

In the Court of Deepak Kumar, Principal Sessions Judge, Sheohar
Sessions Trial No. -83/2024
(Tariyani PS Case No.-190/2023)
CNR No. -BRSO01-002457-2024
State Vrs. Deepak & Others

FORM-A

In the Court of Principal Sessions Judge, Sheohar Present:- Sri Deepak Kumar, Principal Sessions Judge, Sheohar, <u>STr No.-83/2024</u> <u>(Tariyani PS Case No.-190/2023)</u> <u>GR No.-878/2023</u> <u>CNR No. -BRSO01-002457-2024</u> State Vrs. Deepak Kumar & Others. Offence:- U/s-302/34, 364/34, 201/34, 120(B) of I.P.C. (Date of Judgment:-13.05.2026)	
COMPLAINANT/INFORMANT	Madan Kumar, S/o Late Pheku Rai, R/o village– Kasturiya, PS-Tariyani, District–Sheohar.
ACCUSED	1. Deepak Kumar, S/o Dayashankar Chaudhary, Aged-about 27 years, R/o Village- Surgahi, PS- Tariyani, District- Sheohar 2. Bhola Kumar @ Srikant, S/o Umashankar Rai, Aged-about 25 years, R/o Village-Surgahi, PS-Tariyani, District–Sheohar 3. Mantu Kumar, S/o Ramadhar Rai, Aged-about 24 years, R/o Village- Surgahi, PS- Tariyani, District- Sheohar.
REPRESENTED BY COMPLAINANT/ INFORMANT	Sri Suresh Roy, Ld. Public Prosecutor assisted by Sri Shailendra Kumar
REPRESENTED BY ACCUSED PERSON	Sri Dharmendra Kumar, Ld. Advocate Sri Manoj Kumar Singh, Ld. Advocate.

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FORM-B

Date of Offence	28.07.2023
Date of F. I. R.	31.07.2023
Date of Charge sheet	Charge Sheet No.-291/2023, dated 27.10.2023
Date of Cognizance	13.09.2024
Date of Framing Charges	20.11.2024
Date of Commencement of Evidence	12.12.2024
Date on which judgment is reserved	06.05.2026
Date of judgment	13.05.2026
Date of the Sentencing order, if any	-

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offence Charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention during Trial for purpose of section 428 of Cr.P.C.
01.	Deepak Kumar	05.08.2023	Till date	U/s-302/34, 364/34, 201/34 and 120(B) of I.P.C.	Convicted		In Judicial custody since 06.08.2023
02.	Bhola Kumar @ Srikant	05.08.2023	Till date		Acquitted		In Judicial custody since 06.08.2023
03.	Mantu Kumar,	05.08.2023	Till date		Convicted		In Judicial custody since 06.08.2023

FORM-C

LIST OF PROSECUTION/DEFENCE/COURT WITNESS-
A. PROSECUTION :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS,
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		MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
01.	Dr. Bhupendra Kumar	Prosecution Witness –01
02.	Chunchun Kumar	Prosecution Witness –02
03.	Harishankar Rai	Prosecution Witness –03
04.	Rita Devi	Prosecution Witness –04
05.	Madan Kumar (Informant)	Prosecution Witness –05
06.	Birendra Paswan	Prosecution Witness –06
07.	Kamlesh Kumar (I.O.)	Prosecution Witness –07

B. DEFENCE WITNESS, if any ; -

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
01.	Shambhunath Rai	Defence Witness-01

C. COURT WITNESS, if any ; -NIL

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
-	-	-

LIST OF PROSECUTION/DEFENCE/COURTS EXHIBITS

A. PROSECUTION;-

Sr. No.	EXHIBIT NUMBER	DESCRIPTION
01.	Exhibit–1	Postmortem report dated-04.08.2023
02.	Exhibit–2	Written application of Madan Kumar, dated-31.07.2023, before SHO Tariyani Police Station.
03.	Exhibit–2/1	Endorsement and signature of the SHO Tariyani on the written application dated-31.07.2023 submitted by the informant.
04.	Exhibit–3	Formal FIR.

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05.	Exhibit-4	Map of the first place of occurrence in the handwriting of the I.O./SHO and signature upon it.
06.	Exhibit-5	Map of the Second place of occurrence in the handwriting of the I.O./SHO and signature upon it.
07.	Exhibit-6	Arrest memo dated- 04.08.2023 of Deepak Kumar.
08.	Exhibit-7	Seizure list dated- 04.08.2023.
09.	Exhibit-8	Carbon copy of memo no.-2972/23, dated-25.09.2023 sent by SHO Tariyani to District Transport Officer, Sheohar inquiring regarding the owner of scooty bearing registration no.- BR- 30 AG-8357.
10.	Exhibit-9	Arrest memo dated-04.08.2023 of Anish Kumar.
11.	Exhibit-10	search-cum-seizure list dated-04.08.2023
12.	Exhibit-11	Arrest memo dated-04.08.2023 of Mantu Kumar.
13.	Exhibit-12	Search-cum-seizure list dated-04.08.2023
14.	Exhibit-13	Arrest memo dated-04.08.2023 of Bhola Kumar @ Srikant Kumar
15.	Exhibit-14	Photocopy of the inquest report dated-04.08.2023 prepared from the original by S.I. Deepak Patel.
16.	Exhibit-15	Photocopy of the dead body Chalan dated-04.08.2023 prepared from the original by S.I. Deepak Patel.
17.	Exhibit-16	Map of third place of occurrence dated-04.08.2023.
18.	Exhibit-17	Search-cum-seizure list dated-04.08.2023 from the third place of occurrence.
19.	Exhibit-18	Photocopy of relevant extract of Malkhana register which has been compared with the original.

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20.	Exhibit-19	Letter dated-11.10.2023 sent by Circle Officer Tariyani to SHO Tariyani.
21.	Exhibit-20	Certificate dated-15.10.2023 issued by Subodh Kumar Mehta, S.I., In-charge Technical Wing, officer of the Superintendent of Police, Sheohar regarding genuineness of computer operator.
22.	Exhibit-21	SDR of mobile number-9060270090 of Mantu Kumar.
23.	Exhibit-22	CDR and SDR of mobile number-9014319391 of Mantu Kumar
24.	Exhibit-23	CDR and SDR of mobile number-7544051222 of Deepak Kumar
25.	Exhibit-24	CDR and SDR of mobile number-7250108317 of Deepak Kumar.
26.	Exhibit-25	CDR and SDR of mobile number-6201431379 of Deepak Kumar.
27.	Exhibit-26	CDR and SDR of mobile number-8092299577 of Dayashankar Chaudhary, father of Deepak Kumar.
28.	Exhibit-27	CDR and SDR of mobile number-6206631248 of Sweta Kumari who is sister-in-law (Bhabhi) of Deepak Kumar.
29.	Exhibit-28	CDR and SDR of mobile number-9334614863 of Rekha Devi who is mother of Deepak Kumar.
30.	Exhibit-29	SDR of mobile number-7520172347 which was kept in house of deceased Suraj Kumar and which was in his name.

