



2026:CGHC:3764-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1355 of 2021**

1 - Panchram Rathiya S/o Daulatram Rathiya Aged About 47 Years R/o Kerwa,
Police Station Kartala, District Korba Chhattisgarh.

... Appellant(s)**versus**

1 - State Of Chhattisgarh Through Station House Officer Of Police Station- Kartala,
District Korba Chhattisgarh.

... Respondent(s)

For appellant (s)	:	Mr. Roop Naik, Advocate
For Respondent(s)	:	Mr. Soumya Rai, Dy. Govt. Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Ravindra Kumar Agrawal, Judge****Order on Board****Per Ravindra Kumar Agrawal, J.****22.01.2026**

- The present appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973, by the appellant against the impugned judgment of conviction and sentence dated 13.08.2021 passed by learned Sessions Judge, Korba (C.G.) in Sessions Case No. 70/2019 whereby the appellant has been convicted under Section 302 of IPC and sentenced for life

imprisonment with fine of Rs. 500/-, in default of payment of fine, further R.I. for six months.

2. The brief facts of the case are that on 18/02/2019, murg intimation (Ex-P/1) lodged by Krishan Kumar Yadav (PW/1) that his brother Vijay Lal @ Mahadev Yadav had gone to grazing his she-goats on 17.02.2019, but he has not returned back. On being search, he found his dead body at Cheetaburakhar Jungle, having injuries over the body. The Police came on the spot and prepared inquest (Ex-P/3) in presence of the witnesses. The dead body was sent for its postmortem to Community Health Centre, Kartala, where PW/04 Dr. Shekhar Lal Kavar conducted the postmortem of the dead body of the deceased and gave the postmortem report (Ex-P/9). While conducting the postmortem, the Doctor has noticed incised wound on right ear pinna between upper 1-3rd and lower 2/3rd of ear lobe. Pinna was cut, only skin is adherent, dragous of right ear was swollen. Massive contusion on left side of face. Massive clotted blood present on both parietal aspect of skull and found linear fracture of frontal bone of skull and opined that cause of death is hemorrhage and shock due to head injury which seems to be homicidal in nature.
3. The Spot Map (Ex-P/4) was prepared by the Police and (Ex-P/12) was prepared by the Patwari. During the investigation, statements of the witnesses were recorded and then FIR (Ex-P/16) was registered against the accused Panch Ram Rathiya for the offence under Section 302 of IPC. The accused was arrested on 25.03.2019 and his memorandum statement (Ex-P/5) was recorded. Based on his memorandum statement, one axe has been seized from him vide seizure memo (Ex-P/6). Blood stain and plain soil have been seized from the spot vide seizure memo (Ex-P/8). The seized axe was sent for its query report to doctor, who gave his report (Ex-P/10) and opined that the injuries found on the body of the deceased could have been caused by the said axe and advised for chemical examination. The axe seized from

the appellant, blood stain and plain soil and cloths of the deceased were sent for its chemical examination to Regional FSL, Bilaspur, from where report (Ex-P/20) was received and except the plain soil, blood was found on the send articles.

4. After completion of usual investigation, charge-sheet was filed against the accused before the learned Judicial Magistrate, First Class, Kartala for the offence under Section 302 of IPC. The case was committed to the learned Sessions Court for its trial.
5. The learned trial Court has framed charge for the offence under Section 302 of IPC. The accused denied the charge and claimed trial.
6. In order to prove the charge against the accused the prosecution has examined as many as 13 witnesses. Statement under Section 313 of Cr.P.C of the accused was also recorded in which he denied the circumstances appears against him, plead innocence and have submitted that he has been falsely implicated in the offence.
7. After appreciation of oral as well as documentary evidence led by the prosecution, the trial Court has convicted and sentenced the appellant as mentioned in the earlier part 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 the appellant for the alleged offence. There are material inconsistency in the evidence of eye witnesses and their conduct is also suspicious. Though, the prosecution has relied upon the eye witnesses, but, they, in fact, are not the eye witnesses but have been planted witnesses. When they allegedly saw the incident, they did not disclose it to anyone, even to the Police also, immediately and their 161 Cr.P.C. statement have been recorded after more than a month. Therefore, there is no sufficient evidence on record to convict the appellant for the commission of the murder

