



NAFR

VISHAKHA
BEOHARDigitally signed
by VISHAKHA
BEOHAR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 207 of 2012****Judgment Reserved on 21.11.2025****Judgment Delivered on 09.01.2026**

1. Jagdish Prasad Sahu, S/o Hiralal Sahu, aged about 28 years
 2. Banshi Sahu, S/o Hiralal Sahu, aged about 31 years
- Both R/o Village Jewree Thana - Punjipathra, Distt. Raigarh C.G.
- Appellants

versus

- 1 - State Of Chhattisgarh, through P.S. Scheduled Castes and Scheduled Tribes, Raigarh, Distt. Raigarh C.G.
- Respondent

ACQA No. 43 of 2012

- 1 - Tarun Kumar Rathiya S/o. Late Pritam Lal Rathiya aged about 22 years, Occupation Agricultuist, R/o. Village Jiveri P/S. Punjipathara Distt Raigarh C.G.
- Appellant

Versus

1. Jagdish Prasad Sahu, S/o. Heeralal Sahu aged about 28 years
 2. Banshi Sahu S/o Hiralal Sahu, aged about 31 years
- Both R/o Village Jewree Thana - Punjipathra, Distt. Raigarh C.G.
3. State Of Chhattisgarh, through P.S. A.J.K. Distt. Raigarh C.G.
- Respondents

For Appellant(s) : Mr. Sanjay Agrawal, Advocate in CRA No. 207/2012 & Mr. Abhishek Saraf, Advocate in ACQA No. 43/2012

For State : Mr. Devesh G. Kela, Advocate

Division Bench : Hon'ble Smt. Rajani Dubey and
Hon'ble Shri Amitendra Kishore Prasad, JJ.
CAV Judgment

Per Amitendra Kishore Prasad, J.

1. CRA No.207/2012:- This criminal appeal preferred by the appellants/accused persons herein under Section 374(2) of the Cr.P.C. is directed against the impugned judgment of conviction and order of sentence dated 16.02.2012 passed in Special Case No.66/2009 by the Special Judge (under Atrocities Act) Raigarh, District Raigarh, C.G., whereby the appellants have been convicted and sentenced as under:-

Conviction	Sentence
Under Section 304 Part-II read with Section 34 of Indian Penal Code (for short, 'IPC')	Rigorous Imprisonment for three years to each appellant and fine of Rs.5,000/- each, in default of payment of fine amount to undergo additional rigorous imprisonment for six months to each appellant.

2. ACQA No. 43/2012:- This acquittal appeal has been preferred under Section 372 of the Cr.P.C. by the complainant- Tarun Kumar Rathiya, challenging the acquittal of the accused persons of the offences under Section 294 of the IPC and Sections 3(1)(x) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act, 1989'). The

complainant further prays for conviction of the accused persons for the offence under Section 302 read with Section 34 of the IPC and also seeks imposition of the enhanced sentence as mandated by law.

3. Since both the above captioned appeals arise out of the same impugned judgment dated 16.02.2012, they are being heard together and are disposed of by this common judgment.
4. Case of the prosecution, in brief, is that on 05.01.2009 at about 5:30 PM, deceased- Pritamlal Rathiya was standing in front of his house situated at Village Jiveri, Police Station Punjipathara, District Raigarh. At that time, accused-appellant No. 1, Jagdish Sahu, along with his brother, accused-appellant No. 2, Banshi Sahu, arrived on a motorcycle, abused him in filthy language in the name of his caste, threatened him to life and thereafter both assaulted him with sticks on his head and back. During the incident, Bhaina Rautia, Shankar Dansena, Tarun Rathiya, and Brijlal Rathiya were present at the spot, witnessed the assault, and attempted to intervene.
5. Thereafter, on the same day at about 9:00 PM, complainant- Tarun Kumar Rathiya lodged a report at Police Station Punjipathara, pursuant to which, FIR (Exs. P-15 & P-16) was registered against the accused persons. The deceased, who remained under continuous medical treatment, succumbed to his injuries on 11.08.2009, i.e. approximately seven months after the