The Defence has also got some documents marked as exhibit which are as follows:-

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B. DEFENCE ;

Sl. No.	EXHIBIT NUMBER	DESCRIPTION
01.	Exhibit-A	Registered Gift deed bearing no.3112, dated-18.4.2023 (with objection)

C. COURT EXHIBITS ; NIL

Sl. No.	EXHIBIT NUMBER	DESCRIPTION
-	-	-

Following documents have been marked as material exhibit on
behalf of the prosecution;-

D. MATERIAL OBJECTS ;

Sl. No.	MATERIAL OBJECT NUMBER	DESCRIPTION
01.	Material Exhibit-M	Mobile bearing IMEI no.-35879969749838/01 and 358902427449835/01 seized from accused Deepak Kumar.
02.	Material Exhibit-M/1	Blue coloured electric scooty of magnus company bearing registration no.BR-30 AG-8357 seized from accused Deepak Kumar.
03.	Material Exhibit-M/2	Seizure of Android mobile no.-9334614863 of Anish.
04.	Material Exhibit-M/3	Mobile seized from Mantu Kumar
05.	Material Exhibit-M/4	Bullet motorcycle seized from Mantu Kumar.
06.	Material Exhibit-M/5	Empty wine bottle seized from place of occurrence.
07.	Material Exhibit-M/6	Approximately 5 feet long wire seized from place of occurrence.

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Present: Deepak Kumar
Principal Sessions Judge,
Sheohar

Sheohar Dated- 13th May, 2026.

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State

Vrs.

Deepak Kumar & Others.

Charge framed under Section-
302/34, 364/34, 201/34, 120(B) of
the Indian Penal Code (IPC)

Learned Lawyer for the State:- Sri Suresh Roy, Ld. P.P. assisted by Sri
Shailendra Kumar

Learned Lawyer for the defence:- Sri Dharmendra Kumar Singh,
Sri Manoj Kumar Singh,

JUDGMENT

1. There are three accused in this case facing trial. All the three accused Deepak Kumar, Bhola Kumar and Mantu Kumar stands charged under section 302/34, 364/34, 201/34, 120(B) of Indian Penal Code (hereinafter referred to as IPC) for conspiring and committing murder of Suraj Kumar and thereafter in collusion disposed his dead

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body by concealing the same with the intention to disappear the evidence.

2. The case of prosecution in brief is that F.I.R bearing Tariyani P.S Case No-190/2023 dated 31.07.2023 was registered against unknown under section 365 of the Indian Penal Code on the basis of written application submitted by the informant Madan Kumar. It is alleged in the F.I.R that on 28.07.2023, around 02:00 O'clock, his son Suraj Kumar went to his sister's house Nikki Kumari in village-Surgahi by his red colour Super Splendor Motorcycle bearing Registration No.-BR-55/2917. From there, around 07:30 at night, he proceeded to return home at village-Kasturiya but has not reached till date. At his own level the informant tried to search him by contacting relatives but received no information regarding his son.

It is pertinent to mention here that subsequently on an application submitted by the investigating officer of this case, offence U/section-302, 201, 120(B), 34 of the Indian Penal Code was added in the FIR vide order dated-05.08.2023.

3. After completion of due investigation the police submitted charge-sheet bearing number-291/2023 dated-27.10.2023 against Deepak Kumar, Anish Kumar, Bhola Kumar @ Srikant, Mantu Kumar, under section 365/302/201/120(B) of the Indian Penal Code.

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Cognizance of offence under section 365/302/201/120(B) of the Indian Penal Code was taken on 13.09.2024 by Learned Chief Judicial Magistrate, Sheohar. Being minor, the record of accused Anish Kumar was separated and sent to Juvenile Justice Board, Sheohar. Thereafter, the case was committed to the Court of the Sessions vide order dated 18.09.2024. Formal charge against accused Deepak Kumar, Bhola Kumar and Mantu Kumar was framed under section 302/34, 364/34, 201/34, 120(B) of Indian Penal Code on 21st November 2024. Charges were read over and explained to the accused persons in Hindi which they have denied and claimed to be tried. The statement of the accused persons namely Deepak Kumar, Bhola Kumar and Mantu Kumar were recorded under section 313 of the Code of Criminal Procedure on 13.11.2025. The defence case is that the prosecution has not been able to prove the charges levelled against the accused persons.

4. Now it has to be seen whether the prosecution has been able to prove the charges levelled against the accused persons beyond all reasonable doubt.

5. Prosecution in order to substantiate his case has examined altogether 7 witnesses which are as follows:-

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(i) P.W- 1 Dr. Bhupendra Kumar, (ii) P.W- 2 Chunchun Kumar, (iii) P.W- 3 Harishankar Rai, (iv) P.W- 4 Rita Devi, (v) P.W- 5 Madan Kumar, (vi) P.W- 6 Birendra Paswan, (vii) P.W- 7 Kamlesh Kumar

6. The prosecution has got some documents marked as exhibit which are as follows:-

A. PROSECUTION:-

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		officer of the Superintendent of Police, Sheohar regarding genuineness of computer operator.
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7. The defence has examined following witnesses on their behalf.

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(i) D.W-1 Shambhu Nath Rai.

8. The defence has got some documents marked as exhibit which are as follows:-

DEFENCE ;

Sl. No.	EXHIBIT NUMBER	DESCRIPTION
01.	Exhibit-A	Registered Gift deed bearing no.3112, dated-18.4.2023 (with objection)

9. Now this court would firstly like to discuss the prosecution witnesses evidence.

P.W- 1 namely Dr. Bhupendra Kumar has stated in his evidence that on 04.08.2023, he was posted as a Medical officer in Sadar Hospital, Sheohar and on that day at about 12:15 PM, he conducted postmortem of Suraj Kumar. The dead body of the deceased Suraj Kumar was identified by Chaukidar 8/14 Ramprit Paswan and 09/01 Jaimangal Paswan of Tariyani Police Station. He recorded the following finding:-

- (i) The body of deceased was decomposed about 70%
- (ii) Fracture of third cervical vertebra
- (iii) Head found amputated from neck on the level of third cervical vertebra.
- (iv) The mud was found all over the body.

Time since death of postmortem within 15 days.

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Opinion- On the basis of external and internal findings my opinion is that cause of death is due to amputation of head with some wire like substance which developed hypovolemic neurogenic shock leading to cardio-respiratory failure.

The postmortem report dated-04.08.2023 is in his pen and signature which he identified.

In cross-examination on behalf of defence, he deposed that in his opinion the death of deceased could not have been caused on his getting entangled with the current wire and his submergence under the pile of mud.

10. PW-02 namely Chunchun Kumar has stated that the name of the sister of the deceased is Nikki Kumari and her marriage was solemnized six months prior to the incident. The deceased Suraj Kumar is grand son of his aunt (Fua). On 28.07.2023 Suraj Kumar had gone to surgahi where his sister lives. On 30.07.2023, Madan Rai told him that Suraj Kumar has not return from his sister's house. Thereafter on 30.07.2023, he went to Daya Shankar's house at Surgahi where Deepak Kumar, Ajit Chaudhary, Daya Shankar Chaudhary, Shweta Kumari and Pulan Devi told that Suraj Kumar has gone to visit Nepal and will return in 3-4 days. On 04.08.2023, around 6 o'clock in morning, he heard that Suraj Kumar has been killed and his

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dead body is thrown in Gurhan which is half kilometer away from Dekuli Dham. Dead body has been recovered on the statement of Bhola, Anish, Mantu, Deepak. Madan has two children and has four Bigha of land near Salempur Road. This incident has been done to grab his land.

