



2026:CGHC:8244

AFR

**Reserved on : 30.01.2026**

**Delivered on : 16.02.2026**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 378 of 2005**

**1** - Antram (Dead And Deleted As Per Court Order Dated 14-01-2026)

**2** - Prahlad S/o Shri Siya Ram Aged About 57 Years Farmer, R/o Village Muthali, P.S. Kusumunda, Distt. Korba, Chhattisgarh.

**3** - Dhani Ram S/o Shri Prahlad Aged About 32 Years Labour, R/o Village Muthali, P.S. Kusumunda, Distt. Korba, Chhattisgarh.

**4** - Balram S/o Shri Prahlad Aged About 30 Years Labour, R/o Village Muthali, P.S. Kusumunda, Distt. Korba, Chhattisgarh.

**... Appellant(s)**

**versus**

**1** - State Of Chhattisgarh Through Station House Officer, P.S. Kusumunda, Distt. Korba, Chhattisgarh.

**... Respondent(s)**

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For Appellants : Mr. Vikash Kumar Pandey, Advocates

For Respondent/State : Mr. Shailesh Puriya, Panel Lawyer

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**Hon'ble Shri Justice Narendra Kumar Vyas**

**CAV Judgment**

1. The appellants by way of this appeal have challenged the judgment dated 22.03.2005 passed by the Sessions Judge, Korba (CG) in Sessions Trial No. 28/2004 whereby and

whereunder, appellants have been convicted and sentenced as under :-

Conviction u/S.	Sentence RI.	Fine	In default of payment of fine
458 IPC	2 Years and 6 months	Rs. 1000/-	4 months RI
323 IPC with Section 34 IPC	6 Months	Rs. 500/-	1 month RI

2. Briefly stated, the case of the prosecution is that the victim, Rukmani Bai, is the niece of Rajkumar as well as that of the accused persons Antaram and Prahlad. Rukmani Bai had come to her mother Sukvara Bai at the house of Rajkumar in village Mudali, and she used to do household work at Rajkumar's house. In the night of 26.05.2004, Rukmani Bai was sleeping in the courtyard of Rajkumar's house, while her mother Sukhvara Bai and her aunt Pancho Bai were sleeping inside the house. At that time, Rajkumar and his wife were away from the house. At about 2:00 a.m., the accused persons trespassed into the courtyard by scaling the wall and caught hold of Rukmani Bai. They assaulted her by kicking her on the abdomen, and accused Antaram assaulted her with tip of a stick. The other accused persons caught hold her hands, due to which Rukmani Bai could not escape. On hearing her cries, Sukhvara Bai and Pancho Bai raised an alarm to call for help. Thereupon, the accused persons fled away from the spot. At the relevant time, Rukmani Bai was pregnant. Due to the assault on her abdomen, she started

experiencing severe pain and on medical examination it was found that the child died in womb due to assault. Rukmani Bai lodged a report regarding the incident at Police Outpost Hardi Bazar, where FIR No. 0/2004 was registered. Subsequently, a formal FIR bearing Crime No. 272/2004 was registered at Police Station Kusmunda.

3. After completion of usual investigation, a charge-sheet was filed under Sections 458, 316,323, 304 of the IPC against the accused persons before the learned Judicial Magistrate First Class, Katghora. Learned Judicial Magistrate First Class, Katghora vide its order dated 27.08.2004 committed trial to the learned Sessions Judge, Korba which was registered as Sessions Trial No. 28/2004. The accused denied the charges leveled against them under Sections 458, 316, 323 and 304 of the IPC and faced trial.
4. To bring home the charges against appellants, the prosecution examined as many as 9 witnesses namely PW/1 the victim Rukhmani, PW/2 Sukvara Bai, PW/3 Pancho Bai, PW/4 Raj Kumar, PW/5 Dr. N.N. Kanwar, PW/6 Shrawan Kumar, PW/7 D.r Veena Agrawal, PW/8 Dr. P.S. Kanwar, PW/9 Yadumani Sidar, SI and exhibited documents Ex.P/1 Intimation under 174 Cr.P.C., Ex.P/2 Intimation under 175 Cr.P.C., Ex.P/3 Naksa Panchanama, Ex.P/4 Deadbody Supurdnama, Ex.P/5 Medical Examination Report, Ex.P/6 Seizure Memo, Ex.P/7 to P/11 Arrest Panchnama, Ex.P/12 medical examination report, Ex.P13A-application for postmortem, Ex.P/13 Postmortem Report,

