden club was seized vide seizure memo Ex.P/6. The seized articles were sent for its chemical examination to Regional FSL Ambikapur from where report has been received according to which blood was found on bloodstained soil and towel of the deceased, however, no poisonous substance were found in the viscera of the deceased.

- 4 The statement under Section 161 CrPC of witnesses were recorded. After completion of usual investigation, charge sheet was filed against the appellant for the offence under Sections 294, 506-B, 302 and 323 IPC before the Judicial Magistrate First Class Wadraf Nagar. The case was committed to the Court of Sessions Judge Balrampur-Ramanujganj from where it has been transferred to the trial Court for its trial.
- 5 The trial Court framed charge against the appellant for the offence under Sections 302 and 506-B IPC. The appellant abjured his guilt and claimed trial.
- 6 In order to establish the charge against the appellant, the prosecution has examined as many as 11 witnesses. Statement under Section 313 CrPC of the appellant has also been recorded in which he denied the circumstances appears against him, pleaded innocence and have submitted that he is innocent and falsely implicated in the offence.
- 7 After appreciation of oral as well as documentary evidence led by the prosecution, the trial Court has convicted the appellant and sentenced him as mentioned in the opening para of this judgment. Hence this appeal.
- 8 Learned counsel for the appellant would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omission and contradictions in the evidence of prosecution witnesses which cannot be made basis to convict him for the offence in question. On the date of incident the celebration was going on in the house of deceased and the deceased as well as other family members were consumed liquor and in the influence of liquor the deceased fell

down on the hard surface by which he received head injury and ultimately died. There was no reason or motive for the appellant to commit his murder. No weapon was seized from him. The witnesses are interested witnesses as they closely related with the deceased. In such an inconsistent evidence of the witnesses, the appellant cannot be convicted for the alleged offence.

In alternative, he would submit that incident is occurred in a heat of passion and if it is proved that the appellant caused injuries to the deceased, then there is no repeated assault made by the appellant to the deceased that too by a wooden plank lying there, no weapons were carried by the appellant and incident started on a spur of moment and on a trivial issue of unequal distribution of meat and liquor, the deceased died after a considerable period of treatment and even the doctor has not opined that death of deceased was homicidal, thus, from the evidence available on record, the offence of appellant, if any, does not travel beyond the scope of Section 304-II of IPC. Therefore, the offence against the appellant, if any, may be converted under Section 304-II of IPC and his sentence may be reduced for the period already undergone by him as the appellant is in jail since 02.05.2020.

- 9 On the other hand, learned counsel for the State opposes the submissions made by the counsel for the appellant and would submit that but for minor omission or contradiction, there are sufficient and overwhelming evidence against the appellant to convict him in the offence in question. The appellant caused injury on the head of the deceased which resulted in to his death. Had he not been intended to kill, he would have assaulted him on the other part of body, but he has

chosen the head part. The incident was witnessed by PW-1 Chootelal, PW-2 Roop Sai, PW-3 Sanjay and PW-4 Ramdayal and injuries found on the body of the deceased was supported by medical evidence and therefore in view of evidence available on record against the appellant, there is no scope of interference in the appeal and the same is liable to be dismissed.

10 We have heard the counsel for the parties and perused the records of the case.

11 The first question arises for determination would be the nature of death of deceased as to whether his death was homicidal or not?

12 The witnesses PW-1 Chootelal, PW-2 Roop Sai, PW-3, Sanjay and PW-4 Ramdayal have consistently stated that at the time of celebrating festival, the quarrel raised by the appellant and he assaulted the deceased by a wooden plank on his head. The deceased received injuries and fell down and went unconscious. He was immediately taken to Hospital from where he was referred to Medical College Hospital, Ambikapur where he died.

13 The evidence of Doctor Abhay Kumar Sharma, PW-11, clearly speaks about about the injuries on the head of the deceased. He stated in his evidence that on 27.04.2020 he medically examined the deceased and found cut injury on his occipital region of his head. He stitched the wound and looking to his condition, he referred him to higher centre and he proved his report Ex.P/25.

In cross examination, he denied that head injury noticed on the body of deceased was an old injury and there was infection. He further denied that injury found on the body of deceased was simple in nature.

