



2026:CGHC:3501-DB

**NAFR****HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 716 of 2016**

*{Arising out of judgment dated 07.05.2016 passed in Sessions Trial No.166/2014 by the learned First Additional Sessions Judge, Sakti, District Janjgir-Champa}*

**1** – Sukul, S/o. Santu, Aged About 30 Years, R/o. Ward No. 1, Kaserpara, Sakti, P.S. Sakti, District Janjgir - Champa, Chhattisgarh.

**2** - Umashankar, S/o. Amruram, Aged About 24 Years, R/o. Ward No. 1, Kewatapara Sakti, P.S. Sakti, District Janjgir - Champa, Chhattisgarh.

**... Appellants****versus**

State Of Chhattisgarh, Through Police Station - Sakti, District Janjgir – Champa, Chhattisgarh.

**... Respondent**

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For Appellants : Mr. Ishwar Jaiswal, Advocate

For Respondent : Mr. Amit Buxy, Dy. Govt. Advocate

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**(Division Bench)****Hon'ble Shri Justice Sanjay K. Agrawal****Hon'ble Shri Justice Arvind Kumar Verma**

**Judgment on Board****(21.01.2026)****Sanjay K. Agrawal, J.**

1. This criminal appeal preferred by the appellant under Section 374(2) of Cr.P.C. is directed against the impugned judgment of conviction and order of sentence dated 07.05.2016, passed by the learned First Additional Sessions Judge, Sakti, District Janjgir-Champa in Sessions Trial No.166/2014, by which, the two appellants herein have been convicted for the offence under Section 302/34 of Indian Penal Code and sentenced to undergo life imprisonment and fine of Rs.5000/-, in default of payment of fine amount, 6 months' additional rigorous imprisonment.
2. Case of the prosecution, in brief, is that, on 15.05.2014 at 12:00 O'clock, the two appellants herein in furtherance of their common intention assaulted Chhotelal (now deceased) by hand & fist and leg, by which he suffered grievous injuries and succumbed to the injuries on the next date i.e. on 16.05.2014; thereby, the offence has been committed. The matter was reported to the police, pursuant to which, FIR was registered vide Ex.P-5, Nazari Naksha was prepared vide Ex.P-2, Panchnama was prepared vide Ex.P-3, Inquest was



conducted vide Ex.P-12 and dead body of deceased Chhotelal was subjected to post-mortem, which was conducted by Dr. K.K.Sidar (PW-3), who proved the post-mortem report vide Ex.P-7, according to which, cause of death was stated to be cardio respiratory arrest with follow incident of respiratory tract obstruction/ respiratory distress syndrome, asphyxia/ hypovolumic shock/ cardio-genic shock and internal bleeding (hemorrhage) and nature of death is incidental or homicidal. After due investigation, the appellants were charge-sheeted for the aforesaid offence before the jurisdictional criminal court, which was ultimately committed to the Court of Sessions for hearing and disposal in accordance with law, in which, the appellants abjured their guilt and entered into defence stating that they have not committed any offence and they have been falsely implicated.

3. In order to bring home the offence, the prosecution examined as many as 15 witnesses and exhibited 23 documents and the appellants-accused in support of their defence have neither examined any witness nor exhibited any document.
4. The trial Court, after appreciation of oral and documentary evidence on record, convicted the appellants herein for the offence under Section 302/34 of I.P.C. and sentenced them



for life imprisonment against which the present appeal has been preferred.

