



2026:CGHC:13660-DB

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
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06.02.2026	23.03.2026	--	23.03.2026

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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**ACQA No. 392 of 2018**

- Kalam Sahu S/o Shri Aajuram Sahu, Aged About 62 Years Occupation Agriculturist R/o Village Reewapar, Thana And Tahsil Mungeli Civil And Revenue District Mungeli Chhattisgarh.

--- Appellant/Victim

**versus**

1. State Of Chhattisgarh Through District Magistrate, Mungeli District Mungeli Chhattisgarh.
2. Shatrughan Sahu S/o Shri Jhaduram Sahu Aged About 60 Years R/o Village Reewapar, Thana And Tahsil Mungeli Civil And Revenue District Mungeli Chhattisgarh.
3. Mohan Sahu S/o Shri Shatruhan Sahu Aged About 27 Years R/o Village Reewapar, Thana And Tahsil Mungeli Civil And Revenue District Mungeli Chhattisgarh.
4. Khamhan Sahu S/o Shri Shatruhan Sahu Aged About 22 Years R/o Village Reewapar, Thana And Tahsil Mungeli Civil

And Revenue District Mungeli Chhattisgarh.

5. Senkumar @ Buttu Sahu S/o Shri Shatruhan Sahu Aged About 20 Years R/o Village Reewapar, Thana And Tahsil Mungeli Civil And Revenue District Mungeli Chhattisgarh.

--- Respondents

**ACQA No. 64 of 2019**

- State of Chhattisgarh Through The District Magistrate, District Mungeli, Chhattisgarh..

---Appellant

**Versus**

1. Shatruhan Sahu S/o Jhadu Ram Sahu Aged About 60 Years R/o Village Reevapar, Police Station- City Kotwali, Mungeli, District- Mungeli, Chhattisgarh..
2. Mohan Sahu S/o Shatruhan Sahu Aged About 27 Years R/o Village Reevapar, Police Station- City Kotwali, Mungeli, District- Mungeli, Chhattisgarh.
3. Khamhan Sahu S/o Shatruhan Sahu Aged About 22 Years R/o Village Reevapar, Police Station- City Kotwali, Mungeli, District- Mungeli, Chhattisgarh.
4. Sen Kumar @ Buttu Sahu S/o Shatruhan Sahu Aged About 20 Years R/o Village Reevapar, Police Station- City Kotwali, Mungeli, District- Mungeli, Chhattisgarh.

--- Respondent(s)

For Appellants	:	Mr. Sunil Sahu, Advocate in ACQA No.392/2018 and Ms. Nand Kumari Kashyap, P.L. in ACQA No.64/2019
For Res. Nos. 1 in ACQA No.392/2018	:	Ms. Nand Kumari Kashyap, P.L.
For Respondent/accused	:	Ms. Sharmila Singhai, Sr. Advocate with C.K. Sahu and Mr. Hrishabh Deo Shukla, Advocates.

**D.B. : Hon'ble Smt Justice Rajani Dubey & Hon'ble Shri Justice Radhakishan Agrawal**

**(C.A.V. Judgment)**

**Per Rajani Dubey, J**

1. Since the aforesaid acquittal appeals arise out of the same impugned judgment of acquittal, they are being heard together and disposed of by this common judgment.
2. The ACQA No. 392/2018 has been preferred by the appellant/victim and ACQA No.64/2019 has been preferred by appellant/State against the judgment dated 31.05.2018 passed in Sessions Trial No.42/2015 by the learned Sessions Judge, Mungeli, District Mungeli (C.G.), whereby the learned Trial Court while convicting the accused persons under Section 323, 323/34 of IPC for causing injury to injured Dilpa Sahu and Kalam Sahu, acquitted them of the charges punishable under Sections 294, 506-2, 323/34 (for victim/injured Rajmati), 307/34 and 307/34 of IPC.
3. The prosecution case, in brief, is that on 12.07.2015, at Village Reevapar, Police Station City Kotwali Mungeli, complainants Dilpa Sahu, Kalam Sahu, Rajmati, and Ishwari Sahu were engaged in weeding paddy in their agricultural field. At about 12:30 PM, accused persons, namely Shatrughan Sahu, Mohan Sahu, Buttu @ Sen Kumar, and

