



Judgment reserved on 09.05.2025
 Judgment pronounced on 21.08.2025

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 423 of 2019

Ku. Malti D/o Dukhiram Loniya, aged about 30 years R/o Village Ghutku, Police Station Koni, District - Bilaspur Chhattisgarh.

--- Appellant

versus

State of Chhattisgarh through Station House Officer, Police Station Chakarbhata, District - Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

--- Respondent

With

CRA No. 579 of 2019

Apendra Shukla S/o Basant Shukla, aged about 29 years, R/o Village Mendra, Police Station Chakarbhata, Civil and Revenue District - Bilaspur Chhattisgarh.

---Appellant

Versus

State of Chhattisgarh through Station House Officer, Police Station Chakarbhata, District - Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

--- Respondent

With

CRA No. 517 of 2019

1. Rajat @ Tingu S/o Bihari Lal Lonia, aged about 19 years (Approx), R/o Gram Gutaku, P.O. Gutaku, P.S.- Koni, Tah- Takhatpur, District- Bilaspur, Chhattisgarh.
2. Chhotu @ Virendra S/o Lavkumar Lonia, aged about 24 years (Approx), R/o Gram Gutaku, Loniapara, P.O. Gutaku, P.S. Koni, Tahsil- Takhatpur, District- Bilaspur, Chhattisgarh
3. Chiranjeet Kumar @ Deva S/o Chamklal Mandal, aged about 20 years (Approx), R/o Sikamitola, P.S. Pranpur District- Katihar, Bihar

--Appellants

Versus

State of Chhattisgarh through Station House Officer, Police Station Chakarbhatta, District - Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

--- Respondent

For appellants : Shri M.P.S. Bhatia, Ms. Devanshi Chakraborty, Shri Dheerendra Pandey, Shri Barun Kumar Chakrabarty, Shri Parasmani Shrivastava, Shri Vinay Nagdev and Shri Lukesh Kumar Mishra, Advocates

For Respondent : Shri Ajay Pandey, GA

DB : Hon'ble Smt. Justice Rajani Dubey

Hon'ble Shri Justice Sachin Singh Rajput

C A V Judgment

Per Sachin Singh Rajput, J

Since the judgment dated 19.02.2019 passed by First Additional Sessions Judge, Bilaspur, CG in Sessions Trial No. 48/2015 is under challenge in all the aforesaid Criminal Appeals, they are being disposed of by this common judgment.

2. By the judgment impugned the accused/appellants have been convicted and sentenced as described hereunder:-

Accused	Conviction	Sentence
Ku. Malti	U/s 302/120-B IPC	Imprisonment for life with fine of Rs. 1,000/-, plus default stipulation
Rajat, Chhotu alias Tingu and Chiranjeet Kumar alias Deva	U/s 302,120-B/34 IPC	Imprisonment for life with fine of Rs. 1,000/- each, plus default stipulation
Apendra Shukla	U/s 120-B/302/34 IPC	Imprisonment for life with fine of Rs. 1,000/-, plus default stipulation

3. Admittedly, deceased Annu Shukla was the wife of accused/appellant Apendra Shukla who died on 20.01.2015 in her matrimonial home at village Mendra.

4. Facts of the case in brief are that having received an information about the death of Annu Shukla, the Sub Inspector of Chakarbhatta Police Station (PW-17) immediately rushed to the house of accused/appellant Apendra Shukla where father of the deceased namely Badri Prasad Tiwari (PW-11) was also present. Father of the deceased is stated to have disclosed to the Sub Inspector about having received a telephonic information from accused/appellant Apendra Shukla regarding the incident of knife attack, and also requesting him to reach soon. PW-11 is also stated to have disclosed to PW-17 of seeing the deceased lying dead on the floor with her clothes soaked in blood, and the blood spilled nearby. Behaviour of accused/appellant Apendra towards the deceased is also stated to be not good. Based on this information furnished by father of the deceased, *Dehati* FIR (Ex.P-25) followed by *Dehati* merg (Ex.P-26) was

recorded; white colour blood soaked fabric scrap, mobile phone, blood stained knife used for cutting vegetable lying near the deceased were seized under Ex. P-13. After carrying out inquest, the body of the deceased was sent for postmortem examination, which was conducted by Dr. Pankaj Sahu (PW-4) who gave his report (Ex.P-6). Seizure of one Nokia mobile phone, photograph of deceased, two SIMs and receipt book was made from accused/appellant Malti under Ex. P-15. Seizure of cash of Rs. 12,000/- and one T-shirt was made from accused/appellant Rajat Loniya under Ex. P-19. Seizure of cash of Rs. 17,000/-, one CD Deluxe motorcycle No. CG-10-EC 5101 and another motorcycle No. CG-10-NC-6413, Max mobile phone and white colour blood stained scarf was made from accused/appellant Chhotu alias Surendra Kumar under Ex. P-17. One Samsung mobile phone was seized from accused/appellant Apendra Shukla under Ex. P-24. Call details pertaining to the mobile phones seized from the accused/appellants were obtained. On the basis of Dehati merg, FIR Ex.P-28 and P-29 were registered against the unknown persons for the offence under Section 302 IPC. Investigation culminated in charge sheet against the accused/appellants under Sections 302, 459, 120-B, 34 IPC followed by framing of charge against accused Chiranjit Mandal, Chhotu Lonia and Rajat Lonia under Sections 459, 302/34 and 120-B/302 IPC and against accused Malti Loniya and Apendra Shukla under Section 120-B/302 in the alternative 302/34 IPC. All the accused persons however denied the charge and sought trial.

