



CGHC010384212022



2026:CGHC:39313

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 291 of 2022

State Of Chhattisgarh Through - Police Station Mahasamund, District - Mahasamund Chhattisgarh,

... Applicant (s)

versus

1. Rakhi Kumar D/o Ramesh Sahu Aged About 35 Years R/o.- Ward No. 23, Subhashnagar Mahasamund District - Mahasamund Chhattisgarh
2. Gulabi Jagat D/o Raju Jagat Aged About 40 Years R/o.-Ward No. 23, Subhashnagar Mahasamund District - Mahasamund Chhattisgarh

... Respondent(s)

For Applicant (s)	:	Mr. Rishiraj Pithwa, Dy. GA
For Respondent(s)	:	Mr. Ram Vifal Ram Rajwade, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

08/09/2026

1. Today the matter is listed before this Court for hearing on sentence.
2. Heard learned counsel for the parties in compliance of Section 235(2) of the Cr.P.C./Section 254(2) of the Bhartiya Nagrik Suraksha Sanhita (BNSS), 2023 on sentencing as this Court has set aside the order of acquittal so far as it relates to offence under Section 323 read with Section 34 of the IPC.
3. Counsel for the applicant would submit that the respondents are habitual offenders and they should be punished with sever punishment, therefore, maximum sentence as provided in the statute be awarded to the respondents.

4. On the other hand, learned counsel for the respondents would submit that both the respondents are lady, they are the only earning member of the family and if they send to the jail, their family may be adversely affected, therefore, a lenient view may kindly be taken against them and would pray for awarding less punishment.
5. I have heard learned counsel for the parties with utmost satisfaction.
6. Considering the fact that the incident has been taken place in the year 2018 and more than 8 years has already been lapsed and they are the earning member of their family, as such they are sentenced to pay fine of Rs. 750/- each of the respondents under Section 323 read with Section 34 of the IPC. The fine amount is deposited before the trial Court within one from from the date of receipt of the copy of the order.
7. This order be read with the order passed by this Court on 17.07.2026 and a copy of this order be provided to the parties as well as concerned trial Court for onward compliance. Accordingly, the instant acquittal appeal is allowed in part.

Sd/-

(Narendra Kumar Vyas)

Judge



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... Appellant**versus**

1 - Rakhi Kumar D/o Ramesh Sahu Aged About 35 Years R/o.- Ward No. 23, Subhashnagar Mahasamund District - Mahasamund Chhattisgarh

2 - Gulabi Jagat D/o Raju Jagat Aged About 40 Years R/o.-Ward No. 23, Subhashnagar Mahasamund District - Mahasamund Chhattisgarh

... Respondents

For Appellant/State : Mr. Rishi Raj Pithwa, Dy. Government Advocate and Mr. Anant Bajpai, Panel Lawyer

For Respondents : Mr. Ram Vifal Ram Rajwade, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas**Judgment on Board****17.07.2026**

1. The State has filed the present acquittal appeal under Section 378(1) of the Criminal Procedure Code 1973 against the judgment of acquittal dated 10.08.2021 passed by the Judicial Magistrate First Class, Mahasamund (C.G.) in Criminal Case No. 2179 of 2018 by which the trial Court has acquitted the respondents from the charges punishable under Sections 294, 323 read with 34 of the I.P.C.
2. The brief facts as reflected from the record are that on 11.02.2018 the

victim/complainant has lodged an FIR alleging that the accused/respondent No. 1 Rakhi Kumar was constructing toilet in the land which was in possession of the victim/complainant. It is further case of the prosecution that when the victim/complainant objected then the accused abused her and assaulted the victim/complainant and her sister-in-law (Bhabhi). Accordingly, FIR No. 18 of 2018 (Ex. P/1) was registered by the Police Station Mahasamund for commission of offence under Sections 294, 323 read with 34 of the I.P.C..