of the deceased Vijay Lal @ Mahadev. In alternative, he would also submit that the incident occurred in a heat of passion when the deceased and the appellant allegedly consumed liquor together and the accused demanded money from the deceased for bringing more liquor and when the deceased denied to give money, he assaulted him in the influence of liquor. He would also submit that the impact of the injuries, found on the body of the deceased is resulted from only one blow which is under the influence of liquor, therefore, the offence of the appellant, if any, does not travel beyond the scope of Section 304 of IPC, therefore, the conviction of the appellant may be converted under section 304 of IPC and his sentence be reduced for the period already undergone by him.

9. On the other hand, learned counsel for the State vehemently opposes the submissions made by learned counsel for the appellant and has submitted that the prosecution has proved its case beyond reasonable doubt. But for minor omission or contradictions, the evidence of prosecution witnesses are sufficient to convict the appellant for the offence under Section 302 of IPC which has rightly been done by learned trial Court. He would also submit that the case of the prosecution is based on eye witnesses (PW/2) Ram Lal, (PW/5) Santram, (PW/8) Bhagat Ram and (PW/9) Gajaram who were also present on the spot at the time of incident and all of them consumed liquor together. The presence of the eye witnesses cannot be doubted as they were working together and after working, all of them consumed liquor together and when the accused demanded money from the deceased for bringing more liquor, he assaulted him. He would also submit that in the axe seized from the appellant, blood has been found in FSL examination, therefore, there is sufficient evidence on record to hold conviction of the appellant which has rightly been done by the learned trial Court and the appeal of the appellant does not have any merit and is liable to be dismissed.

10. We have heard learned counsel for the parties and perused the record of the learned trial Court.
11. The first and foremost question arises for question would be the nature of death of the deceased .
12. From the evidence of PW/1 Krishana Kumar Yadav, who is the brother of the deceased, it reveals that he saw the dead body of the deceased near Chetaburakhar Jungle, having injuries on his head and face and he lodged the murg intimation. (PW/2) Ram Lal, (PW/5) Santram, (PW/8) Bhagat Ram and (PW/9) Gajaram are the witnesses to the effect that the accused gave axe blow on the head of the deceased. The (PW/3) Chhedelal who is the witness of inquest have also proved that he saw the injuries found on the body of the deceased, at the time of inquest.
13. PW/4, Dr. Shekhar Lal Kavar, who conducted the postmortem of the dead body of the deceased, proved the postmortem report (Ex-P/9) and deposed that during the postmortem, he found inside wound on the head of the deceased, his pinna of right ear was cutted of and contusion on the left side of face. He also found linear fracture in bone and clotted blood present on both parietal aspect of head. He opined that cause of head is hemorrhage and shock due to head injury, which seems to be homicidal in nature. In cross examination, he admitted that if any person would fall on pointed stone, the person could have received same injuries as has been found in the body of the deceased. He also admitted that after the injuries, the body of the deceased was lying for whole of the night and due to continuous bleeding, he died. He further stated that the injuries found on the right side of head can be caused by axe or any sharp edged weapon. From the evidence of the doctor, the homicidal death of the deceased could not be rebutted by the defence. Merely by saying that the injuries could have been caused by falling on the pointed stone is not sufficient as there is no suggestion to the eye witnesses

that the deceased fell on the pointed stone and the eye witnesses have clearly stated that the deceased received injuries due to assault made by the appellant. The learned trial Court has also found that the death of the deceased was homicidal in nature which is based on proper appreciation of evidence and this Court does not find any perversity in the said finding.