Khamhan Sahu, forming an unlawful assembly armed with sticks and lathis, came to the spot and objected to the complainants that they were cultivating and raising the boundary of their (accuseds') field. The accused persons abused the complainants in filthy language and threatened them with dire consequences, including threats to kill. Thereafter, they assaulted Dilpa Sahu, Kalam Sahu, and Rajmati with lathis in a manner likely to cause death. The incident was witnessed by Man Singh and Lal Singh, who were working in a nearby field. They intervened and pacified the accused persons. The injured persons were then shifted to Mungeli Hospital after informing Ambulance 108 for medical treatment. After primary treatment, considering the serious condition of Dilpa Sahu and Kalam Sahu, they were referred to CIMS, Bilaspur. An intimation was sent to Police Station City Kotwali Mungeli through hospital memo on 13.07.2015. On the basis of such information, Crime No. 316/2015 was registered at Police Station City Kotwali Mungeli, and investigation was undertaken.

4. During the course of investigation, the injured persons were medically examined and medical opinions were obtained. Statements of the injured persons and other witnesses were recorded. A spot map (Nazri Naksha) of the place of

occurrence was prepared. Blood-stained soil and plain soil were seized from the spot. Memorandum statements of the accused persons were recorded, and the lathis allegedly used in the commission of the offence were seized. Blood-stained clothes of the injured persons were also seized and sent for medical and chemical examination, and the reports were obtained. Medical documents with regard to the treatment of the injured persons were seized.

5. After completing the usual investigation, a charge sheet was filed against the accused persons for the offence punishable under Sections 307, 294, 323, 506-B, 34 and 325 of IPC before the competent Court followed by charge under Sections 294, 506 (Part-II), 323/34, 307/34 and 307/34 of IPC by the learned Trial Court.
6. In order to prove its case, the prosecution examined as many as 12 witnesses. Statements of the accused/respondents were also recorded under Section 313 of the Cr.P.C. wherein the accused/respondents pleaded innocence and false implication in the crime. In defence, no witness has been examined by the accused.
7. The learned Trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment, while convicting the

accused persons under Section 323, 323/34 of IPC for causing injury to injured Dilpa Sahu and Kalam Sahu, acquitted them of the charges punishable under Sections 294, 506-2, 323/34 (for victim/injured Rajmati), 307/34 and 307/34 of IPC. Hence, this acquittal appeal by the complainant/appellant and the State.

8. Mr. Sunil Sahu, learned counsel for the complainant/appellant submits that the impugned judgment of acquittal is wholly contrary to the evidence available on record and is liable to be set aside. It was contended that the learned trial Court had erred in discarding the cogent and reliable testimony of the prosecution witnesses, whose versions were consistent and corroborative on all material particulars. All the injured witnesses have categorically deposed that the accused/respondents abused them in filthy language, assaulted them, and caused injuries. Their testimony was duly supported by the medical evidence of PW-5 and PW-7, as well as by the Medico-Legal Certificates (MLC reports), which clearly established the injuries sustained by the victims. It has been further submitted that copies of the statements of the witnesses had been filed along with the petition and were marked as Annexure A-1, demonstrating the consistency and reliability

of the prosecution case. Learned counsel further argued that the testimony of the injured witnesses, which carried greater evidentiary value, was fully corroborated by the independent eye-witnesses present at the spot. It was submitted that minor omissions and contradictions, which did not go to the root of the prosecution case, could not be made a ground to discard the otherwise trustworthy evidence of the injured witnesses. The learned trial Court, according to the counsel, failed to appreciate this settled principle of law and wrongly disbelieved the prosecution evidence on insignificant discrepancies. It has been also contended that the learned trial Judge had not properly appreciated the evidence led by the prosecution regarding the seizure of the weapons used in the commission of the offence. The prosecution has duly proved the seizure of the weapons through the testimony of the Investigating Officer, however, the learned trial Court unjustifiably placed undue reliance upon the testimony of memorandum and seizure witnesses while ignoring the clear and convincing evidence of the Investigating Officer, thereby arriving at an erroneous conclusion. It has been also submitted that the learned trial Court has exercised its jurisdiction with material irregularity and had committed a serious error in overlooking the

substantive evidence of the injured witnesses. By giving undue weight to minor contradictions and ignoring the overall consistency of the prosecution case, the learned trial Court has acquitted the accused/respondents in a manner that was perverse and unsustainable in law. Therefore, the impugned judgment of acquittal is liable to be set aside and the accused/respondents be convicted in accordance with law.