3. After usual investigation, charge-sheet for commission of offence under Sections 294, 323 read with 34 of the I.P.C. was filed against the accused before the concerned Judicial Magistrate which has been registered as Criminal Case No. 2179/2018.
4. The prosecution to bring home the guilt of the accused has examined as many as 06 witnesses namely victim Janki (PW-01), Vimla (PW-02), Savitri (PW-03), Sampat Mahapatra (PW-04), Sikandar Bhoi (PW-05) and Premlal (PW-06) and has exhibited the documents from Ex. P/1 to Ex. P/17 on record.
5. Statements of accused/respondents have been recorded under Section 313 Cr.P.C., in which they have denied the allegations, pleaded innocence and have taken plea of false implication. The accused persons have exhibited FIR bearing Crime No. 569/2017 registered before the Police Station Mahasamund against the Shatrudhan Kumar for commission of offence under Sections 294 and 323 of IPC as (Ex. D/1). The accused have also placed on record the FIR bearing Crime No. 165/2018 registered before the Police Station Mahasamund under Sections 294, 323, 506, 452/34 of IPC as (Ex.

D/2) and also examined Rakhi Sahu as (DW-1) and Gulapi Bai as (DW-2). The trial Court on the basis of the evidence and material has acquitted the accused persons. Being aggrieved with this order of acquittal, the appellant/State has filed this appeal.

6. Learned counsel for the appellant/State would submit that learned trial Court without appreciating the evidence and material on record has acquitted the accused without considering the evidence of the victim as she remained affirm during the entire cross-examination and nothing was brought on record to rebut the same, thus on a perverse finding the trial Court has acquitted the accused, therefore, he would pray for allowing the acquittal appeal.
7. On the other hand learned counsel for the respondents would submit that there was enmity between accused family and the victim/complainant's family, therefore, 02 cases were lodged against victim along with her family members and also contended that on the basis of FIR, criminal case has been registered bearing Crime No. 130/2018 wherein the accused have been sentenced with fine amount of Rs. 1000/- for the commission of offence under Sections 452, 294, 323 read with Section 34 of IPC vide order dated 05.06.2025. He would further submit that husband of the complainant has also been sentenced with fine amount of Rs. 1000/- for the commission of offence under Section 323 (two times) for assaulting the accused vide order dated 04.01.2022. Thus, he would submit that the complainants are habitual offenders therefore, the acquittal order passed by the trial Court is legal, justified and would pray for dismissal of the appeal.
8. I have heard learned counsel for the parties and perused the records

with utmost circumspection.

9. From perusal of record it is quite vivid that learned trial Court has not appreciated the evidence led by the prosecution as the victim Janki (PW-01) in her evidence before the trial Court has categorically narrated that the accused are her neighbors and were constructing toilet outside her house and when she asked them to leave some space then they started fighting, grabbed her hair and brutally assaulted the complainant which has caused oozing of blood from her nose, therefore, she became faint. The victim has also stated that when her Sister-in-law (Devrani) was taking her towards hospital where the victim was medically examined by the doctor, the accused continued fighting with her sister-in-law also. The victim was cross-examined, but nothing emerged during the cross-examination to dilute the victim's version of the incident and the injury caused to her. In her cross-examination, she has also denied that due to summer she became unconscious and also denied that she has not received injury because of the scuffle made by the accused.
10. Vimla (PW-02) was also examined and has supported the case of the prosecution and also supported that she was also subjected to assault by the accused but she has simply clarified that she has not sustained any injury. Savitri (PW-03) has also supported the case of the prosecution. Sikandar Bhoi [Assistant Sub Inspector] (PW-05) was also examined and he has also supported case of the prosecution. He further deposed that a complaint regarding the incident was registered in Mahasamund Police Station bearing Crime No. 80/2018 and has signed in the FIR which is marked as Ex. P/1. He further deposed that

on the same date he has prepared an application for treatment of injured Vimla Kumar and Janki Kumar.

