



2026:CGHC:9935

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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 828 of 2005

1 - Radheshyam Patel S/o Chetan Patel Aged About 42 Years R/o Village-Nawagaon, Police Station- Basna, Dist.- Mahasamund, C.G.

2 - Gopal Patel S/o Santosh Patel Aged About 18 Years R/o Village-Nawagaon, Police Station- Basna, Dist.- Mahasamund, C.G.

3 - Udarnath Patel S/o Radheshyam Patel Aged About 20 Years R/o Village-Nawagaon, Police Station- Basna, Dist.- Mahasamund, C.G.

4 - Santosh Patel S/o Chetan Patel Aged About 37 Years R/o Village-Nawagaon, Police Station- Basna, Dist.- Mahasamund, C.G.

... Appellants

versus

• State Of Chhattisgarh Through The District Magistrate, Dist.- Mahasamund, C.G.

... Respondent

For Appellants	: Mr. Palash Agrawal, Advocate
For State	: Ms. Prachi Singh, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas

Judgment on Board

26.02.2026

- The appellants have filed present criminal appeal under Section 374(2) of the Criminal Procedure Code against judgment of conviction and order of sentence dated 22.10.2005 passed by learned 2nd Additional Sessions Judge, Mahasamund, District Mahasamund (C.G.) in Session Trial No. 395/2004 whereby the appellants have been convicted and sentenced in the following manner:-



Conviction	Sentence
Under Section 323 : r/w Section 34 of IPC	All the appellants are sentenced to R.I. for six months and fine of Rs. 200/- of each and in default of payment of fine additional R.I. for one month
Under Section 326 : r/w Section 34 of IPC	All the appellants are sentenced to R.I. for three years and fine of Rs. 1000/- of each and in default of payment of fine additional R.I. for four months

(Fine amount has already been deposited. Both sentences are directed to run concurrently).

- The case of the prosecution, in brief, is that the complainant lodged a report at Police Station Basna, District Mahasamund, alleging that on 12.02.2004 at about 2:00 PM, while he was working in an agricultural field taken on rent from one Dutiya Bai, appellant No. 1, Radheshyam, was present near the said field and was talking with Dutiya Bai. It is alleged that appellant No. 1 passed comments and abused the complainant regarding the issue of filling water in the field, which led to a quarrel between them. The altercation was intervened and pacified by Dutiya Bai and her son. Thereafter, the complainant proceeded to his peanut site. While returning from the site along with his wife and two sons, namely Loknath and Mahendra Kumar, all the accused persons, namely Radheshyam, Santosh, Udarnath and Gopal, allegedly intercepted them, abused them, and assaulted them with sticks, as a result of which they sustained injuries. On the basis of the said report, FIR No. 269/2004 was registered for offences punishable under Sections 294, 323, 506-B read with Section 34 of the Indian Penal Code against the appellants. After completion of the usual investigation, the prosecution filed a charge-sheet before the Judicial Magistrate First Class, who committed the case to the Court of Sessions for trial in accordance with law.



3. In order to prove the guilt of accused, the prosecution has examined witnesses namely *victim (PW-01), Saguna Bai (PW-02), Mahendra Kumar (PW-03), Loknath (PW-04), Dashanand (PW-05), Dr. Smt. Jaishree Sahu (PW-06), Shyam Tandon, Investigating Officer (PW-07), Dr. Tushar Kirti Nayak (PW-08)* and has also exhibited documents namely *F.I.R. (Ex.P/1), site map (Ex. P/2), application for medical examination (Ex. P/3), X Ray report of the victim (Ex. P/4), opinion of Doctor regarding injuries sustained by Saguna Bai (Ex. P/5), X-Ray (Ex. P/6 to P/12), opinion of Doctor regarding injuries sustained by Loknath (Ex. P/13), X Ray report (Ex. P/14), opinion of Doctor regarding injuries sustained by Mahendra Kumar (Ex. P/15), X ray report (Ex. P/16 & P/17), property seizure memo (Ex. P/16 to Ex. P/19), arrest/court surrender memo (Ex. P/20 to Ex. P/23) and application written by Station Incharge, Basna to Dr. J. Sahu (Ex. P/24).*
4. The accused have not examined any witness but they were examined under Section 313 of Cr.P.C.
5. The victim (PW-01), in his examination-in-chief in paragraphs 2, 3 and 4, has deposed that on 12.10.2004 at about 2:00 PM, while he was proceeding to his field to extract peanuts, appellant No. 1, Radheshyam, was instructing Dutiya Bai to raise the boundary (bund) of her field so that the paddy crop of the victim would rot. He further stated that appellant No. 1 also made caste-based remarks against him, which led to a quarrel between them. During the altercation, appellant No. 1 allegedly bit with teeth below his eye on the cheek. In retaliation, the victim bit the chin of appellant No. 1 by teeth. He further deposed that thereafter he went to his peanut site, informed his wife and sons about the incident, and returned to the village where he