5. Prosecution examined 20 witnesses to prove its case.

Statements of the accused/appellants were also recorded under Sections 313 CrPC where they pleaded their innocence and false implication in the case. Four witnesses namely Rajendra Prasad Pandey (DW-1), Nandram (DW-2), Heeralal (DW-3) and Yogesh Loniya (DW-4) have also been examined by the defence.

6. Having thus concluded the trial, learned trial Court by the judgment impugned convicted and sentenced the accused/appellants as described above. Hence these appeals.

7. The submissions made on behalf of the accused/appellant in CRA No. 423/2019 are as under:-

- (I) that the findings recorded by the trial Court are not based on the proper analysis of the evidence of the witnesses;
- (ii) that the seizure being made from the house in joint occupation of the accused and her family members is doubtful;
- (iii) that the seizure witnesses have turned hostile;
- (iv) that the SIM seized was not in the name of any of the accused/appellant, rather it was in the name of some other person;
- (v) that the receipt of the mobile has not been seized;
- (vi) that the accused/appellant has been dragged in this case on the basis of suspicion as initially the Dehati FIR was registered against unknown persons;
- (vii) that the testimony of the witnesses examined by the prosecution is replete with material contradictions and omissions;
- (viii) that the prosecution has failed to prove the motive on the part of the accused/appellant;
- (ix) that most of the witnesses in the case are the interested ones

and therefore the same cannot be made a basis for conviction unless corroborated by the independent witnesses; and

(x) that there is no eyewitness to the incident and the chain of the circumstances relied upon against the accused/appellants is not complete.

8. In CRA No. 579/2019 in addition to the grounds mentioned in paragraph No. 7 of this judgment it is submitted that Badri Prasad Tiwari (PW-11) – father of the deceased has not stated anything about the relationship between accused Apendra Shukla and accused Malti, and that the relations between accused Apendra Shukla and deceased were cordial as after marriage no report of cruelty was made by anyone.

9. In CRA No. 517/2019 it is submitted that there is no eyewitness to the case. It is submitted that two years prior to the incident accused Rajat had gone to Agra (UP) for earning livelihood. It is submitted that as the description of the knife has not been given nor the knife so seized was produced before the doctor, the case of the prosecution becomes doubtful. It is further submitted that the register of the lodge does not contain full particulars and even the number of columns nor the name of the lodge is given, which also renders the case of the prosecution doubtful. It is submitted that father of the deceased has admitted that before the death of the deceased no report regarding the affairs of accused Malti and accused Apendra Shukla and the resultant harassment of the deceased at their hands was lodged by him. It is further submitted that the relations between the accused Apendra Shukla and the

deceased were cordial, and for that there was no occasion for the father of the deceased to lodge any report.

10. Reliance is placed on the decisions of the Supreme Court in the matter of **Vinay Thakur v. State of Himachal Pradesh** rendered on 19.09.2014 in **CRA No. 632 of 2011**, in the matter of **Santosh alias Bhure v. State (GNCT) of Delhi** rendered on 28.04.2023 in **Criminal Appeal No. 575 of 2011**, in the matter of **Chandrapal v. State of Chhattisgarh (Earlier M.P.)** reported in **202 SCC OnLine SC 705** and in the matter of **Ram Sharan Chaturvedi v. State of Madhya Pradesh** reported in **(2022) 16 SCC 166**.

11. The State counsel, on the other hand, supports the judgment impugned and submits that the findings recorded by the trial Court are strictly based on due appreciation of the evidence of the witnesses and therefore cannot be interfered with. He submits that there is ample evidence against the accused/appellants establishing their involvement in the crime in question where after hatching a conspiracy by all the accused/appellants the deceased has been done away with. He submits that it has come in the evidence of the witnesses that the deceased used to tell her parents about the affair between accused Apendra and Malti and for that the deceased was being treated inhumanly not only by accused Apendra but by Malti as well, who used to call her maid in the house. He submits that looking to the enormity of the offence and the evidence collected by the prosecution, the accused/appellants are not entitled for any leniency by this Court, and therefore the appeals being without any merit are liable to be dismissed.

12. After thus hearing the counsel for the respective parties, this Court now undertakes to analyze the evidence of the witnesses examined by the prosecution as also by the defence.