9. Ms. Nand Kumari Kashyap, learned P.L. for the State/appellant in ACQA No. 64/2019 submits that the impugned judgment of acquittal is vitiated by serious errors of law and fact and, therefore, was liable to be set aside. It has been contended that the learned Trial Court failed to properly appreciate the oral and medical evidence available on record and had erroneously extended the benefit of doubt to the accused persons despite the prosecution having proved its case beyond reasonable doubt. It has been further submitted that the acquittal of the accused persons under Section 294 of the Indian Penal Code was wholly unjustified. The learned Trial Court, though discussing the evidence in paragraph 7 of the judgment, failed to consider that P.W.1 and P.W.2 had specifically deposed regarding the use of obscene and abusive

language by the accused persons. Notably, there was no effective cross-examination on this aspect, and P.W.2 had even reproduced the obscene words used. In the absence of any rebuttal, the ingredients of the offence under Section 294 IPC stood clearly established, and the finding of acquittal on this count is perverse. The learned Panel Lawyer further argued that the acquittal under Section 323/34 IPC in respect of injuries caused to Rajmati (P.W.8) was equally erroneous. Rajmati has categorically described the manner in which she was assaulted, and her testimony was duly corroborated by the medical evidence of P.W.6, Dr. Kamlesh Sahu, who proved her complaint of back pain and the medical report (Ex. P-18). The Trial Court failed to properly appreciate this corroborated evidence while recording acquittal. It has been also submitted that the learned Trial Court gravely erred in acquitting the accused persons of the charge under Section 307/34 IPC. The evidence of injured witnesses Dilpa Sahu (P.W.1) and Kalam Sahu (P.W.2) clearly established that the accused persons, armed with lathis and dandas, had assaulted them on vital parts of the body, including the head. Their injuries were medically proved by Dr. Kamlesh Kumar (P.W.-6) and Dr. R. Jitpure (P.W.-7). The X-ray examination confirmed

fracture of the ulna bone of the left forearm of Kalam Sahu, which constituted a grievous injury. The nature of weapons used, the manner of assault, and the conduct of the accused persons clearly reflected the requisite intention and knowledge necessary to attract Section 307 IPC. The Trial Court, however, erroneously diluted the offence and convicted the accused persons only under Sections 323 and 323/34 IPC, ignoring the settled principle that for an offence under Section 307 IPC, the intention coupled with overt act is material and not merely the extent of injury.

10. It has been further argued that both injured witnesses remained hospitalized for several days—Dilpa Sahu from 13.07.2015 to 22.07.2015 with a fracture of the right patella, and Kalam Sahu from 13.07.2015 to 20.07.2015 with a fractured ulna bone. Such injuries could not, by any stretch of imagination, be termed as simple injuries. The medical evidence unequivocally supported the prosecution case, yet the Trial Court failed to assign due weight to the same. The learned Panel Lawyer also contended that the mere fact that some witnesses did not fully support the prosecution case could not render the entire prosecution version doubtful, particularly when the injured witnesses themselves had given cogent, consistent, and reliable testimony. The

Trial Court erred in discarding trustworthy evidence on minor discrepancies and in drawing an unwarranted inference that the complainant party was the aggressor, despite there being no legally admissible evidence to substantiate such a conclusion. It has been also submitted that the accused persons have failed to offer any plausible explanation in their statements under Section 313 Cr.P.C. to rebut the incriminating circumstances appearing against them. In such circumstances, the acquittal recorded by the learned Trial Court by granting benefit of doubt was unsustainable in law. Therefore, the impugned judgment of acquittal is liable to be set aside and the accused persons be convicted in accordance with law.