11. From appreciation of the said evidence adduced by the prosecution, it is quite vivid that the prosecution is able to prove the offence committed by the respondents causing simple injury to the victim. Learned trial Court has committed perversity and illegality in disbelieving the statement of the victim which confers confidence on the case of the prosecution despite extensive cross-examination. The learned trial Court has further committed illegality despite recording a finding in paragraph 13 of his judgment that there was oozing of blood from nose of the victim still it has acquitted the accused.
12. From the aforesaid evidence, it is quite vivid that the victim has got injury and presence of the accused at the place of occurrence is not disputed by the respondents. The injured person has been extensively cross-examined by the accused before the trial Court but he is unable to rebut the evidence regarding his involvement in the commission of offence. Thus, the learned trial Court has committed illegality in acquitting the accused for the offence under Section 323 of IPC as the prosecution is able to prove the case beyond reasonable doubt against the respondents with regard to commission of offence under Section 323 of IPC. So far as Section 294 of IPC is concerned, the prosecution is unable to prove that the respondents have done any obscene acts and slogan in the public place or near a public place, thus the acquittal of the respondents so far as offence under Section 294 of IPC neither suffers from perversity or illegality warranting interference by this Court.

13. Considering the well settled position of law that an accused can be convicted on the basis of the sole testimony of the victim, provided the Court finds the testimony to be credible, trustworthy and of sterling quality. 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."

14. The Defence has also examined 02 witnesses who are DW-1 and DW-2 they have not denied the statement made by the victim that she has been assaulted by the respondents, but they have referred to the incident caused by the victim upon them. The respondents have stated in their evidence that a dispute arose between victim/complainant's family and their family, therefore, they have lodged the complaint against the victim/complainant and also stated

that DW-1 remained in hospital for 12 days. The aforesaid submission is supported by the order of conviction passed by the trial Court by which they have been imposed sentence of fine amount. As such, the conviction of the victim in other case does not entitle the respondents/accused to be acquitted in the case for which they have committed the offence. In criminal law every case has to be examined on the basis of evidence material placed before the Court. The record of the case as detailed above would show that the evidence brought by the prosecution against the respondents/accused was adequate to bring home the guilt of the respondents, therefore, the learned trial Court has committed illegality in ignoring the evidence brought on record by the prosecution regarding commission of offence by the accused, therefore, I am of the view that the acquittal appeal so far as acquittal under Section 323/34 of IPC deserves to be allowed and so far as acquittal under Section 294 of IPC, deserves to be dismissed.

15. From the aforesaid findings recorded by this Court in foregoing paragraphs, it is quite vivid that the learned trial Court while acquitting the accused has not considered the evidence and has recorded its finding of acquittal which are perverse and contrary to the law, therefore, it deserves to be set aside and accordingly it is set aside. Thus, the learned trial Court committed illegality in applying the law, recorded patent perversity, as such, no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record, therefore, this Court can very well interfere in the findings of the trial Court acquitting the accused by reversing the findings for conviction of the accused. Thus,

submission made by the learned counsel for the appellant that if two views can be taken then view which is more favourable to the accused should be considered by the Court and should not interfere in the finding of the acquittal, deserves to be rejected, and accordingly it is rejected.

16. The Hon'ble Supreme Court in case of ***Babu Sahebagoada Rudragoudar and others v. State of Karnataka*** reported in **2024 (8) SCC 149** has held in which circumstances the findings can be reversed, the Hon'ble Supreme Court in paragraphs 41 and 42 has held as under:

“41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

41.1 That the judgment of acquittal suffers from patent perversity;

41.2 That the same is based on a misreading/omission to consider material evidence on record;

41.3 That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

42. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

17. Thus, this Court in exercise of power conferred under Section 386 of Cr.P.C. (Section 427 in the Bharatiya Nagarik Suraksha Sanhita (BNSS)) can very well interfere in the findings recorded by the trial Court and can reverse such findings by convicting the accused for the commission of offence under Sections 323 read with Section 34 of the IPC.
18. Accordingly, this acquittal appeal deserves to be allowed in part and it

is hereby allowed in part by setting aside the order of acquittal so far as it relates to offence under Section 323/34 of IPC. Since this Court is setting aside the order of acquittal, therefore, the matter has to be listed for hearing of the respondents on the quantum of sentence to be imposed upon the respondents on **17th August, 2026** as per compliance of Section 235(2) of Cr.P.C./258(2) of BNSS.

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

Bhumika