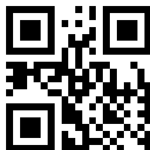

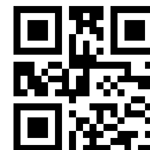

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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 22-01-2025

Judgment delivered on: 06-02-2025

CRA No. 105 of 2024

Suresh Khunte S/o Shri Madhu Khunte, aged about 32 years R/o Kishanpur, P.S. - Pithora, District - Mahasamund, Chhattisgarh.

---Appellant

versus

State of Chhattisgarh Through Station House Officer Pithora, District - Mahasamund, Chhattisgarh.

--- **Respondent**

CRA No. 369 of 2024

Dharmendra Bariha S/o Meghnath Bariha, aged about 23 years R/o-Kishanpur, Police Station-Pithora District- Mahasamund, C.G.

---**Appellant**

Versus

State of Chhattisgarh Through Station House Officer, Police Station-Pithora District- Mahasamund, C.G.

--- **Respondent**

CRA No. 224 of 2024

Gaurishankar Kaivart S/o Surit Rma Kaivart, aged about 24 years R/o Village- Kishanpur, PS- Pithoura,, District : Mahasamund, Chhattisgarh

---**Appellant**

Versus

State of Chhattisgarh Through Station House Officer, Pithoura,, District : Mahasamund, Chhattisgarh

--- **Respondent**

CRA No. 270 of 2024

1 - Fulsingh Yadav S/o Kanhaiya Yadav, aged about 26 years Resident of Kishunpur, Police Station - Pithora, District Mahasamund (C.G.)

2 - Akhandal Pradhan S/o Late Danddhar Pradhan, aged about 39 years Resident of Rampur, Police Station - Pithora, District Mahasamund (C.G.)

---**Appellants**

Versus

State of Chhattisgarh Through The Station House Officer, Police Station, Pithora, District Mahasamund (C.G.)

--- **Respondent**

For Appellant in CRA 105/2024	:	Mr. Rishi Sahu, Advocate
For Appellant in CRA 369/2024	:	Smt. Fouzia Mirza, Senior Advocate assisted by Ms. Smita Jha, Advocate
For Appellant in CRA 224/2024	:	Mr. Awadh Tripathi, Advocate
For Appellants in CRA 270/2024	:	Mr. Vikash Pradhan, Advocate
For Respondent/State	:	Mr. Shashank Thakur, Dy. A.G.
For Objector	:	Mr. Raghvendra Pradhan and Mr. Vikram Pratap, Advocates

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Hon'ble Shri Ramesh Sinha, Chief Justice and
Hon'ble Shri Ravindra Kumar Agrawal, Judge

C.A.V. Judgment

Per Ramesh Sinha, Chief Justice

1. Since the above-captioned appeals arise out of a common factual matrix and impugned judgment, they are clubbed and heard together and are being disposed of by this common judgment.

2. These criminal appeals preferred under Section 374(2) of the CrPC are directed against the impugned judgment of conviction and order of sentence dated 12.12.2023 passed by the learned First Additional Sessions Judge, Mahasamund (C.G.) in Sessions Trial No. 40/2018 by which the appellants have been convicted

and sentenced with a direction to run all the sentences concurrently in the following manner :-

CONVICTION	SENTENCE
U/s 302 of IPC (4 Charges U/s 302 IPC for 4 dead persons)	Life imprisonment and fine of Rs.1,000/-, in default of payment of fine, additional R.I. for 6 months.
U/s 460 of IPC	Rigorous imprisonment for 10 years and fine of Rs.1,000/-, in default of payment of fine, additional R.I. for 6 months.
U/s 396 of IPC	Rigorous imprisonment for 10 years and fine of Rs.1,000/-, in default of payment of fine, additional R.I. for 6 months.
U/s 201 of IPC	Rigorous imprisonment for 5 years and fine of Rs.1,000/-, in default of payment of fine, additional R.I. for 6 months.

3. Case of the prosecution, in nutshell, is that the complainant, Suresh Khunte (later impleaded as accused by the prosecution) came to Police Station Pithora and reported that on 31.05.2018, while he was at his home in the morning, at that time he received information from the village's Mitanin, Hiraudi Sahu, about a murder that occurred at the government residence of the Sub-Health Center in Kishanpur. Upon receiving the said information, he arrived at the Sub-Health Center, wherein he saw the dead bodies of nurse (Yogmaya Sahu), her husband (Chetan Sahu), and their son (Tanmay Sahu) lying in the courtyard, with blood spread on the ground and severe injuries were visible on all three bodies. When he went inside the room, he saw the dead body of (Kunal Sahu) with a severe head injury. An iron shovel was lying

near the door. It was alleged that an unknown person had entered the residence of the Sub-Health Center Kishanpur at night and with the help of sharp weapon has attacked the deceased Yogmaya Sahu, Chetan Sahu, Tanmay Sahu and Kunal Sahu, causing them fatal injuries which resulted in their death.

4. On receiving aforesaid information, the Investigating Officer along with his staff reached the place of occurrence and recorded Dehati Merg Intimations (Merg Nos. 0/2018) vide Exs.P-66 to P-69, thereafter, Dehati Nalishi was registered against unknown person under Crime No. 0/2018 and numbered Merg Intimations were recorded vide Exs.P-87 to P-90. Panchnama was conducted vide Ex.P-3. After summoning the witnesses vide Exs.P-51 to P-54, inquest over the dead bodies of deceased were recorded vide Exs.P-55 to P-58. Thereafter, the dead bodies of the deceased were sent to Community Health Centre, Pithora for conducting postmortem vide Exs. P-4, P-5, P-72 and P-73.

5. Dr. Mol Singh Kanwar (PW-3) conducted postmortem over the dead body of deceased Yogmaya Sahu vide Ex.P-5 and found following injuries :

(1) There was a cut wound in size 12.5 cm length x 3.5 cm deep and 2.5 cm wide from right eyebrow to the back of head and the bones were broken. There was clot and dark colored blood present. Right eye was ruptured.

(2) There was another versal injury in the head, that brain was ruptured and there was blood clot in that too.

(3) There was a deep horizontal cut wound on the front side of the neck which was slightly slanted downwards, in this wound artery vein, trachia, oesochagus, muscle were all cut, there were 2, 3, 4 fractures in cervical vertebral disc, nerve & artery were also cut, size of this injury was 22cm x 10.00 cm and blood was clotted.

(4) There was a 4 x 1.5cm transverse incised wound on the left anterior forehead with blood clot.

(5) There was an oval shaped stab wound of size 4 x 2 cm in the right forearm with blood clot

(6) There was an oval shaped 3 x 2 cm vertical stab wound on the left side of the chest with blood clot.

(7) There was a transverse stab wound of size 2.5 x 1.5 cm on the right side of the chest with blood clot.

(8) There was an incised wound behind the right ear, this wound had a cut in the temporal bone, the injury had regular margins, and the bone was broken and the muscle & artery was crushed, which looked like it had been stabbed repeatedly like chopping is done, the muscle & artery were visible, brain tissue had come out.

(9) There was also a lacerated wound above the right ear, the size of which was uncertain. There was blood clot and the wound was 3x3cm.

(10) Her external genitalia were healthy but pale in color, with no external injuries.

All the above injuries were caused before antemortem death and were caused by sharp cutting objects. All the injuries had clean cut regular margins. According to opinion of the doctor, the cause of death was shock due to excessive bleeding from the

injuries and complications due to brain injury and exudation of brain tissue and the nature of death was homicidal.

6. The same doctor *i.e.,* Dr. Mol Singh Kanwar (PW-3) has also conducted postmortem over the dead body of deceased Chetan Sahu vide Ex.P-7 and found following injuries :

(1) The right eye was ruptured, there were blood clots on the face, forehead and both shoulders. There was a 2x1.5cm lacerated wound over the right eye.

(2) There was a lacerated wound of 3x2.5 cm on the left side of the forehead, which contained clotted blood.

(3) Left jaw incisor tooth was missing but the space for that tooth was empty and there was red blood and clotted blood in it.

(4) A V-shaped stab wound of 3 x 3 cm on the lower front side of his neck which was also filled with blood.

(5) There was a stab wound measuring 3 x 2.5 x 1.5cm below the left mandibular region of the neck.

(6) There was an oval shaped vertical stab wound measuring 3.5 x 2.5 x 2cm between the left neck and left shoulder with blood clotting.

(7) There was also a stab wound measuring 3 x 2cm in the right forearm.

(8) There was a stab penetrating wound measuring 1.5x 1.5cm in diameter on the right side of the nose.

(9) There was a transverse stab & incised wound measuring 4 x 2.5 x 2cm in the right lower part of the

neck, in which blood had accumulated, in this artery vein wound & muscle were cut.