incident, at K.G. Hospital, Raigarh, due to grievous head injuries sustained in the assault, resulting in registration of Merg No. 28/2009 vide Ex. P-18 at Police Station AJAK, Raigarh. Summons were issued vide Ex. P-06 and inquest proceedings were conducted vide Ex. P-5. The dead body was sent for post-mortem vide Ex. P-3A, and the post-mortem report was prepared vide Ex. P-3. The spot map was prepared vide Ex. P-17. During investigation, on 22.10.2009, the accused persons were taken into custody. Memorandum statements of the accused persons, Jagdish Prasad Sahu and Banshi Sahu, were recorded vide Exs. P-22 and P-20 respectively, pursuant to which, clubs were seized from their possession vide Exs. P-23 and P-25. Blood-stained soil and plain soil were also seized from the spot vide Ex. P-9. The seized club (*danda*) was sent for FSL examination vide Ex. P-31, and as per FSL report Ex. P-33, blood was found on the *danda* seized from appellant No. 2, Banshi Sahu. Post-mortem examination of the deceased was conducted by Dr. Umashankar Gupta (PW-2), and the report is marked as Ex. P-4. According to the doctor, the cause of death could not be ascertained and viscera was preserved for chemical examination. The mode of death was coma. Thereafter, statements of witnesses under Section 161 Cr.P.C. were recorded.

6. After completion of the investigation, a charge-sheet was filed against the accused persons before the concerned trial Court. The accused persons abjured their guilt, prayed for trial, and

entered into defence stating that they have not committed the alleged offences.

7. In order to bring home the offences, prosecution has examined as many as 17 witnesses and brought on record 33 documents vide Ex.P/01 to P/33 whereas, the appellants in their defence have examined 2 witnesses i.e. DW-1 statement of Ravishankar Sao and DW-2 Statement of Hemram Patel and have exhibited 2 documents vide Ex.D/01 & D/02. Statements of the accused persons were recorded under Section 313 of Cr.P.C., in which, they denied the circumstances appearing against them in the evidence brought on record, pleaded innocence and false implication.

8. The trial Court, after hearing counsel for the parties and appreciating the evidence on record, by the impugned judgment, converted the offence under Section 302 read with Section 34 of the IPC to Section 304 Part-II read with Section 34 of the IPC, and acquitted the accused persons of the charges under Section 294 of the IPC and Sections 3(1)(x) and 3(2)(v) of the SC/ST Act. Aggrieved by the said judgment, the instant appeals have been filed by the accused persons and the complainant- Tarun Kumar Rathiya, respectively.

9. **CRA No. 207 of 2012** – Learned counsel for the appellants submits that the conviction of the appellants, as recorded by the trial Court, is wholly unsustainable in law. It is argued that the

appellants have been erroneously convicted for the offence punishable under Section 304 Part-II read with Section 34 of the IPC and improperly sentenced to undergo three years' imprisonment. From the entire evidence adduced by the prosecution, it is established that although the appellants are alleged to have assaulted the deceased- Pritam Lal Rathia, with a *danda* on his head and abused him in filthy language in the name of his caste, but the deceased had sustained only one lacerated wound on his head and a single contusion on his back. He was treated at the Primary Health Centre and thereafter returned home. It is submitted that after about seven months, due to certain complications, he again visited the hospital on 11.08.2009, where he was admitted and died on the same day. The doctor, who examined him, categorically stated that the injury sustained by the deceased was simple in nature and that the cause of death could not be ascertained. In these circumstances, the conviction of the appellants under Section 304 Part-II read with Section 34 of the IPC is erroneous and liable to be set aside. It is further submitted that the appellants have been falsely implicated in the case, and that appellant No. 2, Banshi Sahu, being a government servant, has been roped in due to previous animosity, and any confirmation of the conviction would seriously affect his service career.