13. Hemant Kumar Loniya (PW-1) has stated that he knew accused Rajat alias Tingu, Malti Loniya and Surendra alias Chhotu being the residents of his village, but did not know the other accused persons. Accused Rajat alias Tingu, one and a half – two years prior thereto, had gone to Agra (UP) to earn a livelihood. Mobile number of this witness is 8223968484 on which accused Rajat alias Tingu talked to him in an interval of a month or two so as to convey his well being to his parents, and so also his parents too talked to him off and on. Accused Rajat alias Tingu talked to him from any of the contact numbers of the people in his group. This witness has stated that no person other than accused Rajat alias Tingu ever talked to him on his mobile number from Agra. He has stated that during the period when accused Rajat alias Tingu was in the village, someone from Agra had called him on phone asking him to let him talk to him (Rajat alias Tingu) in respect of labourers, which this witness had done accordingly. That person however did not have a talk to him in respect of accused Chiranjeet, whom this witness did not even know. This witness however is stated to not remember the phone number of that caller. He has stated that the said caller had told him on phone about one person having been sent by train, and also asked him to convey to accused Rajat alias Tingu to come with labourers. Though in the Court statement this witness has denied that the said caller who had called him up about 10 days before was Bakish by name, in

the statement recorded under Section 161 CrPC marked as Ex. P-1 he has stated that it is Bakish who had called him 10 days before. In his police statement, this witness has also disclosed the mobile number from which he was contacted as 8439898864. As per his police statement, later on he came to know that the person by whom accused Malti ensured the murder was called by accused Rajat alias Tingu. The factum of disclosure of mobile number to the police on which he was contacted has been admitted to be 8439898864.

14. Sudhir Soni (PW-3) is the witness who with due licence, deals in the business of money lending. According to him, on 19.01.2015 accused Malti Loniya had pawned with him the golden ornaments weighing 34 grams and 700 milligrams for Rs. 60,000/- under receipt, one copy retained with him. He has stated that the original receipt which has been produced in the Court and marked as Ex.P-5 was given to accused Malti. He states that by mistake the date was mentioned in the receipt which bears the signature of accused Malti, as 19.02.2015, but in fact it was 19.01.2015 which is mentioned in the preceding receipt of the relevant receipt book maintained by him. Having seen accused Malti in the Court, this witness identified her to be the same person who had come to him at Mungeli. In cross-examination this witness has resiled from his version and stated that the original receipt which is given to the customer was attached in the receipt book and was not given to the customer, who in this case is accused Malti.

15. Ajay Singh Thakur (PW-10) is the witness to seizure of Nokia mobile phone, photograph of deceased, SIM and receipt made from

accused/appellant Malti under Ex. P-15; seizure of cash of Rs. 12,000/- and one T-shirt made from accused/appellant Rajat Loniya under Ex. P-19; seizure of cash, one CD Deluxe motorcycles, Max mobile phone and white colour blood stained scarf made from accused/appellant Chhotu alias Virendra Kumar under Ex. P-17. However, as regards arrest of the accused persons, this witness has turned hostile.

16. Badri Prasad Tiwari (PW-11) – the father of the deceased has stated that just two month after marriage his daughter (deceased) had told her mother about an affair between accused Apendra and accused Malti, who in turn told him of the same. Accused Malti after coming to the house of accused Apendra used to call the deceased as maid, and herself as owner of the house. This witness then apprised the father of accused Apendra of all this but he did not pay much attention to the same taking Malti to be a member of his family. Over this, accused Apendra beat the deceased with belt, shoe and stick. According to this witness, when accused Apendra and Malti sat inside the room, the deceased was made to sit outside. Looking to all this, father of accused Apendra brought the deceased to village Sakri from village Mendra and then to village Pondi, which is her maternal home. Father of accused Apendra told this witness that in the wake of certain sequence of events in the house, he had come to drop the deceased for some time. According to him, some days thereafter accused Apendra came to his house in a drunken condition, wiped

off the vermillion from her hair streak and saying about the termination of marital relations he beat her also, and then got back leaving the motorcycle over there. On being apprised of all this, father of accused Apendra along with his relatives came to village Pondi to set the matter right by convening a Panchayat meeting. Then assuring to put a restraint on the visits of accused Malti to his house, father of accused Apendra got back. Some days thereafter, accused Apendra again visited his house and assured him that such instances would not recur in future. This witness has stated that when accused Apendra was sitting, the mobile phone slipped out of his pocket making the memory card fall aside, which after being inserted in another mobile was played out and contents were recorded. After some time, on being asked his mother accused Apendra came to take the deceased back. Saying that he would keep the deceased at village Sakri, he straightaway took her to village Mendra. According to this witness, for two days accused Apendra had again brought the deceased to his house and then took her back to Mendra. On 20.01.2015 accused Apendra told this witness on phone about some knife attack incident in his house. After receiving that information when this witness along with his wife, brother and son went to the house of accused Apendra, he found his pregnant daughter (deceased) lying there with seven bleeding wounds on her stomach. One mobile and pen were also lying nearby. He has stated that his daughter was killed by accused Apendra and Malti by hiring the killers. He has stated that during investigation he came to know that the killer was called from Bihar. He has reiterated that he had

come to know about the relationship between accused Apendra and Malti before the death of his daughter. He has stated that initially this fact was not disclosed to the police as his mental condition was not stable. According to this witness, after three days of the incident he did disclose the same to the police. He however is stated to have shown the photographs saved in the mobile to the police. Though mobile was not seized, he was asked by the police to keep it safe. He has stated that he did not lodge any report about the character and behaviour of accused Apendra.