(10) There were 02 vertically incised wounds on the face, size of the first one was 3 x 1.5cm and size of the second one was 2.3 x 1.5cm.

(11) There was a penetrating & incised wound at the back of the neck, which was 2.5cm in diameter and 2.8cm deep.

(12) The body had a 8.2cm x 2.5cm long and 2.3cm deep transverse incised wound in the cervical vertebra, with fractures in the second and third cervical vertebrae.

(13) His external genitalia were healthy but pale in color.

All the above injuries were antemortem in nature caused by sharp cutting objects. All injuries had clean cut regular margins. According to opinion of the doctor, the cause of death was shock due to excessive bleeding from the injuries and injury to the viral organs brain and complications arising out of the injuries and the nature of death was homicidal.

7. Postmortem over the dead body of deceased Tanmay Sahu was conducted by Dr. Vishal Singhal (PW-9) vide Ex.P-24, who found following injuries :

(1) A large chopped wound of red colour was there in right cheek measuring 11 x 3 x 3 cm, some part of which was torn and some part was straight cut.

(2) A large chopped wound was present on the upper right side of the neck behind the ear measuring 6 x 4 x 3 cm.

(3) A large chopped wound was present on the middle part of the right side of the neck measuring 4 x 2 x 2 cm.

(4) A large chopped wound measuring 10 x 4 cm was present on the upper part of the head. It was deep into the bone where the bone was broken and brain tissue was visible.

He opined that death of the deceased was caused by injuries to his vital organs and excessive bleeding therein and the nature of death was homicidal.

8. The same doctor *i.e.,* Dr. Vishal Singhal (PW-9) has also conducted postmortem over the dead body of deceased Kunal Sahu vide Ex.P-25 and found following injuries :

(1) A large chopped wound was present on the right side of forehead measuring 15 x 4 cm which was deep to the bone where the bone was broken and brain tissue was visible, some part of the injury was torn and some part was straight cut.

(2) A large chopped wound of red colour was present on the right cheek measuring 4 x 2 x 2 cm.

(3) A large chopped wound was in the middle of the nose measuring 4 x 2 x 2 cm.

(4) A large chopped wound was present on the right and middle of the neck whose size was 06 x 3 x 2 cm.

(5) A large chopped wound was in the middle of the chin measuring 3 x 2 x 2 cm.

(6) There was an incised red wound in the right ear measuring 06 x 2 x 1 cm.

(7) There was an incised red wound just above the elbow of the right hand measuring 4 x 4 x 2 cm.

He opined that death of the deceased was caused by injuries to his vital organs and excessive bleeding therein and the nature of death was homicidal.

9. Clothes worn by deceased Tanmay Sahu and deceased Kunal Sahu were recovered and seized vide Ex.P-21 and similarly, clothes worn by deceased Yogmaya Sahu and Chetan Sahu were recovered and seized vide Ex.P-22. After preliminary investigation, First Information Report under Crime No. 87/2018 was registered against unknown person under Section 302 of IPC vide Ex.P-91. The matter was taken up for further investigation.

10. During the course of investigation, crime details form was prepared vide Ex.P-71 and a memo for providing spot map was sent to concerned Tahsildar vide Ex.P-3A, whereupon spot map of the incident site was prepared by the concerned Patwari vide Ex.P-2. One iron spade with wooden handle was seized vide Ex.P-1, one empty box of Micromax company LED TV with stickers was seized from the place of incident vide Ex.P-74, dried blood found on the cot lying near the body of deceased Kunal Sahu by scrapping off the blood and by running entire cotton over the entire part of the cot were seized vide Ex.P-75, one empty blue colored mobile box of Samsung company with a photo of mobile printed on its front part was seized vide Ex.P-76, dried blood from four different places of crime scene were seized by scrapping off vide Ex.P-77,

dried blood from the crime scene near the dead body of Yogmaya Sahu was scraped with a blade and seized in a while plastic box; a piece of plain floor was scraped with a pickaxe from near the dead body of deceased Yogmaya Sahu and broken pieces of black hair stuck to the palm of the right hand of deceased Yogmaya Sahu were tied in a white paper and seized vide Ex.P-78, dried blood from the crime scene near the body of deceased Chetan Sahu was scraped off with a blade and sealed in a white plastic box and a piece of plain floor near the dead body was scraped out with a pickaxe and seized in a white plastic box vide Ex.P-79, dried blood from the crime scene near the body of deceased Tanmay Sahu was scraped off with a blade and sealed in a white plastic box and a piece of plain floor near the dead body was scraped out with a pickaxe and seized in a white plastic box vide Ex.P-80. A white colour mobile box, on which a red sticker was pasted, on which was written "India's Number One Smartphone Brand" in English, and in the middle there was a photo of the mobile and below it was written in English "Redmi Note Five Pro by Jiomi", and at the back IMEI 1: 867194033136923, IMEI 2: 867194033136931 was written, a white colour mobile box with four digits printed on it and Redmi Note 4 in English on the back and side and IMEI 1: 864850039379329, IMEI 2: 864850039379337, SN: 15657180085130, a red colour Jiofi (wifi device) box with four digits printed on it and Jio Digital Life in English and MAC ID: C8D779AC42A1, IMEI 921551654359322 is

printed beside it. The above empty boxes were seized as evidence and were sealed separately and taken into police custody. The seizure memo is Ex.P.81.

11. Appellant Dharmendra Bariha (A1) has been arrested on suspicion and on the basis of statement recorded under Section 161 of CrPC of Bhojlal (PW-4) that he was seen standing under a tree on the night of date of incident near the house of deceased persons. Memorandum statement of appellant Dharmendra Bariha (A1) has been recorded vide Ex.P-36, wherein he has admitted before the police that he had entered the Sub-Health Center with the intention of committing theft, and when the deceased resisted, he killed them using a sharp-edged weapon, he was arrested on 02.06.2018 vide Ex.P-82 and information of his arrest was given to his family members vide Ex.P-83. At the instance of accused Dharmendra Bariha (A1), one iron axe containing dried blood, one iron *katta* containing dried blood, one black purse containing Rs. 42,201/-, his Aadhar Card and Voter ID Card and one gamcha with green-white checks, one pair of gold earrings, one golden ring, one golden nosepin, one pair of silver anklet, one pair of silver *chutki*, one Samsung mobile, one chocolaty colour Redmi mobile, one black colur Redmi mobile, one 32 inch Micromax LED TV and one Jio wifi device were seized vide Ex.P-37. Hair being cut and presented by accused Dharmendra Bariha (A1) was seized vide Ex.P-38. Taul panchnama of seized golden and silver ornaments was conducted vide Ex.P-39. Identification of jewelry recovered

from accused Dharmendra Bariha was done by Babu Lal (PW-13) vide Ex.P-59. A memo was sent to Finger Print Expert for examination of seized articles and documents vide Ex.P-84 and receipt of the same was obtained vide Ex.P-84A. The seized properties were sent to FSL Raipur for chemical examination vide Exs.P-85 and hair seized from the right palm of deceased Yogmaya Sahu and hair seized from accused Dharmendra Bariha were sent to FSL Raipur for DNA test vide Ex.P-86.

12. During the course of interrogation, accused Dharmendra Bariha (A1) has told that he had sustained injuries due to scuffle that took place at Chetan Sahu's house, therefore, he was sent for medical examination to Community Health Centre, Pithora vide Ex.P-23, wherein he was medically examined by Dr. S.N. Dadsena (PW-6), who found following injuries :

(1) A contusion of 4 x 4 cm on the left side of forehead with a scratch of 3 x 1.5 cm above it, the scratch had reddish brown scab.

(2) A scratch mark of 1 x 0.5 cm on the upper eyelid of the left eye, it also had a reddish brown scab.

(3) A scratch mark measuring 1.5 x 0.5 cm in the thinner eminence of the right hand, this also had reddish brown scab.

(4) A scratch mark measuring 3 x 0.5 cm under the left scapula, this also had reddish brown scab.

(5) A scratch mark measuring 1 x 0.5 cm on the outer surface of left toe, this also had reddish brown scab.

(6) A scratch mark of 1 x 0.5 cm on the back of the right elbow, this also had reddish brown scab.

As per opinion of the doctor, all the above injuries were caused by hard and rough objects, and occurred within 24 to 48 hours of the test and all the injuries were of ordinary nature and his MLC report is Ex.P-23.