14 PW-5, Dr.J.S. Saruta, who conducted postmortem of the dead body of the deceased, has also noticed head injury on the body of deceased. There was no fracture noticed on the body of deceased and therefore he could not opine about nature and mode of death and only opined that nature and mode of death could be ascertained only after histopathological examination of viscera of the deceased. His postmortem report is Ex.P/11. He also proved his query report Ex.P/12.

In cross examination he admits that the injuries noticed on the body of deceased was simple in nature and injuries noticed during postmortem was not sufficient to cause his death in ordinary course until infection developed in the said injuries.

15 From the evidence of these two Doctors and the evidence of eyewitnesses PW-1 Chootelal, PW-2 Roop Sai, PW-3, Sanjay and PW-4 Ramdayal, from postmortem and MLC report and also from Merg intimation, the prosecution has proved that deceased died due to homicidal death on account of injuries found on his body, in which we do not find any infirmity or perversity. Further, there is no other evidence that deceased died otherwise. In FSL report also no poisonous substance were found on the viscera of the deceased.

16 So far as involvement of appellant in crime in question is concerned, the case of prosecution is based on eyewitnesses to the incident who are PW-1 Chootelal, PW-2 Roop Sai, PW-3, Sanjay and PW-4 Ramdayal, who consistently deposed that on 27.04.2020 the family members were celebrating festival in the house of Ramdayal. They cooked meat there and invited the relatives for celebration. During celebration, dispute arose between the appellant and the deceased

which culminated into altercation and they sent back the appellant to his house. After sometime the appellant came back and again raised quarrel and took a wooden plank which was lying there and made an assault on the head of the deceased. By the said assault, the deceased fell down and blood was oozing. The deceased was taken to hospital from where he was referred to District Hospital Ambikapur and during his treatment he died on 01.05.2020.

17 All these eyewitnesses have consistently deposed the same version that during celebration of festival the appellant came there; raised quarrel with the deceased and assaulted him by a wooden plank which was lying there by which the deceased received injuries. The defence was unable to extract any material from the evidence of these witnesses so that involvement of appellant in offence in question could be doubted. Therefore, involvement of appellant in offence in question is established by the prosecution by leading evidence of eyewitnesses. We also concur with the findings recorded by the trial court that it is the appellant who is the perpetrator of the crime in question.

18 The aforesaid finding brings us to the next question for consideration as to whether the case of the appellant is covered within Exception 4 to Section 300 of the IPC vis-a-vis culpable homicide not amounting to murder and their conviction can be converted to Section 304 Part-I or Part-II of the IPC, as contended by learned counsel for the appellant?

19 The Supreme Court in the matter of ***Sukhbir Singh v. State of Haryana, (2002) 3 SCC 327*** has observed as under:-

“21. Keeping in view the facts and circumstances of the case, we are of the opinion that in the absence of the existence of common object Sukhbir Singh is proved to have committed the

offence of culpable homicide without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and did not act in a cruel or unusual manner and his case is covered by Exception 4 of Section 300 IPC which is punishable under Section 304 (Part I) IPC. The finding of the courts below holding the aforesaid appellant guilty of offence of murder punishable under Section 302 IPC is set aside and he is held guilty for the commission of offence of culpable homicide not amounting to murder punishable under Section 304 (Part I) IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5000. In default of payment of fine, he shall undergo further rigorous imprisonment for one year.”

20 The Supreme Court in the matter of ***Gurmukh Singh v. State of Haryana, (2009) 15 SCC 635***, has laid down certain factors which are to be taken into consideration before awarding appropriate sentence to the accused with reference to Section 302 or Section 304 Part II of the IPC, which state as under :-

“23. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under :

- (a) Motive or previous enmity;
- (b) Whether the incident had taken place on the spur of the moment;
- (c) The intention/knowledge of the accused while inflicting the blow or injury;
- (d) Whether the death ensued instantaneously or the victim died after several days;
- (e) The gravity, dimension and nature of injury;
- (f) The age and general health condition of the accused;
- (g) Whether the injury was caused without premeditation in a sudden light;
- (h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;
- (i) The criminal background and adverse history of the accused;
- (j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;
- (k) Number of other criminal cases pending against the accused;
- (l) Incident occurred within the family members or close relations;

(m) The conduct and behaviour of the accused after the incident.

Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment ?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.

24. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused receives appropriate sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in view while convicting and sentencing the accused."