11. Ms. Sharmila Singhai, learned Sr. Advocate appearing for the accused/respondents submits that the impugned judgment passed by the learned Trial Court was well-reasoned, based on proper appreciation of evidence, and did not suffer from any illegality, perversity, or material irregularity warranting interference by this Hon'ble Court. It was contended that the scope of interference in an appeal against acquittal is limited, and unless the findings recorded by the Trial Court are manifestly erroneous or wholly unreasonable, the same ought not to be disturbed. It was

further argued that the learned Trial Court meticulously examined the oral and medical evidence on record and had rightly found that the prosecution failed to prove the charges beyond reasonable doubt. The prosecution witnesses were closely related and interested witnesses, and their testimonies contained material contradictions and omissions which went to the root of the matter. The Trial Court, having had the advantage of observing the demeanor of witnesses, rightly assessed their credibility and found their evidence unreliable to the extent alleged by the prosecution. With regard to the charge under Section 294 IPC, learned Sr. counsel submitted that mere allegation of abuse was not sufficient unless the exact obscene words were proved to have been uttered in a public place causing annoyance. The Trial Court, upon appreciation of evidence, found that the essential ingredients of the offence were not satisfactorily established. Such a finding, being based on evidence, did not call for interference. In respect of the injuries allegedly sustained by the complainant party, it was contended that the medical evidence did not conclusively support the prosecution version of a brutal and life-threatening assault. The nature of injuries, except the alleged fracture, was simple in nature. Even regarding the fracture, there was no

evidence to establish that the same was inflicted with the intention or knowledge necessary to attract Section 307 IPC. It was submitted that for constituting an offence under Section 307 IPC, the prosecution must prove intention or knowledge to cause death, which was conspicuously absent in the present case. The mere fact that a fracture occurred would not automatically bring the case within the ambit of attempt to murder. Learned Sr. counsel further submitted that the Trial Court had rightly considered the possibility of a sudden quarrel arising out of a land dispute and had found that the prosecution suppressed the genesis of the occurrence. The defence version that the complainant party was the aggressor was not adequately ruled out by the prosecution. In such circumstances, the benefit of doubt was rightly extended to the accused persons. It was also argued that minor inconsistencies in the prosecution case, hostile witnesses, and lack of independent corroboration created serious doubt about the prosecution story. The Trial Court, after comprehensive evaluation of the entire evidence, had convicted the accused only to the extent proved and acquitted them of the graver charges. Such a balanced approach demonstrated proper judicial application of mind rather than perversity.

In support of her submission, learned Sr. Counsel placed reliance on the decision of Hon'ble Apex Court in the matter of **Mallappa and Ors. Vs. State of Karnataka** reported in **(2024) 3 SCC 544** and **Babu Sahebagouda Rudragoudar and Ors. Vs. State of Karnataka** reported in **(2024) 8 SCC 149**.

12. We have heard learned counsel for the parties and perused the material available on record.
13. It is apparent from the record of the learned trial Court that the learned trial Court framed charges under Sections charge under Sections 294, 506 (Part-II), 323/34, 307/34 and 307/34 of IPC by the learned Trial Court, and after appreciation of oral and documentary evidence, the learned Trial Court while convicting the accused persons under Section 323, 323/34 of IPC for causing injury to injured Dilpa Sahu and Kalam Sahu, acquitted them of the charges punishable under Sections 294, 506-2, 323/34 (for victim/injured Rajmati), 307/34 and 307/34 of IPC..
14. Complainant Dilpa Sahu (PW-1) has stated that on the date of the incident, at about 12:00 noon, when his father Kamal, mother Rajmati, and brother's wife Ishwari were engaged in weeding work in the field, the accused/respondents Shatrughan, Mohan Sahu, and Buttu came near their field

carrying bamboo sticks and started assaulting him while abusing him in the name of his mother and sister. He has further stated that all the four accused/respondents caused injuries to him on his head, right leg, hand, and chest. He has also deposed that while he was present there, all the four accused/respondents started assaulting his father as well, and he (this witness) fell injured. Thereafter, accused/respondent Shatrughan also hit his mother Rajmati on her back with a stick. At that time, Man Singh and Lalji, who were putting manure in their field, came running to the spot, upon which the accused/respondents, thinking him (this witness) to be dead, left him and fled away. Thereafter, he went to the police station and lodged a report. He has further stated that he was taken to CIMS, Bilaspur, where he remained admitted for two months. His X-ray was conducted, and his leg was operated upon, in which a rod was inserted.