13. An Application (Ex.P-8) was sent to the Medical Officer, Government Hospital, Pithora for giving a query report after examining the clothes worn by deceased Yogmaya Sahu and examination report of the same was obtained vide Ex.P-9. Similarly, an application (Ex.P-10) was sent for giving a query report after examining the clothes worn by deceased Chetan Sahu and examination report of the same was obtained vide Ex.P-11. An another application (Ex.P-26) was sent for giving a query report after examining the clothes worn by deceased Tanmay and examination report of the same was obtained vide Ex.P-27 and also an application (Ex.P-28) was sent for giving a query report after examining the clothes worn by deceased Kunal Sahu and examination report of the same was obtained vide Ex.P-29.

14. An application (Ex.P-30) was sent to the Medical Officer, Government Hospital, Pithora for the test report of the seized iron spade and examination report of the same was obtained vide Ex.P-31. An application (Ex.P-12) was sent for the test report of the seized blood stained *gamcha* and examination report of the same was obtained vide Ex.P-13. An another application

(Ex.P-14) was sent for the test report of the seized iron rod and report of same was obtained vide Ex.P-15. An application (Ex.P-16) was sent for the test report of the seized iron tangia and examination report of the same was obtained vide Ex.P-17.

15. Following the arrest of accused Dharmendra Bariha (A1), the deceased's family expressed suspicion regarding the involvement of other individuals. However, no evidence was found during the interrogation of Dharmendra Bariha in jail and after completing the investigation, a case was registered against Dharmendra Bariha under Sections 302, 457, and 458 of the Indian Penal Code (IPC)., thereafter, an application was submitted before the Judicial Magistrate First Class, Pithora on 31.07.2018 for grant of permission to conduct Narco Test of the accused Dharmendra Bariha (A1), whereupon vide order dated 02.08.2018, permission was granted to conduct Narco Test after obtaining consent from the accused, upon which a letter was written to the Directorate of Forensic Science, Sector – 18 A, Gandhinagar, Gujarat State for giving appointment date for conducting Narco Analysis Test. After completion of investigation, the charge sheet was then presented under aforementioned sections, before the Judicial Magistrate First Class, Pithora, wherefrom the case was committed to the Court of Sessions Judge, Mahasamund on 11.09.2018, and on 14.09.2018 the case was received by the Court of Additional Sessions Judge, Mahasamund for trial.

16. The Directorate of Forensic Science, Sector – 18 A, Gandhinagar, Gujarat State vide letter dated 16.11.2018 (Ex.P-63) allotted date for conducting Narco Analysis Test from 31.12.2018 to 05.01.2019. Thereafter, after obtaining permission from the concerned trial Court, accused Dharmendra Bariha (A1) was referred for Narco Analysis examination by the Superintendent of Police, Mahasamund at Forensic Narco Analysis Division of DFS, Gandhinagar. The accused willingly gave consent for undergoing Narco Analysis Test and he was subject for Narco Analysis Test on 04.01.2019 by Dr. N.M. Khopkar (PW-22) and report of the same has been obtained vide Ex.P-92, whereby accused Dharmendra Bariha (A1) revealed that accused Suresh Khunte (A2) Gaurishankar Kaivartya (A3), Fulsingh Yadav (A4) and Akhandal Pradhan (A5) were also present along with him at the time of the incident. Thereafter, vide letter dated 02.02.2019 (Ex.P-65), permission was sought from the Court of Sessions Judge, Mahasamund for further investigation.

17. During the course of further investigation, accused Suresh Khunte (A2) Gaurishankar Kaivartya (A3), Fulsingh Yadav (A4) and Akhandal Pradhan (A5) were taken into custody and after giving notice to the witness Jagdish Bhoi (PW-11) vide Ex.P-40 memorandum statement of accused Gaurishankar Kaivartya (A3) was recorded vide Ex.P-44, wherein he has admitted that he along with all other four co-accused persons have jointly committed the murder of all the aforementioned four deceased and at his

instance, one ready-made half-sleeve shirt containing mud over it and one boulder stone weighing 03 kg tide with the said shirt were seized vide Ex.P-45. Similarly, after giving notice to the witness Jagdish Bhoi (PW-11) vide Ex.P-41, memorandum statement of accused Suresh Khunte (A2) was recorded vide Ex.P-46, wherein he has admitted that he along with co-accused Akhandal Pradhan (A5) and Fulsingh Yadav (A4) have entered into the house of deceased Yogmaya with intention to commit rape upon her and co-accused Dharmendra Bariha (A1) and Gaurishankar Kaivartya (A3) have came with intention to commit theft in the said house, but, when the deceased Chetan Sahu woke up and asked why they had come here late night, upon which some quarrel took place between them on account of which, they all have committed murder of all the four deceased with common intention. At his instance, one golden mangalsutra was seized vide Ex.P-47.

18. Later on, after giving notice to the witness Pramod Kumar (PW-12) vide Exs.P-49, memorandum statement of accused Fulsingh Yadav (A4) was recorded vide Ex.P-42, whereby he has admitted that he along with all other four co-accused persons have jointly committed the murder of all the aforementioned four deceased and at his instance, one iron axe with bamboo handle containing algae over it was seized from the pond vide Ex.P-43. Hair samples of all the four accused persons were collected and packed in separate packets and seized vide Ex.P-48. Thereafter, co-accused Gaurishankar Kaivartya (A3), Fulsingh Yadav (A4) and Akhandal

Pradhan (A5) were arrested on 27.04.2019 vide Exs.P-94, P-95 and P-96 respectively and information of their arrest was given to their family members vide Exs. P-97C, P-98C and P-99C respectively. Accused Suresh Khunte (A2) was arrested on 04.05.2019 vide Ex.P-109 and information of his arrest was given to his family member vide Ex.P-110.

19. After seeking permission from JMFC, Pithora vide Ex.P-102 for DNA testing of the seized hair samples of all the four accused along with hair sample seized from the right palm of deceased Yogmaya were sent to Forensic Science Laboratory, Raipur for DNA testing through Superintendent of Police, Mahasamund vide Ex.P-101, wherefrom DNA report was received vide Ex.P-103, whereby the hair sample of accused Suresh Khunte (A2) was found to be matched with the hair sample seized from the right palm of deceased Yogmaya.

20. After completion of the investigation, supplementary charge sheet was subsequently presented by the prosecution against co-accused Suresh Khunte (A2), Gaurishankar Kaivartya (A3), Fulsingh Yadav (A4), and Akhandal Pradhan (A5) under Sections 302, 457, 458, 460, 396, and 201 of the IPC before the Court of Judicial Magistrate First Class, Pithora on 19.07.2019. On 27.07.2019, the Judicial Magistrate First Class, Pithora, transferred the case to the Court of Sessions Judge, Mahasamund, for further action against the above mentioned co-accused. The case was later on transferred to the Court of First

Additional Sessions Judge, Mahasamund on 01.02.2023, for proper disposal.

21. During the course of trial, Babulal Sahu (PW-13), who is father of deceased Chetan Sahu has filed a writ petition under Article 226 of the Constitution of India being WPCR No. 108 of 2020, seeking a direction for CBI to investigate the case. The said writ petition was disposed of by the learned Single Judge of this Court vide order dated 25.03.2022 directing the CBI to investigate the case and submit a report to before the trial Court within a specified time frame and on the basis of that, the trial Court was directed to dispose of the case within time limit. The CBI, Jabalpur, submitted its final report before trial Court on 30.09.2023, agreeing with the police investigation and stating that no new facts were found. The CBI concurred with the final report presented by Police Station Pithora, and no additional witnesses or exhibits were produced in the documents.

22. In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 22 witnesses and exhibited 112 documents (Exs.P-1 to P-112). Statements of the accused/ appellants were recorded under Section 313 of the Code where they denied the circumstances appearing against them and pleaded innocence and false implication in the crime in question. The accused have not examined any witness, however, have exhibited 11 documents in their support i.e. Ex.D-1 and Ex.D-11.

23. The trial Court upon appreciation of oral and documentary evidence on record and considering that it is the appellants who have committed aforesaid offence, convicted and sentenced them in the aforementioned manner, against which aforesaid four appeals under Section 374(2) of the CrPC have been preferred by the accused/appellants.