Ex.P/14 application for Medical Examination, Ex.P/15 Spot Map, Ex.P/16 application to SDM, Ex.P/17 application for medical report. The accused were examined under Section 313 of the Cr.P.C. and exhibited documents Ex.D/1 FIR, Ex.D./2 Police Statement of the victim, Ex.D/3 Police Statement of the Sukvara, Ex.D/4 Police Statement of Pancho Bai, Police Statement of Rajkumar.

5. Upon appreciation of the evidence and material on record, the learned trial Court convicted the appellants and sentenced them as aforesaid. Aggrieved thereby, the appellants have preferred the present appeal under Section 374 of the Cr.P.C. The appellants remained in jail from 28.05.2004 to 05.06.2004 during trial and again from 22.03.2005 till the sentence was suspended and bail was granted by this Court on 28.04.2005.
6. Learned counsel for the appellants would submit that the appellants have been falsely implicated in the present case due to property dispute between the family members. He would assail the impugned judgment of conviction and order of sentence as being illegal, perverse and contrary to the evidence on record. He would submit that the prosecution has failed to establish the ingredients of the offence punishable under Section 458 of the Indian Penal Code. The alleged place of occurrence is an open courtyard, and there is no legally acceptable evidence to show that the appellants committed lurking house-trespass or house-trespass at night with preparation to cause hurt. The essential requirement of "preparation" under Section 458 IPC

has not been proved, rendering the conviction under the said provision unsustainable. It is further submitted that the prosecution case rests primarily on the interested testimony of closely related witnesses and no independent witness from the village has been examined, despite the alleged incident having occurred in a residential area.

7. Learned counsel would further submit that since the trial Court has already acquitted the accused for commission of offence under Section 316 and 304 of the IPC, the conviction of the appellants under Section 458 IPC is illegal as there is no evidence by the prosecution to prove beyond reasonable doubt that the accused have committed lurking house trespass with intention to commit offence. He would further submit that there are material contradictions and omissions in the statements of the prosecution witnesses with regard to the manner of occurrence, the role attributed to each accused, and the sequence of events. These contradictions go to the root of the prosecution case and render the version unreliable and would pray for allowing the appeal.
8. Per contra, learned counsel for the State would vehemently oppose the appeal and submit that the impugned judgment of conviction and order of sentence have been passed after proper appreciation of the oral and documentary evidence available on record and do not suffer from any illegality or perversity warranting interference by this Court. He would further submit that the testimony of the victim, Rukmani Bai, is cogent,

consistent and inspires confidence. Her version of the incident stands duly corroborated by the evidence of material prosecution witnesses, namely Sukvara Bai and Pancho Bai, who were present at the spot and witnessed the aftermath of the incident. Their presence at the place of occurrence is natural and has not been shaken in cross-examination.

9. Learned counsel would further submit that the prosecution has successfully established the offence of house-trespass at night by proving that the accused persons unlawfully entered the courtyard of the house by scaling the boundary wall at about 2:00 a.m. and committed assault, thereby clearly satisfied the ingredients of Section 458 of the Indian Penal Code. He would further submit that the medical evidence on record fully corroborates the ocular testimony. The medical examination of the victim establishes that she was pregnant at the relevant time and that the foetus died in the womb as a result of the injuries sustained on her abdomen. The nature and location of injuries clearly support the prosecution version and rule out any possibility of accidental or self-inflicted injuries. The prosecution has proved beyond reasonable doubt that the accused persons, in furtherance of their common intention, voluntarily caused hurt to the victim and committed acts which resulted in death of the unborn child. It is further argued that minor contradictions, if any, pointed out by the appellants are trivial in nature and do not go to the root of the prosecution case. Such discrepancies are natural in the testimony of rustic witnesses and, rather than discrediting

the prosecution case..