In cross-examination by defence, he deposed that the informant Madan Rai is his own cousin brother (Fufera Bhai). At the time of marriage of Nikki, dowry was demanded. The marriage was solemnized peacefully. There is no relative of Suraj Kumar in Nepal. He had seen Suraj Kumar while he going to Surgahi. He had also gone to see flag at Simar Chowk. The distance between Kasturiya and Surgahi village is nearly 3-3.5 kilometer. The place from where dead body was recovered is at a distance of 8-9 kilometer from Kasturiya village. In East-South of Dekuli Dham is dam on Bagmati river.

11. PW-03 namely Hari Shankar Rai has stated in his evidence that Madan Kumar is his nephew. Madan Kumar has one son, Suraj Kumar, and one daughter, Nikki Kumari. Nikki Kumari was married on 19-01-2023 to Deepak Kumar, son of Daya Shankar Chaudhary, resident of village-Surgahi. The incident took place about two years ago on 28-07-2023. On that day, Suraj Kumar had gone to his brother-in-law Deepak Kumar's house in village- Surgahi to see fair (mela).

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On that day, he had also gone to village-Surgahi to see the fair, where he saw Suraj Kumar in the fair along with Deepak Kumar. Thereafter, Suraj Kumar did not return home till evening. The next day, he went to village Suragahi to Deepak Kumar's house to inquire, where he met Dayashankar Chaudhary and Aditya Kumar. They told him that Suraj Kumar had gone to Nepal and would return after visit/roaming. He has further deposed that Suraj Kumar had been murdered and his dead body was hidden near the riverbank by Deepak Kumar, Bhola Kumar, Anish Kumar, and Mantu Kumar. He received information from the police regarding the murder of Suraj Kumar. He was called by the police towards the south-east of village Dekuli. He went there along with Amrendra Kumar and Upendra Kumar. At that place, the police and the above-named four persons were searching for the dead body. After sometime the dead body of Suraj Kumar was found in a pit. The dead body was identified by him, Amrendra Kumar, and Upendra Kumar. The post-mortem report of the deceased body was prepared in his presence, on which his signature is present. The reason for the occurrence is that Madan Kumar possesses about four bighas of valuable land, whereas Deepak Kumar and Aditya Kumar deal in land business. Deepak Kumar and Aditya Kumar had a greedy eye on Madan Kumar's land, and for this reason, they murdered Suraj Kumar.

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In cross-examination he has deposed that the informant Madan Kumar is his own nephew. He has no land-related dispute with informant Madan Kumar. It is not true that a land dispute case no. 275/2023-24 is pending before the Circle Officer, Tariyani, between him and informant Madan Kumar, which he is deliberately concealing. On the date of occurrence, deceased Suraj Kumar had gone to his brother-in-law's house by motorcycle which belonged to him. The motorcycle has not been recovered till date. On the date when the fair was held at Surgahi, another fair was also being held at Simar Chowk. His house is about 500 meters away from Simar Chowk. To go from his house to Surgahi, there is also a route via Simar Chowk. On the next day of the occurrence, i.e., on the 29th, at about 10–11 AM, he went to Deepak Kumar's house. He had gone alone to Deepak Kumar's house. At his house, he only spoke with his father and brother and not with other nearby persons. The place where the dead body of Suraj Kumar was found is about 4–5 kilometers away from Deepak Kumar's house. The dead body of Suraj Kumar was found about half an hour after he reached the spot on being called by the police. The dead body of Suraj Kumar had been thrown into a pit. The police had called only him by phone, whereas other people had gathered there on their own upon hearing noise. From the place where

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the dead body was found, Mohari Basti/settlement is about 500–600 meters away, and Dekuli Dham is about 400–500 meters away.

12. PW-04 namely Rita Devi, has stated that she has two childrens, namely Nikki Kumari and Suraj Kumar. Nikki Kumari is married, whereas Suraj Kumar was unmarried. Nikki Kumari was married to Deepak Kumar. The occurrence took place about one and half years prior to the present statement. On 28.07.2023, at village Surgahi, Suraj Kumar had gone to watch a fair at the place of Deepak Kumar. After going there, Suraj Kumar did not return home. Nikki Kumari informed over the phone that Suraj Kumar had gone along with Deepak Kumar to Chaudhary Market to see the fair and also stated that food had already been prepared at home, but both of them went to the fair without eating. Deepak Kumar returned at about 9:00 PM in the night. It is alleged that Deepak Kumar, along with his associates, took Suraj Kumar to the fair and murdered him. After committing the murder, they threw his dead body into the Bagmati River. The police subsequently recovered the dead body. Deepak Kumar had gone along with his associates, namely Bhola, Mantu, and Avinash. It is further stated that she owns four bighas of valuable land, and in order to grab the said land, Deepak Kumar murdered Suraj Kumar. His daughter

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went to her matrimonial home on 13.02.2025. On the same date, they had come to Sheohar Court in connection with case.

In cross-examination she has deposed that at the time of the occurrence, Suraj Kumar was about 20 years of age. In her village Kasturiya, a fair is also held, and it is held on the same day as the fair which is held in Village- Surgahi. Suraj Kumar had gone alone to village Surgahi on his motorcycle at about 2:00 PM. People of Kasturiya village generally do not go to Chak Surgahi to watch the fair. The dead body of Suraj Kumar was recovered on 04.08.2023. After the recovery of the dead body, her husband, Madan Babu, instituted the case. Prior to this occurrence, she had no dispute with her son-in-law. After the marriage, her son-in-law Deepak Kumar never made any demand from them. The place where the dead body of Suraj Kumar was found near the Bagmati River is at a distance of about 4 kilometers from her house. Near that place, there is also a site known as Dekuli Dham. She did not personally see the dead body. She do not remember who informed him that Suraj Kumar had been murdered by Deepak Kumar and his associates. There is a land dispute between her family and Harishankar Rai of her village. He is related to her as father-in-law. Her daughter is living happily in her matrimonial home and has no grievance against her in-laws.