24. Opening the arguments on behalf of all the accused/appellants, Smt. Fouzia Mirza, learned Senior Advocate vehemently argued that the learned trial Court has failed to appreciate that the case has been based on circumstantial evidence and while convicting the appellants for the alleged offences the chain of evidence is not complete in order to show that within all human possibility the act has been done by the accused persons only. The incriminating circumstance against appellant Dharmendra Bariha is the memorandum statement (Ex.P-36) and the recovery of tangia (Article B) and Gamchha (Article L) as per Ex.P-37, which have been sent for FSL examination and as per the FSL report (Ex.P-104) only in Gamchha (Article L) human blood was found, for which there is no serological report to show that the blood group found on Gamchha (Article L) is of the same group belonging to the deceased persons. The origin of the blood in tangia (Article B) cannot be determined on account of it being disintegrated. She further argued that the learned trial Court has failed to appreciate that the confession of appellant Dharmendra Bariha has been recorded by the prosecution by torturing and giving 3rd Degree

treatment which is evident from Ex.P-23, MLC report by Dr. S.N. Dadsena (PW-6) of appellant Dharemndra and it has wrongly been appreciated to be the evidence of his presence at the place of incidence at the time of commission of offence. She also argued that the mobile phones & T.V. that have been recovered at the instance of appellant Dharmendra Bariha vide Ex.P-37 though contains the same sticker of the IMEI number on the empty boxes that have been recovered from the place of incidence vide Ex.P-74 but it has not been proved that the cellphones are having the same IMEI number of the phones which are being used by the deceased persons and having the same IMEI number. Further the seizure is also not supported by the seizure witnesses namely Suresh Khunte and Akhandal Pradhan (who have later been made accused by the prosecution).

25. It has been submitted by learned Senior Advocate that though the appellant Dharmendra Bariha has been arrested on suspicion and on the basis of the statement U/s 161 of CrPC of Bhoj Lal (PW-4) that he was seen standing under a tree on the night of date of incident near the house of deceased persons, but he has turned hostile and has not supported the case of the prosecution. She further submitted that the jewellery recovered at the instance of appellant Dharmendra Bariha has been identified by the father of deceased Chetan Sahu namely Babulal Sahu (PW-13) as per Ex.P-59 without conducting the test identification proceedings as provided by law. Hence, the identification itself is vitiated. She also

submitted that the learned trial Court has also not appreciated the fact that though the memorandum and seizure witnesses PW-11, Jagdish Bhoi and PW-12, Pramod Kumar have supported the case of the prosecution, but they were doctored witnesses as PW-11, Jagdish Bhoi is a police informant has been a witness in many of the matters and is a prosecution witness for the seizure and memorandum in the offences registered at various police stations which is proved by Exs. D/2 and D/3 and he has not supported the seizure at the instance of other 4 appellants (Paras 36, 39, 40, 41). He has also not supported the seizure of gold mangalsutra Ex.P-47 at the instance of appellant Suresh Khunte. He has also not supported the seizure of hair Ex.P/48 of appellant Suresh Khunte and other accused persons from the jail. The learned trial Court has failed to appreciate that the other memorandum and seizure witness PW-12, Pramod Kumar is the driver of the Police Station Pithoura and is a acquainted with PW-11. He was also a witness to Ex.P-48 with regard to the seizure of hair of other 4 accused persons and have stated that he has gone to the District Jail, Mahasamund only once.

26. Learned Senior Advocate contended that the other 4 co-accused persons have been convicted on the basis of the Narco Analysis Test Report Ex.P/92 which is not admissible as per section 293(4) of Cr.P.C. as the author of the report has not been examined by the learned trial Court and further the provisions under Section 294 Cr.P.C. have also not been complied with and cannot be use as

evidence without any formal proof. She further contended that the learned trial Court has failed to appreciate that the recoveries of the weapon form the other accused persons Exs.P/43, P/45, there is no bloodstain found on the weapon of offence and the identification of the gold mangalsutra Ex.P/47 recovered at the instance of Suresh Khunte which has been identified by Ketki, mother-in-law of deceased as Ex.P-60 has not been examined. The seizure witness Dhel Singh (PW-10) has not supported the case of prosecution with regard to seizure of weapon of offence i.e., Tangiya Ex.P-43 and further T-shirt Ex.P-45 from other accused persons and has also not supported the memorandum of other 4 accused persons. She also contended that as per PW-13 Babulal, father-in-law of deceased Yogmaya, there was CCTV Camera in the House and further he was also present in the evening on the date of incident as per PW-1 Tyagi Bai, but no investigation has been done with regard to the CCTV footage and with respect to the PW-13 Babulal being last seen with the deceased persons.

27. It has been further argued by learned Senior Advocate that the DNA Report Ex.P-103 is vitiated and does not incriminate appellant Suresh Khunte as Pramod Kumar (PW-12), who is witness to the seizure of hair of 4 appellants from the Mahasamund Jail, has stated in his evidence that only once had gone for obtaining the hair i.e. Ex.P-48 which has been seized on 22.06.2019 and as per Ex.P-101 it has been deposited of FSL on

24.06.2019, but strangely as per Ex.-D/6 the hair has been taken of the 4 appellants on 16.05.2019 as per the permission dated 15.05.2019 Ex.D/7 on the letter dated 10.05.2019 Ex.D/10 and has been taken on 16.05.2019 as per information Ex.D/11 dated 20.05.2019 to the learned JMFC, which itself is contradicted by the evidence of PW-15 Dr. Manpreet Singh Gurudutta, who in his evidence has stated that he has gone for the collection of hair on 22.06.2019. The hair of Yogmaya has been sent for FSL on 28.08.2018 vide Ex.P-86 for FSL examination, which has been received on 25.06.2019 as per Ex.P-103, but as per Ex-P-101 it was deposited on 31.05.2019 i.e. Article "E" hair of appellant Suresh Khunte. As per the evidence of Ritesh Singh (PW/17) the hair of Yogmaya seized as Ex.P-78 on 31.05.2018 has been sent for FSL as Ex.P-86 on 28.08.2018 supported by Evidence of Dipesh Jaiswal (PW-18) that the hair seized on 22.06.2019 has been sent for FSL as per Ex.P-101 received on 25.06.2019 (Para 33 & 34) and he has gone for the collection of hair only once i.e. on 22.06.2019.

28. Learned Senior Advocate vehemently submitted that as per the learned trial Court the basis of conviction of the other 4 accused persons was the Narco Analysis Test Report Ex.P-92 which was admissible with the aid of Section 30 of the Evidence Act, which is confession of other co-accused persons, whereas in the judgment passed by the Hon'ble Supreme Court in the matter of ***Salvi Vs. State of Karnataka (2010) 7 SCC 263*** in para 265 the averment

in the report is not a confession but only a statement. No question with regard to the incriminating circumstances on the basis of Narco Analysis Report has been asked from the accused persons U/s 313 of the Cr.P.C. hence the report Ex.P-92 cannot be considered for basing the conviction.

29. In the present case, Jagdish Bhoi (PW-11) and Pramod Kumar (PW-12) are the witnesses of memorandum and seizure. Jagdish Bhoi (PW-11) in his statement before the learned trial Court has stated that in his presence the memorandum statement of Dharmendra Bariha A1 was recorded and according to which on the date of incident he went to the house of the deceased with an intention of committing theft and had an encounter with deceased Chetan Sahu, then with the help of a shovel he murdered Chetan Sahu and when his wife came to intervene there was a scuffle between both of them as a result of which he killed deceased Yogmaya and her minor son Tanmay Sahu and also killed Kunal Sahu while he was sleeping. Memorandum statement of Dharmendra Bariha was exhibited as Ex.P-36 and the seizure memo was marked as Ex.P-37. The above circumstances are contradictory to the contentions made in Ex.P-92 Narco Analysis Report. No Narco Analysis Test has been conducted on the other 4 accused persons, hence the report Ex-P/92 stands uncorroborated by the other incriminating circumstances. She lastly submitted that Dhol Singh (PW-10) and Dolamani Dheevar (PW-20) are the divers who entered the pond and have recovered

articles from the pond situated at Kishanpur. In the statement before the Court, Dhol Singh PW-10 stated that Ex.P-33 and P-34 bears his signature and Dolamani Dheevar PW-20 stated in his Court statement that axe thrown by Fulsingh Yadav (A4) was recovered from the pond and was marked as Ex.P-43 and T-shirt of Gaurishankar Kaivartya (A3) was marked as seizure Ex.P-45, but the Articles *i.e.* weapon of offence have not been sent for FSL, thus none of the incriminating circumstance bring home the guilt of committing the crime by the accused persons and the chain of circumstances is not complete for convicting the accused/ appellants.