**10.** Lastly, learned counsel would submit that the accused were afforded an opportunity to explain the incriminating evidence during their examination under Section 313 of the Cr.P.C. wherein they have not placed any material to dislodge the case of the prosecution and would pray for dismissal of the appeal.

**11.** I have heard learned counsel for the appellants and the State and perused the record of the trial Court with utmost satisfaction.

**12.** From the submission made by the learned counsel for the parties and perusal of the record, the point emerged for determination by this Court is ;

“Whether the prosecution is able to prove beyond reasonable doubt the ingredients of Section 458 IPC and 323 IPC read with 34 IPC to render the conviction legal and justified?”

**13.** For appreciation of this point, this Court has to go through the evidence as well as the legal position with regard to proving of Sections 458 and 323 of the IPC.

**14.** To appreciate whether offence under Section 458 of the IPC lurking house trespass or house breaking by night after preparation for hurt, assault or wrongful restrain is made out or not, this Court has to examine whether the prosecution has been able to prove beyond reasonable doubt of the ingredients of Section 458 IPC i.e. the ingredients of lurking house trespass or house breaking by night as defined in Sections 441, 442, 443,

444, 445 and 446 of the IPC which read as under :-

**Section 441. Criminal trespass —**

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

**442. House trespass —**

Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass". Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

**443. Lurking house-trespass —**

Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".

**444. Lurking house-trespass by night —**

Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night".

**445. House Breaking ---**

A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say--

First- If he enters or quits through a passage by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly- If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly- If he enters or quits through any passage which he

or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly- If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly- If he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault.

Sixthly- If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation- Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

#### **446. House Breaking by night –**

Whoever commits house-breaking after sunset and before sunrise is said to commit “house-breaking by night”.

#### **458. Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint —**

Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

**15. Evidence of PW/1 :** - The victim, in her examination-in-chief, has categorically deposed that at about 2:00 a.m. in the night, she was sleeping at the house of her maternal uncle. At that time, accused Antaram, Prahlad, Dhaniram, Balram and Dharmin unlawfully entered the house and came into the courtyard. Her mother was awake and, on noticing the accused persons, raised an alarm stating that they had come to assault them. Upon hearing this, the victim woke up, whereafter all the

accused persons caught hold of her and started assaulting her. She further stated that she folded her hands and requested her maternal uncles to spare her, telling that she was seven months pregnant. At that point of time, accused Antaram exhorted that her abdomen itself be beaten so that she would die quickly, and further instructed that no cut marks be caused. She deposed that accused Dhaniram was holding a stick, accused Balram was holding a *tangia* (axe), and her aunt Dharmin assaulted her abdomen with fists, as a result of which she became unconscious. The victim further stated that due to the blows inflicted on her abdomen, the child in her womb died. Thereafter, she called her husband and went to lodge a report at the police station. Subsequently, she was sent for medical examination and was admitted to the 100-bedded hospital. On delivery, a dead child was born. In her cross-examination, she remained firm and stated that the incident was taken place about 2'o clock in the night. The accused have come from their side wall by scaling over it to the place of offence where she was sleeping in the courtyard. She has also cried when they were assaulting her and at that time the bulb was lighting and she denied that she could not identify the accused due to darkness. She has also stated that accused Dhaniram was the first person to assault her. She reiterated that she requested the accused persons to spare her as she was pregnant. She has clarified that some of the accused have assaulted her and some of them have had caught hold of her, therefore, she has stated that all the accused have

assaulted her and further denied that the accused have not assaulted her. She further stated in her cross-examination that in the night itself when she was assaulted, she felt heaviness and realized that the child had died in the womb. When she was taken to the 100-bedded hospital, the doctor informed them that the child was already dead in the womb and advised that she be immediately taken to Bilaspur. She has clearly stated in her cross-examination that she remained unconscious after the assault for about two hours i.e. from 2:00 a.m. to 4:00 a.m. and after that also she remained not fully conscious.

