



2025:CGHC:58274-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 1428 of 2023**

Santkumar Bandhe S/o Late Devabandhe Aged About 21 Years Resident of
Village- Bharni, Police Station - Damdha, District : Durg, Chhattisgarh

--- **Appellant****versus**

State Of Chhattisgarh Through, Police Station- Berla, District : Bemetara,
Chhattisgarh

--- **Respondent****CRA No. 1647 of 2023**

1 - Rekhchand @ Jitendra Deshlahre, son of Premchand Deshlahre Aged
About 27 Years

2 - Premchand Deslahre, Son of Samay Das Deshlahre Aged About 65 Years

Both are R/o Ward No. 07, Satnamipara, Berla, Police Station - Berla, District -
Bemetara (C.G.)

---**Appellant(s)****Versus**

State Of Chhattisgarh Through - Police Station - Berla, District Bemetara
(C.G.)

--- **Respondent**

(Cause Title Taken from Case Information System)

For Appellant(s)	: Mr. Palash Tiwari, Advocate {Cr.A. No. 1428/2023} Mr. Pushpendra Kumar Patel, Advocate {Cr.A. No. 1647/2023}
For Respondent/State	: Mr. Shashank Thakur, Deputy Advocate General
Date of Hearing	: 11/11/2025
Date of Judgment	: 02/12/2025

Hon'ble Mr. Ramesh Sinha, Chief Justice**Hon'ble Mr. Ravindra Kumar Agrawal, Judge**



C A V Judgment

Per Ramesh Sinha, Chief Justice

1. The appellant(s) have preferred these appeals under Section 374(2) of the Criminal Procedure Code, 1973 (*for short, the Cr.P.C.*) questioning the impugned judgment of conviction and order of sentence dated 06.04.2023 passed in Sessions Trial No. 46/2022 by the learned First Additional Sessions Judge, Bemetara, District Bemetara, by which the learned trial Judge has convicted and sentenced the appellant as under:

Conviction under Section	Rigorous imprisonment	Fine	Default Sentence
Santkumar Bandhe			
302, 34 of the Indian Penal Code (<i>for short, the IPC</i>)	Life imprisonment	Rs.1000/-	1 month
120-B IPC	10 years	Rs. 1000/-	1 month
Rekhchand @ Jitendra Deshlahre and Premchand Deshlahre			
120-B of the IPC	10 years	Rs. 1000/-	1 month

2. The appellants/convicts were charged under Section 120-B and 302 read with Section 34 of the IPC alleging that at about 11:30 a.m. of 20.07.2022 to 1:45 p.m. of 21.07.2022, at Boriyawandh Berla (behind Karokanya Temple), Police Station Berla, District-Bemetara, they along with the absconding accused Paras alias Tehku Ratre, conspired to murder Dharmendra Deshlahare (*hereinafter referred to as 'the deceased'*) and in furtherance of their common intention under the aforesaid criminal conspiracy, caused the death of deceased by inflicting fatal injuries on his neck, head and jaw with a blade, stone and a quarter bottle of liquor, which amounts to murder.

3. The case of the prosecution in brief is that on 21.07.2022 at about 15:20 hours, the informant Manharan Deshlahare (PW-1) lodged a report about the death of deceased stating that on 21.07.2022 at about 2.30



p.m., he was in his house when his uncle Dukhwa Deshlahare (PW-2) told him that his cousin i.e. the deceased, son of appellant-Premchand Deshlahare, age 32 years, resident of Mini Mata Para Berla, was lying dead in Boria Bandh Berla behind Karo Kanya Temple. Then he came near Boriya Bandh Berla along with his uncle Dukhva Deshlahare (PW-2) and Ajor Das Deshlahare (PW-3), Bhawani Ram Bajare (PW-5) of the locality and saw the deceased was lying dead, serious injury marks were visible on the left side of his head, above the left ear and on the left side of his neck, and that some unknown person had killed his brother by hitting him with a sharp weapon on his head and neck, causing serious injuries. On the basis of the above information of the informant, Dehati Merg Intimation (Exhibit P/1) was registered and after registering the Dehati Nalishi (Exhibit P/2) on the spot and preparing the inquest report (Exhibit P/5), the dead body was sent for post-mortem and after registering Merg Intimation No. 70/2022 (Exhibit P/40) in Berla police station and after investigation, FIR (Exhibit P/41) under Crime Number 274/2022 was registered against the accused in Berla Police Station and after complete investigation in the case, the charge sheet was presented in the court of Chief Judicial Magistrate, Bemetara, which was committed to the Court of Sessions, Bemetara.