30. On the other hand, Mr. Shashank Thakur, learned Deputy Advocate General appearing for the respondent/State would support the impugned judgment and submits that the prosecution has proved its case beyond reasonable doubt and the learned trial Court after considering all incriminating materials and circumstances available against the accused persons rightly convicted them for the aforesaid offences. He further submitted that during investigation on merg intimation given by the complainant Suresh Khunte (later on impleaded as accused) suspicion arose upon the accused Dharmendra Bariha and accordingly his memorandum statement was recorded wherein he has accepted the commission of crime and stated that with an intention to theft he entered in the house of the deceased and when the deceased caught him while them he committed murder

of all 4 persons by deadly weapon and his instance the articles used in the crime were also seized and the same were sent for chemical examination. Thereafter the said accused person was arrested and was sent in jail and when the family members of the deceased made allegation that apart from the present accused Dharmendra Bariha some other persons were also involved as it is not possible for a single man to kill 4 persons so deadly and heinously, further interrogation has been done by the police from the accused Dharmendra Bariha in respect to the involvement of other accused persons but no information could be gathered and therefore the police after due investigation in the matter has filed charge sheet against the said accused Dharmendra Bariha for the offence punishable under sections 302, 457, 458 of IPC. Thereafter the prosecution has made an application for the Narco Test of the accused Dharmendra Bariha before the Court having competent jurisdiction in respect to the involvement of other accused persons in the aforesaid crime and accordingly the permission has been granted for the Narco test after taking consent from the accused Dharmendra Bariha, wherein it has been revealed that the accused Dharmendra Bariha was accompanied with co-accused persons Suresh Khute, Gaurishankar Kaivartya, Fulsingh Yadav and Akhandal Pradhan at the scene of crime. Thereafter the said accused persons were interrogated by the police wherein they have accepted the commission of crime in presence of the independent witnesses in

their memorandum statement and further at their instance the articles used in crime as well as the blood stain clothes were seized from their possession and thereafter the seized articles were sent for chemical examination at State Forensic Science Laboratory and after completion of investigation in the matter, police has filed the supplementary charge sheet for the offence punishable under sections 302, 457, 458, 460, 396, 201 of IPC against the co-accused persons Suresh Khunte, Gaurishankar Kaiwarth, Fulingh Yadav and Akhandal Pradhan. Later on the matter has been handed over to the Central Bureau of Investigation as per the direction of the Hon'ble High Court of Chhattisgarh and accordingly the Central Bureau of Investigation, Jabalpur on 30/09/2023 had submitted its final report before the learned Trial Court satisfying with the investigation done by the police and no further new facts has been found in the present case and agreeing with the final report filed by the police no further statement of witnesses and document is to be submitted.

31. Mr. Thakur also submitted that the prosecution has examined 21 prosecution witnesses to prove the charges as leveled against the accused persons as well as the exhibited documents Exs.-P-1 to Exhibit-P-112 and the Article A-1 and Exs-D-1 to D-11 and the trial Court convicted the appellants for the offences punishable under sections 460, 302(4 times), 396, 201 of IPC. The prosecution has proved the case beyond reasonable doubt and the trial Court has rightly convicted the appellants for offence as mentioned above

Hence, the instant criminal appeals, being bereft of merits, are liable to be dismissed looking to the commission of offence done by the accused persons.

32. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

33. **The first question for consideration would be, whether the trial Court was justified in holding that death of deceased Yogmaya Sahu, Chetan Sahu, Tanmay Sahu and Kunal Sahu were homicidal in nature ?**

34. The trial Court relying upon the statement of Dr. Mol Singh Kanwar (PW-3), who has conducted postmortem over the dead body of deceased Yogmaya Sahu vide Ex.P-5 and deceased Chetan Sahu vide Ex.P-7 and also relying upon the statement of Dr. Vishal Singhal (PW-9), who has conducted postmortem over the dead body of deceased Tamnay Sahu vide Ex.P-24 and deceased Kunal Sahu vide Ex.P-25, has clearly come to the conclusion that death all the four deceased were homicidal in nature. The said finding recorded by the trial Court is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Even otherwise, it has not been seriously disputed by the learned counsel for the appellants. We hereby affirm the said finding.

35. **The next question for consideration would be, did the accused caused the death of deceased Yogmaya Sahu, Chetan Sahu, Tanmay Sahu and Kunal Sahu while committing secret house tresspass in the night and did accused Suresh Khunte, Gaurishankar Kaivartya, Fulsingh Yadav and Akhandal Pradhan knowing that they had murdered all the above-mentioned four deceased, on the said date, time and place, give false information to the police with the intention of destroying evidence of the commission of that crime ?**

36. It is the case of no direct evidence, rather conviction is based on circumstantial evidence.

37. Conviction of the appellant Dharmendra Bariha (A1) is based on the evidence Bhojlal (PW-4), his memorandum statement (Ex.P-36), recovery of weapons used in commission of offence at his instance (Ex.P-37), FSL report (Ex.P-104) and conviction of other accused/appellants Suresh Khunte (A2), Gaurishankar Kaivartya (A3), Fulsingh Yadav (A4) and Akhandal Pradhan (A5) is based on the Narco Analysis Test Report (Ex.P-92) of accused Dharmendra Bariha (A1), memorandum statement of accused Suresh Khunte (A2) vide Ex.P46, recovery of mangalsutra of deceased Yogmaya vide Ex.P47 and DNA report (Ex.P-103), memorandum statement of accused Gaurishankar Kaivartya (A3) vide Ex.P-44 and recovery of shirt from pond vide Ex.P-45, memorandum statement of accused Fulsingh Yadav (A4) vide

Ex.P-42 and recovery of iron axe from pond at his instance vide Ex.P-43.

38. We may make a reference to a decision of the Supreme Court in ***C. Chenga Reddy and Ors. v. State of A.P.,*** reported in ***(1996) 10 SCC 193***, wherein it has been observed thus:

> "In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".

39. In ***Padala Veera Reddy v. State of A.P. and Ors.,*** reported in ***AIR 1990 SC 79,*** it was laid down by the Supreme Court that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

> "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
>
> (3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

> (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

40. In ***State of U.P. v. Ashok Kumar Srivastava,*** reported in ***(1992 Crl.LJ 1104),*** it was pointed out by the Supreme Court that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

41. Sir Alfred Wills in his admirable book "Wills' Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and

incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted".

42. Five golden principles which constitute *Panchseel* of proof of case based on circumstantial evidence have been laid down by the Supreme Court in the matter of ***Sharad Birdhichand Sarda v. State of Maharashtra,*** reported in ***(1984) 4 SCC 116*** which state as under :-

> "(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
>
> (3) the circumstances should be of a conclusive nature and tendency;
>
> (4) they should exclude every possible hypothesis except the one to be proved; and
>
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

43. The Supreme Court in the matter of ***Suresh and Another v State of Haryana,*** reported in ***(2018) 18 SCC 654*** has observed that cases of circumstantial evidence, the courts are called upon to

make inferences from the available evidence, which may lead to the accused's guilt. The court at paras 41 and 42 has observed thus :

> “41. The aforesaid tests are aptly referred as Panchsheel of proof in Circumstantial Cases (refer to Prakash v. State of Rajasthan). The expectation is that the prosecution case should reflect careful portrayal of the factual circumstances and inferences thereof and their compatibility with a singular hypothesis wherein all the intermediate facts and the case itself are proved beyond reasonable doubt.
>
> 42. Circumstantial evidence are those facts, which the court may infer further. There is a stark contrast between direct evidence and circumstantial evidence. In cases of circumstantial evidence, the courts are called upon to make inferences from the available evidence, which may lead to the accused's guilt. In majority of cases, the inference of guilt is usually drawn by establishing the case from its initiation to the point of commission wherein each factual link is ultimately based on evidence of a fact or an inference thereof. Therefore, the courts have to identify the facts in the first place so as to fit the case within the parameters of “chain link theory” and then see whether the case is made out beyond reasonable doubt. In India we have for a long time followed the “chain link theory” since Hanumant case, which of course needs to be followed herein also.”

44. The Supreme Court in the matter of ***Sailendra Rajdev Pasvan and Others vs. State of Gujarat Etc.,*** reported in ***AIR 2020 SC 180*** observed that in a case of circumstantial evidence, law

postulates two-fold requirements. Firstly, that every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt and secondly, all the circumstances must be consistent pointing out only towards the guilt of the accused. We need not burden this judgment by referring to other judgments as the above principles have been consistently followed and approved by this Court time and again.

45. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.

46. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

47. In the light of these guiding principles, we will have to examine the present case.

48. On a perusal of the judgment of the Trial Judge, it would reveal that the main circumstance on which the Trial Judge found the appellants guilty of the crime is the Narco Analysis Test Report, their memorandum statements and recovery of various incriminating articles at their instances. Initially on the basis of merg intimation given by the complainant Suresh Khunte (later on impleaded as accused) suspicion arose upon accused Dharmendra Bariha (A1) and accordingly his memorandum statement was recorded vide Ex.P-36, wherein he has accepted the commission of crime and stated that with an intention to theft he entered in the house of the deceased and when the deceased caught him, he committed murder of all 4 persons by deadly weapon and his instance, one iron axe containing dried blood, one iron *katta* containing dried blood, one black purse containing Rs. 42,201/-, his Aadhar Card and Voter ID Card and one gamcha with green-white checks, one pair of gold earrings, one golden ring, one golden nosepin, one pair of silver anklet, one pair of silver *chutki*, one Samsung mobile, one chocolaty colour Redmi mobile, one black colur Redmi mobile,

one 32 inch Micromax LED TV and one Jio wifi device were seized vide Ex.P-37 out of which, the iron axe (Article B), iron *katta* (Article C) and Gamchha (Article L) were sent for chemical examination to FSL vide Ex.P-85 and though blood was found in iron axe (Article B), but was not confirm as human blood whereas in iron *katta* (Article C) as well as in Gamchha (Article L) human blood was found. Thereafter the said accused person was arrested and was sent in jail and when the family members of the deceased made allegation that apart from the present accused Dharmendra Bariha some other persons were also involved as it is not possible for a single man to kill 4 persons so deadly and heinously, further interrogation has been done by the police from the accused Dharmendra Bariha in respect to the involvement of other accused persons but no information could be gathered and therefore the police after due investigation in the matter has filed charge sheet against the said accused Dharmendra Bariha for the offence punishable under sections 302, 457, 458 of IPC. Thereafter the prosecution has made an application for the Narco Test of the accused Dharmendra Bariha before the Court having competent jurisdiction in respect to the involvement of other accused persons in the aforesaid crime and accordingly, the permission has been granted for the Narco test after taking consent from accused Dharmendra Bariha (A1), wherein it has been revealed that he was accompanied with co-accused persons

Suresh Khunte (A2), Gaurishankar Kaivartya (A3), Fulsingh Yadav (A4) and Akhandal Pradhan (A5) at the scene of crime.

49. Thereafter the said accused persons were interrogated and after giving notice to the witness Jagdish Bhoi (PW-11) vide Ex.P-40 memorandum statement of accused Gaurishankar Kaivartya (A3) was recorded vide Ex.P-44, whereby he has admitted that he along with all other four co-accused persons have jointly committed the murder of all the aforementioned four deceased and at his instance, one ready-made half-sleeve shirt containing mud over it and one boulder stone weighing 03 kg tide with the said shirt were seized vide Ex.P-45. Similarly, after giving notice to the witness Jagdish Bhoi (PW-11) vide Ex.P-41, memorandum statement of accused Suresh Khunte (A2) was recorded vide Ex.P-46, whereby he has admitted that he along with co-accused Akhandal Pradhan (A5) and Fulsingh Yadav (A4) have entered into the house of deceased Yogmaya with intention to commit rape upon her and co-accused Dharmendra Bariha (A1) and Gaurishankar Kaivartya (A3) have came with intention to commit theft in the said house, but, when the deceased Chetan Sahu woke up and asked why they had come here late night, upon which some quarrel took place between them on account of which, they all have committed murder of all the four deceased with common intention. At his instance, one golden mangalsutra was seized vide Ex.P-47.

50. Later on, after giving notice to the witness Pramod Kumar (PW-12) vide Exs.P-49, memorandum statement of accused Fulsingh Yadav (A4) was recorded vide Ex.P-42, whereby he has admitted that he along with all other four co-accused persons have jointly committed the murder of all the aforementioned four deceased and at his instance, one iron axe with bamboo handle containing algae over it was seized from the pond vide Ex.P-43. Hair samples of all the four accused persons were collected and packed in separate packets and seized vide Ex.P-48. Thereafter, co-accused Gaurishankar Kaivartya (A3), Fulsingh Yadav (A4) and Akhandal Pradhan (A5) were arrested on 27.04.2019 vide Exs.P-94, P-95 and P-96 respectively and information of their arrest was given to their family members vide Exs. P-97C, P-98C and P-99C respectively. Accused Suresh Khunte (A2) was arrested on 04.05.2019 vide Ex.P-109 and information of his arrest was given to his family member vide Ex.P-110.

51. At this stage, it would be appropriate to notice Section 27 of the Indian Evidence Act, 1872, which states as under: -

> "**27. How much of information received from accused may be proved**.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

52. The prosecution's case, in the absence of eye witnesses, is based upon circumstantial evidence. As per Section 25 of the Indian

Evidence Act, 1872, a confession made to a police officer is prohibited and cannot be admitted in evidence. Section 26 of the Evidence Act provides that no confession made by any person whilst he is in the custody of a police officer shall be proved against such person, unless it is made in the immediate presence of a Magistrate. Section 27 of the Evidence Act is an exception to Sections 25 and 26 of the Evidence Act. It makes that part of the statement which distinctly leads to discovery of a fact in consequence of the information received from a person accused of an offence, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the accused. The fact which is discovered as a consequence of the information given is admissible in evidence. Further, the fact discovered must lead to recovery of a physical object and only that information which distinctly relates to that discovery can be proved. Section 27 of the Evidence Act is based on the doctrine of confirmation by subsequent events – a fact is actually discovered in consequence of the information given, which results in recovery of a physical object. The facts discovered and the recovery is an assurance that the information given by a person accused of the offence can be relied.

53. The Supreme Court in ***Asar Mohammad and others v. State of U.P.***, reported in ***AIR 2018 SC 5264*** with reference to the word “fact” employed in Section 27 of the Evidence Act has held that the facts need not be self-probatory and the word “fact” as

contemplated in Section 27 of the Evidence Act is not limited to "actual physical material object". It has been further held that the discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place and it includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. Their Lordships relying upon the decision of the Privy Council in the matter of ***Pulukuri Kotayya v. King Emperor,*** reported in ***AIR 1947 PC 67*** observed as under: -

> "13. It is a settled legal position that the facts need not be self-probatory and the word "fact" as contemplated in Section 27 of the Evidence Act is not limited to "actual physical material object". The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place. It includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. It will be useful to advert to the exposition in the case of *Vasanta Sampat Dupare v. State of Maharashtra*, (2015) 1 SCC 253, in particular, paragraphs 23 to 29 thereof. The same read thus:
>
> > "23. While accepting or rejecting the factors of discovery, certain principles are to be kept in mind. The Privy Council in *Pulukuri Kotayya v. King Emperor* (supra) has held thus: (IA p. 77)
> >
> > > "… it is fallacious to treat the 'fact discovered' within the section as equivalent to the object

> produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.
>
> xxx xxx xxx
>
> xxx xxx xxx
>
> xxx xxx xxx"

54. In ***State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru***, reported in ***(2005) 11 SCC 600***, the Supreme Court affirmed that the fact discovered within the meaning of Section 27 of the Evidence Act must be some concrete fact to which the information directly relates. Further, the fact discovered should refer to a material/physical object and not to a pure mental fact relating to a

physical object disassociated from the recovery of the physical object.

55. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto.

56. In ***Mohmed Inayatullah v. State of Maharashtra,*** reported in ***(1976) 1 SCC 828,*** elucidating on Section 27 of the Evidence Act, it has been held by the Supreme Court that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposed to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact

thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word 'distinctly' is used to limit and define the scope of the information and means 'directly', 'indubitably', 'strictly' or 'unmistakably'. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.

57. The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case.

58. Section 27 of the Evidence Act is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse. However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.

59. The Supreme Court in the matter of ***Aghnoo Nagesia v. State of Bihar,*** reported in ***AIR 1966 SC 119*** has clearly held that confession to police whether in course of investigation or

otherwise and confession made while in police custody would be hit by Section 25 of the Evidence Act and observed as under:-

> "9. Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found generally in Ss. 24 to 30 of the Evidence Act and Ss. 162 and 164 of the Code of Criminal Procedure, 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading "Admissions". Confession is a species of admission, and is dealt with in Ss. 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confessions caused by certain inducements, threats and promises. Section 25 provides : "No confession made to a police officer, shall be proved as against a person accused of an offence." The terms of S. 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by S. 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by S. 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by Ss. 24, 25 and 26. It provides that when any fact is deposed to as discovered in consequence of information received from a person accused

of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-s (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of S. 27 of the Evidence Act. The words of S. 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under S. 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by S. 27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under S. 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by S. 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer is protected by S. 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them."

Their Lordships further held as under:-

"18. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by S.25. The confession

includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of S. 25 is lifted by S.27."

60. In the present case, the memorandum statements of the accused the seizure made on that basis are relevant to be considered. The basis taken by the defense is that the confession made by one accused in the case is not admissible in evidence against the other accused. On behalf of the defence, reliance has been placed on ***Salvi 's case*** (supra).

