



2026:CGHC:10167-DB



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 603 of 2015

Sanjeev @ Sanju Thakur S/o Jagadish Thakur, aged about 22 years, R/o Village Kalgasa, Thana Darima, District Sarguja, (C.G.)

... Appellant

Versus

State of Chhattisgarh, through P.S. Darima, District- Sarguja, (C.G.)

... Respondent

For Appellant	: Mr. Jai Prakash Shukla, Advocate.
For State/Respondent	: Mr. Ashish Shukla, Additional A.G.

Hon'ble Shri Sanjay K. Agrawal, Judge
Hon'ble Shri Arvind Kumar Verma, Judge

Judgment on Board

Per Arvind Kumar Verma, J.

27.02.2026

1. This criminal appeal filed by the appellant-accused under Section 374(2) of Cr.P.C. is directed against the impugned judgment of conviction and order of sentence dated 05.10.2013, passed by the learned Sessions Judge, Sarguja, District Ambikapur (C.G.) in



Sessions Trial No. 11/2012, whereby the appellant-accused has been convicted for offence under Section 302 of the IPC, 1860 and sentenced to undergo imprisonment for life and fine of Rs.1,000/- and in default of payment of fine, further undergo additional simple imprisonment for six months.

2. Case of the prosecution, in brief, is that on 04.12.2011 the Complainant- PW-02 Anil Singh lodged a report in the Police Station – Darima, District Sarguja (C.G.) regarding the murder of Krishna making allegation that on 04.12.2011 at 8pm, Krishna along with appellant/accused Sanjeev alias Sanju Thakur were warming themselves through bonfire in front of the Motu Baraik's house whereby both of them had quarreled with each other, but the accused has taken Tangi (Axe) from his house and assaulted with it on the head of the deceased Krishna and fled away from the spot. The accused/appellant committed the murder of the deceased Krishna. The accused/appellant was arrested on 05.12.2011 on the alleged commission of offence punishable under Section 302 of IPC.
3. During the course of investigation, the panchnama of dead body was prepared by the police. Further, police seized the property which was relating to the offence and spot map was prepared, thereafter, the police sent the body for postmortem. The statements of witnesses were recorded and on completion of the investigation, police submitted the charge-sheet under Section



302 of IPC against the present accused/appellant.

4. During the course of trial, the charges under Section 302 of IPC was framed against the present accused/appellant, but he denied the charge.
5. In order to bring home the offence, the prosecution examined as many as 09 witnesses and exhibited 15 documents. The appellant-accused examined none in his defence nor any document has been exhibited.
6. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 05.10.2013, convicted the appellant for offence under Section 302 of the IPC and sentenced him as aforementioned, against which, this criminal appeal has been filed.
7. Mr. Jai Prakash Shukla, learned counsel appearing for the appellant would submit that the impugned judgment passed by the learned trial court is bad; illegal, perverse and contrary to law applicable to the facts and circumstances and evidence available on record. He further argued that the prosecution witnesses have not supported the case of the prosecution against the appellant beyond reasonable doubt. He would further submit that PW-08 Virendra Kumar has stated that he too was warming himself through bonfire and when he got up from the middle then, the fateful incident took place and he came back to the spot and there he saw Tangi lying on the ground and the appellant had already



fled from the spot, but seizure memo shows that the Tangi was recovered from Kotha, but the learned trial Court has failed to consider those aspect. He would further argued that there is no eye witness of the incident and the prosecution story is based on circumstantial evidence and witnesses are hostile. The learned Trial Court committed error of law by convicting the accused/appellant in spite of failure of prosecution to prove the charge beyond reasonable doubt. It is, therefore, prayed that this Court may kindly be pleased to allow the present appeal and the impugned judgment dated 05.10.2013 of conviction and order of sentence may kindly be set aside.

Alternatively, learned counsel for the appellant submits that the act attributed to the appellant does not fall within the ambit of Section 302 IPC, and at best, considering the number and nature of injury, party of body affected and the weapon used, and the fact that the incident took place on spur of moment without premeditation, his act squarely falls within the ambit of Section 304 Part-II i.e., culpable homicide not amounting to murder and considering the detention period of the accused i.e., more than 05 years, his sentence may be reduced to the period already undergone by him.

8. On the other hand, Mr. Ashish Shukla, Additional Advocate General appearing for the respondent/State supports the impugned judgment and would submit that the impugned



judgment passed by the trial Court is based on proper appreciation of material and evidence available on record and the same requires no interference.