17. Ambika Tiwari (PW-12) is the mother of the deceased who has also made similar statement as that of PW-11. This witness has stated that though she had the information through the deceased regarding the relationship of accused Apendra and Malti and the resultant harassment to the deceased, she did not bring it to the notice of anyone much less to the police just to save the family. Deepak Prasad Tiwari (PW-13) – brother of the deceased has also made almost similar statement like as that of PW-11. He too has admitted that no report regarding the tortuous attitude of accused Apendra towards the deceased was ever made during the lifetime of his sister. Smt. Ahilya Shukla (PW-14) is the witness who reached the spot after hearing the uproar and saw Annu Shukla lying dead. Sandeep Tiwari (PW-15) is the uncle of the deceased and he too has stated about the affair between accused Apendra and Malti, and harassment to the deceased by the two in a bid to eliminate her from their way. After hearing about the incident, he went to the house of accused Apendra and saw the deceased lying dead. Rest of the things

stated by this witness are akin to that of PW-11, PW-12, PW-13 and PW-14.

18. Pappu Sharma (PW-16) is the witness in whose presence the interrogation was made of accused Malti in the Cyber Cell of Tarbahan Police Station. According to this witness, in his presence accused Malti had disclosed about her affair with accused Apendra Shukla since 5-6 years prior thereto. This witness has stated that in his presence accused Malti had disclosed that the mobile being used by her was kept in almirah with two SIMs. Accused Malti had also disclosed that the photograph given to accused Rajat was returned to her, which she had kept in hiding. So also was the statement with regard to the receipt of ornaments being pawned. This witness has also stated that at the time when accused Malti made such disclosures, one Ajay Thakur was also present there. This witness has further stated that the police had interrogated accused Chhotu alias Virendra in his presence who had disclosed that out of the amount of Rs. 1,00,000/- his share amounting to Rs. 17,000/- was given to one Mithilesh. He is also the witness to memorandum of accused Chhotu alias Virendra (Ex.P-16) on the basis of which seizure of cash of Rs. 17,000/-, two motorcycles, one Max mobile with SIM, one blood stained scarf were seized under Ex. P-17. He is also the witness to seizure of cash of Rs. 12,000/- and one blood stained T-shirt made under Ex. P-19. He is also the witness to seizure of Samsung mobile with an Idea SIM made from accused Apendra Shukla under Ex. P-24. He is also the witness to arrest of the accused persons. In his cross examination also this witness has

made almost similar statement as in the examination-in-chief.

19. Dr. Pankaj Sahu (PW-4) is the medical officer who conducted autopsy on the body of the deceased and gave his report (Ex.P-6). According to this witness, six stab wounds were noticed on the stomach of the deceased and all were antemortem in nature. Cause of death, according to this witness, was stab injury over abdomen and chest and penetrating injury of heart. Nature of death has been opined as shock and the death was homicidal in nature. While answering the query, this witness has stated that the injuries present on the body of the deceased could be inflicted with the knife produced before him for examination. He has also stated that the deceased was pregnant and a three month fetus was found in the stomach of the deceased.

20. Jugal Kishore (PW-5) is the Tehsildar who conducted Test Identification Parade (TIP) who has stated that four persons other than the accused of the same age group and built were arrayed at the time of TIP where one Mukesh (PW-6) had identified the accused by putting his hand on his head. Mukesh Tripathi (PW-6) who deals in the hotel business has stated that in the TIP he had identified accused Chiranjeet vide Ex. P-9, who was made to stand with four other persons. Govind (PW-7) is the witness who at the relevant time was working as Manager in the Sharda Lodge of PW-6. He has stated that the visitors staying in his hotel used to make the entry in the register by submitting identity proof. According to this witness, he identified accused Chiranjeet by touch to be the person who had stayed in room No. 112 of concerned lodge. Said lodger had

mentioned his address as village Chamua, Post Pranpur, District Katihar. Ashok Das (PW-9) is the village Kotwar in whose presence the Patwari had prepared spot map (Ex. P-12) has supported the seizure of certain articles made under Ex. P-13. He has stated that the knife was seized from the spot itself.

21. S.N. Shukla (PW-17) is the investigating officer who has duly supported the case of the prosecution. He has described the way in which the investigation was carried out including making of seizure on the memorandum of the accused persons. B.N. Rai (PW-18) is the witness who assisted in the investigation along with S.N. Shukla (PW-17). He has stated that in order to obtain the call details of mobile numbers – 8718853092, 9907154187, 7869753463 and 7415710431 a requisition (Ex.P-37) was made to Cyber Cell In charge and acting upon the said request he was provided the Call Details Report (CDR). He has further stated that call details of mobile number 7415710431 and 8439898864 along with certificate under section 65-B of the Evidence Act were requisitioned and the same were supplied by Tata Docomo which is marked as (Ex.P-39). Likewise, the call details of mobile number 9907154187 along with certificate under Section 65-B of the Evidence Act was issued by Reliance Telecom Limited which is marked as Ex. P-41 and P-42. So is stated to be the position with the call details of mobile number 8718853092 and 8959196998 and the necessary call details and the certificate have been marked as Ex. P-44. Mobile number 8718853092 is stated to be the one belonging to the deceased. On that number, according to the CDR, accused Apendra and accused Malti had conversation on 18.01.2015.