15. Kalam Sahu (PW-2), Man Singh Sahu (PW-3), Laljee (PW-4) and Rajmati (PW-8) have supported the statement of complainant and stated that accused/respondents committed maarpeet with Dilpa Sahu (PW-1) and Kalam Sahu (PW-2) & they sustained injuries in the incident.
16. Dr. Kamlesh Kumar (PW-6) is the doctor who examined the

complainant/injured Dilpa Sahu (PW-1) and gave his report (Ex. P-16), wherein he noted a lacerated wound on the middle of the forehead measuring 4" × ½", deep up to the bone, along with swelling and tenderness on the right shoulder region and swelling and tenderness on the right knee joint. The doctor also medically examined injured Kalam Sahu (PW-2) and submitted his report (Ex. P-17), noting as many as six lacerated wounds on the right frontal region of the head, middle of the head, left anterior parietal region, right parietal region (twice), and on the right elbow joint. Both the injured were referred by this witness to CIMS, Bilaspur for further management and expert opinion. The doctor also examined Rajmati (PW-8) and gave his report (Ex. P-18), wherein he noted complaint of pain in the back of the body; however, no external mark of injury was found on her body.

17. Dr. R. Jitpure (PW-7) conducted x-ray of Dilpa Sahu (PW-1) vide Ex.P-21 and after examination of x-ray report, he found no fracture on his body. The doctor has also conducted x-ray of Kalam Sahu (PW-2) and gave his report under Ex.P-22 and P-23 noticing fracture beneath the ulna bone of left forearm with no callus. The doctor has admitted this suggestion that the fracture of hand could also be caused

by falling on the ground forcefully.

18. The learned Trial Court minutely appreciated oral and documentary evidence including the medical evidence and recorded its finding that no fatal injury has been proved by the prosecution. From the testimony of Dr. Kamlesh Kumar (PW-6), it transpires that although certain lacerated wounds and swelling were found on the person of Dilpa Sahu (PW-1) and multiple lacerated wounds on the person of Kalam Sahu (PW-2), but the nature of these injuries was not shown to be fatal or life-threatening. Further, the X-ray report of Dilpa Sahu (PW-1), proved by Dr. R. Jitpure (PW-7), did not reveal any fracture. Though the doctor (PW-7) noticed fracture on hand of Kalam Sahu (PW-2) but it was the admission of the doctor that the fracture could also be caused by falling on the ground forcefully. Although a fracture of the ulna bone of the left forearm of Kalam Sahu (PW-2) was noticed but Kalam Sahu (PW-2), in his deposition, attributed assault by the accused primarily on the head and leg, and did not specifically utter about any assault on the hand, where the fracture was found. This discrepancy creates a reasonable doubt regarding the prosecution version as to the manner in which the said injury was caused and gives strong assertion to the

admission of doctor that the said injury could also be caused by falling on the ground. So, the learned Trial Court rightly held that the prosecution has not established the essential ingredients of the offences punishable under Sections 294, 506 (Part-II), 323/34 (in respect of Rajmati), and 307/34 of IPC, and the conviction of the accused/respondents was rightly limited to the offences under Sections 323 and 323/34 IPC, to the extent duly proved.

19. The Hon'ble Apex Court in the matter of **Mallappa and Ors. Versus State of Karnataka** reported in (2024) 3 SCC 544 has held in para 42 as under:-

42. *Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:-*

- "(I) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive--inclusive of all evidence, oral and documentary;*
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;*
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be*

*followed;*

- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;*
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;*
- (vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."*

20. Thus from the discussion aforesaid and judicial pronouncement of Hon'ble Supreme Court in the matter of ***Mallappa*** (*supra*) & the view taken by the learned Appellate Court in convicting the accused/respondents under Sections 323, 323/34 of IPC and acquitting of the charge under Sections 294, 506-2, 323/34 (causing injury to victim/injured Rajmati), this Court finds no illegality in the judgment impugned acquitting the accused/respondents particularly when there is a settled legal position that if on the basis of record two conclusions can be arrived at, the one favouring the accused has to be preferred. Even otherwise, the prosecution thus has utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record.

Furthermore, in case of appeal against the acquittal the scope is very limited and interference can only be made if finding recorded by the trial Court is highly perverse or arrived at by ignoring the relevant material and considering the irrelevant ones. In the present case, no such circumstance is there warranting interference by this Court.

21. Accordingly, ACQA Nos.392/2018 and No.64/2019 preferred by the victim/appellant and State/appellant herein are bereft of any substance and, therefore, the same liable to be and are hereby dismissed.

Sd/-

**(Rajani Dubey)**  
**JUDGE**

Sd/-

**(Radhakishan Agrawal)**  
**JUDGE**