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13. PW-05 namely Madan Kumar, has stated in his deposition that the incident occurred on 28-07-2023, at about 2:00 PM. His son Suraj Kumar had left from his house at Kasturi on his red Splendor motorcycle to go to village Surgahi to see the Mahaveer flag (fair) and to meet his sister Nikki Kumari. Suraj Kumar, along with Deepak Kumar, went to Chaudhary Market, Surgahi, to see the Mahaveer flag. Upon being asked by Nikki, she stated that Suraj had come home at about 4:00 PM and asked him to eat meat, as she had prepared the same. Suraj Kumar went with Deepak Kumar to see the Mahaveer flag at Chaudhary Market, Surgahi. At night, Deepak Kumar returned, but Suraj Kumar did not return. When Deepak Kumar was asked about Suraj, he stated that Suraj had left for home in the evening. Suraj did not return home that night. Despite search, no trace of him was found. Nikki Kumari's sister-in-law Shweta Kumari, wife of Aditya Kumar, stated that Suraj had gone to Nepal and would return soon. On 04-08-2023, the police arrested Deepak Kumar, who confessed before the police that on 28-07-2023 he, along with his associates Bhola Kumar @ Shrikant, Anish Kumar, and Mantu Kumar, had murdered Suraj Kumar. All of them were arrested and confessed their guilt, and stated that the dead body had been thrown near the bank of Bagmati river in bushes. On the pointing out of the accused persons, the police

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recovered the dead body of Suraj alongwith a bottle and wire near it. The dead body was identified by Harishankar Rai and Amrendra Kumar. He has two children. His daughter Nikki Kumari is married to Deepak Kumar. His son Suraj Kumar was unmarried and he has been murdered by his son-in-law Deepak Kumar along with his associates. Regarding this occurrence, he had submitted a written application to the SHO, which was written by Arun Ojha and signed by him. The cause of the occurrence is that he owns about four and half acres of land near the road, upon which Daya Shankar, Deepak and their family members had an evil eye, due to which his son was murdered. Her daughter Nikki was enticed and taken away by Daya Shankar and an unknown person to their house on the day he had come to the Sheohar Court in connection with this case. Her daughter Nikki Kumari has one daughter named Bandi Kumari.

In cross-examination he deposed that on the day of the Mahaveer flag in Surgahi, a similar event was also held in his village at Simar Chowk in which almost all villagers attend it. On the day of Mahaveer flag, people eat meat or fish as per their choice. The motorcycle used by his son had registration number BR05S 2917. The motorcycle was not recovered near the dead body and its whereabouts is still unknown. Prior to this occurrence, he had no enmity with his

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son-in-law Deepak. To go from his village to Surgahi, one has to pass through Simar Chowk, even by motorcycle the same route is used. His son Suraj had left the house alone. The place where the dead body was found is about 3–4 km from his house. He had not seen his son's dead body. He had given the application to the police before the recovery of the dead body. He cannot say how far the Bagmati river is from the place where the body was found, as he did not go there. He saw his son's dead body only at the time of the last rites. The body was decomposed, foul-smelling, and the skin had decayed, due to which no injury marks could be identified. He had no land dispute with his co-villager Harishankar Rai. Before this occurrence, his son-in-law Deepak had made no demand from him.

14. PW-06 namely Birendra Paswan, has stated in his evidence that as per the direction of officer in-charge Tariyani Police Station he has produced material exhibit of Tariyani PS Case No.-190/2023, in court and its Malkhana Register of the year 2023.

In cross-examination he has deposed that the material exhibit is sealed in a bag made of cloth. The thread by which the bag has been knotted is not sealed. The second column of serial no.642 of the Malkhana Register, whitener/eraser has been used and thereafter it has been written.

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15. PW-07 namely Kamlesh Kumar, has stated that on 31-07-2023 he was posted as the Station House Officer of Tariyani Police Station. This case was instituted on the basis of a written application dated 31-07-2023 submitted by the informant, Madan Kumar. He took up the investigation of the case himself on 31-07-2023 and recorded the same in the case diary. He recorded the re-statement of the informant. Thereafter, he recorded the statements of witnesses, namely Sita Devi, Nikki Kumari, Deepak Kumar, Shweta Kumari, Daya Shankar Chaudhary, and Aditya Kumar. They stated that Suraj Kumar had gone to his sister Nikki Kumari's matrimonial home at Surgahi, and from there, along with his brother-in-law Deepak Kumar, he had gone to see a fair at Chaudhary Market. The first place of occurrence, as per the informant and witnesses, is situated in Ward No. 5 of Surgahi Panchayat under Tariyani Police Station, at the two-storied pucca house of Dayashankar Chaudhary, son of Ramsunder Chaudhary. The sister of the victim Suraj Kumar resides there in her matrimonial home. After visiting his sister's in-laws' house, Suraj Kumar was said to have not returned to his own house at Kasturiya. The second place of occurrence is at Chaudhary Market. This is the place where the abducted Suraj Kumar was taken by his brother-in-law Deepak Kumar to the Mahaviri Jhanda fair at Chaudhary Market. Thereafter, Suraj

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Kumar returned for his home at Kasturiya. This place is also situated in Ward No. 5 of Surgahi Panchayat, where various shops are located, and a rural road passes through the market connecting Kushahar and further areas. On the western side of the road near a culvert, behind the grocery shop of Rajesh Sah (son of Ganga Sah), Suraj Kumar's motorcycle (Super Splendor, registration no. BR05S-2917) was parked by Deepak Kumar, from where he allegedly proceeded towards Kasturiya. The distance between Chaudhary Market and the house of Deepak Kumar is about 400 meters. During secret inquiry at Chaudhary Market, it was learnt that the information regarding missing of Suraj Kumar could be obtained from his brother-in-law Deepak Kumar and his family members. On 04-08-2023, at about 02:30 AM, Deepak Kumar was interrogated at Surgahi. He confessed that along with his associates Bhola Kumar @ Shrikant, Mantu Kumar, and Anish Kumar had murdered his brother-in-law Suraj Kumar by strangulating him with a wire after making him consume alcohol, near the bank of the Bagmati River at Dubba Ghat under Dekuli Dham, and had concealed the dead body there. Upon being asked about the motive, he stated that Suraj Kumar was his only brother-in-law possessing substantial land, and he himself was the sole brother-in-law. Co-accused Anish Kumar was arrested from his house

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at Surgahi on 04-08-2023 by Sub-Inspector Aarti Kumari on his direction. His confessional statement was also recorded. Similarly, co-accused Mantu Kumar was arrested on 04-08-2023 at 03:35 AM by Sub-Inspector Upendra Kumar on his direction. His confessional statement was also recorded. Further, accused Bhola Kumar was arrested on 04-08-2023 at about 03:50 AM by Sub-Inspector Aarti Kumari. During interrogation of the four arrested accused persons they stated that they would show the place where they had killed Suraj Kumar and concealed his dead body. On 04-08-2023, at around 5:30 in the morning, the police set out with the four arrested accused persons. At about 6:00 AM, they reached the western bank of the Bagmati River near Dekuli Dham Police Station Piprahi. Based on the indication given by the accused, the dead body of Suraj Kumar was recovered from bushes (grass and shrubs) located on the western bank of the Bagmati River. At that time, deceased's maternal uncle Amrendra Kumar and his uncle Harishankar Rai, also reached the spot upon receiving information. They identified the dead body of the deceased Suraj Kumar. The inquest report was prepared on 04-08-2023 at about 6:30 AM. At this location, in most parts of the area, dense growth of tall grass and bushes was found on a large scale, the height of which is more than that of an average standing person.

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During night time, the area remains deserted and is sparsely inhabited. At this very place, it has been stated that the accused persons made Suraj Kumar consume liquor, strangled him by tying a wire around his neck, and thereafter concealed the dead body in the dense bushes. At the said place, clear marks of dragging on soil was visible on the ground. At the instance of the arrested accused persons one approximately five feet long wire and an empty liquor bottle, which had been thrown in the grass near the Bagmati River, were recovered.