10. **ACQA No. 43/2012**: Learned counsel for the appellant/complainant submits that the deceased was standing

outside his house when the accused—appellants assaulted him with a danda and used filthy, caste-based language, referring to him as “*sala Adivasi Kanwar*,” thereby humiliating him in public. It is further argued that the incident arose out of a previous dispute during an election and that the accused persons caused injuries to vital parts of the deceased’s body, particularly his head. Although the injuries did not appear serious on the date of the incident, i.e., 05.01.2009, but complications arising from these injuries led to the deceased being admitted to the hospital after seven months, where he ultimately succumbed. In these circumstances, the offence under Section 302/34 of the IPC is clearly made out against the accused persons. It is further contended that, based on the eye-witness accounts, the accused persons are also liable to be convicted under Sections 3(1)(x) and 3(2)(v) of the Act, 1989, as the assault was committed on the ground that the deceased belonged to a Scheduled Tribe. The evidence, therefore, establishes the commission of offences under the Special Act, for which the accused persons are liable to be convicted and sentenced in accordance with law, which the trial Court has failed to do. Learned counsel for the complainant further submits that the seriousness of the injuries, which ultimately caused the death of the deceased, cannot be overlooked merely because there was no fracture or because the death occurred seven months after the incident; the death was a

direct consequence of the complications arising from the injuries inflicted during the assault.

11. Learned State counsel submits that the accused persons are liable to be convicted and sentenced appropriately. On perusal of the judgment, it appears that the trial Court rightly convicted the accused persons for the offence punishable under Section 304 Part-II/34 of the IPC; however, the trial Court has taken a lenient view while awarding the sentence. It is therefore submitted that the appellants are required to be properly sentenced in accordance with law.

12. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection. It is admitted that the incident took place on 05.01.2009 at about 5:30 p.m., when the deceased was standing outside the complainant's house. At that time, the accused persons arrived there, abused the deceased, and assaulted him. This is evident from the testimony of the prosecution witnesses. From a perusal of the evidence adduced by the prosecution, it is clear that the incident of abuse and assault indeed occurred. Furthermore, the testimony of PW-5 Tarun Kumar Rathiya, the son of the deceased, reveals that the accused persons abused the deceased, saying "*sale Kanwar bhosdike, bada neta bana firta hai,*" and assaulted him with a *danda*. Appellant No. 1- Jagdish Prasad Sahu, struck the deceased on the head, while Appellant No. 2, Banshi Sahu,

assaulted him on the back and foot. Although this witness was cross-examined, nothing substantial was elicited by the defence to discredit his version, and the facts regarding the abuse and assault remain unshaken.

13. PW-6 Brijlal, also a son of the deceased, has similarly stated that on the day of the incident he saw accused Jagdish Prasad Sahu, armed with a stick, and accused Banshi Sahu assaulting his father by hitting him on the head and by kicking and beating him. He stated that the incident occurred due to a caste-related dispute. However, in cross-examination, he admitted that he witnessed the incident from his doorway, about 80 steps away, during the evening in winter, and that the village, being surrounded by mountains, becomes dark quickly. He further stated that he had a prior dispute with accused Banshi Sahu regarding the Indira Awas Yojana. He confirmed poor visibility and acknowledged that he first mentioned the green stick and the kicking in court, but denied having given a false statement due to the prior dispute.

14. Likewise, PW-7 Padumlal stated that while returning from the house of accused Jagdish Sahu with a companion in the evening, just before sunset, he heard a loud banging sound. He saw the accused persons assaulting Pritamlal with kicks and sticks. According to him, Jagdish Sahu was assaulting the deceased with a stick, while Banshi Sahu was kicking him. After the assault,

both accused persons returned to their respective homes. Thereafter, he, along with Manbodh, lifted Pritamlal and took him to his house. Further, PW-4 Manbodh also corroborated the incident. He stated that while he was going towards the colony in the evening, he saw Pritamlal lying near the Bajrang Bali temple with a head injury from which blood was oozing. At that time, PW-5 Tarun Rathiya asked him for help in lifting the injured Pritamlal. He assisted in lifting him and took him to his house. He further stated that Pritamlal was conscious and speaking at that time. Thus, from the above evidence, it is clear that on the date of the incident, both accused persons assaulted the deceased Pritamlal.