4. Charges were framed against the appellants for the offences under Sections 302, 120-B and 34 of the IPC and was explained to them. The appellants denied the charges and prayed for trial.
5. In order to bring home the offences, the prosecution examined as many as 34 witnesses, namely Manharan Deshlahare (PW/1), Dukhva Deshlahare (PW/2), Anjordas Deshlahare (PW/3), Chandrabhushan Kurre (PW/ 4), Bhavaniram Banjare (PW/ 5), Usha Deshlahare (PW/ 6),



Rajesh Gaikwad (PW/7), Krishna Kumar Dewangan (PW/8), Lavkush Sahu (PW/9), Bhikham Singh Sahu (PW/10), Samaldas Manikpuri (PW/11), Govardhan Patel (PW/12), Sahasram Dhruv (PW/13), Shankar Sahu (PW/14), Deva Bandhe (PW/15), Nikhlesh Sivana (PW/16), Narmada Ratre (PW/17), Birendra Sahu (PW/18), Amesh Kumar Sai (PW/19), Devendra Sahu (PW/20), Tukaram Nishad (PW/21), Nasir Khan (PW/22), Ramsing Gaikwad (PW/23), Amarnath Sahu (PW/24), Lata Tandon (PW/25), Priyanka Deshlahare (PW/26), Poonasingh Rajput (PW/27), Dinanath Yadav (PW/28), Dr. Narendra Kumar Maheshwari (PW/29), Hemant Verma (PW/30), Kamal Narayan Sharma (PW/31), Balkaran Markandey (PW/32), Sanjeev Nema (PW/33) and Manohar Babu Bhupati (PW/34) and exhibited as many as 89 Exhibits and 6 Articles.

6. In defence, the appellants did not examine any witness nor exhibited any documents in support of their case.
7. The statement of the appellants under section 313 Cr.P.C was recorded wherein they expressed ignorance to the questions and some of them were denied as well. They stated that they had been falsely implicated in this case and prayed for acquittal.
8. The learned trial Court, after considering the evidence on record, convicted and sentenced the appellants/accused as detailed in the opening paragraph of this judgment. Hence, the present appeal by the appellants/convict.
9. Mr. Palash Tiwari, learned counsel for the appellant-Santkumar Bandhe submits that the appellant has been falsely implicated in this case. There is absence of direct evidence. The prosecution relies predominantly on



circumstantial evidence as there are no direct eyewitnesses to the alleged crime. The lack of first hand testimony or tangible proof directly linking the accused to the offence raises significant questions regarding the sufficiency and reliability of the evidence presented. Further, the conviction is based on the basis of last seen theory. The last seen theory is applicable in cases where the time gap between the moment the accused and the deceased were last seen together and the discovery of the deceased's body is so minimal that the possibility of any person other than the accused committing the crime is rendered improbable. However, in the present case, the prosecution's reliance on the last seen theory is unfounded as the accused was allegedly observed with the deceased solely through CCTV footage, which constitutes secondary evidence. Furthermore, there is no conclusive proof apart from the CCTV footage to establish that the accused was with the deceased at the exact time of the alleged murder. This evidentiary gap disrupts the chain of circumstances thereby weakening the prosecution's case and rendering the application of the last seen theory inapplicable. There is further absence of conclusive forensic evidence as the prosecution has merely cited the seizure of bloodstained clothing and the mobile phone as evidence. However, in absence of conclusive forensic findings directly linking the accused to the crime, such as DNA mismatch or the absence of the accused's fingerprints, such evidence may be deemed insufficient to establish guilt beyond a reasonable doubt. Since the blood group analysis in this case is inconclusive, there is no definite proof linking the accused to the crime.