**16. Evidence of PW-2 – Sukvara Bai:** PW-2, the mother of the victim, has fully supported the case of the prosecution and remained firm in the cross examination and denied that due to darkness in the night she could not recognize the accused. She has stated that Balram has assaulted the victim with Baton and Dhaniram has assaulted her with club/lathi and others had beaten her by hands and fists. She has also affirmed that the wall which has been crossed by the accused is above her height. In the cross-examination she has admitted that there was dispute with regard to land between Rajkumar, and Prahlad and Antram.

**17. Evidence of PW-3 – Pancho Bai:** PW-3 is the aunt of the victim. She has supported the prosecution case and stated that due to assault on the abdomen of the victim, her child died in womb. She has further stated that the police sent the victim to Kosabadi Hospital and in the hospital sonography was conducted and the

doctors told her that the child inside the womb was dead and referred the victim to Hospital at Bilaspur. She has also stated that accused have jumped the wall and assaulted the victim and then they have made hue and cry. She has also affirmed that the accused have kept an axe and club. She has also stated that after assault the victim became unconscious and also informed this fact to the police but if this fact has not been recorded in the Ex.D/4, then it cannot be explained.

**18. Evidence of PW-4 – Rajkumar:** PW-4 maternal uncle of the victim has stated that he had gone for work to village Kandra. He returned on 27th at 3 pm, then he was informed by his nephew Pawan that accused persons assaulted the victim until she lost her consciousness. The victim along with Pancho Bai and a policeman came to his house and the policeman informed him that the child died in her womb and for operation Rs. 40,000/- is required to be arranged and on 28<sup>th</sup> they will go to Bilaspur for operation. The victim stayed at his house at night. At night, she started crying in pain and about 3 am her labor pain intensified and about 7 am the infant got aborted. The child was aborted due to assault by the accused persons. After the delivery of dead child, he informed the same to police Station. In his cross-examination he has stated that he has come back on 27 at 3'o clock but what has happened on 26<sup>th</sup> from 9 to 10 pm till 27<sup>th</sup> is not known to him.

**19. Evidence of PW-5 – Dr. A.N. Kanwar:** PW-5, the Medical Officer has stated that he examined the victim and found a

contusion (12cm x3 cm) on the left side of the abdomen, a contusion (4cm x2 cm) on the right side of the abdomen, a contusion (11cm x3 cm) just above the navel and abrasion (3cmx2cm) on the right hand of the victim. **He opined that the injuries were caused by the hard and blunt object.** The abrasions could have been caused by nail. The injuries were caused within 24 hours. In cross-examination, the witness admitted that the injuries noted could be caused if a person is caught by four persons and assaulted on the abdominal region. He has also admitted in his cross-examination that if a blow is inflicted with force by a stick then only a contusion may occur, and if the blow is inflicted with ordinary force, the mark will disappear soon.

**20. Evidence of PW-7 Dr. Veena Agrawal – :** PW-7, who medically examined victim, has stated that the victim was examined at 5 pm. She was sent for sonography and as per the sonography report the child was dead therefore, she was referred to Bilaspur Hospital. In her cross-examination she has stated that she did not find any marks of assault on the abdomen of the victim. Since, there was no movement of fetus, therefore, she has advised for sonography and since there was no gynecologist in the Hospital, therefore, the victim was referred to Bilaspur Medical College.

**21. Evidence of PW-8 – Dr. P.S. Kanwar:** PW-8, who conducted postmortem of the child, has given his opinion that the age of the fetus was 6 months. There was no sign of injury on head or

brain. Lung, Heart, Liver, Spleen and Kidney were in developing stage, Hydrostatic test of the lung was negative, Meconium was found in Large Intestine. There was no sign of any injury or disease.

**22. Evidence of PW-9 – Yadumani Sidar, Sub-Inspector :** PW/9

who is Investing Officer has stated in his examination in chief that he has seized the Stick vide Ex.P/6. In his cross-examination he has stated that in FIR Dharamkunwar was not named, she was made accused after recording of police statement of the victim. He has also admitted in his cross-examination that before the incident, about 2-3 months back there was land dispute (regarding the courtyard) among the brothers i.e. maternal uncles of the victim.