- 15.** Besides above, from the perusal of the evidence of Dr. S.N. Keshari (PW-15), who initially treated the deceased, it is clear that during the MLC examination, no bone injuries were found on the body of the deceased. One lacerated wound measuring 5.5×2.5 cm was noted on the scalp, and a contusion measuring 2.5×6 cm was found on the backside of the deceased. This witness has categorically stated that no fractures were detected on the body of the deceased. The other Doctor (PW-1 Dr. T.K. Tondar), who treated the deceased, stated that the deceased had been admitted to the hospital for old injuries sustained to his head. However, no details regarding those injuries have been provided. Furthermore, PW-2 Dr. Umashankar Gupta conducted the post-mortem examination of the deceased, who died on 11.08.2009. In the post-mortem and autopsy report (Ex.P/4) prepared by him, he

stated that the cause of death could not be ascertained in this case, and therefore he preserved the *viscera* for further examination.

16. Furthermore, from the evidence of the Investigating Officer (PW-17 Sitaram Singh), it appears that the incident took place on 05.01.2009, and the FIR was lodged on the same date by the deceased himself, wherein he categorically named the assailants and described their acts. From the testimony of the Investigating Officer, it further appears that the deceased sustained only two injuries, and he died after seven months of the incident, i.e., on 11.08.2009, during the subsequent course of treatment. This witness has categorically stated that no information was ever provided to him regarding the deceased having gone into a coma or any such medical complication. Initially, offences under Sections 294 and 324 IPC were registered against the accused persons; however, upon the death of the deceased, offences under Section 302 IPC and Section 3(2)(v) of the Act, 1989, were added. He further stated that the incident occurred due to an election-related dispute.

17. That apart, the accused persons were examined under Section 313 Cr.P.C., during which they stated that they had been falsely implicated in the case. According to them, the deceased was suffering from *mirgi* (epilepsy) and was drunk on the date and time of the incident, and he fell on the road, thereby sustaining

injuries. They contended that due to political rivalry involving between one Uchitram and the son of the deceased- Tarun Rathiya, they were falsely implicated, as there was a dispute regarding the construction of an Indira Awas. The defence also examined two witnesses, DW-1 Ravinshankar Sao and DW-2 Hemram Patel. DW-2 Hemral Patel categorically stated that the deceased was suffering from *mirgi* and was found lying in a drunken condition. DW-1 Ravinshankar Sao stated that he had no information regarding the incident. He further stated that the accused persons were not in the village at the relevant time, as they were participating in a *pran-pratishtha* ceremony in a temple, and therefore they had not committed any offence.

- 18.** Perusal of the above evidence would show that the deceased, at the time of the incident on 05.01.2009, himself lodged the FIR on the same date, naming the accused persons as the assailants. He categorically described the manner in which the incident occurred. Therefore, the FIR, being in the nature of a dying declaration, cannot be discarded. Likewise, the other witnesses who witnessed the incident, namely PW-4 Manbodh, PW-5 Tarun, PW-6 Brijlal and PW-7 Padumal, have also categorically stated about the occurrence and have confirmed that the deceased sustained injuries during the said incident. However, from the post-mortem report (Ex.P-3), it is not apparent that the death of the deceased was homicidal in nature. The doctor conducting the post-mortem has stated that no definite cause of death could be

ascertained. It was also not stated by him that the death was homicidal. Thus, the medical evidence does not support the conclusion that the deceased died a homicidal death, particularly considering that he was stated to be in a drunken condition as per the evidence of the doctor. The doctor (PW-15) has also stated that no bone injuries were found in the body of the deceased.

19. When the death of the deceased itself is not shown to be homicidal in nature, there is no question of convicting the accused persons for an offence punishable under Section 304 Part II of the IPC. From the medical evidence as well as the testimonies of the witnesses, it appears that the deceased sustained only one lacerated wound on the head and one contusion on the back, both of which were simple in nature. The incident occurred on 05.01.2009, and after receiving primary treatment, the deceased returned home. Thereafter, nearly seven months later, he developed certain complications for which he was admitted to the hospital, where he ultimately died. Since the doctor failed to provide any definite cause of death and did not opine that the death was homicidal in nature, the most that can be said is that the injuries sustained by the deceased would attract the offence under Section 323 IPC and not Section 304 Part II IPC. Accordingly, neither the offence under Section 302/34 IPC nor that under Section 304-II/34 IPC is made out against the accused persons, particularly in view of the fact that the medical evidence does not establish the death to be homicidal. Therefore, no higher

offence can be said to be made out, and the accused persons are liable only for conviction under Section 323 read with Section 34 IPC and they are sentenced to one year rigorous imprisonment which they have already undergone. However, the fine amount imposed by the learned trial Court shall remain intact. The conviction under Section 304 Part II read with Section 34 IPC is, accordingly, set aside.

20. The next issue for consideration is whether the trial Court rightly acquitted the accused persons of the offences under Section 294 IPC and Sections 3(1)(x) and 3(2)(v) of the Act, 1989. On examining the evidence, this Court finds no material to show that the assault was committed solely because the deceased belonged to a Scheduled Tribe. The incident appears to have arisen out of an election-related dispute, and no compelling evidence establishes a caste-based motive. Further, the evidence regarding the alleged abuses under Section 294 IPC is inconsistent, as the witnesses differ on the specific words uttered, and these do not find mention in the FIR. There is also no evidence to show that the alleged abuses were made in a public place or that they caused annoyance to the public, both of which are essential ingredients of Section 294 IPC. Accordingly, the acquittal of the accused persons of the offences under Section 294 IPC and Sections 3(1)(x) and 3(2)(v) of the Act, 1989, is justified and needs no interference by this Court.

21. We now consider the submission advanced by the learned counsel for the appellants regarding the conviction of Appellant No. 2, who is a government employee and whose conviction may adversely affect his service career. From the evidence on record, the offence does not appear to be one involving moral turpitude. It is further argued that since the evidence against Appellant No. 2 is weak and the essential ingredients of Section 304-II/34 IPC are not established, he may be acquitted; or, in the alternative, appropriate observations may be made to ensure that his service prospects are not prejudicially affected.

22. We have considered this aspect. On perusal of the evidence, it does not appear that any act involving moral turpitude was committed by the appellant. In ***Naresh Markam and others v. State of Chhattisgarh***, CRR No. 8 of 2018, decided on 16.05.2018, a Co-ordinate Bench of this Court has categorically held that in petty offences, where the conduct does not amount to moral turpitude, the conviction of the accused would not debar him from government service. Following this principle, we hold that the conviction of Appellant No. 2- Banshi Sahu for the offence under Section 323/34 IPC, for which he has already undergone the sentence of one year's rigorous imprisonment, shall not adversely affect his service. Since the appellants have already undergone the sentence of one year, they are not required to surrender.

23.In the result, CRA No. 207 of 2012 filed by the accused persons is **allowed in part**, whereas ACQA No. 43 of 2012 filed by the complainant, being without merit, is hereby **dismissed**.

24.The appellants/accused persons are reported to be on bail. Keeping in view the provision of Section 437-A of CR.P.C., the appellants/accused persons are directed to forthwith furnish personal bond in terms of Form No.45 prescribed in the Cr.P.C. of sum of Rs.25,000/- each with one surety in the like amount before the trial Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellants/accused persons on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

25. Registry is directed to transmit the lower Court record along with a copy of this judgment to the trial Court forthwith for information and necessary compliance.

Sd/-

sd/-

(Rajani Dubey)
Judge

(Amitendra Kishore Prasad)
Judge