Likewise, the CDR also goes to show the conversation between accused Malti and accused Rajat on mobile numbers 7869753463 and 8439898864 respectively on 14.01.2015. Similarly, as per the CDR accused Malti talked on her mobile number 7869753463 to accused Chhotu Loniya on his mobile number 7415710431 on 17.01.2015. In the same way, as per the CDR accused Malti had conversed on her mobile number 7869753463 to accused Rajat Loniya on his mobile number 8439898864 on 17.01.2015 at 18:33:47 to 19:25:40. Similarly, as per the CDR accused Rajat Loniya talked on his mobile number 8439898864 to accused Malti on her mobile number 7869753463 on 18.01.2015 at 18:32:01. Likewise, on 20.01.2015 accused Chhotu Loniya talked from his mobile number 7415710431 to accused Malti on her number 7869753463 six times in the interval of 9:39:45 to 11:28:14. Likewise, on the same day the conversation on these very two numbers was there at 14:25:26. Similarly, on 19.01.2015 the conversation between accused Malti from her mobile number 9907154187 to accused Chhotu Loniya on his mobile number 7415710431 was there at 12:22:11 and 12:53:54. Likewise, on 20.01.2015 accused Chhotu Loniya talked from his mobile number 7415710431 to accused Malti on her mobile number 9907154187 at 10:14:09 to 10:26:39. Likewise, on the same day and on the same mobile numbers the conversation took place from 14:15:25 to 14:22:39. In the same way, the conversation on 14.01.2015 between accused Rajat Loniya and accused Malti took place from 9:15:28 to 9:16:15. Similarly, on 17.01.2015 there was conversation from accused Malti from her mobile number

7869753463 to accused Rajat on his mobile number 8439898864 and on 18.01.2015 the conversation on the same numbers was done at 18:28:18. In cross examination also this witness has consistently stated almost the same thing as in the examination-in-chief.

22. Kuldeep Prasad Sharma (PW-19) is the Patwari who on 31.01.2015 had prepared the spot map (Ex.P-12) who has stated that there is a lane in front of the place where the incident had taken place, and adjacent to that there is a society. He has admitted he did not take the signature of the people whose land and houses are shown in the map. He has admitted that the house of accused Apendra Shukla is adjoining to the lane. House of Apendra Shukla had two courtyards and the first one is adjoining to the lane and the other one is in the midst of his house.

23. Hemant Aditya (PW-20) is the Assistant Police Inspector who assisted in the investigation. He has stated that from the CDR it is manifest that on 08.01.2015 outgoing and incoming calls including the SMSs were exchanged five times in between Mobile No. 8959196998 which is in the name of accused Apendra and the Mobile Number 9907154187 which was seized from accused Malti Loniya. Same was the position with these two mobile numbers on 12.01.2015, 14.01.2015 and 15.01.2015 also where such exchange of calls and SMSs was made 04 times, 06 times and 08 times respectively. On 16.01.2015 call and SMS exchange between these two numbers was made 02 times; on 17.01.2015 it was 13 times; and on 18.01.2015 it was 02 times. This witness has further stated that from the CDR of mobile number 8959196998 which belongs to

accused Apendra Shukla it is apparent that the calls and SMSs were made to the mobile number 9907154187. This witness has stated that from CDR for the period 01.01.2015 to 20.01.2015 it is clear that for the period 01.01.2015 to 06.01.2015 and then from 06.01.2015 to 07.01.2015 and then 17.01.2015 to 20.01.2015 said SIM of Apendra Shukla was used in the mobile handset bearing IMEI No. 358148050645280 and the SIM No. 9907154187 was used for the period from 6 and 7.1.2015 to 17.01.2015 in the mobile handset bearing IMEI No. 358148050645290. This witness has further stated that from the CDR of mobile No. 9907154187 on 05.01.2015 at 08:04:55 there was an outgoing call made from mobile No. 7415710431 belonging to accused Chhotu alias Virendra Loniya. Likewise, on 08.01.2015 there was an outgoing call made from the mobile No. 9907154187 which was seized from accused Malti Loniya. Another even dated call from the mobile number seized from accused Malti was made at 08:26:58. Yet another even dated call on the same mobile number was made at 09:22:49. Likewise on 09.01.2015 at about 11:11:22 there was a call made from the mobile No. 7415710431 belonging to Chhotu alias Virendra Loniya to the mobile number 9907154187 which was seized from accused Malti Loniya. Again on 19.01.2015 at 07:53:42 there was a call made from the mobile number 9907154187 seized from accused Malti to the Mobile No. 7415710431 belonging to accused Chhotu. On the same day another call at 08:30:23 and then at 09:48:06 and then 10:37:36 and then 12:22:12 was made. On the same day another call was made from the mobile of accused Chhotu to the mobile of accused Malti.