narrated the occurrence to the village Panchs. While they proceeding from the village towards his residence at Dopapara, the appellants intercepted them and assaulted them with sticks and hands, as a result of which they sustained injuries on the head, back, waist and legs.

6. The victim, his wife and son were subjected to medical examination wherein injuries were found as per report of Dr. Smt. Jaishree Sahu (PW-06) as under:-

"On body of Victim (Nilaram) - One incised wound measuring 2x3x2 cm on the head which can be caused by hard and blunt weapon and no fracture was found and the injuries are simple in nature.

On body of Saguna Bai-

- (i) swelling in the right side of the head.
 - (ii) lacerated wound measuring 15x3x2 cm between the palm and the index finger.
 - (iii) large swelling on the left palm.
- Injury No. 1 was grievous in nature which may be caused by hard and blunt weapon.

On body of Loknath- a deep lacerated wound measuring 2.5x0.5x0.5 cm on the back of the head which may be caused by hard and blunt weapon and blood was oozing from nose. Loknath was unconscious when he was brought for medical examination.

On body of Mahendra-

- (i) swelling on the middle of the head.
 - (ii) bruise measuring 5x2 cm on the left arm.
 - (iii) bruise measuring 4 x 2 cm on the left arm and back.
 - (iv) lump measuring 3x2 cm on the left side of the back.
 - (v) lump and swelling 2 x 2 cm on the middle part of the back.
 - (vi) 5x2 cm size lump and swelling near the knee of the right leg.
- Injury No. 1 was grievous in nature and remaining injuries were simple in nature."



7. On the basis of evidence and material on record, the trial Court has convicted the appellants for the offences as detailed above.
8. Being aggrieved with the aforesaid judgment, the appellants have preferred this appeal.
9. Learned counsel for the appellants would submit that Dr. Smt. Jaishree Sahu has not supported the case of the prosecution. It is further contended that the alleged weapon of assault was never seized by the prosecution. On the contrary, the evidence on record indicates that the assault was committed by hands and fists. He would further submit that the prosecution has failed to establish its case beyond reasonable doubt. Therefore, it is prayed that the appeal be allowed and the impugned judgment be set aside. He would further submit that the incident pertains to the year 2004 and more than 22 years have elapsed since then. The appellants remained in custody for a period of 13 days from 16.10.2004 to 28.10.2004, therefore, if the Court may deem fit, sentences be reduced to the period already undergone by the appellants.
10. Per contra, learned counsel for the State, opposing the submissions advanced on behalf of the appellants, would submit that the finding recorded by the learned trial Court convicting the appellants is legal, proper and well-founded, and does not call for any interference by this Court. She would further submit that the learned trial Court, upon due appreciation of the oral and documentary evidence available on record, particularly the testimony of the victim (PW-01) and the medical evidence adduced by the Doctor, has rightly convicted the appellants. It is also contended that this is not a fit case for reduction of sentence to the period already undergone by them, inasmuch as the incident has been proved beyond reasonable doubt by the cogent and reliable



testimony of the victim, duly corroborated by medical evidence.
 victim has clearly deposed regarding the manner in which they were
 assaulted by the accused persons. Accordingly, she prays for dismissal
 of the appeal.