He further deposed in his examination in chief that thereafter, on 11.10.2023, vide Letter No. 2586/G.O. issued by the Circle Officer, Tariyani, a land report relating to the family of the deceased Suraj Kumar was received. During further course of investigation, the SDR and CDR reports in respect of mobile number 9060270090 of accused Mantu Kumar, mobile number 9014319391 of accused Mantu Kumar, mobile numbers 7544051222, 7250108317, and 6201431379 of accused Deepak Kumar, mobile number 8092299577 belonging to Daya Chaudhary, mobile number 6206631248 belonging to Shweta Kumari, mobile number 9334614863 belonging to Rekha Devi were obtained from the Technical Branch, Sheohar. SDR and CDR report of mobile number 7520172347 belonging to deceased Suraj Kumar and kept in his house

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was also obtained from the Technical Branch, Sheohar. With regard to the authenticity of the obtained SDR and CDR reports, a certificate bearing Memo No. 60 dated 15.10.2023 was received from the Office of the Superintendent of Police, Technical Cell, Sheohar, duly signed by Subodh Kumar Mehta, Sub-Inspector, District Intelligence Unit, Sheohar. He identified the signature of Subodh Kumar Mehta on the said certificate.

It is further deposed that from the mobile number 7544051222 Deepak Kumar made a total of 10 calls to mobile number 9334614863 on 28.07.2023 between 14:46 hrs and 19:50 hrs. Further, from the same mobile number (7544051222), on 28.07.2023, two calls were made to mobile number 7250108317 between 19:02 hrs and 19:03 hrs. On the same date, i.e., 28.07.2023, one call was made from mobile number 7544051222 to mobile number 9060270090 at 19:18 hrs. As per tower location data, the mobile number 7544051222 of accused Deepak Kumar was located at the place of occurrence (third location) at 18:54 hrs, and later at 21:01 hrs, it was found at his residence in Kushahar Purvi Tola. From mobile number 7250108317, used by Deepak Kumar, two calls were made to mobile number 9334614863 on 28.07.2023 between 11:41 hrs and 16:04 hrs, and its tower location was also found at the place of

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occurrence. Mobile number 9102274893 (used by accused Mantu) made 13 calls to mobile number 9334614863 on 28.07.2023 between 13:27 hrs and 18:35 hrs. The tower location of this number was found at the place of occurrence at 18:58 hrs, and later at 20:36 hrs, it was located at Kushahar Purvi Tola. Mobile number 9334614863, belonging to Rekha Devi (mother of accused Anish Kumar), 18 calls were done to mobile number 6201431379 on 28.07.2023 between 13:57 hrs and 18:06 hrs, and its tower location was also found at the place of occurrence between 16:36 hrs and 17:16 hrs.

Charge Sheet No. 291/2023 dated 27.10.2023 was submitted under Sections 365, 302, 201, and 120B IPC against accused Deepak Kumar, Anish Kumar, Bhola Kumar, and Mantu Kumar.

In cross-examination by defence he has deposed that he conducted an investigation regarding the ownership of the motorcycle on which the deceased had gone to the accused's house. During his investigation, the said motorcycle was not recovered. He did not record the statements of witnesses Lakshmi Narayan Chaudhary and Mahendra Rai, who were witnesses of the boundary of the first place of occurrence. He did not record the statement of Rajesh Sah, shopkeeper of the second place of occurrence. He recorded the

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statement of witness Sanjeev Kumar in the case diary, but did not make him a witness in the charge sheet. He is a witness of the second place of occurrence. It is not mentioned in the case diary whether the tower location of the deceased Suraj Kumar's mobile on 28-07-2023 was at the third place of occurrence or not. Mobile number 7520172347 was being used by the parents of the deceased at their home, and from this number, a conversation took place on 30-07-2023 with mobile number 6206631248 belonging to Shweta Kumari, who is the sister-in-law of accused Deepak Kumar. He investigated who had used the deceased's mobile phone on 30-07-2023, during which he recorded the statements of his parents. However, the CDR of the deceased's mobile number 7520172347 was not obtained. He did not record the statements of any shopkeepers or persons near Dekuli Dham Temple. At the place of occurrence, a liquor bottle with traces of soil and mud was found. he did not investigate the fingerprints present on the bottle. The wire recovered from the place of occurrence, allegedly used in the murder, is a thin iron wire. There were no stains of mud or blood on it, and he did not investigate the fingerprints on the wire. The wire produced was not separately sealed. On page no. 302153 of the Malkhana register, there is no signature of any officer. Similarly, at Serial No. 642, the entry-making officer has

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not been signed. At Serial No. 642 of the Malkhana register, M.R. No. 32/23 shows overwriting/whitener on digit '3', and no officer has countersigned it. He have had the opportunity to work with Subodh Kumar Mehta, an officer of the technical branch. No investigation was conducted regarding the ancestral property of accused Deepak Kumar. No investigation was conducted regarding any land disputes involving the family of the deceased. The wire that he recovered did not have any knots tied in it. The bottle recovered from the place of occurrence was not sealed separately; rather, both items were sealed together. During the course of investigation, the mobile number 7520172347 of the deceased Suraj Kumar was not seized. As per the CDR, this mobile number was activated on 14-04-2023. According to the statement of the parents of the deceased, this mobile phone was used by all family members at their house. He cannot say when the deceased Suraj Kumar last used this mobile phone to make a call. A foul smell was coming from the recovered dead body, but it was not decomposed, rather, it was still in a condition identifiable.

16. After closure of prosecution evidence on 03.07.2025 all the three accused were examined under section 313 of Code of Criminal Procedure on 13.11.2025 and they have said that they have heard the

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evidence of the witnesses and in defence they said that they are innocent. Thereafter the case was fixed for defence evidence.

17. D.W-1 namely, Shambhu Nath Rai has deposed that the gift deed no. 3112 has been executed by Madan Kumar in favour of Smt. Rita Devi on 18.04.2023. The doner and donee has signed in his presence. In cross-examination he has deposed that on 18.04.2023 he was in registry office, Sheohar. He does not remember father's name of the doner and the donee.

18. Thereafter, defence evidence was closed on 28.11.2025 and the case was fixed for argument. After hearing both sides the case was fixed for judgment on 06.05.2026.

FINDING

19. From the above mentioned evidence which has come on record during the course of trial now it is to be decided whether place of occurrence, manner of occurrence and commission of the offence by the accused persons have been proved or not.

20. The Learned Counsel for the State submitted that the deceased Suraj Kumar's body, and the wire by which he was strangled and killed has been recovered on the basis of confessional statement of all the co-accused persons. This fact was in special knowledge of the accused persons. One of the co-accused Deepak Kumar is own

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brother-in-law of the deceased and he was last seen with him. To conceal the killing he narrated a false story and got told to the family members of the deceased by his family members that he has gone to Nepal for recreation and will return in few days. Mobile tower of all the accused persons have been found at the place of occurrence where the deceased was killed by them on that particular date. This fact is corroborated by the statement of accused Deepak Kumar, recorded under/section-313 CrPC. The doctor's evidence also corroborates the manner of killing of the deceased by the charge accused persons. The dead body has also been identified by uncle and father of the deceased and identification of the body has not been challenged by any one. The doctor has also deposed that age of the deceased was about 22 years. Had the intention of the informant being malafide, he would have implicated accused persons in the FIR itself. The name of the accused persons have transpired in this case during the course of investigation. The motive of the crime is the greed of grabbing four acres of valuable land of the in-laws of accused Deepak Kumar. Accused Deepak Kumar is son-in-law of the informant, who had only two children, one was the deceased and other is the daughter who is wife of accused Deepak Kumar and both were newly married and Deepak Kumar was a land broker.