On 20.01.2015 also calls were made on these two numbers of accused Chhotu and Malti six times. This witness has further stated that from the CDR of other mobile seized from accused Malti Loniya i.e. Mobile No. 7869753463 it is evident that on 12.01.2015 three calls were made from this number to the mobile number of accused Chhotu and on 17.01.2015 two calls were made and on 20.01.2015 seven calls were made. Further, on 14.01.2015 two calls were made from the mobile number 7869753463 of accused Malti Loniya to the mobile number 8439898864 belonging to accused Chiranjeet. On 17.01.2015 one call was made on these two numbers and 18.01.2015 two calls were made thereo. This witness has further stated that from the CDR of mobile number 7869753463 seized from accused Malti Loniya it was found that between 12.01.2015 and 18.01.2015 the said SIM was used in the mobile handset bearing IMEI No. 358148050645280, and her other SIM No. 9907154187 was also used in the mobile handset bearing the same IMEI Number I.e. 358148050645280. This witness however has admitted that no mobile handset or SIM was seized by him either from accused Apendra, Malti and Chhotu, but seizure of all this was made by the Station House officer, Chakarbhata Police Station. In paragraph 18 this witness has stated that mobile numbers 9907154187 and 7869753463 which was seized from accused Malti were registered in the name of one Roop Singh and Shekhar Singh respectively. He has also admitted that CDR were obtained by him from concerned company through e-mail. This witness has stated that in respect of the aforesaid call details a certificate under Section 65-B of the

Evidence Act has been issued by the Nodal Officer of the concerned company.

24. Rajendra Prasaed Pandey (DW-1) has simply stated that accused Malti was working as Panchayat Sachiv, in Gram Panchayat Takhatpur, and she was placed under suspension on 21.05.2015. He however has expressed his ignorance whether accused Malti had signed the attendance register from 19.01.2015 to 23.01.2015 or not. DW-2 to DW-4 have not stated anything pertaining to the incident except giving her residential and official description.

25. Arduous exercise of threadbare analysis of the fact situation in the light of the evidence adduced by the parties having heard their respective counsel at considerable length, has been undertaken.

26. Since the conviction of the accused persons in this case for the death of deceased is adjunct with the criminal conspiracy, this Court before advertting to the merit aspect of the case thinks it apposite to first have a glimpse of the relevant provision itself which defines the term "criminal conspiracy", which for ready reference is noted down as under:-

"120A Definition of Criminal Conspiracy- When two or more persons agree to do or cause to be done –

- (I) an illegal act, or
- (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation. - It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

27. Now it appears necessary for this Court to have a look of the facts of this case in juxtaposition with the aforesaid legal provision. Here in the case in hand, the accused/appellant Apendra Shukla and deceased namely Annu Shukla happened to be husband and wife and their marriage was performed in the year 2012. It has come in the evidence of the witnesses that just after the marriage the deceased complained to her mother about her husband having an affair with accused Malti, and also of resultant harassment by her husband in the event she registered her opposition to the same. Once accused Apendra Shukla is also stated to have abused the deceased and even wiped off the vermillion from her forehead signifying the relations Evidence further suggests that the sorry state of affair did not improve even after this fact was brought to the notice of father of accused Apendra by the father of the deceased. Even accused Malti is said to have called the deceased as maid and herself as the whole sole of the family. Evidence discloses that in the hope of the matter being set right some day, no legal recourse was undertaken against such tortuous attitude of accused Apendra against the deceased. Accused Malti who had all stakes on her paramour and the deceased who naturally did not want to lose her husband at any cost had daggers drawn against each other. This vicious struggle on the part of accused Malti appears to have to have laid the foundation for the entire tragic incident which culminated in the elimination of the deceased. Thus the evidence clearly speaks of strong motive on the part of accused Apendra to eliminate the deceased so as to get rid of her and thereby bring accused Malti in his life.

28. On 20.01.2015 father of the deceased (PW-11) is stated to have received a telephonic information from accused Apendra Shukla regarding the incident of some knife attack, and after he reached the spot, body of his daughter (deceased) was lying dead on the floor with her clothes soaked in blood, and the blood spilled nearby. Thereafter, during investigation on the memorandum of the accused persons certain seizures were made including that of mobile phones, SIM cards and the photograph of the deceased and the call details were obtained with the certificate under Section 65-B of Evidence Act. Nokia mobile along with Reliance SIM No. 9907154187 Airtel SIM No. 7869753463 which were seized from accused Malti under Ex. P-15 were used for making and receiving calls many a time from 08.01.2015 to 20.01.2015 to the mobile number 8959196998 which was seized from accused Apendra Shukla under Ex. P-24. The evidence on record further goes to show that there were several communications between accused Malti and accused Chhotu alias Virendra Loniya from whose possession mobile No. 7415710431 was seized, during this period starting from 05.01.2015 to 20.01.2015.

29. Another important witness is Pappu Sharma (PW-16) in whose presence interrogation of accused Malti was made in Cyber Cell of PS Tarbarar. From the testimony of this witness it is manifest that in his presence accused Malti had disclosed that the mobile being used by her was kept in almirah with two SIMs and the photograph given to accused Rajat was returned to her, which she had kept in hiding. So also was the statement with regard to the receipt of ornaments being pawned by accused Malti. In the presence of this witness,

the police had interrogated accused Chhotu alias Virendra in his presence who had disclosed that out of the amount of Rs. 1,00,000/- his share amounting to Rs. 17,000/- was given to one Mithilesh. From the evidence of this witness it is further manifest that on the memorandum of accused Chhotu alias Virendra (Ex.P-16) seizure of cash of Rs. 17,000/-, two motorcycles, one Max mobile with SIM, one blood stained scarf were seized under Ex. P-17. He is also the witness to seizure of cash of Rs. 12,000/- and one blood stained T shirt made under Ex. P-19; seizure of Samsung mobile with an Idea SIM made from accused Apendra Shukla under Ex. P-24.

30. Another important witness to the case of the prosecution is Sudhir Soni (PW-3) who deals in the business of money landing. From his testimony, it is manifestly clear that on 19.01.2015 accused Malti Loniya and pawned with him the golden ornaments weighing 34 grams and 700 milligrams for Rs. 60,000/- under receipt, one copy retained with him. For pawning the ornaments by giving her Rs. 60,000/- receipt (Ex.P-5) was also given to accused Malti. He has also admitted that the date mentioned in the receipt as 19.02.2015 is a mistake, which in fact was 19.01.2015. To confirm this mistake, he has also referred to the preceding receipts mentioning the date as 19.01.2015. This witness also identified accused Malti to be the same person who had come to him at Mungeli to pawn the ornaments in for Rs. 60,000/-.

31. From the evidence of Mukesh Tripathi (PW-6) who deals in the hotel business it is also evident that in the TIP he had identified accused Chiranjeet vide Ex. P-9, who was made to stand with four

other persons. Govind (PW-7) has stated that the visitors staying in his hotel used to make the entry in the register by submitting identity proof. According to this witness, he too had identified accused Chiranjeet by touch to be the person who had come to stay in room No. 112 of concerned lodge on 19.01.2015 at 04:10 PM and left the same on 20.01.2015 at 08:40 PM vide Ex. P-10.

32. Another important witness is Hemant Loniya (PW-1) from whose testimony it is apparent that accused Rajat alias Tingu had gone to Agra (UP) to eke out the livelihood from where he off and on used to talk to him on his mobile number - 8223968484 so as to convey the messages through him to his parents. From his evidence it also emerges that during the period when accused Rajat alias Tingu was in the village, someone from Agra had called him on his phone asking him to let him talk to him (Rajat alias Tingu) in respect of labourers, and this witness did it that way. That caller from Agra however did not talk to him in respect of accused Chiranjeet.

33. After arrest, seizure of knife, cash, mobiles, SIM cards, receipt of pawning of ornaments, hotel register etc. was made from the accused/appellants on 20.1.2015, 23.01.2015, 31.01.2015 and on 14.04.2015 under Ex. P-13, P-15, P-17, P-19, P-24 and P-33. So far as the seizure of cash, photograph, clothes and mobile phones from accused Malti, Chhotu alias Virendra, Rajat Loniya, and Apendra is concerned, it was made on 23.01.2015 itself, and that of knife from the spot on 20.01.2015. This apart, the accused/appellants Apendra Shukla, Malti, Chhotu alias Virendra and Rajat, as is apparent from the CDR, had several telephonic conversations in the interval of

01.01.2015 to 20.01.2015. From all this, it is abundantly clear that the accused persons had been actively involved in hatching the conspiracy to commit the crime in question so as to ensure elimination of deceased Annu Shukla, by frequently exchanging the telephonic calls and messages with one and the other. From the evidence it is also established that accused Chiranjeet hailing from Bihar had come down to Bilaspur and stayed in the hotel from 19.01.2015 to 20.01.2015 which is clear from the hotel register seized under (Ex. P-10) The evidence thus suggests that the incident involving the death of Annu Shukla was the outcome of the agreement entered into between the accused/appellants right from 01.01.2015 to 20.01.2015 being in touch with one another by means of exchange of telephonic calls and messages.

34. What are the ingredients necessary to constitute an offence of Criminal Conspiracy punishable under Section 120-B IPC as enunciated by the Supreme Court in a series of decisions the principal ingredient for the offence of criminal conspiracy under Section 120B of the IPC is an agreement to commit an offence. Such an agreement must be proved through direct or circumstantial evidence. Court has to necessarily ascertain whether there was an agreement between the accused charged of that offence. In the matter of **Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra** reported in **(2008) 10 SCC 394** it has been held by the Supreme Court that an agreement forms the core of the offence of conspiracy but is not always possible to prove the same by direct evidence. Relevant portion of the said judgment is as under:-

"Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement."