14. So far as, the involvement of the appellant in the offence in question is concerned, we again examined the evidence of the witnesses.
15. The prosecution case is based on four eye witnesses (PW/2) Ramlal, (PW/5) Santram, (PW/8) Bhajanram and (PW/9) Gajaram.
16. (PW/2) Ramlal, has stated in his evidence that on the date of incident, he along with other witnesses and the accused have taken a contract for cutting tree of the field of Pardeshi Man. Up to 5 PM, they were cutting tree and thereafter, they consumed liquor. Deceased Mahadev was also there. When Mahadev demanded money from Panchram, he refused to give him money as he was not having any money with him, and then Panchram assaulted him by axe on his head. They afraid of by the incident and fled away. In cross-examination, he remained firm in saying that after cutting tree, all of them consumed liquor, the appellant demanded money from the deceased and when he refused, the appellant gave axe blow on his head. The defence could not extracted any substantial rebuttal from his evidence which makes his evidence doubtful. Though, the suggestion has been given to him that they themselves has committed murder of the deceased and therefore, they have not inform the incident to anyone but he firmly denied the suggestion. Although they stated that the Police has recorded their statement after more than one month, but, merely delay recording of the statement of the witnesses, cannot be doubted when they remain firm in saying that the appellant has assaulted the deceased.

17. PW/5, PW/8 and PW/9 are also the eye witnesses who duly proved the involvement of the appellant in the offence in question and assault made by him to the deceased by axe. All of them have stated that after cutting tree, they consumed liquor, the appellant demanded money from the deceased Mahadev for bringing more liquor and when he refused to give money, the appellant assaulted on his head by axe. They afraid of by the incident and fled away but for trivial omission or contradictions, their evidence are remained intact with respect to assault made by the appellant to the deceased.
18. Further from the appellant, axe has been seized on his memorandum statement and as per the query report, the injuries found on the body of the deceased could have been caused by the said axe and blood has been found in the axe seized from the appellant and thus, there are sufficient and clinching evidence against the appellant that he caused injuries to the deceased by which he died.
19. 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 their conviction can be converted to Section 304 Part-1 or Part-II of the IPC, as contended by learned counsel for the appellants?
20. The Hon'ble Supreme Court in the matter of **Sukhbir Singh v. State of Haryana**¹ 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

1 (2002) 3 SCC 327

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."

21. The Hon'ble Supreme Court in the matter of **Gurmukh Singh v. State of Haryana**² 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 fight;

2 (2009) 15 SCC 635

(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."

- 22.** Likewise, in the matter of **State v. Sanjeev Nanda**³, their Lordships of the Hon'ble 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

3 (2012) 8 SCC 450

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.

23. Further, the Hon'ble Supreme Court in the matter of Arjun v. State of Chhattisgarh⁴ 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, (1) 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)

4 (2017) 3 SCC 247

"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 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"

24. 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.
25. Further, the Hon'ble Supreme Court in the matter of **Rambir v. State (NCT of Delhi)**⁵ 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:

5 (2019) 6 SCC 122

"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."

26. Accordingly to the postmortem report (Ex-P/9), there was inside wound on right ear pinna and pinna was cut, massive contusion on right side of face and clotting blood was present on both parietal and linear fracture bone of skull. The said injury was caused by axe blow. There is no other injury found on the body of the deceased. Even, eye witnesses (PW/2, 5, 8 and 9) have stated that when the appellant demanded money from the deceased for bringing liquor and when he refused to give him money, the appellant assaulted him by axe. Such conduct of the appellant shows that he did not had the intention to cause murder of the deceased though in a heat of passion, he would have assaulted the deceased. In the facts of the present case, after consuming liquor when the appellant demanded money from the deceased for bringing more liquor and when he refused, the incident occurred. Without there being premeditation on the part of the appellant to cause death of the deceased, the assault was made. As such his case purview of Exception 4 of Section 300 of IPC, as the act of the appellant completely satisfies the 4 necessary ingredients of Exception 4 of Section 300 of 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.

27. 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.
28. 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 and sentenced to undergo rigorous imprisonment for 7 years.
29. As the appellant is stated to be in jail, he shall serve out the remaining sentence as modified by this Court.
30. The criminal appeal is **partly allowed** to the extent indicated herein-above.
31. The appellant is reported to be in jail since 25.03.2019. He is entitled for set-off of his undergone period which he remained in jail during trial as well as during present appeal.
32. Registry is directed to sent a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their jail sentence to serve the same on the appellants informing them that they are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.
33. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice