



2026:CGHC:22725

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on: 24.04.2026

Judgment delivered on: 14.05.2026

CRA No. 368 of 2008

1 – Kaushal, S/o Negi Prasad Rathore, Aged About 25 Years, R/o Dharashiv, Police Station- Pamgarh, District- Janjgir Champa (C.G.).

--- Appellant

versus

1 - State of Chhattisgarh, through the Police Station Pamgarh, District- Janjgir-Champa (C.G.).

--- Respondent(s)

with

CRA No. 369 of 2008

1 – Bailisthar, S/o Kedarnath Rathore, Aged About 53 Years, R/o Dharashiv, Police Station- Pamgarh, District- Janjgir Champa (C.G.).

---Appellant

Versus

1 - State of Chhattisgarh, through the Police Station Pamgarh, District- Janjgir-Champa (C.G.).

--- Respondent(s)

with

CRA No. 371 of 2008

1. Kamta Prasad, S/o Negi Prasad, Aged About 22 Years,
2. Negiram, S/o Adhar Singh Rathore, Aged about 54 years,
3. Dinesh Kumar, S/o Radhe Lal Rathore, Aged about 22 years,
4. Suneel Kumar, S/o Balisthar Rathore, Aged about 21 years,
5. Babla @ Tankeshwar, S/o Jagdish Gir Goswami, Aged about 28 years,
6. Jugunu alias Motilal, S/o Itwari Prasad Patel, Aged about 27 years,
7. Dilip, S/o Radheshyam Rathore, Aged about 27 years,
8. Banwasi, S/o Gopal Prasad Rathore, Aged about 24 years,
9. Anil, S/o Ghanshyam Prasad Pandey, Aged about 27 years,

All are R/o Dharashiv, Police Station- Pamgarh, District- Janjgir Champa (C.G.).

--- Appellants

Versus

1 - State of Chhattisgarh, through the Police Station Pamgarh, District- Janjgir-Champa (C.G.).

--- Respondent(s)

For Appellants	:	Mr. Rajeev Shrivastava, Sr. Advocate along with Ms. Anu Mishra, Advocate
For Respondent(s)/State	:	Ms. Shubha Shrivastava, P.L.

Hon'ble Smt. Justice Rajani Dubey

CAV Judgment

1. Since all these appeals arise from the same impugned judgment, they were heard together and are being decided by this common judgment.
2. These appeals, preferred under Section 374(2) of the Code of Criminal Procedure, 1973, have been filed by the appellants assailing the judgment of conviction and order of sentence dated 17.03.2008 passed by the learned Additional Sessions Judge, Janjgir, District- Janjgir- Champa in Sessions Trial No. 127/2006, whereby the trial Court convicted the appellants and sentenced them as follows:-

Conviction	Sentence
Under Section 147 of IPC	R.I. for 1 year
Under Section 148 of IPC	R.I. for 1 year
Under Section 326/149 of IPC	R.I. for 3 years and to pay fine of Rs. 500/- and in default of payment of fine to undergo R.I. for 2 months
Under Section 325/149 of IPC	R.I. for 2 years and to pay fine

	of Rs. 500/- and in default of payment of fine to undergo R.I. for 2 months
Under Section 324/149 of IPC (two counts)	R.I. for 1 year and to pay fine of Rs. 500/- and in default of payment of fine to undergo R.I. for 2 months
Under Section 323/149 of IPC	R.I. for 6 months

3. The prosecution case, in brief, is that on 07.07.2005, an annual ceremonial feast (Bhoj) in memory of the grandmother of complainant party member Vishnu Prasad namely Harabai, was organized at his residence. Relatives and villagers had assembled there. On 07.07.2005 at about 2:00 PM, Shravan Rathore, who was engaged in agricultural work for the complainant party, informed them that accused Negiram had remarked that he was acting as a sycophant of Vishnu Prasad. Thereafter, at about 7:30–8:00 PM, Vishnu Negi was questioned as to why he had referred to Shravan Kumar as a sycophant despite the fact that he was employed by them for agricultural purposes. Upon being so questioned, he returned from the spot. Thereafter, during the night, when Vishnu Prasad, Maharathi, Vinod and Santosh had gone to a *paan* stall for purchasing betel leaves, several persons from the village arrived there and started abusing Vishnu Prasad. Upon receiving information regarding the quarrel, Radhabai, Hirabai, Uttara Bai and Kamalabai also reached the spot. The prosecution further alleges that all the

