



2026:CGHC:21579-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1565 of 2021

1 - Arjun Singh Ayam S/o Shivkumar, Aged About 22 Years R/o Village - Lalmatiya Tola Katra, Police Station - Marwahi, District - Bilaspur Now District - Gourela - Pendra - Marwahi Chhattisgarh

2 - Shiv Prasad Ayam S/o Mohan Ayam, Aged About 42 Years R/o Village - Lalmatiya Tola Katra, Police Station - Marwahi, District - Bilaspur Now District - Gourela - Pendra - Marwahi Chhattisgarh

... Appellant(s)

versus

State Of Chhattisgarh Through Station House Officer, Police Station, Marwahi, District - Bilaspur Now District - Gourela - Pendra - Marwahi Chhattisgarh

... Respondent(s)

For Petitioner(s) : Mr. Sudhir Kumar Bajpai, Advocate

For Respondent(s) : Mr. Soumya Rai, Dy. G.A.

**Hon'ble Shri Ramesh Sinha, Chief Justice and
Hon'ble Shri Ravindra Kumar Agrawal, Judge**

Judgment on board

Per Ramesh Sinha, C.J.

08.05.2026

1. This criminal appeal filed by the appellants-accused under Section 374(2) of Cr.P.C. is directed against the impugned judgment of



conviction and order of sentence dated 09.09.2021, passed by the learned Second Additional Sessions Judge, Pendraroad, District-Bilaspur (C.G.) in Sessions Case No. 25/2019, whereby the appellants-accused have been convicted as under:-

Conviction	Sentences (to both the appellants)
Section 302/34 of the IPC	Life imprisonment and fine of Rs.100/-, in default of payment of fine, additional R.I. for 15 days.
Section 323/34 of the IPC	R.I. for 01 year
Both the sentences have been directed to run concurrently.	

2. The prosecution case, in brief, is that on 22.06.2019 at about 07:00 a.m., the informant Lalchand Puri informed the Marwahi Police Station that, upon receiving information regarding the murder of Amartiya Bai at Lalmatia Tola, Village- Katra, he reached the spot and found the deceased lying dead in the courtyard of her house. It was alleged that the incident had occurred between 08:00 p.m. on 21.06.2019 and 07:00 a.m. on 22.06.2019. The informant noticed injuries on the head near the right ear and also on the back of the deceased. It was further stated that there had been a quarrel between Shiv Prasad and Ramprasad during the night.
3. On the basis of the said information, the police of Police Station Marwahi reached the spot and recorded a merg intimation (rural information) vide Ex. P-03. On the basis of the same, inquest



proceedings were initiated vide Ex. P-20, and the inquest was conducted over the dead body. Inspector Pradeep Kumar Arya, who reached the spot, prepared the merg intimation as stated by Lalchand Puri. Thereafter, notices to witnesses were issued vide Ex. P-21, and the spot map/panchanama was prepared vide Ex. P-09. An FIR was registered vide Ex. P-22 for offences punishable under Sections 302, 326 read with Section 34 of the Indian Penal Code.

4. An autopsy on the deceased was conducted, and as per the postmortem report Ex. P-14, the Medical Officer opined that the death of Amartiya Bai was homicidal in nature. The injured Ramprasad Ayam was medically examined, and his treatment records were obtained from SIMS Hospital, Bilaspur. Statements of the injured Ramprasad Ayam and other witnesses were recorded during investigation.
5. Pursuant to memorandum statements, a wooden stick was seized from accused Arjun Singh vide Ex. P-7. Blood-stained and plain soil were seized from the spot vide Ex. P-6. The accused persons were arrested and the seized articles were sent to the Regional Forensic Science Laboratory for chemical examination. Upon completion of investigation, the charge-sheet was filed before the Court of Shri Anand Kumar Singh, Judicial Magistrate First Class, Marwahi, and the case was thereafter committed to the Sessions Court for trial on 20.09.2019.