10. Mr. Tiwari further submits that the financial transactions were also not directly linked to the crime. The withdrawals of Rs. 60,000/- on 11.07.2022 and Rs. 50,000/- on 25.07.2022 are being construed by the



prosecution as indicative of a criminal conspiracy. However, in the absence of direct evidence demonstrating that these funds were explicitly used to compensate the alleged perpetrators, the applicability of Section 120-B of the IPC remains legally debatable. Further, mere financial transactions, without a proven nexus to the alleged offence, do not suffice to establish criminal conspiracy beyond a reasonable doubt. The accused/appellant was merely 21 years old at the time of alleged incident and he has no criminal antecedent. The prosecution has not presented any evidence to establish a history of previous offence or habitual criminal conduct. As such, the appellant deserves to be acquitted. In support of his contentions, he places reliance on the decision of the Apex Court in ***Sharad Birdhichand Sarda v. State of Maharashtra*** {(1984) 4 SCC 116}, ***Ramreddy Rajesh Khanna Reddy & Another v. State of A.P.*** {(2006) 10 SCC 172}, ***Kanhaiyalal v. State of Rajasthan*** {(2014) 4 SCC 715} and ***Arjun Marik v. State of Bihar*** {(1994) Supp. 2 SCC 372}.

11. Mr. Pushpendra Kumar Patel, learned counsel for the appellants-Rekhchand @ Jitendra Deshlahre and Premchand Deshlahre, submits that the appellants are the brother and father of the deceased and they cannot conspire such a heinous crime against the deceased. Merely because the deceased was a drunkard, the appellants would not hire contract killers for commission of murder of the deceased. Even otherwise, there is no cogent evidence on record to establish any connection with the offence in question. The conspiracy has not been proved beyond reasonable doubt. Furthermore, when the appellants have been acquitted of the charge under Section 302/34 of the IPC, which is the substantive offence, the conviction of the appellants under



Section 120-B of the IPC also deserves to be set aside and the appellants be acquitted of the charges.

12. On the other hand, Mr. Shashank Thakur, learned Deputy Advocate General submits that the appellant-Santkumar Bandhe and the absconding accused were last seen in the company of the deceased purchasing liquor. There is ample evidence on record to hold the appellants guilty of the offences for which they have been convicted and sentenced. Mr. Thakur further submits that though the State has not filed any appeal with respect to the acquittal of the appellants-Rekhchand @ Jitendra Deshlahre and Premchand Deshlahre of the offences under Section 302/34 of the IPC, however, their conviction under Section 120-B of the IPC is well founded. The statement of the witnesses and the materials available on record, clearly makes out a case against the appellants. The judgment of conviction and order of sentence passed by the learned trial Court is just and proper warranting no interference.
13. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
14. It is an admitted position that the appellant-Premchand Deshlahre is the father of the deceased and Rekhchand @ Jitendra Deshlahre is the brother of the deceased. It is also not disputed that the death of the deceased was homicidal in nature which is evident from the postmortem report (Annexure P/76) and the deposition made by Dr. Narendra Kumar Maheshwari (PW-29). The said witness has clearly given a finding that the cause of death was hemorrhagic shock due to rupture of great



vessels of neck injury and the nature of death was opined to be homicidal. It is a finding of fact and we concur with the said finding.

15. Now the question for consideration would be as to whether the learned trial Court was justified in convicting the appellant-Santkumar Bandhe for the offence under Section 302/34 and Section 120-B of the IPC and the appellants-Rekhchand @ Jitendra Deshlahre and Premchand Deshlahre, for the offence under Section 120-B of the IPC?
16. The case of the prosecution is that the deceased was a drunkard and was causing nuisance in the family by selling the lands and properties for arranging money for liquor. The appellant-Rekhchand @ Jitendra Deshlahre is the real brother of the deceased while the appellant-Premchand Deshlahre is the father of the deceased. It is the case of the prosecution that both these appellants hired contract killers who are the appellant-Santkumar Bandhe and the absconded accused Paras @ Tehku Ratre for killing the deceased. They gave contract to the appellant-Santkumar Bandhe and the absconded accused Paras @ Tehku Ratre for a sum of Rs. 50,000/-.
17. It is an admitted position that there is no eye witness to the incident and the case rests solely on circumstantial evidence and the last seen theory. The learned trial Judge has acquitted the appellants-Rekhchand @ Jitendra Deshlahre and Premchand Deshlahre for the offence under Section 302/34 of the IPC, but has convicted only for the offence punishable under Section 120-B of the IPC.
18. For ready reference, Section 120-B of the IPC is quoted hereinbelow:

“120B. Punishment of criminal conspiracy.- (1) Whoever is a party to a criminal conspiracy to commit an offence



punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

- 19.** Section 109 of the IPC provides for punishment for abetment that if the act abetted is committed in consequence and where no express provision is made for its punishment. The same reads as under:

“109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment. - Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation . - An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.”