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21. The learned counsel for the defence/accused submitted that there is delay of three days in lodging FIR and no explanation has been given by the prosecution regarding such delay. No independent witnesses have been examined in this case. It is alleged that the deceased had gone to the house of his sister Nikki Kumari but surprisingly she has not been produced by the prosecution and examined whereas she is charge-sheet witness. In fact the real culprit is PW-3 (Harishankar Rai) who is uncle of the deceased. He had land dispute (exhibit-A) with the family of the deceased and to grab their land, he in collusion with the police, concocted false story and implicated the accused persons in this case. The deceased was killed by him and his body was put at the third place of occurrence from where the body of the deceased has been recovered. Firstly he reached the place of occurrence and on his lead the dead body has been recovered whereas the police has tried to make out the case in collusion with Harishankar Rai that the body has been recovered on the basis of confessional statement of the accused persons. Surprisingly the father of the deceased was not informed by the police regarding killing of his son and was not called at the place of occurrence rather, Harishankar Rai was informed and called at the spot. No mark of dragging has been found on the spot. It is also

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surprising that the dead body has been recovered after six days of the commission of the offence and it was lying in open sky and no animal, bird or insect had eaten the dead body. It is also surprising that on the spot the body has been identified by deceased uncle Harishankar Rai and not by his parents. At the time of identification of the body on the spot Harishankar Rai, Amrendra Kumar (brother-in-law of the informant) and Upendra Kumar were also present, however, Amrendra Kumar and Upendra Kumar have not been made charge-sheet witness and examined before the court during the course of trial which raises serious suspicion against the fairness and genuineness of the investigation done by the police. The motive of commission of the offence by the accused persons has also not been proved by the prosecution. Confessional statement of accused before police has no evidentiary value in the eye of law. No tower location of the accused persons have been found at the third place of occurrence. It is alleged that the deceased had gone to meet his sister by motorcycle but surprisingly the motorcycle has been not recovered by the police. This case is totally based on circumstantial evidence and the prosecution has failed to connect chain of circumstances. In support of his submission learned counsel relied upon a decision rendered by Hon'ble Supreme Court in Nagamma @ Nagarathna & Ors. Vs. The

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State of Karnataka, reported in 2026 (1) PCCR 287, Para-6, 14, 23, 24, 27, 35, 36.

22. From the evidence which has come on record it is not in dispute that FIR (Ext-3) has been registered against unknown. The name of the accused persons transpired in this case during the course of investigation (PW-7, I.O. para-1). Accused Deepak Kumar is brother-in-law of the deceased Suraj Kumar and both were last seen together on 28.07.2023 (reply to question no.-2 by the accused Deepak Kumar in statement recorded u/s 313 CrPC) and thereafter the deceased was missing. Thus this case is based on circumstantial evidence.

23. On circumstantial evidence, in Bhim Singh v. State of Uttarakhand, reported in (2015) 4 SCC 281 : (2015) 2 SCC (Cri) 580 : 2015 SCC OnLine SC 108, the Hon'ble Supreme Court has been pleased to observe at para 23 that

23. On circumstantial evidence, this Court has laid down the following principles in Sharad Birdhichand Sarda v. State of Maharashtra [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487] : (SCC pp. 120-21)

(1) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established,

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is

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to say, they should not be explainable on any other hypothesis except that the accused is guilty,
(3) the circumstances should be of 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.”
Whenever there is a break in the chain of circumstances, the accused is entitled to the benefit of doubt.

24. Circumstances of last seen together does not by themselves and necessarily lead to the inference that it was the accused who committed the crime. There must be some more establishing connectivity between the accused and the crime. With regard to last seen theory and its evidentiary value the Hon’ble Supreme Court has been pleased to observe in State of Goa Vs. Pandurang Mohite, reported in AIR 2009 SC 1066, at para-13 and 14 that

13. So far as the last-seen aspect is concerned it is necessary to take note of two decisions of this Court. In State of U.P. v. Satish [(2005) 3 SCC 114 : 2005 SCC (Cri) 642] it was noted as follows : (SCC p. 123, para 22)
“22. The last-seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long

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gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2.”

14. In Ramreddy Rajesh Khanna Reddy v. State of A.P. [(2006) 10 SCC 172 : (2006) 3 SCC (Cri) 512] it was noted as follows : (SCC p. 181, para 27)

“27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration.

(See also Bodhraj v. State of J&K [(2002) 8 SCC 45 : 2003 SCC (Cri) 201] .)”

25. A similar view was also taken in Jaswant Gir v. State of Punjab [(2005) 12 SCC 438 : (2006) 1 SCC (Cri) 579] and Kusuma Ankama Rao case [(2008) 13 SCC 257 : (2009) 2 SCC (Cri) 298] .

26. The doctrine of last seen together shifts the burden of proof on the accused requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard would give rise to a very strong presumption against him [Prithipal Singh Vs. State of Punjab, reported in 2012 (1) SCC 10].

27. In Ashok v. State of Maharashtra, (2015) 4 SCC 393, the Hon’ble Supreme Court have been pleased to observe at para-12 that

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*12. From the study of above stated judgments and many others delivered by this Court over a period of years, the rule can be summarised as that the initial burden of proof is on the prosecution to bring sufficient evidence pointing towards guilt of the accused. However, **in case of last seen together, the prosecution is exempted to prove exact happening of the incident as the accused himself would have special knowledge of the incident and thus, would have burden of proof as per Section 106 of the Evidence Act.** Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused, etc. non-explanation of death of the deceased, may lead to a presumption of guilt.*

28. In Ramesh Vs. State, 2014 (9) SCC 392, the Hon'ble Supreme Court has further been pleased to observe at para 22, 24, 27, 28 that

22. It has been held by this Court in Jitender Kumar v.State of Haryana [(2012) 6 SCC 204 : (2012) 3 SCC (Cri) 67] : (SCC pp. 213-14, paras 16-18)

*“16. As already noticed, the FIR (Ext. P-2) had been registered by ASI Hans Raj, PW 13 on the statement of Ishwar Singh, PW 11. It is correct that the name of accused Jitender, son of Sajjan Singh, was not mentioned by PW 11 in the FIR. However, **the law is well settled that merely because an accused has not been named in the FIR would not necessarily result in his acquittal.** An accused who has not been named in the FIR, but to whom a definite role has been attributed in the commission of the crime and when such role is established by cogent and reliable evidence and the prosecution is also able to prove its case beyond reasonable doubt, such an accused can be punished in accordance with law, if found guilty. Every omission in the FIR may not be so material so as to*

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unexceptionally be fatal to the case of the prosecution. Various factors are required to be examined by the court, including the physical and mental condition of the informant, the normal behaviour of a man of reasonable prudence and possibility of an attempt on the part of the informant to falsely implicate an accused. The court has to examine these aspects with caution. Further, the court is required to examine such challenges in the light of the settled principles while keeping in mind as to whether the name of the accused was brought to light as an afterthought or on the very first possible opportunity.