6. Charges under Sections 302/34 and 326/34 of the Indian Penal Code were framed against the accused. The accused denied the charges and pleaded innocence in his statement recorded under Section 313 of the Code of Criminal Procedure and claimed false implication. No defence evidence was adduced.
7. On behalf of the prosecution, the statements of 14 witnesses were recorded before the trial Court and 31 documents were exhibited.
8. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 09.09.2021, convicted the appellants for offences as aforementioned, against which, this criminal appeal has been filed.
9. Learned counsel appearing on behalf of the appellants would submit that the impugned judgment dated 09.09.2021 passed by the learned Trial Court is perverse, erroneous and unsustainable in law, as it has been rendered without proper appreciation of the evidence on record and is liable to be set aside. It is further submitted that the learned Court below has failed to appreciate the material fact that on the date of incident there was a quarrel between the deceased Amartiya Bai and her husband Ramprasad (PW-12), who was subsequently arrested and convicted under Section 326 of the IPC and sentenced to rigorous imprisonment for two years, thereby clearly indicating that the occurrence arose out of a domestic altercation and not due to any act attributable to the present appellants. It is also urged that no motive or intention



whatsoever has been alleged or proved against the appellants for committing the alleged murder, and in absence of such essential ingredients, conviction under Sections 302/34 IPC is wholly unsustainable in law. Learned counsel further contends that as per the medical evidence, the injuries on the deceased were caused by a sharp-edged weapon. However, no such weapon has been recovered from the appellants, nor has any prosecution witness attributed any assault by sharp-edged weapon to the appellants, thereby rendering the prosecution case doubtful. It is further submitted that there exist material contradictions and omissions between the statements recorded under Section 161 CrPC and the testimony of witnesses before the Court, which go to the root of the prosecution case and have been ignored by the learned Trial Court. It is contended that the findings recorded by the Trial Court are based on conjectures and surmises and are contrary to the evidence available on record, and hence perverse. It is further submitted that the prosecution has failed to establish the guilt of the appellants beyond reasonable doubt, and therefore the conviction and sentence are liable to be set aside. It is also argued that the learned Trial Court has failed to appreciate the evidence and documentary material in its proper perspective, resulting in grave miscarriage of justice. Lastly, it is submitted that even if the entire prosecution case is accepted at its face value, the same would at best attract Section 304 Part I or Part II IPC, as the requisite intention to cause death is absent, and thus the



conviction under Section 302/34 IPC is excessive, harsh, and liable to be modified accordingly.

10. On the other hand, learned State counsels for the respondent/State supports the impugned judgment and submits that the appellants have caused murder of deceased by deadly attacking her with *lathi* due to which, she succumbed to her injuries, therefore, the learned trial Court has rightly convicted the appellant under Section 302 of the IPC and it is not a case where the appellants' conviction under Section 302 of the IPC can be altered/converted under Section 304 Part-I or Part-II IPC and as such, the instant criminal appeal deserves to be dismissed.
11. 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.
12. The first question for consideration would be whether the deceased died under unnatural circumstances ?
13. On appreciation of the entire evidence on record, it is clearly established that the deceased died an unnatural death and the same was homicidal. The ocular version of injured eyewitness Ramprasad (PW-12) categorically states that both the accused persons assaulted the deceased with bamboo sticks, as a result of which she sustained fatal injuries and died at the spot. His testimony finds material corroboration from the statement of Lalchand (PW-2), who immediately reached the place of



occurrence and found the deceased lying dead with injuries on her head and chest, and from Dayaram Paw (PW-3), the then Sarpanch, who also reached the spot and supported the preparation of inquest proceedings. The Investigating Officer (PW-13) has further corroborated the version that the deceased was found lying dead with visible injuries on her head and ear region and that inquest proceedings were duly conducted. The postmortem report (Ex. P-14) and the evidence of Dr. K.K. Dhruv (PW-7) conclusively establish that the deceased had sustained a deep bone-cutting injury on the head and multiple contusions on vital parts of the body, and the cause of death was opined to be shock and hemorrhage due to head injury, which was homicidal in nature.