5. Mr. Ishwar Jaiswal, learned counsel for the appellants, would submit that even if the entire case of the prosecution, resting on eye-witness account of Santosh (PW-6) is taken into consideration, at the most, the alleged criminal act of the appellants would not travel beyond culpable homicide not amounting to murder punishable under Section 304 Part-II of I.P.C. Therefore, the conviction of appellants for offence under Section 302/34 of I.P.C. be converted to Section 304 Part-II of I.P.C. and the appellants be sentenced for the period already undergone, as they have already suffered the jail sentence of more than 5 years & 6 months.
6. Mr. Amit Buxy, learned State counsel, would support the impugned judgment and submit that the prosecution has been able to bring home the offence beyond reasonable doubt and the trial Court has rightly convicted the appellant for the aforesaid offence. He would further submit that the eye-witness account of Santosh (PW-6) corroborated from the evidence of oral and dying declaration as per the evidence of Smt. Gomati Bai (PW-7) and Kirtan Lal (PW-9) which proves that the appellants had assaulted the deceased



with hands and fists and the deceased succumbed to the injuries. He would further submit that it is not a case where the conviction of appellants for offence under Section 302/34 of I.P.C. can be converted to Section 304 Part-II of I.P.C.; therefore, the appeal deserves to be dismissed.

7. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
8. The first question for consideration as to whether the death of deceased Chhotelal was homicidal in nature has been answered by the trial Court in affirmative relying upon the post-mortem report (Ex.P-7) proved by Dr. K.K.Sidar (PW-3), according to which, cause of death was stated to be cardio respiratory arrest with follow incident of respiratory tract obstruction/ respiratory distress syndrome, asphyxia/ hypovolumic shock/ cardio-genic shock and internal bleeding (hemorrhage) and nature of death is incidental or homicidal, which in our considered opinion is a correct finding of fact based on evidence available on record, it is neither perverse nor contrary to the record and accordingly, we hereby affirm the said finding.



9. Now, considering the statement of Santosh (PW-6), who is the eye-witness to the incident, the trial Court has rightly concluded that the appellants had assaulted the deceased by hand & fist and by leg by which he suffered grievous injuries and succumbed to the injuries on the next date. Therefore, the conviction of appellants is well merited.
10. Now, the question would be whether the conviction of the appellants for offence under Section 302 of I.P.C. can be converted/ altered to an offence under Section 304 Part-I or Part-II of I.P.C., as contended by learned counsel for the appellants ?
11. The Supreme Court in the matter of Arjun v. State of Chhattisgarh<sup>1</sup> has held that if there is intent and knowledge, the same would be case of Section 304 Part-I of I.P.C. 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 I.P.C.
12. Reverting to the facts of the case in light of the aforesaid principles of law laid down by their Lordships of the Supreme Court, it is quite vivid that, on the date of offence, marriage ceremony was taking place in the house of Sahni Kewat and

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<sup>1</sup> (2017) 3 SCC 247



in order to prepare Mandap in the marriage place, the appellants and deceased have gone to jungle to cut wood for preparation of Mandap. In the meanwhile, on account of some trivial dispute, quarrel arose between appellants & deceased and then, out of sudden anger, in a heat of passion, the appellants have assaulted the deceased by hand & fist and by leg by which he succumbed to the injuries on the next date. As such, there was no intention on the part of appellants to cause death, but the appellants must have had knowledge that the injuries caused by them is likely to cause death. Therefore, the conviction of the appellants for offence under Section 302/34 of I.P.C. deserves to be converted to Section 304 Part-II of I.P.C.

13. In view of the above, the conviction of appellants for offence punishable under Section 302/34 of I.P.C. is altered to Section 304 Part-II of I.P.C. and the appellants are sentenced to the period already undergone, as they remained in jail for more than 5 years & six months.
14. In the result, this criminal appeal is partly allowed to the extent indicated herein-above.
15. The appellants are on bail, they need not surrender; however, their bail bonds shall remain in force for a period of six



months in view of the provision contained in Section 437-A of the Cr.P.C.

16. Let a certified copy of this judgment along-with the original record be transmitted to the concerned trial Court forthwith for necessary information & action, if any.

Sd/-

**(Sanjay K. Agrawal)**  
**Judge**

Sd/-

**(Arvind Kumar Verma)**  
**Judge**

Ashok