**23. Evidence of Prahlad, Dharamkunwar, Dhaniram and**

**Balram:**The accused were examined under Section 313 of the Cr.P.C., wherein they have taken plea of false implication on the count that with regard to the property dispute Rajkumar has already filed criminal complaint before the Judicial Magistrate First Class Katghora and a dispute is going on which has been resolved by the intervention of the administration.

**24.** From the evidence brought on record by the prosecution it is

quite vivid that the prosecution is able to prove the ingredients of Section 458 of the IPC as the prosecution through the evidence of victim (PW/1), Sukvara Bai (PW/2) and Pancho Bai (PW/3) has categorically proved that the accused by trespassing has entered into the courtyard of the house at night at about 2'o

clock with club about 4' long as evident from the seizure memo Ex.P/6 and assaulted her as corroborated by the medical report of victim and evidence of Dr. A.N. Kanwar (PW/5) who has given the opinion that the assault must have been committed by blunt weapon and the injuries must be within 24 hours. The victim was examined on 27.05.2004.

**25.** From the evidence of the victim's witness PW/1 it is quite vivid that the sworn testimony by the injured witness generally carry significant weight. Such testimony cannot be dismissed as unreliable unless there was pellucid and substantial discrepancy or contradiction that undermine their credibility. If there is any exaggeration in the deposition that is immaterial to the case, such exaggeration should be disregarded. However, it does not warrant the rejection of entire evidence. Therefore, the suspicion raised by the appellants regarding the genesis of the case is rendered unfounded.

**26.** The Hon'ble Supreme Court has examined the evidentiary value of injured witness in case of **Balu Sudam Khalde and Another vs State of Maharashtra {2023 (13) SCC 365}** wherein the Hon'ble Supreme Court has held as under :-

26. When the evidence of an injured eye-witness is to be appreciated, the under- noted legal principles enunciated by the Courts are required to be kept in mind:-

- (a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.
- (b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.
- (c) The evidence of injured witness has greater evidentiary

value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

- 27.** The learned counsel for the appellants would submit that the learned trial Court has committed illegality in convicting the accused with the aid of Section 34 of the IPC without any evidence brought on record by the prosecution that the accused have committed the said offence in furtherance of common intention. He would further submit that the victim itself deposed before the trial Court that all the accused alleged to have committed different set offence, still, committed illegality in imposing sentence upon all the accused with the aid of Section 34, is being considered by this Court.
- 28.** From the evidence of the victim as well as PW-2 and PW-3, it is manifest that the accused persons, acting in furtherance of their common intention, assaulted the victim. Presence of all the accused at the scene substantially facilitated the successful commission of the offence. The act was carried out pursuant to a pre-arranged plan, and the commission of the offence would not have been possible without the aid and participation of the other accused. It is well settled that for fastening liability with the aid of

Section 34 of the IPC, each accused must participate in the commission of the offence in some manner, which stands duly established in the present case. Consequently, the submission advanced by the learned counsel for the appellants that all the accused cannot be convicted with the aid of Section 34 IPC is misconceived and is liable to be rejected. It is well settled position of law that element of participation in the commission of offence, is the chief feature that distinguishes Section 34 IPC from Section 149 IPC and other Sections. The Hon'ble Supreme Court in case of **Vasant @ Girish Akbarasab Sanavale and Another vs. The State of Karnataka {2025 INSC 221}** has examined the provisions of Section 34 of the IPC as under:-

86. It is true that to convict any particular accused constructively under Section 34 of an offence, say of murder, it is not necessary to find that he actually struck the fatal blow, or any blow, but there must be clear evidence of some action or conduct on his part to show that he shared in the common intention of committing murder", (pp. 457-458).

87. The net result of the above discussion is that although Section 34 deals with a criminal act which is joint and an intention which is common, it cannot be said that it completely ignores or eliminates the element of personal contribution of the individual offender in both these respects.