9. We have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.
10. The first question for consideration would be whether the death of deceased Krishna was homicidal in nature ?
11. The trial Court after appreciation of oral and documentary evidence available on record particularly relying upon the postmortem report of Dr. Ajay Gupta (PW-07) has come to the conclusion that cause of death was 'Cardiopulmonary arrest and coma due to head injury on the forehead of the deceased'. He has found that one repaired wound over the scalp at the mid parietal region of length 8cm, skull bone fracture vertically and linear at the mid parietal region of length 7 cm and diffuse intracerebral hemorrhage with clots in brain substance and meninges was fractured in the bone region.
12. After hearing learned counsel for the parties and after considering the submissions, we are of the considered opinion that the finding recorded by the learned trial Court that death of deceased Krishna was unnatural which was occurred due to injury sustained by the deceased from the assault made by the appellant by way of a Tangi on the head and the said finding is based on evidence



available on record. It is neither perverse nor contrary to record.

We hereby affirm that finding that the death of deceased Krishna was homicidal in nature.

13. Now, the next question for consideration would be whether the accused-appellant herein is the perpetrator of the crime in question as during the commission of the crime ?
14. In the present case, Bundeshwar Singh (PW-3) has categorically stated that on the date of the incident at around 8:15 pm, he saw that the accused/appellant and deceased were quarreling with each other and the appellant was saying that he will kill the deceased. After pacifying the accused, he made the accused to go his house and the accused after reaching his home started searching Tangi (Axe). After a while, Motu shouted that the accused/appellant had assaulted Krishna. He further admitted in para 03 of his cross-examination that he saw the blood oozing from the head of the deceased. (PW-08) Virendra Kumar has supported the statement of (PW-03) Bundeshwar Singh and has also stated that the accused came with a tangi and said that he will kill all the Kanwar community people and he also saw the blood oozing from the head of the deceased. PW-03 Bundeshwar Singh has informed the incident to PW-02 Anil Singh and then, Anil Singh (the complainant of the case) has lodged the report vide Ex. P/03 in the Police Station – Darima, District Sarguja (C.G.) and the postmortem report is Ex. P/13.



15. Surit Sarthi (PW-9), Investigating Officer, has deposed in his examination-in-chief that on 04.12.2011, while posted as Sub-Inspector at Police Station Darima, he registered the First Information Report (Ex. P-3) on the basis of the written report lodged by complainant Anil Singh. He stated that the FIR was recorded exactly as narrated by the complainant and bears his signatures. During the course of investigation, on 05.12.2011 at about 14:00 hours, he took the accused into custody and recorded his memorandum statement (Ex. P-6), wherein the accused disclosed that he had concealed a tangi (axe) in the cattle shed of his house. Pursuant to the said memorandum, he seized one iron tangi from the accused's house situated at village Kalagasa under seizure memo (Ex. P-7). He described that the handle of the tangi was 28 inches long and bore stains resembling human blood, and the blade measured 7 inches in length and 2 inches in width. On the same date, he seized from the place of occurrence plain soil, blood-stained soil, and one pair of plastic slippers allegedly belonging to the accused under seizure memo (Ex. P-8). He further deposed that he sent a report (Ex. P-12A) to the Chief Medical Officer, PHC Darima, for examination in relation to the seized tangi. During investigation, he recorded the statements of witnesses Anil Singh (Ex. P-4), Budheshwar Singh (Ex. P-5), and other witnesses namely Virendra @ Motu, Badeik, and Konda @ Nana Guru, as per their narration without adding or omitting anything. On 08.12.2011, after the postmortem examination of the



deceased Krishna Singh, he seized the clothes worn by the deceased, viz blue jeans, blue baniyan, and bermuda, in the presence of witnesses under seizure memo (Ex. P-14). He further deposed that he arrested the accused on 05.12.2011 in the presence of witnesses and prepared the arrest memo (Ex. P-15). Intimation of arrest was given to Jagdish Thakur, and the carbon copy of the intimation is (Ex. P-15A). He also stated that the seized weapon, clothes, plain and blood-stained soil were sent to the Forensic Science Laboratory, Raipur, for chemical examination along with a letter from the Superintendent of Police, Surguja. Thus, his evidence establishes the registration of FIR (Ex. P-3), recording of memorandum (Ex. P-6), recovery and seizure of weapon (Ex. P-7), seizure of material exhibits from the spot (Ex. P-8), forwarding of articles for examination (Ex. P-12A), seizure of deceased's clothes (Ex. P-14), arrest of the accused (Ex. P-15 & Ex. P-15A), recording of witness statements (Ex. P-4 & Ex. P-5), and submission of charge-sheet.

16. On perusal of the statement of the relevant witnesses, it reveals that the accused/appellant had quarrel with the deceased at around 8:30 pm and thereafter, the accused/appellant went to his house, searched for Tangi (Axe) and came with the same and then assaulted Krishna on the head.
17. The case of the prosecution is based on the theory of last seen together.