14. Further, Ramprasad (PW-12), being an injured eyewitness, has consistently deposed that both the appellants assaulted the deceased with bamboo sticks, which resulted in her death. Though Mohan Ayam (PW-1) was declared hostile, even in his cross-examination he admitted the occurrence of quarrel and the involvement of Ramprasad, thereby not completely ruling out the incident but only creating partial ambiguity regarding specific participation. The seizure of bamboo sticks at the instance of accused Arjun Singh vide memorandum (Ex. P-5) and seizure memo (Ex. P-7), duly proved by the Investigating Officer (PW-13), is further strengthened by the forensic report (Ex. P-31), which confirms the presence of human blood on the seized sticks,



thereby connecting the weapon of offence with the crime.

15. Although the defence has contended that the injuries noted in the spot map were suggestive of a sharp-edged weapon and no such weapon was recovered from the appellants, this argument is of no consequence in view of the categorical medical evidence which supports the use of a hard and blunt weapon like bamboo sticks, and the settled position of law that opinion recorded in the spot map cannot override expert medical opinion. The postmortem report and medical evidence clearly outweigh such inconsistency, if any.
16. On a holistic appreciation of the evidence, the prosecution has been able to establish beyond reasonable doubt that the deceased died a homicidal death caused by injuries inflicted during the incident in question.
17. Accordingly, it stands proved that the death of Amartiya Bai was not only unnatural but homicidal in nature.
18. Now, the question for consideration would be whether the accused-appellants herein are the perpetrator of the crime in question.
19. In this regard, the prosecution has primarily relied upon the testimony of injured eyewitness Ramprasad (PW-12), who has clearly stated that on the date of incident both accused Shivprasad and Arjun Singh assaulted him with bamboo sticks, as



a result of which he sustained multiple injuries on his head, ear, face and other parts of the body. The said witness has further deposed that during the same occurrence, his wife Amartiya Bai was also assaulted by both the accused persons, due to which she died on the spot.

20. The evidence of PW-12 finds substantial corroboration from medical evidence. Dr. Adarsh Rai (PW-11), Medical Officer, Community Health Centre, Marwahi, who first examined the injured on 22.06.2019, found the following injuries:

- (i) 5 x 2 cm torn wound on the left side of eye,
- (ii) 2 x 1 cm torn wound in front of left ear,
- (iii) 7 x 3 cm cut wound on left ear,
- (iv) 3 x 2 cm torn wound behind the ear,
- (v) 2 x 5 x 1.5 cm torn wound on parietal region of head,
- (vi) 7 x 3 cm torn wound on occipital region of head,
- (vii) abrasion/linear injuries over thigh region and other parts of body.

21. The said injuries were opined to have been caused by hard and blunt as well as hard and sharp object, as reflected in injury report Ex.P-19. The injured was referred to SIMS Hospital, Bilaspur for further management.
22. Further, Dr. Vaibhavant Baderia (PW-8), SIMS Hospital, Bilaspur, examined the injured on 23.06.2019 and found stitched wound over frontal region of head and parietal region with multiple



sutures, and advised CT scan, X-ray and sonography vide Ex.P-

16. Thereafter, Dr. Madhuanant Banjare (PW-10) also medically examined the injured and found:

- (i) 2 cm injury on frontal region of head,
- (ii) 2 cm injury on left parietal region,
- (iii) 2 cm injury on pinna of left ear,
- (iv) 2 cm injury on mastoid region of left ear,

All of which were already stitched, as reflected in Ex.P-17 (admission sheet). The medical evidence of PW-11, PW-8 and PW-10 thus consistently establishes that PW-12 sustained multiple injuries on vital parts of body, particularly head and ear region, fully corroborating his oral testimony.