accused persons formed an unlawful assembly and, in furtherance of their common object, assaulted Vishnu Prasad, Maharathi and Vinod with deadly weapons such as lathis, swords, axes and knives. The accused persons, namely Kamta Rathore, Kauyshal, Negiram, Sunil, Dinesh, Babla, Bailisthar, Dilip, Banvasi, Anil Pandey, Lali Chouhan, Jugunu and others, allegedly participated in the assault. It is further alleged that accused Harishankar instigated the co-accused by exhorting them to assault the victims.

4. At the said time, Babla was armed with a *Farsa*, Anil was carrying a *Tabbal*, Sunil was holding an iron rod, and the other persons accompanying them were armed with lathis/sticks. When local residents attempted to intervene and rescue the victims, they too were allegedly assaulted by the accused persons. In the incident, Radhabai, Hirabai, Uttara Bai and Kamalabai sustained injuries. During the course of assault, Vishnu Prasad fell to the ground and, presuming him to be dead, the accused persons fled from the spot. Thereafter, the injured persons were taken to their homes and information regarding the incident was communicated telephonically to the police station at Pamgarh, as well as to the Janjgir police. Police personnel subsequently reached the village and shifted the injured persons to the hospital for medical treatment. Some of the injured persons were later referred to SIMS Hospital, Bilaspur, for further treatment. X-ray examinations were conducted and grievous injuries, including fracture injuries

sustained by Kamal Rathore and Vinod were detected.

5. On the basis of information furnished by Santosh Rathore, son of Bhagirathi, a merg/intimation was initially recorded and thereafter, on 08.07.2005, the formal First Information Report was registered. During investigation, the police prepared the spot map, recorded statements of witnesses under Section 161 CrPC, seized weapons such as *lathis*, *tabbal* and axe allegedly used in the commission of offence, arrested the accused persons and, upon completion of investigation, filed the charge-sheet before the competent Court. The learned Trial Court framed charges against the appellants for the offence punishable under Sections 147, 148, 307/149, 326/149, 325/149 and 323/149 of the Indian Penal Code, to which appellants abjured their guilt and claimed to be tried.

6. In order to substantiate the charges levelled against the accused/appellants, the prosecution examined as many as 23 witnesses. Thereafter, the statements of the accused/appellants were recorded under Section 313 of the Code of Criminal Procedure, 1973, wherein all incriminating circumstances appearing in the prosecution evidence were put to them for explanation. The accused/appellants denied the said circumstances in toto, pleaded innocence and asserted that he has been falsely implicated in the present case. In their defence, appellants examined 6 witnesses.

7. The learned trial Court, upon appreciation of the entire oral as well as documentary evidence available on record, found the prosecution case to be credible and trustworthy. Accordingly, vide judgment dated 17.03.2008, the trial Court convicted and sentenced the accused/appellants as detailed in para 1 of the said judgment. Hence, this appeal.
8. Learned counsel for the appellants submits that the judgment of conviction passed by the learned trial Court is based on surmises and conjectures and is contrary to the evidence available on record. It is further submitted that there is no specific allegation against the present appellants regarding participation in the assault and he has been falsely implicated by the complainant due to previous enmity. Learned counsel submits that the trial Court itself recorded a finding that there was insufficient light at the place of occurrence for proper identification of the assailants, yet, merely on the basis that the complainant and the appellants belonged to the same village and were previously acquainted, the Court presumed the presence of the appellants at the spot, which is legally unsustainable.

It is submitted that all the prosecution witnesses are interested witnesses and, therefore, their evidence required careful scrutiny, which has not been properly undertaken by the trial Court. Learned counsel further submits that the prosecution failed to prove the First Information Report in accordance with

law. As per the prosecution case itself, the Janjgir Police first reached the spot and shifted the injured persons to the hospital, whereas the Pamgarh Police reached later. Therefore, the Dehati Nalishi (Ex.P-1) recorded subsequently by the Pamgarh Police could not have been treated as the FIR, rendering the prosecution story doubtful. It is further contended that the Investigating Officer, Shri B.S. Khutiya (PW-22), admitted that on the report lodged by the appellants and other co-accused persons, a counter case bearing Crime No.247/2005 was also registered against the complainant party, however, the prosecution failed to disclose the outcome of the said case before the Court, thereby creating serious doubt regarding the fairness of the investigation. Learned counsel submits that the trial Court committed illegality in discarding the defence plea regarding the counter case merely on the ground that no document relating thereto was produced by either side, despite the prosecution being in custody of such records. An adverse inference ought to have been drawn against the prosecution for withholding the said documents. It is also submitted that the trial Court failed to properly appreciate the material contradictions and omissions in the statements of the prosecution witnesses and ignored the fact that due to previous enmity there existed a strong motive for false implication of the appellant.

Learned counsel further submits that although the prosecution alleged that 10-12 persons had participated in the

assault, no specific overt act or weapon attributed to the present appellants has been proved by the prosecution. Despite such deficiencies, the trial Court illegally convicted the appellants without proper appreciation of the evidence relating to assault and seizure of weapons. Lastly, it is submitted that no blood stains were found on any of the weapons allegedly used in the incident and none of the seized weapons were sent for chemical examination. In absence of such corroborative evidence, the conviction of the appellants is unsustainable in law. Thus, the impugned judgment is liable to be set aside.

Reliance has been placed on the decisions of Hon'ble Supreme Court in the matter of **Kanbi Nanji Virji and Others Vs. State of Gujarat; (1970) 3 SCC 103, State of Haryana Vs. Ram Singh and another connected matter; (2002) 2 SCC 426** & the decision of Hon'ble High Court of Madhya Pradesh in the matter of **Sewaram and others Vs. State of M.P.; 2024 SCC OnLine MP 8781**.

9. Per contra, learned State counsel opposes the appeal and submits that the judgment of conviction and sentence passed by the learned trial Court is well reasoned and based on proper appreciation of the oral and documentary evidence available on record. It is further submitted that the prosecution witnesses have consistently supported the case of the prosecution and their testimony inspires confidence. Minor contradictions and

omissions do not affect the core of the prosecution case. The involvement of the appellants in the incident stands duly proved beyond reasonable doubt and, therefore, no interference with the impugned judgment is warranted.

10. Heard counsel for the parties and perused the material available on record.

11. It is evident from the record of the learned Trial Court that charges were framed against the appellants for the offences punishable under Sections 147, 148, 307 read with Section 149, 326 read with Section 149, 325 read with Section 149 and 323 read with Section 149 of the IPC. Upon appreciation of the oral as well as documentary evidence available on record, the learned Trial Court acquitted the appellants of the charge under Section 307 IPC, but convicted them for the offences punishable under Sections 147, 148, 324/149, 326/149, 325/149 and 323 (five counts) read with Section 149 of the IPC.

12. Vishnu Rathore (P.W.-1) deposed that on the date of the incident, at about 7:00–7:30 PM, he along with his brothers was sitting after having betel leaf, when the accused persons, armed with weapons, arrived at the spot, started abusing them and thereafter assaulted them with the said weapons.

In para 4 of his cross-examination, the witness admitted that a counter-case in respect of the same incident had also been registered against him and his family members and trial in the

said case is still pending.

The witness further stated that at the relevant time, Harishankar was serving as the Sarpanch. Prior thereto, Uttarabai, wife of his brother Maharathi, had held the post of Sarpanch. He further stated that the Sarpanch election had taken place approximately 6–7 months prior to the incident and admitted that his son Sanat had contested the said election. He further admitted that apart from Harishankar, about 5–6 other candidates had also contested against Sanat, and Harishankar had ultimately won the election.

13. Santosh Kumar Rathore (P.W.-2) deposed that on the date of the incident, at about 9:00 PM, his uncle had gone to consume betel leaf and at that time he was present on the roof of his house. Upon hearing noises of abuse, he along with other family members rushed towards the *paan* shop and witnessed the accused persons assaulting his uncles with weapons. He further stated that when they attempted to intervene, the accused persons also assaulted them. The witness further stated that he lodged the First Information Report vide Ex. P/1 and identified his signatures thereon marked from 'A to A'.

In his cross-examination, the witness admitted the defence suggestion that a counter-case in respect of the same incident had been registered against them. He further admitted that Harishankar had contested the election for the post of Sarpanch

and his cousin Sanat Rathore had also participated in the said election.

14. Maharathi Rathore (P.W.-3) deposed that accused Anil assaulted him with a hatchet, as a result of which he sustained an injury on the frontal portion of his head.

During the course of cross-examination, the witness admitted the defence suggestion that a counter-case arising out of the same incident had been registered against him and his family members.

15. Uttara Bai (P.W.-4) stated that all the accused persons assaulted her and her family members with lathis and axes, thereby causing injuries to the injured persons.

In her cross-examination, the witness admitted that Harishankar had contested the election for the post of Sarpanch and that prior to the said election, she herself had served as the Sarpanch of the village. However, she denied the defence suggestion that false allegations were being levelled against the accused persons on account of political rivalry.

16. Santosh Kumar Rathore (P.W.-5) admitted his signatures on the seizure memos Ex. P/2 to Ex. P/16; however, he stated that he was unable to specify which weapon had been seized from which accused person. The prosecution declared the witness hostile and subjected him to cross-examination, but he denied all the suggestions put forth by the prosecution and further denied the

alleged seizures said to have been effected in his presence.

17. Ram Gir (P.W.-6) admitted his signatures on the seizure memos Ex. P/2 to Ex. P/8 marked from 'B to B'. He stated that clubs were seized from accused Kaushal, Santosh, Bairistor, Negi and Dinesh. He further stated that an iron rod was seized from Motu and an axe was seized from Babla.

In his cross-examination, the witness stated that upon being called by the Inspector, he went to the concerned place and signed all the documents prepared there.

18. Vinod Kumar (P.W.-7) deposed that on the date of the incident, all the accused persons, armed with weapons such as rods, assaulted him as well as Vishnu Rathore and Maharathi Rathore.

During the course of his cross-examination, the witness admitted that, on the basis of the report lodged by the accused persons, a counter-case in respect of the same incident was pending against the complainant party and their family members.

19. Laxman (P.W.-8) stated that on the date of the incident at about 9:00 PM, a quarrel had taken place; however, he expressed ignorance regarding the details and circumstances of the said quarrel.

The prosecution declared the said witness hostile and cross-examined him, but he denied all the suggestions put to him by the prosecution.

20. Radhabai (P.W.-9), Santkumar Rathore (P.W.-10), Kamla Bai (P.W.-11) and Heera Bai (P.W.-12) deposed that all the accused persons, armed with weapons, assaulted their family members and, as a consequence of the said assault, the injured persons sustained injuries.

21. Shravan Kumar Rathore (P.W.-13), Rajendra Puri (P.W.-14) and Milan Chouhan (P.W.-15) did not support the case of the prosecution and were accordingly treated as hostile witnesses.

22. In the matter of **Sewaram** (supra), Hon'ble High Court of Madhya Pradesh held in paras 16, 17 and 18 as under:-

“16. These facts reveal that there was a free fight amongst the rival party. Law in relation to free fight is crystal clear. Supreme Court in Kanbi Nanji Virji v. State of Gujrat ((1970) 3 SCC 103 : AIR 1970 SC 219), held that in case of a free fight, there are two groups of persons. Injuries sustained by the persons of both groups in course of such fight where death of two persons also takes place, then only those persons who are proved to have caused injuries or death, can be held guilty for the offence individually committed by them.

17. Similarly, in case of Munir Khan v. State of Uttar Pradesh ((1970) 3 SCC 191 : AIR 1971 SC 335), Supreme Court held that in a mutual fight, there is no common object and none of the accused can be convicted by having recourse to Section 149 IPC. Same is the ratio of law laid down by Supreme Court in State of Uttar Pradesh v. Jodha Singh ((1989) 3 SCC 465: AIR 1989 SC 1822).

18. In Mangalsingh v. State of Madhya Pradesh [1996 Cri LJ

1908 (MP)], it is held that there was wordy dual and clashing of arm by parties resulting into free fight in which both sides suffered injuries. It is held that it cannot be said that it was an unlawful assembly. Hence, conviction of accused under Section 302/149 IPC was altered to one under Section 304, 325 and 148 IPC.”

23. In the present case, all the complainant and injured witnesses have admitted that a counter-case arising out of the same incident is also pending against them. Thus, it is apparent that members of both parties had assaulted each other during the course of the incident. In such circumstances, the prosecution has failed to establish that the appellants were members of an unlawful assembly.

24. Purushottam Banjare (D.W.-1), who was working as a teacher in the Primary School, deposed that Anil Pandey was posted as the teacher in the said school during the period from 15.06.2005 to 30.04.2006. He further stated that on 07.07.2005, Anil Pandey remained present in the school along with him from 10:00 AM to 4:30 PM, in support whereof he produced the attendance register marked as Ex. D/8. The witness further stated that thereafter Anil Pandey stayed with him on the same day and during the night both of them shared the same room. According to the witness, on 07.07.2005, Anil Pandey did not leave village Jhumkidih. He further stated that the Sarpanch had appointed Anil Kumar Pandey as a guest teacher and a copy of the said appointment order had been forwarded to the school. The said appointment

order was exhibited as Ex. D/9.

25. It is evident from the First Information Report (Ex. P/23) that the alleged incident took place on 07.07.2005 at about 11:30 PM, whereas the FIR came to be lodged on 08.07.2005 at about 6:30 PM. The reason assigned for the delay in lodging the FIR is stated to be heavy rainfall during the night.

26. Dr. Amritlal Soni (P.W.-18) deposed that on 08.07.2005, he medically examined Vishnu Prasad Rathore and found 3 simple injuries on his body. The witness further stated that he advised X-ray examination in respect of Injury Nos. 1 and 2 and prepared the medical examination report, which was exhibited as Ex. P/26.

The witness further deposed that he examined Maharathi, advised him to undergo X-ray examination and prepared the corresponding medical report, which was exhibited as Ex. P/27.

He also examined Vinod Kumar and found 4 injuries on his body. He advised X-ray examination and prepared his medical report, which was marked as Ex. P/28.

The witness further stated that he examined Santaram, advised him for X-ray examination and issued the medical report vide Ex. P/29.

On the same day, he medically examined Santosh and found simple injuries on his body. He prepared the medical examination report in this regard, which was exhibited as Ex.

P/30.

The witness further deposed that he examined Radhabai, advised her to undergo X-ray examination and prepared the medical report, which was exhibited as Ex. P/31.

On the same day, he also examined Kamla and issued the medical examination report, which was exhibited as Ex. P/32.

The witness further stated that upon examination of Uttara, he found 4 injuries on her body and prepared the medical report vide Ex. P/33. He also examined Heerabai, found simple injuries on her body and issued the corresponding medical report, which was exhibited as Ex. P/34.

27. Dr. R.K. Das deposed that he advised X-ray examination of Kamla and, upon examination of the X-ray report, found a fracture in her right arm. In this regard, he prepared and issued the X-ray report, which was exhibited as Ex. P/44.

28. The learned Trial Court observed that no blood stains were detected on the seized weapons and that the prosecution had failed to place on record any FSL report in support of its case. Taking the said deficiencies into consideration, the learned Trial Court acquitted the accused persons of the charge punishable under Section 307 of the IPC; however, it convicted them for the remaining offences by invoking the principle of common object under Section 149 IPC. It is apparent that the prosecution failed to establish, by cogent and reliable evidence, that the injuries

sustained by the injured persons were caused by the weapons allegedly seized during the investigation.