18. Now the question is whether the learned trial Court is justified in convicting the appellant relying upon the theory of last seen together to be duly established.
19. Admittedly, the prosecution case is based on circumstantial evidence. The five golden principles to constitute the *panchsheel* of the proof of a case based on circumstantial evidence have been narrated by their Lordships of the Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**¹, in which it was observed in paragraph 153 as under :

“**153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1)the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra*² where the following observations were made : [SCC para 19, p. 807 : SCC (Cri) p. 1047]

Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2)the facts so established should be consistent hypothesis except that the accused is guilty,

(3)the circumstances should be of a conclusive nature and tendency,

(4)they should exclude every possible hypothesis except the one to be proved, and

(5)there must be a chain of evidence so complete as not to leave any reasonable ground

1 (1984) 4 SCC 116

2 (1973) 2 SCC 793



for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

20. From the evidence of PW-03 Bundeshwar Singh and PW-08 Virendra Kumar, it is crystal clear that the appellant and the deceased were warming their bodies through bonfire and in front of the Motu Baraik's house whereby both of them had quarreled with each other, and the appellant was saying that he would kill the deceased. PW-03 Bundeshwar after pacifying the accused, made the accused to go his house and the accused after reaching his house started searching Tangi (Axe). After a while, Motu shouted that the accused/appellant had assaulted Krishna and the aforesaid witnesses stated that they have seen the blood oozing from the head of the deceased. From the testimony of the aforesaid prosecution witnesses, the prosecution has been successful in proving this fact that the accused/appellant and the deceased was last seen together, the deceased sustained injury on his head and the accused was holding tangi in his hand and that the deceased sustained injury immediately after he was seen holding tangi in his hand & when the deceased was being taken to hospital, he succumbed to the injuries during the course of the treatment. Therefore, the chain of evidence must be so complete and cogent as to leave no reasonable ground for a conclusion consistent with the innocence of the accused. The evidence on record clearly establishes that, in all human probability, the offence



was committed by the appellant. It is also pertinent to observe that the circumstances proved on record exclude every possible hypothesis except that of the appellant's guilt.

21. Applying the aforesaid principles of law laid down by their Lordships of the Hon'ble Supreme Court in the facts of the present case and considering the statements of the witnesses, this Court is of the considered view that the present accused/appellant committed the murder of the deceased by way of axe.
22. The aforesaid finding brings us to the next question for consideration, 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 his conviction can be converted to Section 304 Part-I or Part-II of the IPC, as contended by learned counsel for the appellant?
23. It has been held by this Court in the matter of Jaiprakash @ Bau Yadav v. State of Chhattisgarh passed in Criminal Appeal No. 1119 of 2024 in paras 23, 24, 26, 27 and 28 which reads as thus:-

“23.The Hon'ble Supreme Court in the matter of Sukhbir Singh v. State of Haryana³ 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

3 (2002) 3 SCC 327



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.”

24. The Hon'ble Supreme Court in the matter of **Gurmukh Singh v. State of Haryana**⁴ 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

4 (2009) 15 SCC 635



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 fight;

(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.”

26. Further, the Hon'ble Supreme Court in the matter of **Arjun v. State of Chhattisgarh**⁵ 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 fight; (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 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 : (SCC p. 596, para 9)

“9. '18. The help of exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (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

5 (2017) 3 SCC 247



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”.

27. In the matter of **Arjun** (supra), the Hon'ble 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.

28. Further, the Hon'ble Supreme Court in the matter of **Rambir v. State (NCT of Delhi)**⁶ 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 fight;
 - (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.”

⁶ (2019) 6 SCC 122



24. In this case, there was no premeditation on the part of the appellant to cause death of the deceased Krishna and only because of the quarrel between the deceased and the appellant, the appellant has assaulted the deceased by way of axe on his forehead and only one injury was caused to the deceased and the appellant then fled away. Thereafter, Anil Singh took the deceased to the hospital for the treatment, his MLC was done and during the course of treatment, the deceased was died. Therefore, this Court is of the considered view that the appellant did not have any intention to cause death of the deceased, but by causing such injury, he must have had the knowledge that such injuries inflicted by him would likely to cause death of Krishna, as such, his case would fall within the purview of Exception 4 of Section 300 of IPC, as the act of the appellant herein completely satisfied 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.

25. Therefore, the conviction of the appellant under Section 302 of IPC is altered/converted into Section 304 Part-II of IPC.

26. Accordingly, conviction of the appellant under Section 302 of the IPC is set aside, however, he is convicted under Section 304 Part-II of the IPC. The record shows that the appellant has remained in jail for more than 05 years, thus considering the detention period, his sentence is reduced to the period already undergone by him and the fine amount



imposed by the trial Court shall remain intact.

27. The appellant is reported to be on bail. However, keeping in view the provisions of Section 481 of BNSS, 2023 the appellant is also directed to furnish a personal bond for a sum of Rs. 25,000/- with one surety in the like amount before the Court concerned which shall be effective for a period of six months alongwith 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 thereon shall appear before the Hon'ble Supreme Court.

28. *Ex consequenti*, the appeal is **partly allowed**. The criminal appeal is partly allowed to the extent indicated herein-above.

29. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-

**(Sanjay K. Agrawal)
Judge**

Sd/-

**(Arvind Kumar Verma)
Judge**