61. Lekh Ram Thakur (PW-16) has admitted in paragraph 7 of the cross-examination that the jail superintendent was directed to take action according to the jail manual after receiving permission from the court. In paragraph 8 of the cross-examination, the said witness has admitted that the report of the Narco Test was not received in his proceedings and the e-mail was received by his superior officer. He did not do it and further stated himself that his superior officer had sent it to him for perusal and action. In paragraph 9 of the cross-examination, the said witness has denied the fact that no Narco Test of accused Dharmendra Bariha has been done and he did not go to Gandhi Nagar Gujarat for narco test. Dipesh Jaiswal (PW-18) has stated in paragraph 20 of the cross-examination that the Narco Test report Ex.-92 was sent to the Superintendent of Police, Mahasamund through a letter dated 24.01.2019 and he is aware that Narco test is not admissible in

evidence and further stated on his own that Narco Test is conducted in the investigation of any case by interrogating the accused through scientific method and the said Narco Test was prepared which proves to be helpful in the investigation. In paragraph 39 of the cross-examination, the said witness has denied the fact that after receiving the Narco Test report, he did not take any permission from the Magistrate for further investigation and further stated on his own that he had appeared in the Court and requested, on which the Court had expressed that there is no need for separate permission for investigation and on 25.04.2019 he had written a letter to the Sessions Judge, Mahasamund, granting permission for further investigation, which is attached with the case.

62. The basis taken by the defense is that Narco Test is not admissible in evidence. In this regard, in the case of ***Selvi*** (supra), the Hon'ble Supreme Court has been of the opinion that the statement given by the accused during the Narco Test cannot be considered as a confessional statement. "But as regards any material fact as per the information given by the accused, it can be accepted as evidence under section 27 of the Evidence Act." In other words, such statements can be treated as information obtained under section 27. Since the information obtained from such statements is merely corroborative evidence, it cannot be presented as primary evidence. If the Court wishes, it can grant limited admissibility to it keeping in view the facts and circumstances.

63. It has also been argued on behalf of the appellants that in the Narco Test Ex.P-92, accused Dharmendra Bariha had also named Lokesh as an accused, therefore the said Narco test is not admissible in evidence, but in this regard, it is clear from the observation of the Narco Test Ex.P-92 that the pre-interview session has been conducted in two or three stages and after that a post test interview has been taken and on the basis of that opinion has been given in which the accused Dharmendra Bariha has stated about the alleged incident being committed in connivance with accused Suresh Khunte, Gaurishankar Kaivartya, Fulsingh Yadav, Akhandal Pradhan, therefore the objection taken in this regard is not acceptable and is dismissed as baseless. Thus, the Narco Test report Ex.P-92 is admissible in evidence if corroborated by other evidence.

64. At this stage, it would be appropriate to notice Section 30 of the Indian Evidence Act, 1872, which states as under: -

> "**30. Consideration of proved confession affecting person making it and others jointly under trial for same offence**.— When more persons than one are being tried jointly for the same offence, and a confession made by one of such person affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.
>
> *Explanation.—* "*Offence*", as used in this section, includes the abetment of, or attempt to commit the offence."

65. As per the above provision when an accused person unconditionally confesses his crime and also names another person jointly tried with him for the same crime, his confession can be considered against himself as well as against such other person because his own admission of guilt acts as a kind of sanction which to some extent replaces the admission under oath and thus gives some guarantee that the entire statement is true. The court can use the confession of one accused against another accused only if the following two conditions are fulfilled:

(01) The co-accused should have been charged in the same case along with the confessor.

(02) He should have been tried in the same trial along with the confessor.

66. There is no doubt that a confession can normally be admitted as evidence. Where there is sufficient evidence against a co-accused to support a conviction, if believed, a confession of the kind described in Section 30 of the Indian Evidence Act may be included as an additional reason to believe that evidence. The Court may consider the confession and thus, there is no doubt, it becomes evidence on which the Court can act, but the section does not say that the confession is equivalent to evidence, obviously there will be other evidence. The confession is only one element in considering all the facts proved in the case. It can be weighed with other evidence by placing it in the balance.

67. Thus, on the above grounds, it is clear that it is a fundamental principle of law that the confession given by one accused is not substantial evidence against the other accused and can be used against the other accused only when other evidence is available against the other accused and the Court feels that the confession of crime should be used to support the other evidence, only then the confession of crime can be used against the other accused.

68. The basis has also been taken by the defence that no permission was taken for further investigation after the charge sheet was presented by the defense for investigation in the case. In the case, an application was submitted to the Sessions Judge Mahasamund for Narco Test of accused Dharmendra Bariha on 30.11.2018 as per Ex.P.-64 and for further investigation in the case, an application was submitted on 02.02.2019 as per Ex.P.-65. On the said application, the Court wrote on 25.04.2019 that there is no need for judicial order for further investigation. On the said basis, further investigation has been carried out in the case and Narco Test report Ex.P.-92 (report dated 21.01.2019) has been submitted in the case. Thus, it is clear that permission was taken for conducting Narco Test in the case and the case was investigated by submitting an application before the Sessions Judge for further investigation, hence the basis taken by the defence in this regard is not acceptable.

69. In this case, on the basis of the possibility of finger prints of accused Dharmendra Bariha in the four mobile boxes seized from

accused Dharmendra Bariha, it was exhibited as Exs A,B,C,D and the finger print of accused Dharmendra Bariha was taken separately by Police Station Pithora through document of Ex.P-84 and sent to Fingerprint Expert Control Room Raipur for matching the said finger print with it. The report of the fingerprint expert was not presented in the Court. The said finger print report was summoned by trial Court on 13.06.2023 through Police Station Pithora, which was presented in the Court on 15.06.2023. The said finger print report was negative. On the above grounds the said finger print report has no value.

70. There was no eye witness to the incident in the case. It is an established principle of law that an accused can be convicted at once if he is found guilty even on circumstantial evidence, provided that the prosecution is able to prove beyond reasonable doubt the full chain of events and circumstances which definitely point to the involvement of the suspect or the accused as the case may be. The accused shall not be entitled to acquittal merely on the ground that there are no eye witnesses in the case and the accused can be convicted on the basis of circumstantial evidence only subject to the satisfaction of the accepted principles in that regard. The following principles have to be kept in mind while dealing with circumstantial evidence: (1) The circumstances from which the inference of guilt is to be drawn must be fully proved, (2) The facts so proved should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be

capable of explanation on any other hypothesis except that the accused is guilty, (3) The circumstances must be of a conclusive nature and tendency (4) They must exclude every possible hypothesis except the hypothesis sought to be proved and (5) The chain of evidence must be so complete as to leave no reasonable ground for a consistent conclusion that the accused is innocent and must show that in all human possibilities the act must have been done by the accused. In this case, on the basis of the statement of accused Dharmendra Bariha in Narco test Ex.P-92 and on the basis of the disclosure statements, the seizure memos have been duly proved by the prosecution witnesses, on the basis of which, by the disclosure of the accused, the seizure memos have been found to be duly certified as above; hence, under Section 30 of the Indian Evidence Act, the statement of accused Dharmendra Bariha in the Narco Test report (Ex.P-92) is admissible in evidence against the other accused and the involvement of all the accused in the crime is proved.

71. The defence has also based its case on the fact that the report sent for testing the hair from the head of accused Dharmendra Bariha to match it with the hair found in the right hand of the deceased is not available and the hair of accused Suresh Khunte, Gaurishankar Kaivartya, Fulsingh Yadav, Akhandal Pradhan has not been plucked out and sent to FSL for matching with the hair found in the right hand of the deceased, hence the chain of

circumstantial evidence has not been established against the accused.

72. In the case, the prosecution has been able to prove the chain of circumstances comprehensively and convincingly and the evidence produced on record leaves no major loophole in the case of the prosecution. With the help of prosecution witnesses, the presence of the accused in the house of the deceased, their intention to commit such a heinous crime, the manner in which the accused persons destroyed the evidence *i.e.* dead bodies, blood stained clothes of the accused themselves, from where and how they procured the incriminating articles which they used like axe, *katta*, tangiya, spade etc. and finally the conduct of the accused before and after committing the crime have been proved by the prosecution.

73. In the case, the hair cut and presented by accused Dharmendra Bariha was seized by Ms. Litesh Singh (PW-17) and the hair seized from the palm of the right hand of deceased Yogmaya was also seized by her on the date of incident. Both the hairs were sent for testing to FSL Raipur through document Ex.P-86, the hair seized from the palm of the right hand of the deceased was marked as Article-A and the pieces of hair from the head of accused Dharmendra Bariha was marked as Article-B. The result of testing of the said items was not submitted by FSL Raipur. The Court sent a letter to FSL Raipur on 16.06.2023, in pursuance of which, a letter was sent by FSL Raipur on 19.06.2023 whereby it

was reported that the Police Station Pithora did not deposit the hair of accused Dharmendra Bariha in FSL for testing. The facts in this regard clearly show that FSL tests of the hair could be done only when it is plucked out and provided, but in this case the cut hair of accused Dharmendra Bariha was sent for testing to match it the hair found in the palm of the right hand of the deceased, which was not tested by FSL due to scrutiny, i.e. both the items of Articles A and B were deposited in FSL Raipur only.