17. The court shall also examine the role that has been attributed to an accused by the prosecution. The informant might not have named a particular accused in the FIR, but such name might have been revealed at the earliest opportunity by some other witnesses and if the role of such an accused is established, then the balance may not tilt in favour of the accused owing to such omission in the FIR.

18. The court has also to consider the fact that the main purpose of the FIR is to satisfy the police officer as to the commission of a cognizable offence for him to conduct further investigation in accordance with law. The primary object is to set the criminal law into motion and it may not be possible to give every minute detail with unmistakable precision in the FIR. The FIR itself is not the proof of a case, but is a piece of evidence which could be used for corroborating the case of the prosecution. The FIR need not be an encyclopaedia of all the facts and circumstances on which the prosecution relies. It only has to state the basic case. The attending circumstances of each case would further have considerable bearing on application of such principles to a given situation. Reference in this regard can be

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made to State of U.P. v. Krishna Master [(2010) 12 SCC 324 : (2011) 1 SCC (Cri) 381] and Ranjit Singh v. State of M.P. [(2011) 4 SCC 336 : (2011) 2 SCC (Cri) 227] ”

24. *It is the case of the prosecution that PW 3, the grandmother of the deceased had sent the child to see whether the flour had been ground. However, when the child did not return for some time, PW 3 went home. At this juncture, there is evidence through PW 5 and PW 12 who were employees under the accused that the accused took the child to the backyard while he unusually permitted PW 12 to go for lunch. Further, the accused could not explain the need of taking an 8 year old child to the backyard. In this aspect of the last seen theory, it has been held by this Court in Kusuma Ankama Rao v. State of A.P. [(2008) 13 SCC 257 : (2009) 2 SCC (Cri) 298] as under: (SCC p. 263, para 10)*

“10. So far as the last-seen aspect is concerned it is necessary to take note of two decisions of this Court. In State of U.P. v. Satish [(2005) 3 SCC 114 : 2005 SCC (Cri) 642] it was noted as follows: (SCC p. 123, para 22)

‘22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2.’

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In Ramreddy Rajesh Khanna Reddy v. State of A.P. [(2006) 10 SCC 172 : (2006) 3 SCC (Cri) 512] it was noted as follows: (SCC p. 181, para 27)

‘27. The last-seen theory, furthermore, comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration.’”

27. It is true that in the present case, there is no direct evidence which prove that the rape and murder of the deceased child was committed by the appellant. There are no witnesses available on record who have testified having witnessed the appellant committing the crime. However, all the circumstances point towards the appellant as being the author of the crime in the present case.

28. It has been held by five-Judge Bench of this Court in Govinda Reddy v. State of Mysore [AIR 1960 SC 29 : 1960 Cri LJ 137] as under: (AIR p. 30, para 5)

“5. The mode of evaluating circumstantial evidence has been stated by this Court in Hanumant Govind Nargundkar v. State of M.P. [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1953 Cri LJ 129] and it is as follows: (AIR pp. 345-46, para 10)

'10. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such

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*as to show that within all human probability
the act must have been done by the accused.'*

29. In Bhagwan Jagannath Markad & Ors vs State of Maharashtra, reported in 2017(2) P.L.J.R(SC) 174 it has been held that certain discrepancies not touching the core of the case is not enough to reject the evidence as a whole. It's relevant para 19 is enumerated herein below for proper appreciation.

19. While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects creditworthiness and trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted. Want of independent witnesses or unusual behavior of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be

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closely scrutinized to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a 'partisan' or 'interested' witness may lead to failure of justice. It is well known that principle "falsus in uno, falsus in omnibus" has no general acceptability. On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness

30. In the backdrop of above discussed law laid down by Hon'ble Supreme Court regarding what to consider in circumstantial evidence case, particularly based on last seen theory, now coming to the facts of this case.

31. PW-5 (Madan Kumar) is the informant of this case and father of the deceased. He has supported the facts as narrated by him in his written application submitted in Tariyani Police Station on 31.07.2023 for lodging of FIR regarding missing of his son. He has specifically stated in his evidence at para-1 that on 28.07.2023, around 2 O'clock Suraj Kumar have gone to meet his sister Nikki Kumari in village Surgahi and also to see fair. From there he had gone to see fair with his brother-in-law Deepak Kumar. His daughter Nikki Kumari had

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informed him that Suraj had come to her house around 4 o'clock and she had prepared meat. Thereafter, he went with Deepak Kumar in fair. At night Deepak Kumar returned but Suraj was not with him. On inquiry from him he told that in evening Suraj has returned to his home. But he did not return. Sweta Kumari who is sister-in-law of Nikki Kumari told that Suraj has gone to Nepal and will return very soon. On 04.08.2023, when Deepak Kumar was arrested he confessed and accepted that he along with Bhola Kumar @ Srikant, Anish Kumar, Mantu Kumar has killed Suraj Kumar on 28.07.2023 and on the basis of their statement dead body of Suraj Kumar was recovered which was identified by Harishankar Rai and Amrendra Kumar. He has one daughter and one son and his son Suraj Kumar was unmarried and he has been killed because Deepak Kumar had greedy eye on his 4.5 acre of land. and other co-accused.

32. The evidence of PW-5 is corroborated by evidence of PW-4 (Rita Devi) who is wife of PW-5, PW-3 (Harishankar Rai) who is uncle of informant and PW-2 (Chunchun Kumar) who is also brother (Fufera Bhai) of the informant. All have deposed the same fact and are consistent in their testimony. PW-2 has deposed at para-6 that he had seen Suraj Kumar going to Surgahi village. PW-3 has deposed at para-1 that he had seen Suraj Kumar with Deepak Kumar because he was

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also present in the fair in village Surgahi. PW-4 has deposed in her evidence at para-1 that her daughter Nikki Kumar, who is also wife of accused Deepak Kumar, had informed her on telephone that Suraj Kumar has gone to see fair with Deepak Kumar and she had prepared meat and without eating it both have gone to see fair. Deepak Kumar returned home around 9 o'clock at night.

33. So far submission of defence that all the witnesses are relatives of informant and are interested witnesses is concerned, merely because the witnesses are relatives of the informant does not go to prove that they are untrustworthy and are not to be relied upon. There is no reason to disbelieve their testimony. They are consistent and corroborate the evidence of each other. They have also stood the test of credibility in their respective cross-examination.