21 Likewise, in the matter of ***State v. Sanjeev Nanda, (2012) 8 SCC 450,***

Their Lordships of the Supreme Court have held that once knowledge that it is likely to cause death is established but without any intention to cause death, then jail sentence may be for a term which may extend to 10 years or with fine or with both. It has further been held that to make out an offence punishable under Section 304 Part II of the IPC, the prosecution has to prove the death of the person in question and such death was caused by the act of the accused and that he knew that such act of his is likely to cause death.

22 Further, the Supreme Court in the matter of ***Arjun v. State of Chhattisgarh, (2017) 3 SCC 247,*** has elaborately dealt with the issue and observed in paragraphs 20 and 21, which reads as under :-

"20. To invoke this Exception 4, the requirements that are to be fulfilled have been laid down by this Court in *Surinder Kumar v. UT, Chandigarh [(1989) 2 SCC 217 : 1989 SCC (Cri) 348]*, it has been explained as under : (SCC p. 220, para 7)

"7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden ight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not

relevant nor its I relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.”

21. Further in *Arumugam v. State* [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130], in support of the proposition of law that under what circumstances Exception 4 to Section 300 IPC can be invoked if death is caused, it has been explained as under :

“9. '18. The help of exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden light; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression “undue advantage” as used in the provisions means “unfair advantage”.

23 In the matter of *Arjun* (supra), the Supreme Court has held that if there is intent and knowledge, the same would be case of Section 304 Part-I of the IPC and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then same would be a case of Section 304 Part-II of the IPC.

24 Further, the Supreme Court in the matter of *Rambir v. State (NCT of Delhi)*, (2019) 6 SCC 122, has laid down four ingredients which should be tested to bring a case within the purview of Exception 4 to Section 300 of IPC, which reads as under:

“16. A plain reading of Exception 4 to Section 300 IPC shows that the following four ingredients are required:

- (i) There must be a sudden light;
- (ii) There was no premeditation;
- (iii) The act was committed in a heat of passion; and
- (iv) The offender had not taken any undue advantage or acted in a cruel or unusual manner.”

25 It is the case of prosecution that on the date of incident the celebration of festival was going on in the house of Ramdayal where they cooked meat and drank liquor. The appellant came there, raised quarrel about unequal distribution of meat and liquor and when quarrel become aggravated, he took a wooden plank which was lying there and gave a blow on the head of the deceased. No traditional weapon were carried by the appellant for causing injury, but during quarrel he picked up the said wooden plank. The incident occurred in a heat of passion and the appellant has not repeated the assault and only one assaulted was made that too by a wooden plank and therefore, it cannot be said that the accused was having any intention to kill the deceased. The quarrel arose without there being any premeditation on the part of appellant to cause death of the deceased. From the evidence of doctor also no fracture was found on the head of the deceased which also demonstrate that the assault was not under such intensity to cause fracture of head bone. Thus, the act of appellant would fall within the purview of Exception 4 of Section 300 of IPC, as the act of the appellant completely satisfies the four necessary ingredients of

Exception 4 to Section 300 IPC i.e. (i) there must be a sudden fight; (ii) there was no premeditation; (iii) the act was committed in a heat of passion and (iv) the appellant had not taken any undue advantage or acted in a cruel or unusual manner. Had the appellant intended to cause murder of deceased, he would have given more severe blows with the wooden plank. As such, it could be safely said that the appellant did not have any intention to kill the deceased.

26 In view of the above discussion, we hold that it would meet the ends of justice if the conviction of the appellant under Section 302 of the IPC is altered/converted to Section 304 Part-II of the IPC.

27 Accordingly, the conviction and sentence of the appellant under Section 302 of the IPC is **set aside**, and instead thereof, he is convicted under Section 304 Part-II of the IPC and sentenced to the period already undergone by him. The conviction and sentence for the offence under Section 506-B (506 Part-II) of IPC is hereby maintained. Both the sentences are directed to run concurrently.

28 The appeal is **allowed in part** to the aforesaid extent. The appellant is reported to be in jail since 02.05.2020. He be released forthwith, if not required in any other case.

29 Keeping in view the provisions of Section 481 of BNSS, the appellant is directed to forthwith furnish a personal bond in terms of Form No.45 prescribed in BNSS of sum of Rs. 25,000/- with one reliable surety in the like amount before the Court concerned, which shall be effective for a period of six months along with an undertaking that in the event of filing of special leave petition against the instant judgment or for grant

of leave, the aforesaid appellant, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

30 The trial Court records alongwith copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

inder