29. It is evident from the statements of the prosecution witnesses that members of both parties had assaulted each other during the incident in question. The said accused examined a witness in his favour. According to Vishnu Rathore (P.W.-1), accused Anil had assaulted the injured persons with an axe. Similarly, Maharathi Rathore (P.W.-3) also deposed that he was assaulted by Anil with an axe. However, it is apparent from the seizure memos available on record that no weapon was seized from the possession of Anil. The learned Trial Court has also recorded a finding that the prosecution failed to establish that the injuries sustained by the injured persons were caused by the weapons allegedly seized during investigation.

30. Furthermore, the defence evidence adduced on behalf of Anil creates a serious doubt regarding his presence at the place of occurrence at the relevant point of time. In such circumstances, the participation of Anil in the alleged incident becomes doubtful and he is entitled to the benefit of doubt.

31. Accordingly, **Criminal Appeal No. 371 of 2008** preferred by **appellant Anil** deserves to be and is hereby **allowed**. The conviction and sentence imposed upon the appellant by the impugned judgment in respect of the alleged offences are hereby set aside and he is acquitted of all the charges levelled against

him.

32. The appellant- Anil is reported to be on bail. Keeping in view the provisions of Section 437-A of Cr.P.C. (481 of the B.N.S.S.), the appellant is directed to forthwith furnish a personal bond in terms of Form No. 45 prescribed in the Code of Criminal Procedure of 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 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 appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

33. So far as other appellants are concerned, the learned Trial Court, upon meticulous appreciation of the statements of the prosecution witnesses as well as the medical evidence available on record, rightly held the accused persons guilty for the offences punishable under Sections 324 (two counts), 326, 325 and 323 (five counts) of the IPC. However, from the evidence adduced in the case, it is apparent that the incident was a case of free fight between both the parties and, therefore, the essential ingredients constituting an unlawful assembly and the existence of a common object have not been satisfactorily established by the prosecution. Consequently, the conviction of the appellants under Sections 147 and 148 IPC cannot be sustained.

34. Further, as the prosecution failed to prove that the injuries

sustained by the injured persons were caused by the weapons allegedly seized during the course of investigation, the conviction of the appellants under Section 326 IPC is also not sustainable in law and is accordingly altered to one under Section 325 IPC. However, the conviction of the appellants for the offences punishable under Sections 324 (two counts), 325 and 323 (five counts) of the IPC is hereby affirmed.

35. So far as the question of sentence is concerned, considering the fact that the incident in question pertains to the year 2005 and that the present appeal has remained pending since the year 2008, coupled with the circumstance that the appellants have already undergone more than one month of incarceration, this Court is inclined to take a lenient view in the matter. It is also noteworthy that during the pendency of the trial, the appellants remained on bail and there is nothing on record to indicate that they ever misused the liberty so granted to them.

36. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the ends of justice would be adequately served if the substantive jail sentence imposed upon the surviving appellants is reduced to the period already undergone by them.

37. Consequently, the appeal preferred by the appellants, namely **Kaushal, Bailisthar, Kamta Prasad, Negiram, Dinesh Kumar, Suneel Kumar, Babla @ Tankeshwar, Jugunu, Dilip and**

Banwasi stands **partly allowed**. The appellants are acquitted of the offences punishable under Sections 147 and 148 IPC. However, their conviction under Sections 324 (two counts), 325 and 323 (five counts) IPC is maintained with modification that the sentence awarded to them shall stand reduced to the period already undergone by them. The fine amount, if unpaid, shall be deposited in accordance with the directions of the learned Trial Court.

38. The appellants namely Kaushal, Bailisthar, Kamta Prasad, Negiram, Dinesh Kumar, Suneel Kumar, Babla @ Tankeshwar, Jugunu, Dilip and Banwasi are reported to be on bail, therefore, their bail bonds shall remain in operation for a period of six months as provided under Section 481 of BNSS, 2023.

39. The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-
(Rajani Dubey)
JUDGE