- 20.** The term abetment has been defined under Section 107 of the IPC, which reads as under:

“107. Abetment of a thing. - A person abets the doing of a thing, who-



First. - Instigates any person to do that thing; or

Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes places in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. - A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

- 21.** The learned trial Court has convicted the appellants-Rekchand @ Jitendra Deshlahre and Premchand Deshlahre for the offence under Section 120-B of the IPC and they have been sentenced to rigorous imprisonment for 10 years, however, both of them have been acquitted of the charge under Section 302 or 302/34 of the IPC. When both these appellants have been acquitted of the substantive offence i.e. commission of murder of the deceased for which the conspiracy is alleged to have been hatched, the conviction and sentence of the appellants under Section 120-B of the IPC cannot withstand and as such, we are of the considered opinion that the conviction and sentence awarded to the appellants-Rekhchand @ Jitendra Deshlahre and Premchand Deshlahre for the offence under Section 120-B of the IPC deserves to be set aside.
- 22.** Further, the learned trial Court has awarded sentence to the appellants-Rekhchand @ Jitendra Deshlahre and Premchand Deshlahre for a period of 10 years rigorous imprisonment for the offence under Section 120-B IPC, which also cannot sustain as if the learned trial Judge has



held the appellants guilty of said offence alleging that they had hatched conspiracy for murder of the deceased, the appellants should have been at least awarded the sentence as was awarded to the appellant-Santkumar Bandhe, for the offence under Section 302/34 of the IPC.

23. The Apex Court, in ***Sachin v. State of Maharashtra*** {2025 SCC OnLine SC 834} while dealing with an issue similar to this case, observed as under:

“22.2 In Govind Ramji Jadhav vs. State of Maharashtra, (1990) 4 SCC 718 (“Govind Ramji Jadhav”), the question was whether the High Court had jurisdiction to enhance the sentence without issuing notice and affording to the appellant an opportunity of showing cause against such enhancement of the sentence in the absence of an appeal by the State for enhancement of sentence on the ground of inadequacy. The appellant therein had preferred criminal appeal against the conviction and sentence before the Bombay High Court, Aurangabad Bench. The High Court neither issued notice to the appellant therein nor afforded him any opportunity of showing cause against the said enhancement while enhancing the sentence. There was no appeal for the said enhancement of sentence under Section 377 CrPC on the ground of its inadequacy. It was observed that the High Court enjoys the power of enhancing the sentence either in exercise of its revisional jurisdiction under Section 397 read with Section 401 or its appellate jurisdiction under Section 377 read with Section 386(c) CrPC subject to proviso (1) and (2) to Section 386. That while exercising its revisional jurisdiction under Section 397 read with Section 401 CrPC for enhancement of sentence, opportunity must be provided to the accused.

Referring to certain judgments of this Court, it was observed that Section 386 CrPC deals with the powers of the appellate court in disposing of an appeal preferred under Section 374 and also in case of an appeal under Sections 377 or 378 CrPC. Under clause (c)(iii) of Section 386 CrPC, the appellate court may in an



appeal for enhancement of sentence with or without altering the finding, alter the nature or the extent, or, the nature and extent, of the sentence so as to enhance or reduce the same. That in both the above situations, for the power of enhancement of the sentence, the accused must be given a reasonable opportunity to showing cause as contemplated under the first proviso to Section 386 as well under sub-section (3) of Section 377 CrPC. Rules of natural justice would mandate issuance of notice to the appellant and affording an opportunity to be heard on the proposed action for enhancement of sentence. Applying the aforesaid principle to the facts of the said case, it was observed that enhancement of sentence from three years to seven years for the conviction under Section 201 IPC was impermissible. Consequently, this Court set aside the High Court's order enhancing the sentence and restored the order of the trial court imposing the sentence of three years rigorous imprisonment and the fine of Rs. 2500/- with the default clause.

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24. Thus, in an appeal filed by the appellant-accused against the judgment of the conviction and sentence, can the accused be left worse-off while the conviction is affirmed by the appellate court exercising appellate jurisdiction by enhancing the sentence? In such an event, the appellant-accused would be better off, if he either withdraws his appeal or, not to file an appeal at all !

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26. The right to prefer an appeal is not only a statutory right but also a constitutional right in the case of an accused because an accused has a right to not only challenge a judgment on its merits, namely, with respect to the conviction and sentence being imposed on him but also on the procedural aspects of the trial. An accused can also question procedural flaws, impropriety and lapses that may have been committed by the trial court in arriving at the judgment of conviction and imposition of sentence in an appeal filed against the same.



It then becomes the duty of the appellate court to consider the appeal from the perspective of the accused-appellant to see if he has a good case on merits and to set aside the judgment of the trial court and acquit the accused or to remand the matter for a re-trial in accordance with law or reduce the sentence while maintaining the conviction or, in the alternative, to dismiss the appeal.

27. In our considered view, the appellate court, in an appeal filed by the accused cannot, while maintaining the conviction, enhance the sentence. While exercising its appellate jurisdiction at the instance of the convict, the High Court cannot act as a revisional court, particularly, when no appeal or revision has been filed either by the State, victim or complainant for seeking enhancement of sentence against accused.

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29.1 However, in this case, our focus of attention is whether, in the absence of any appeal or revision filed by the State, a complainant or a victim in a particular case and when the appeal has been filed only by the accused assailing the judgment of conviction and sentence, the High Court can exercise its revisional jurisdiction while dealing with an appeal filed by the accused/convict. In other words, when an accused is seeking setting-aside of a judgment of conviction and sentence, can the High Court, in the absence of there being any challenge to the same from any other quarter, suo motu exercise its revisional power and thereby condemn the accused by awarding an enhancement in his sentence. Even if an opportunity of hearing is given to such an accused/convict, we do not think that the High Court can exercise its revisional jurisdiction under Section 401 CrPC while exercising its appellate jurisdiction in an appeal filed by the accused/convict in the High Court. All that the High Court can do is to set-aside the judgment of conviction and sentence and acquit the accused, or while doing so, order for a retrial or, in the alternative, while maintaining the conviction, reduce the sentence. In other words, in an appeal filed by the accused/convict, the High Court cannot suo motu exercise its



revisional jurisdiction and enhance the sentence against the accused while maintaining the conviction.

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33. The rationale of the above can be explained in simple language by stating that no appellant by filing an appeal can be worse-off than what he was. That is exactly what we are seeking to reiterate in our judgment having regard to the facts of the present case.”

- 24.** From perusal of the materials available on record, there appears to be ample evidence against the appellants-Rekhchand @ Jitendra Deshlahre and Premchand Deshlahre for convicting them under Section 302/34 of the IPC, however, since appellants have been acquitted of the said charge and convicted and sentenced only for offence under Section 120-B IPC by the learned trial Court, and further no appeal has been filed by the State seeking enhancement/conviction of these appellants under Section 302/34 of the IPC, this Court cannot either impose or enhance the penalty awarded by the learned trial Court and as such, with a heavy heart, we are constrained to acquit the appellants-Rekhchand @ Jitendra Deshlahre and Premchand Deshlahre for the offence punishable under Section 120-B of the IPC.
- 25.** So far as the appeal with respect to appellant-Santkumar Bandhe is concerned, there is sufficient evidence against him as the deceased and the appellant-Santkumar Bandhe were last seen in the CCTV footage of the country liquor shop (Exhibit P/12) and Chicken Centre (Exhibit P/15) on 20.07.2022. The said evidence gets corroborated by the deposition made by the prosecution witnesses namely, Rajesh Gaikwad and Krishna Kumar Dewangan (PW-7 and PW-8). Further, the appellant-Santkumar Bandhe has failed to provide any explanation with respect to his presence alongwith the deceased in the CCTV footage.