74. In the investigation of the case, an application was submitted by the Police Centre In-charge, Pithora, through document Ex.P-100 dated 10.05.2019 requesting the Judicial Magistrate First Class, Pithora for taking the hair samples of the accused Suresh Khunte, Gaurishankar Kaivartya, Fulsingh Yadav, Akhandal Pradhan for DNA testing from the Jail Superintendent Mahasamund through the doctor. Through document Ex.D-10 dated 10.05.2019, a memorandum was issued to the Jail Superintendent Mahasamund by the Judicial Magistrate First Class, Pithora, regarding the necessary action to obtain the hair samples and finger prints of the said four accused Suresh Khunte, Gaurishankar Kaivartya, Fulsingh Yadav, Akhandal Pradhan. After obtaining permission from the Judicial Magistrate First Class, Pithora, the Police Station In-charge corresponded with the District Medical Officer, District Mahasamund on 15.05.2019 through document Ex.D-7 regarding providing an experienced doctor to remove the hair from the head of the said accused Suresh Khute, Gaurishankar Kaivartya,

Fulsingh Yadav, Akhandal Pradhan, in which Dr. Manpreet Gurudatta was authorized for the action on 16.05.2019 in the said document itself. On the said basis, through Ex.D-08, Dr. Manpreet Gurudatta plucked out the hair from the head of the said accused Suresh Khute, Gaurishankar Kaivartya, Fulsingh Yadav, Akhandal Pradhan and handed it over to the Police Station In-charge, Pithora on 16.05.2019. A certificate regarding the same has also been issued by the Police Station Pithora through document Ex.D-9. A report regarding the above action taken on 20.05.2019 has also been given by the Jail Superintendent, Mahasamund to the Judicial Magistrate First Class, Pithora through document Ex.D-11.

75. In the case, thereafter, the Police Station In-charge, Pithora, submitted an application for permission to conduct DNA test of the above-mentioned hair samples in sealed condition of the above-mentioned accused Suresh Khunte, Gaurishankar Kaivartya, Fulsingh Yadav, Akhandal Pradhan to the Judicial Magistrate First, Pithora, on 29.05.2019. Thereafter, it was sent to FSL Raipur for testing, but FSL expressed that testing was not possible as it was not in the prescribed proforma. On 19.06.2019, permission was obtained from the Police Station In-charge, Pithora, through the document of Ex.P-110A, to the Judicial Magistrate First, Pithora, for permission to take action as per the proforma. On 24.06.2019, the hair seized from the above accused after digging it out and handed over was marked with Articles A,B,C,D and the hair seized from the palm of the right hand of deceased Yogmaya Sahu at the

scene of incident was marked with Article E as before and was sent to FSL Raipur for testing through document Ex.P-101. The receipt of the said Articles is Ex.D-5 dated 25.06.2019, the result of which has been sent by FSL Raipur to the Superintendent of Police Mahasamund through document Ex.P-103, in which it has been reported that the DNA profile of Article E is similar to the DNA profile of Article A and the DNA profile of Article E is not similar to the DNA profile of Articles B,C,D. Thus, it is proved that the DNA profile of the hair found in the palm of right hand of the deceased Yogmaya and the hair taken out from the head of the accused Suresh Khunte is the same. That is, the hair of the accused Suresh Khunte was found in the palm of the right hand of the deceased Yogmaya. Therefore, the ground taken by the defence on the above grounds that the report of the hair from the head of the accused Dharmendra Bariha was not received for testing to match it with the hair found in the right hand of the deceased and that the hair from the head of the accused Suresh Khunte, Gaurishankar Kaivart, Fulsingh Yadav, Akhandal Pradhan was not sent to FSL for matching it with the hair taken out and found in the right hand of the deceased and that the chain of circumstantial evidence could not be established against the accused is not acceptable on the above grounds. In the memorandum of Superintendent of Police Ex.P.-101, the hair seized from the palm of the right hand of the deceased has been shown to have been exhibited as Article E on 31.05.2018. But

below it, it has been shown to have been deposited on 31.05.2019. On the above grounds, it appears that the date 31.05.2019 was recorded due to typographical mistake.

76. Ms. Litesh Singh (PW-17), Dipesh Jaiswal (PW-18), Anil Paleshwar (PW-19) have been cross examined in detail. No such important fact has come to light in their cross examination which can fundamentally affect the investigation. No such fact has been brought on record by the defence that the accused had any grudge against the said investigators or that the accused have been falsely implicated in the crime by the said investigators. In the case, although the defence has taken the basis of the witnesses of the memorandum and seizure sheet being pocket witnesses and also taking the basis of them being witnesses in other cases. It is a well-established principle of law that all the statements of the witnesses cannot be rejected just because they have been called as witnesses in other cases and are interested witnesses. The quality of the evidence of the said witnesses has to be tested by the Court. In the event of witnesses not being found at the scene of incident, the investigating officers in the case gave notice to the witnesses and took them along for seizure etc. on the basis of their disclosure in the investigation proceedings, in which there is no illegality of any kind. In the case, on the basis of the memorandum statement of the accused, other evidence has also been found proved against the accused. In the memorandum statement of accused Suresh Khunte, Gaurishankar Kaivartya,

Fulsingh Yadav, facts regarding involvement of accused Akhandal Pradhan in the crime have also been found and all the accused were involved in the criminal act together, hence mere absence of seizure from accused Akhandal Pradhan does not have any adverse effect on the case.

77. In the case, the chain of circumstantial evidence has been proved by the prosecution as above. According to the prosecution story, the accused had entered the government residence of the deceased Yogmaya in the night by trespassing in the house with the intention of committing robbery by looting jewellery and cash and then the alleged incident took place. Thus, the motive of the accused in the crime is also proved. On the basis of the above complete discussion, it is found that accused Dharmendra Bariha, Suresh Khunte, Gaurishankar Kaivartya, Fulsingh Yadav, Akhandal Pradhan on 31.05.2018, while trespassing in the government residence of nurse Yogmaya situated at Sub Health Centre Kishanpur under Kishanpur Police Station Pithora area at night, caused the death of Chetan and on the said date, time and place, with the intention of killing Yogmaya, Chetan, Tanmay and Kunal, they attacked them with a shovel and killed them and on the said date, time and place, together stole jewellery, cash, LED, from the residence of Yogmaya and while committing robbery by robbing three mobile phones, they killed Yogmaya, Chetan, Tanmay and Kunal and on the said date, time and place, the accused Suresh Khute, Gaurishankar Kaivartya, Fulsingh Yadav,

Akhandal Pradhan, knowing that they had killed Yogmaya, Chetan, Tanmay and Kunal, gave false information to the police with the intention of destroying the evidence of the commission of that crime, due to which the charge under sections 460, 302 (four charges), 396 IPC against the accused Dharmendra Bariha, Suresh Khunte, Gaurishankar Kaivartya, Fulsingh Yadav, Akhandal Pradhan and section 201 IPC against the accused Suresh Khunte, Gaurishankar Kaivart, Fulsingh Yadav, Akhandal Pradhan is also found proved.

78. Applying the aforesaid well settled principles of law and taking into consideration the facts in totality and considering the facts and circumstances of the case, in our considered view the prosecution was able to establish the guilt of the accused beyond reasonable doubt. The impugned judgment of conviction and order of sentence is just and proper warranting no interference by this Court.

79. In the result, all the appeals, being devoid of merit, are liable to be and are hereby **dismissed**.

80. It is stated at the Bar that the appellants are in jail, they shall serve out the sentence as ordered by the learned trial Court.

81. 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.

82. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their jail term, to serve the same on the appellants informing them that they are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of the High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-	Sd/-
(Ravindra Kumar Agrawal)	**(Ramesh Sinha)**
Judge	**Chief Justice**

Judgment Date : 06/02/2025

Chandra

Head-Note

The confession given by one accused is not substantial evidence against the other accused and can be used against the other accused only when other evidence is available against the other accused and the Court feels that the confession of crime should be used to support the other evidence, only then the confession of crime can be used against the other accused.

एक आरोपी द्वारा दिया गया इकबालिया बयान दूसरे आरोपी के खिलाफ पर्याप्त सबूत नहीं है और इसका इस्तेमाल दूसरे आरोपी के खिलाफ तभी किया जा सकता है जब दूसरे आरोपी के खिलाफ अन्य सबूत उपलब्ध हों और अदालत को लगता है कि अपराध की स्वीकारोक्ति का इस्तेमाल अन्य सबूतों के समर्थन में किया जाना चाहिए, तभी अपराध की स्वीकारोक्ति का इस्तेमाल दूसरे आरोपी के खिलाफ किया जा सकता है।