88. On the other hand, it is a condition precedent of Section 34, IPC, that the individual offender must have participated in the offence in both these respects. He must have done something, however slight, or conduct himself in some manner, however nebulous whether by doing an act or by omitting to do an act so as to indicate that he was a participant in the offence and a guilty associate in it. He must also be individually a party to an intention which he must share in common with others.

89. In other words, he must be a sharer both in the 'criminal act' as well as in the 'common intention' which are

the twin aspects of Section 34, IPC. In view of the above position, it is difficult for the accused to legitimately urge before the Court that owing to the mention of Section 34, IPC, in the charge, he was misled or prejudiced in his defence by being persuaded to presume that all consideration of his individual liability was completely shut out as a result thereof. He would be presumed to know the law on the point and if, in spite of it, he deluded himself into any such belief, he would be doing so at his own peril. [See: Om Prakash(supra)]

90. As held by this Court in Suresh Sakharam Nangare v. The State of Maharashtra, 2012 (9) Judgements Today 116, if common intention is proved but no overt act is attributed to the individual accused, Section 34 of the code will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent Section 34 cannot be invoked. In other words, it requires a pre-arranged plan and pre supposes prior concert therefore there must be meeting of mind.

**29.** The learned trial Court, on the basis of the evidence of the victim and other prosecution witnesses, has categorically recorded a finding in paragraph 50 that the accused persons entered the house of the victim at midnight and assaulted her. Consequently, the prosecution has successfully proved all the essential ingredients required to constitute the offence under Section 458 of the IPC, namely, criminal trespass, house-trespass, and lurking house-trespass by night, which are sine qua non for attracting punishment under the said provisions. Further, as the accused also caused hurt to the victim, the learned trial Court has convicted them for the offence under Section 323 of the IPC. This finding stands duly corroborated by the medical evidence of Dr. A.N. Kanwar (PW-5), who conducted the medical examination of the victim. Thus, all the requisite ingredients of the offences are clearly established before the learned trial

Court, therefore, the finding of the learned trial Court holding the accused guilty for the offences punishable under Sections 458 and 323 read with Section 34 of the IPC does not suffer from any perversity or illegality warranting interference by this Court. As such, the impugned judgment of conviction passed by the learned Sessions Judge, Korba in Sessions Trial No. 28/2004 is hereby affirmed.

**30.** However, so far as the sentence part is concerned, considering the long pendency of the case and taking into account that accused No. 2 Prahlad is presently aged about 75 years, accused No. 3 Dhani Ram is aged about 52 years, and accused No. 4 Balram is aged about 50 years, further considering the fact that this is their first offence and no past criminal antecedents of the appellants have been brought on record by the prosecution, and also considering that the appellants are on bail and have not misused the liberty so granted, as well as the fact that no minimum sentence is prescribed under Section 458 of the IPC, therefore, this Court is of the opinion that ends fo justice would be served if the sentence imposed upon each appellant is reduced to rigorous imprisonment for a period of one year and the fine imposed under Section 458 of the IPC is enhanced to ₹5,000/- for each appellant, and the fine under Section 323 of the IPC is enhanced to ₹2,000/- for each appellant, which shall be paid to the victim as compensation in terms of Section 357(3) of the Cr.P.C.

**31.**The appellants are directed to deposit the fine amount before the trial court within a period of three months from the date of this judgment. In default of payment of fine, they shall undergo additional simple imprisonment for a period of one month. The appellants are further directed to surrender before the concerned trial Court within a period of three months to serve out the remaining part of their sentence after giving set-off of the period of 1½ months already undergone by them during trial as well as after conviction prior to their release on bail by this Court, failing which the trial Court shall take appropriate steps to secure their custody in accordance with law.

**32.**Accordingly, the Criminal Appeal stands partly allowed in terms of the aforesaid modification, whereby the substantive sentence has been reduced and the fine amount has been enhanced.

**33.**As, the appellants are reported to be on bail, their bail bonds stand cancelled in view of the provisions of Section 480 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

**Sd/-  
(Narendra Kumar Vyas)  
Judge**