- 26.** The police had also seized the blood stained clothes (Exhibit P/43) and mobile phone (Exhibit P/44) based on the memorandum (Exhibit P/42) of the appellant which corroborates with the deposition of the seizure witness Nasir Khan (PW-22) and Ram Singh Gaikwad (PW-23) and Amarnath Sahu (PW-24).
- 27.** The FSL report (Exhibit P/62) which is in respect of soil (A and B), blade (C), broken bottle (D), polythene bag (E), disposable glass (F), water pouch (G), cotton (H and I), shirt, pant and underwear of the deceased (J1, J2 and J3), hair of the deceased (K), and the full pant (L) and full shirt (M) of the accused-Santkumar Bandhe, states that in Exhibits A, C, D, E, F, G, H, J1, J2, J3, L and M, blood was found and in Exhibits C, D, E, F, J1, J2, J3, L, and M, human blood was found however, the blood group could not be ascertained.
- 28.** According to Section 27 of the Indian Evidence Act, 1872, a statement given by a person or an accused before a police officer is not admissible as evidence. However, only that portion of the memorandum statement given by that person/accused which reveals any new facts is admissible. In this case also, on the basis of the memorandum statement of the appellant and the seizure of the clothes worn by him at the time of the incident, bank account passbooks along with mobile phones and the CD of CCTV footage related to the incident, seizure memo Exhibit P/43, P/44, P/47 and P/48, are admissible in evidence, which the prosecution has proved beyond reasonable doubt through the uncontroverted statements of the two independent witnesses of the above memorandum and seizure memo, Ramsingh Gaikwad (PW-23) and Amarnath Sahu (PW-24).



- 29.** In this case, prosecution witness Bhikham Singh Sahu (PW-10) examined in the court has deposed that in his house situated in Ward No. 04 of village Berla, there is a CCTV camera installed on the roof. On 22.07.2022, the police had given him a notice regarding providing the CCTV footage of 20.07.2022 installed in his house. This witness has further stated that he along with the police had seen the footage of 20.07.2022 in the CCTV camera in which two persons were seen coming from Boria Badha side, out of which one person was wearing a black cap and the other person was wearing a white colour shirt and the said footage was of around 5 p.m. In this manner, from deposition of the witness witness Krishna Kumar Devangan (PW-08), the case of the prosecution appears to be proved beyond reasonable doubt that on 20.07.2022, just before his death, the deceased at the last moment, was seen with the above appellant Santkumar Bandhe and absconded accused Paras @ Tehku Ratre.
- 30.** Further, the prosecution witness Devendra Sahu (PW-20) has deposed that a letter was sent to Cyber Cell Bemetara for providing the call details of the conversation between the mobile number-9301135691 of appellant Rekhachand Deshlahare and the mobile number-8815545215 of appellant Santkumar Bandhe, on the basis of the said letter, the call details of the conversation between the said two mobile numbers and the customer application form were sent to the Berla Police Station through e-mail. On the instructions of the Station House In-charge, he got the print out of the e-mail information sent by the Cyber Cell, Bemetara, signed it and self-certified it as genuine. This witness further stated that the emailed letter sent by the Superintendent of Police, Bemetara to the Jio Nodal Officer, MP and CG, regarding the sending of the 65B Evidence Act certificate, was attested by him (Exhibit P/32).



- 31.** Tukaram Nishad (PW-21), who was posted as a Constable at Berla Police Station, has deposed that on the instructions of Station House Officer Nasir Khan, he had video-graphed the incident site Boriyabandh on 13.08.2022 and while the memorandum statement of appellant Satkumar Badhe was being taken, he had video-graphed it with his Oppo Android mobile phone and the data of the said mobile phone was kept in the custody of Berla Police Station. He had prepared a CD by putting the mobile data into the computer. He had handed it to the Berla Police Station in-charge in presence of witnesses. This witness further stated that the above CD was true and correct based on the videography which he did and that he had not made any changes to it. The above CD prepared by this witness is Article A-1. Investigation Officer Nasir Khan (PW-22) stated that during the investigation of the case, on seeing the CCTV footage installed in the country liquor shop of village Berla, on 20.07.2022, just before the death of deceased from 12:08 to 12:17 p.m. and on observing the CCTV camera footage installed in the chicken shop of Krishna Kumar Devangan, on 20.07.2022 at 03:26 p.m., the deceased Dharmendra Deshlahare was seen with Paras Ratre wearing a black cap with a white line and on the same date 20.07.2022 at 05:05 p.m. in the CCTV camera footage installed in the house of Bhikham Sahu (PW-10), the deceased was seen with Santkumar Bandhe and Paras Ratre, after which he obtained the said three CCTV footages through pen drive and got its CD prepared in the police station which is Article A-3 to Article A-5.
- 32.** In the context of the above evidence according to "last seen together," the burden of proof falls on appellant Santkumar Bandhe to prove as to who caused the death of the deceased and under what circumstances and how. However, the appellant Santkumar Bandhe has neither