35. In the matter of **Firozuddin Basheeruddin and others v. State of Kerala** reported [in \(2001\) 7 SCC 596](#) conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. Relevant portion of the said judgment reads as under:-

"23. Like most crimes, conspiracy requires an act (actus reus) and an accompanying mental state (mens rea). The agreement constitutes the act, and the intention to achieve the unlawful objective of that agreement constitutes the required mental state. In the face of modern organised crime, complex business arrangements in restraint of trade, and subversive political activity, conspiracy law has witnessed expansion in many forms. Conspiracy criminalizes an agreement to commit a crime. All conspirators are liable for crimes committed in furtherance

of the conspiracy by any member of the group, regardless of whether liability would be established by the law of complicity. To put it differently, the law punishes conduct that threatens to produce the harm, as well as conduct that has actually produced it. Contrary to the usual rule that an attempt to commit a crime merges with the completed offense, conspirators may be tried and punished for both the conspiracy and the completed crime. The rationale of conspiracy is that the required objective manifestation of disposition to criminality is provided by the act of agreement. Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators. Since an agreement of this kind can rarely be shown by direct proof, it must be inferred from circumstantial evidence of co-operation between the accused. What people do is, of course, evidence of what lies in their minds. To convict a person of conspiracy, the prosecution must show that he agreed with others that together they would accomplish the unlawful object of the conspiracy."

36. Thus if the facts of the case in hand are put in the legal framework referred to above, this Court is of the opinion that the accused/appellants herein started laying the foundation of conspiracy from 01.01.2015 up to 20.01.2015. As per the evidence collected by the prosecution there was frequent telephonic conversation among the accused persons during the period from 01.01.2015 to 20.01.2015 on the mobile phones seized by the accused persons. Thus meeting of mind of the accused persons to do a particular act has been duly established. Further, to arrange money needed to be given to the persons hired for executing the crime, accused/appellant Malti had pawned her ornaments to PW-3

who is a licensed money lander who had issued the receipt which bears the date as 19.02.2015. This witness has however clarified in his evidence that the actual date of receipt is 19.01.2015 but by mistake it has been mentioned as 19.02.2015. To justify this error, PW-3 has referred to the preceding receipts of the receipt book. That apart, there is evidence to show that from 19.01.2015 to 20.01.2015 accused Chiranjeet had stayed in a lodge which is evident from the hotel register Ex. P-10. Thus if the evidence is seen as a whole, the dots showing the involvement of the accused persons in the crime in question, are fully connected.

37. All the aforesaid apart, there is ample evidence that the marriage of the deceased and accused Apendra had taken place in the year 2012 and just two-three months thereafter, the deceased started narrating her painful experience to her parents at the hands of her husband (accused Apendra) in connivance with accused Malti, both being entangled in illicit relations. As has come in the evidence that the parents of the deceased did not make any complaint against accused Apendra for harassing his daughter (deceased) with a hope that there would be an improvement in his behaviour. It seems to be but natural for a parent to make an effort to the best to restore the harmony in the life of their married daughter. Furthermore, the brutality of the offence is writ large looking to the six stab wounds on the vital part like stomach of the deceased were inflicted. This shows that the accused persons did not want to take a chance to see the deceased alive. FSL report (Ex.P-38) also shows that the blood on

piece of cloth, knife and mobile seized from the spot were stained with human blood.

38. Of course, there is no eyewitness to the incident and the entire case of the prosecution hinges on the circumstantial evidence, but the law is well settled if every incriminating circumstance is clearly established by reliable and clinching evidence and the circumstances so proved are able to form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible, the conviction can very well follow on such evidence. The evidence scrutinized by this Court do not speak anything other than the one that it is the accused/appellants who entered into a conspiracy to do away with the deceased so as to clear the way for accused Apendra and Malti to make their ugly dream come true.

39. This Court thus has no hesitation to say that the prosecution has proved its case against the accused/appellants beyond reasonable doubts, and so also the trial Court has dealt with the evidence of the witnesses effectively and in the right direction and found the circumstances proved against the appellants beyond reasonable doubt. The findings recorded by learned trial Court are based on proper appreciation of the evidence do no require any interference in these appeals. In the light of discussion made here-in-above the arguments advanced by learned counsel for the appellants are liable to be repelled. The view taken by the trial Court in convicting and sentencing the accused/appellants as described above

does not appear to call for interference with the same, and therefore the judgment impugned deserves affirmation. This Court went through the decisions cited by the counsel for the appellants, but with due respect, they being distinguishable on the fact situation are not of any help to the accused/appellants.

40. In the result, the appeals being without any substance are liable to be and are hereby dismissed. Judgment under challenge in these appeals is maintained. Consequences to follow.

41. Let a copy of this judgment along with the record be sent back to the trial Court for due compliance.

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

Sd/-

**(Rajani Dubey)
Judge**

Sd/-

**(Sachin Singh Rajput)
Judge**