23. It is further relevant that although Dr. Adarsh Rai (PW-11) initially noted possibility of injuries caused by both hard blunt and hard sharp object, no sharp-edged weapon has been recovered from the accused persons. Importantly, injured PW-12 has nowhere stated that any sharp weapon was used, and has consistently maintained that he was assaulted with bamboo sticks. Thus, the prosecution case regarding weapon of offence is primarily supported by bamboo stick.
24. The Investigating Officer Inspector Pradeep Kumar Arya (PW-13) has categorically stated that on the basis of memorandum statement of accused Arjun Singh (Ex.P-5), one bamboo stick was recovered vide seizure memo Ex.P-7. The said memorandum and



seizure proceedings were supported by witnesses Lalchand (PW-2) and Dayaram Paw (PW-3), who though turned hostile in part, admitted their signatures on Ex.P-5 and Ex.P-7 but denied actual witnessing of recovery.

25. Further, PW-13 has also proved seizure of blood-stained soil and plain soil from spot vide Ex.P-6. The seized articles, including bamboo sticks, blood-stained soil and clothes of deceased, were sent to Regional Forensic Science Laboratory. The FSL report Ex.P-31 clearly shows that human blood was found on bamboo stick samples marked D and E as well as on blood-stained cloth sample C. This scientific evidence clearly establishes that the seized bamboo stick was connected with the incident in question.
26. It is also relevant that injured PW-12 himself is an eyewitness and has consistently deposed regarding assault by both accused persons. His testimony is supported by medical evidence (Ex.P-19, Ex.P-16, Ex.P-17) and forensic evidence (Ex.P-31). The presence of injuries on PW-12 is not disputed. However, from medical evidence it is also clear that none of the injuries have been opined to be grievous within the meaning of Section 320 IPC. There is no evidence of fracture, permanent disfigurement, loss of organ or life-threatening injury. The injuries, though multiple, are simple in nature caused by blunt force trauma.
27. Thus, from the cumulative appreciation of ocular, medical, and scientific evidence, it stands clearly established that the accused-



appellants did participate in the occurrence and voluntarily caused injuries to injured PW-12 by means of bamboo sticks. However, the prosecution has failed to establish any intention on the part of the appellants to cause death or such bodily injury as is sufficient in the ordinary course of nature to cause death.

28. The evidence on record further indicates that the incident occurred suddenly during a quarrel without premeditation. The use of bamboo sticks, absence of lethal weapon, absence of repeated targeting of vital organs with intention to kill, and nature of injuries collectively indicate that the appellants had knowledge that their act was likely to cause bodily injury, but did not possess intention to cause death.
29. The aforesaid finding brings us to the next question for consideration, whether the case of the appellants 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 appellants?
30. The 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

1 (2002) 3 SCC 327



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.”

31. The 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

² (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.”

32. Likewise, in the matter of **State v. Sanjeev Nanda**³, 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.
33. Further, the Supreme Court in the matter of **Arjun v. State of Chhattisgarh**⁴ 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.

3 (2012) 8 SCC 450

4 (2017) 3 SCC 247



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 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”.

34. 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.
35. Further, the 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:
- “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.”
36. The distinction between intention and knowledge in the context of Section 299 and Section 300 IPC is crucial in determining the culpability of the appellant. Intention denotes a conscious desire to bring about a particular result, whereas knowledge implies

5 (2019) 6 SCC 122



awareness that a particular consequence is likely to ensue. In the present case, while the appellants' actions were undoubtedly culpable, the circumstances suggest that they did not intend to cause the death of the deceased. However, it is evident that they knew that their actions were likely to cause harm.

37. Reverting to the facts of the present case, the following circumstances emerge as significant:

- * The prosecution has not been able to establish any prior enmity or motive on the part of the accused-appellants against deceased Amartiya Bai.

- * The incident occurred in the intervening night inside the house during a sudden altercation, without any pre-planned design or preparation.

- * The evidence on record, particularly the testimony of PW-1 Mohan Ayam and PW-12 Ramprasad, indicates that there was a sudden quarrel within the household, which escalated into a physical altercation.