presented any evidence in support of his case nor provided any explanation in this regard during questioning under Section 313 of the Cr.P.C. In such a situation, even according to the "last seen together" theory, it will be safe to hold that the appellant-Santkumar Bandhe and the absconded accused in this case, Paras @ Tehku Ratre, between 11:30 a.m. on July 20, 2022, and 1:45 p.m. on 21.07.2022, murdered the deceased by inflicting fatal injuries to his neck, head, and jaw with a blade, stone, and a quarter bottle of liquor.

33. No doubt that there is no eye witness who has seen the occurrence of the incident, however, the evidence collected by the prosecution leads to the only conclusion that it was the appellant-Santkumar Bandhe who had committed the murder of the deceased.
34. For the foregoing discussions, this Court is of the opinion that the appellants-Rekhchand @ Jitendra Deshlahre and Premchand Deshlahre be acquitted of the charges under Section 120-B of the IPC. Further, this Court is of the opinion that the conviction and sentence awarded to the appellant-Santkumar Bandhe is just and proper warranting no interference. It is ordered accordingly.
35. In the result, the appeal filed by the appellants-**Rekhchand @ Jitendra Deshlahre and Premchand Deshlahre**, are **allowed**. They are reported to be in jail. They shall be released forthwith if not required in any other case. The appeal filed by the appellant-**Santkumar Bandhe** stands **dismissed**. He shall serve out the remaining part of the sentence as has been awarded by the learned trial Court.
36. Keeping in view the provisions of Section 437-A Cr.P.C. (now Section 481 of the Bhartiya Nagarik Suraksha Sanhita, 2023), the appellants-Rekhchand @ Jitendra Deshlahre and Premchand Deshlahre are



directed to forthwith furnish a personal bond in terms of Form No.45 prescribed in the Code of Criminal Procedure, 1973 for a sum of Rs.25,000/- with one surety in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellants on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

- 37.** Before parting, we consider it appropriate to make a brief observation with respect to the reasoning adopted by the learned trial Judge for acquitting the appellants Rekhchand @ Jitendra Deshlahre and Premchand Deshlahre of the charges under Section 302/34 of the IPC and convicting them only for the offence under Section 120-B of the IPC. The record indicates that while several material circumstances suggestively pointing towards the involvement of appellants Rekhchand @ Jitendra Deshlahre and Premchand Deshlahre were accepted, the trial Court nonetheless refrained from recording a corresponding finding on the principal charge i.e. Section 302/34 IPC, without providing sufficiently clear reasons for such divergence. This has resulted in a certain degree of inconsistency in the overall appreciation of evidence.
- 38.** This Court does not intend to make any adverse remark on the learned trial Judge concerned, however, in matters involving multiple interconnected charges, especially those resting on circumstantial evidence, it is essential that all established circumstances are examined in a coherent manner and that the reasoning remains consistent throughout. The learned trial Judge is, therefore, advised to exercise greater care and circumspection in future while dealing with such issues,



so that the findings fully reflect the settled legal principles governing both conspiracy and the substantive offence.

39. The trial Court record along with the copy of this judgment be sent back to the trial Court concerned for compliance and necessary action, forthwith.
40. A copy of this judgment be circulated all the Principal District & Sessions Judges of the State who in turn shall further communicate to the other Presiding Officers of the District Judiciary.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE



Head Note

When there is overwhelming evidence with regard to participation of the accused(s) in the substantive offence in question, then acquitting some of the accused for the substantive offence and convicting them merely for conspiracy on mis-appreciation of evidence, cannot be justified.