11. I have heard learned counsel for the parties and perused the records of the trial Court.
12. From perusal of the record, it is quite vivid that learned trial Court, on the basis of evidence and material on record, particularly the statement of the victim and also opinion of the Doctor which clearly suggests that the injuries must have been caused by stick, particularly head and elbow injury of victim's wife and Mahendra which are grievous in nature and injuries sustained by victim and Loknath are simple in nature, therefore, the learned trial Court has rightly convicted the appellants. Even it is well settled position of law that an accused can be convicted on the basis of the sole testimony of the victim, provided the Court finds the testimony to be credible, trustworthy and of sterling quality.
13. The Hon'ble Supreme Court has examined the evidentiary value of injured witness in case of **Balu Sudam Khalde and Another vs State of Maharashtra {2023 (13) SCC 365}** wherein the Hon'ble Supreme Court has held as under :-

"26. When the evidence of an injured eye-witness is to be appreciated, the under- noted legal principles enunciated by the Courts are required to be kept in mind:-

- (a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.
- (b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.
- (c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.
- (d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.



(e) If there be any exaggeration or immaterial embellishment in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."

14. From the evidence of the victims Nilaram (PW-1), Saguna Bai (PW-2), Mahendra Kumar (PW-3), it is manifest that the accused persons, acting in furtherance of their common intention, assaulted the victims. Presence of all the accused at the scene substantially facilitated the successful commission of the offence. The act was carried out pursuant to a pre-arranged plan, and the commission of the offence would not have been possible without the aid and participation of the other accused. It is well settled that for fastening liability with the aid of Section 34 of the IPC, each accused must participate in the commission of the offence in some manner, which stands duly established in the present case. Consequently, the submission advanced by the learned counsel for the appellants that all the accused cannot be convicted with the aid of Section 34 of the IPC is misconceived and is liable to be rejected. It is well settled position of law that element of participation in the commission of offence, is the chief feature that distinguishes Section 34 of the IPC from Section 149 of the IPC and other Sections. The Hon'ble Supreme Court in case of **Vasant @ Girish Akbarasab Sanavale and Another vs. The State of Karnataka {2025 INSC 221}** has examined the provisions of Section 34 of the IPC as under:-

"86. It is true that to convict any particular accused constructively under Section 34 of an offence, say of murder, it is not necessary to find that he actually struck the fatal blow, or any blow, but there must be clear evidence of some action or conduct on his part to show that he shared in the common intention of committing murder", (pp. 457-458).



87. The net result of the above discussion is that although Section 34 deals with a criminal act which is joint and common intention which is common, it cannot be said that it completely ignores or eliminates the element of personal contribution of the individual offender in both these respects.

88. On the other hand, it is a condition precedent of Section 34, IPC, that the individual offender must have participated in the offence in both these respects. He must have done something, however slight, or conduct himself in some manner, however nebulous whether by doing an act or by omitting to do an act so as to indicate that he was a participant in the offence and a guilty associate in it. He must also be individually a party to an intention which he must share in common with others.

89. In other words, he must be a sharer both in the 'criminal act' as well as in the 'common intention' which are the twin aspects of Section 34, IPC. In view of the above position, it is difficult for the accused to legitimately urge before the Court that owing to the mention of Section 34, IPC, in the charge, he was misled or prejudiced in his defence by being persuaded to presume that all consideration of his individual liability was completely shut out as a result thereof. He would be presumed to know the law on the point and if, in spite of it, he deluded himself into any such belief, he would be doing so at his own peril. [See: Om Prakash(supra)]

90. As held by this Court in Suresh Sakharam Nangare v. The State of Maharashtra, 2012 (9) Judgements Today 116, if common intention is proved but no overt act is attributed to the individual accused, Section 34 of the code will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent Section 34 cannot be invoked. In other words, it requires a pre-arranged plan and pre-supposes prior concert therefore there must be meeting of mind."

14. From plain reading of the above paragraph for applying Section 34 of IPC there should be a common intention of all the accused persons which means community of purpose and common design. The common intention does not mean that the co-accused persons should have engaged in any discussion or agreement so as to prepare a plan or hatch a conspiracy for committing the offence. Common intention is a psychological fact and it can be formed a minute before the actual happening of the incident or as stated earlier even during occurrence of the incident. Thus, the learned trial Court has rightly convicted all the accused with the aid of Section 34 of the IPC.