- * The weapon alleged to have been used is a bamboo stick, which is ordinarily available in rural households, and there is no evidence of any preparation or procurement of a deadly weapon with intention to cause death.

38. It is true that the medical evidence, particularly Ex.P-14 (postmortem report) and the statement of Dr. K.K. Dhruv (PW-7), establishes that the deceased sustained a fatal head injury which was sufficient in the ordinary course of nature to cause death. However, the crucial question is not merely the nature of injury, but the intention or knowledge with which the act was committed.



In the present facts, where the incident occurred suddenly in the course of a domestic quarrel and there is absence of premeditation, the Court is not persuaded to hold that the accused-appellants intended to cause the death of the deceased or intended to inflict that particular injury in the ordinary course of nature to cause death. At the highest, it can be safely inferred that the appellants had knowledge that their act of assault with bamboo sticks on vital parts of the body was likely to cause death. This brings the case within the ambit of Section 304 Part II of the Indian Penal Code.

39. The factual matrix of the case satisfies the essential ingredients attracting Exception 4 to Section 300 IPC, namely:
- (i) the act was committed without premeditation,
 - (ii) it occurred in a sudden fight,
 - (iii) it was committed in the heat of passion upon a sudden quarrel and
 - (iv) the accused did not take undue advantage nor acted in a cruel or unusual manner.
40. The evidence of PW-1 and PW-12, read along with medical and forensic evidence, indicates that the occurrence was a spontaneous development arising out of a domestic altercation. There is nothing to show that the appellants acted in a calculated or deliberate manner so as to attract the offence of murder.
41. In so far as the recovery evidence is concerned, the bamboo sticks seized vide Ex.P-7 pursuant to memorandum Ex.P-5 of



accused Arjun Singh, coupled with seizure of blood-stained and plain soil (Ex.P-6), and the FSL report (Ex.P-31) confirming presence of human blood on the seized sticks, do establish the use of such sticks in the occurrence. However, such recovery and forensic corroboration, though relevant for proving participation, do not by themselves establish the existence of intention required to constitute murder under Section 302 IPC, particularly in a case arising out of a sudden quarrel.

42. The medical evidence witnesses establishes multiple injuries on the injured PW-12, but the same are not shown to be grievous within the meaning of Section 320 IPC. The nature of injuries further indicates a blunt force impact consistent with bamboo stick assault rather than a premeditated homicidal attack with intention to cause death.
43. Thus, on an overall appreciation of the evidence on record, it is established that the occurrence took place suddenly, without premeditation, in the course of a quarrel, and the assault was made with bamboo sticks. The appellants can be attributed knowledge that such assault was likely to cause death, but the prosecution has failed to prove intention to cause death or intention to cause such bodily injury as is sufficient in the ordinary course of nature to cause death. The case, therefore, falls within the ambit of culpable homicide not amounting to murder punishable under Section 304 Part II IPC.



44. Consequently, the conviction of the appellants under Section 302 read with Section 34 of the Indian Penal Code cannot be sustained and is liable to be set aside. The same is modified to Section 304 Part II IPC, as the act of the appellants clearly discloses knowledge but not intention, thereby bringing the case within the said provision.
45. Considering the facts and circumstances of the case, the nature of assault, the role attributed to the appellants, and the period already undergone, the sentence of rigorous imprisonment for a period of seven (7) years under Section 304 Part II IPC would meet the ends of justice.
46. Accordingly, the conviction of the appellants under Section 302/34 IPC is set aside. Instead, they are convicted under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for seven (7) years.
47. The criminal appeal is **partly allowed** to the extent indicated herein-above.
48. Appellant No.2- **Shiv Prasad Ayam** is said to be on bail. His bail bonds are cancelled and sureties discharged. He shall surrender within four weeks from today before the concerned trial Court for serving remaining sentence as awarded by this Court, failing which he shall be taken into custody by the Trial Court and sent to jail.



49. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the Appellants are undergoing the jail term, 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.
50. 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

Manpreet