15. The evidence of the victims have not been shaken at any stage, the accused have been able to rebut the stand of the victims by leading cogent evidence, therefore, the finding of the learned trial Court holding the accused guilty for the offences punishable under Sections 323, 326 read with Section 34 of the IPC does not suffer from any perversity or illegality warranting interference by this Court. As such, the impugned judgment of conviction passed by the learned Sessions Judge, Mahasamund in Sessions Trial No. 395/2004 is hereby affirmed.
16. Further submission of the counsel for the appellants is that the appellants remained in jail for 13 days and since the incident pertains to 2004 and more than 22 years have already been lapsed, as such, the sentence may be reduced to the period already undergone by the appellants is being considered by this Court.
17. Before advertng to the submissions, it is expedient for this Court to examine and consider what are the facts and circumstances, and the gravity of the offence to apply the principle of already undergone is being examined in terms of law laid down by the Hon'ble Supreme Court in the case of **Parameshwari vs. The State of Tamilnadu and others, reported in 2026 INSC 164** wherein the Hon'ble Supreme Court has examined about mitigating factors and held in paragraphs 22 and 34 as under:

“22. The objective of punishment is to create an effective deterrence so that the same crime/actions are prevented and mitigated in future. The consideration to be kept in mind while awarding punishment is to ensure that the punishment should not be too harsh, but at the same time, it should also not be too lenient so as to undermine its deterrent effect.

34. The misplaced understanding of various courts in treating compensation as a substitute of sentence is both a matter of concern and a practice which should be condemned. We have observed a trend amongst various High Courts wherein the sentences awarded to the accused persons by the Trial Court are reduced capriciously and mechanically, without any visible



application of judicial mind. Considering the gravity of the situation as thus, we have culled out certain basic factors which are to be kept in mind by the courts while dealing with imposition of sentence, in line with the view taken by this Court in the aforementioned cases. The said factors are enunciated as below:

A. Proportionality: Adherence to the principle of “*just deserts*” ought to be the primary duty of the courts. There should be proportionality between the crime committed and the punishment awarded, keeping in consideration the gravity of the offence.

B. Consideration to Facts and Circumstances:

Due consideration must be given to the facts and circumstances of the case, including the allegations, evidence and the findings of the trial court.

C. Impact on Society: While imposing sentences, the courts shall bear in mind that crimes essentially impair the social fabric of the society (of which the victim(s) is/are an indispensable part) and erodes public trust. The sentence should be adequate to maintain the public trust in law and administration, however, caution should also be taken, and the Court shall not be swayed by the outrage or emotions of the public and must decide the question independently.

D. Aggravating and Mitigating Factors: The courts, while deciding the sentence or modifying the sentence, must weigh the circumstances in which the crime was committed, and while doing so, the court must strike a fair balance between the aggravating and the mitigating factors.”

18. From the above stated legal position, it is quite vivid that this Court has to consider the gravity of the offence, the manner in which offence has been committed. From the facts it is quite vivid that the victims sustained injuries which are of grievous in nature. However, looking to the fact that incident pertains to year 2004 and more than 22 years have already been lapsed, and the appellants are not having past criminal antecedents, they have not misused the liberty of bail granted to them during the trial and even during pendency of the appeal, therefore, I am of the view that the sentence can be reduced to 06 months each for offence under Section 326 of I.P.C. and 01 months each for offence under Section 323 of I.P.C., both sentences are directed to run concurrently with enhancement of fine amount from Rs. 200/- to Rs. 2,000/- for the offence under Section 323 of IPC and from



Rs. 1,000/- to Rs. 3,000/- for the offence under Section 326 of IPC.
difference amount of fine i.e. Rs. 1,800/- (Rs. Eighteen Hundred only)
and Rs. 2,000/- (Rs. Two Thousand only) shall be deposited by the
appellants before the trial Court within two months from the date of
receipt of copy of this order and the same shall be payable by the trial
Court to the victims as per Section 357(3) of the Cr.P.C. as
compensation within further one month from the date of deposit by the
appellants.

19. From the record it appears that the appellants are on bail and their bail bonds shall stand cancelled. The appellants are directed to surrender before the trial Court on **08th April, 2026** to serve out the remaining part of the sentence awarded by this Court after set of the period already undergone which is 13 days. If the appellants fail to surrender before the trial Court, the Police Authorities are directed to take action against them and send a compliance report to this Court.
20. Consequently, the instant appeal is partly allowed to the extent indicated hereinabove.
21. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for compliance.

Sd/-
(Narendra Kumar Vyas)
Judge