34. In *Takdir Samsuddin Sheikh v. State of Gujarat*, (2011) 10 SCC 158 : (2012) 1 SCC (Cri) 218 : 2011, the Hon'ble Supreme Court has been pleased to observe at para-13 as following:-

13. The complainant Shri Bharat Rajendraprasad Trivedi (PW 1) is the sole eyewitness. It has been submitted on behalf of the appellants that being a sole and an interested witness, his evidence cannot be relied upon without corroboration. The submissions advanced in this respect had been that Shri Bharat Rajendraprasad Trivedi (PW 1) being a partner in the firm would be the beneficiary in the transaction of land involved herein in case one partner had been

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eliminated and the other partner landed in jail. Such an argument is not acceptable for two reasons:

*(i) **While appreciating the evidence of witness considering him as the interested witness, the court must bear in mind that the term “interested” postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some other reason.** (Vide Kartik Malhar v. State of Bihar [(1996) 1 SCC 614 : 1996 SCC (Cri) 188] and Rakesh v. State of M.P. [(2011) 9 SCC 698 : (2011) 3 SCC (Cri) 803])*

*(ii) This Court has consistently held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the court will insist on corroboration. **In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted.** The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.*

[SeeVadivelu Thevar v. State of Madras [AIR 1957 SC 614 : 1957 Cri LJ 1000], Sunil Kumar v. State (Govt. of NCT of Delhi) [(2003) 11 SCC 367 : 2004 SCC (Cri) 1055], Namdeo v.State of Maharashtra [(2007) 14 SCC 150 : (2009) 1 SCC (Cri) 773] and Bipin Kumar Mondal v. State of W.B. [(2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150 : AIR 2010 SC 3638]

35. Thus it is not in dispute that deceased was last seen with his brother-in-law Deepak Kumar (accused). This fact is also not denied

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by him in answer to question no.-2, which is his statement recorded under Section 313 of CrPC.

36. In Sahebrao and another vs. State of Maharashtra, reported in (2006) AIR (SC) 2002 / (2006) 9 SCC 794, the Hon'ble Supreme Court has held at para 4 that “..... *The settled principle of law of this Court is that delay in filing FIR by itself cannot be a ground to doubt the prosecution case and discard it. The delay in lodging the FIR would put the Court on its guard to search if any plausible explanation has been offered and if offered whether it is satisfactory*”.

37. So far as delay in lodging FIR and recovery of dead body is concerned, plausible explanation has come on record during trial. The incident is of 28.07.2023 and FIR has been registered on 31.07.2023 and dead body has been recovered in early morning of 04.08.2023. Informant and his wife are rustic persons. PW-2, PW-3, PW-5 have deposed that they were informed that deceased Suraj Kumar has gone to Nepal for recreation after seeing fair. Thus informant and his family members were misled and they remained in bonafide impression that deceased has gone to Nepal. However, when he did not return for 3 days, informant submitted written complain before police on 31.07.2023 and thereafter within 4 days dead body was recovered. Thus in view of this court there is genuine reason for lodging FIR

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after 3 days and further also the time gap between the point of time when the accused Deepak Kumar and deceased Suraj Kumar were last seen alive and deceased Suraj Kumar is found dead is very small on the confessional statement of accused persons dead body and were by which his head was amputated has been recovered. Tower location of Deepak Kumar has also been found at the place from where dead body has been recovered on 28.07.2023 of late evening hour.

38. So far as submission of defence that prosecution did not examine Nikki Kumari, who is charge-sheet witness is concerned, non-examination of any charge-sheet witness does not falsifies the evidence of witnesses which have been recorded during the course of trial in any case. It is the quality of evidence and not the quantity of evidence which is to be looked upon in any case (Section 134 of the Indian Evidence Act, 1872). In the instant case non-examination of charge-sheet witness Nikki Kumari, who is sister of the deceased and wife of accused Deepak Kumar is not fatal. PW-4 who is mother of Nikki Kumari, has stated at para-1 that her daughter has gone to her matrimonial home on 13.02.2025. PW-5, who is father of Nikki Kumari, and also informant of this case, has deposed at para-4 of his evidence that Dayashankar (Father-in-law of Nikki Kumari) and unknown persons induced her daughter Nikki and took her away to

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her matrimonial home on the day when he had come to court. Thus sufficient reason has come on record for non-examination of Nikki Kumari. However, the defence was always at liberty to produce her for examination on their behalf in defence evidence but she was not produced as defence witness also for the reasons best known to them.

39. Identification of the recovered body to be of the deceased Suraj Kumar is also not in dispute. The defence has not challenged it during the course of trial. Thus identification of the dead body, to be of the deceased Suraj Kumar, by PW-3 (Harishankar Rai) in genuine and trustworthy and fit to be relied upon. Merely because the dead body has been recovered after six days cannot be the sole ground to disbelieve the testimony of PW-3. PW-5, who is the informant of this case and also father of the deceased has stated at para-23 of his cross-examination that he had seen dead body of his son at the time of cremation. There is nothing on record to show that after seeing the dead body of his son, PW-5 disbelieved it that it is not the dead body of his son.

40. PW-7, who is I.O. of this case, has deposed in his examination-in-chief at para-4 that an empty wine bottle and nearly 5 feet long wire was also recovered from the place where the dead body was recovered on pointing out of the accused persons. PW-1, who is doctor and who

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has conducted postmortem of deceased has deposed that third cervical vertebra was fractured and head was found amputated from neck on the level of third cervical vertebra. He has also opined that cause of death is due to amputation of head by some wire like substance. Thus it is clear that Suraj Kumar was killed by strangulation by wire which has been recovered and seized from the third place of occurrence. The doctor has also deposed in his evidence that mud was found all over the body. It is further corroborated from the evidence of I.O. (PW-7). He has deposed at para-3 of his evidence that mark of dragging in the soil was found at the third place of occurrence i.e. the place from where the dead body has been recovered. It is relevant under Section 7 of the Indian Evidence Act, 1872 (illustration (b)). Thus this fact strengthens/corroborates the fact that the place from where the dead body has been recovered is the place where he was killed. PW-7, has narrated the surrounding of the spot in his evidence. From para-2 and 3 of his evidence it is evident that near the spot Bagmati river flows and long plants (Khar-Gurahan) are grown there in which any person can conceal himself and is a secluded place where people does not live. There is no population there. Thus the place of occurrence and the manner in which Suraj Kumar has been killed has been proved by the prosecution.

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41. Section 8 of the Indian Evidence Act, 1872 says that

Motive, preparation and previous or subsequent conduct-
Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. - The word "conduct" in this section does not include statements, unless those statements, accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. - When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

42. Section 30 of Indian Evidence Act, says that -

when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons 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.

43. In answer to question no.-3, recorded u/s 313 CrPC, after closure of prosecution evidence, accused Deepak Kumar has said that he had not told that Suraj Kumar has gone to Nepal rather had said that he had gone to his home. People had seen him with Suraj in Mahaviri Mela. If this statement of accused Deepak Kumar is true that he had informed to the family of Suraj that he has gone to his home then his subsequent conduct becomes relevant u/s 8 of Indian

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Evidence Act, 1872. He was last seen with Suraj Kumar, on 28.07.2023, the offence is alleged to have been committed on the same day and body has been recovered in the morning of 04.08.2023. Exhibit-24 is the call details of accused Deepak Kumar. His mobile no. is 7250108317. The number of the mobile which was used in the house of deceased is 7520172347. From perusal of exhibit-24 it is evident that on 28.07.2023 there was three calls made between both the mobile numbers. On 29.07.2023 there has been one call between mobile no.-7250108317 and 7520172347, four calls on 30.07.2023, three calls on 31.07.2023, six calls on 01.08.2023, eight calls on 02.08.2023, three calls on 03.08.2023 and there has been no further calls between both the mobile numbers. The reason is that accused Deepak Kumar was arrested in night of 03.08.2023. It is pertinent to mention here that mobile no.7250108317 is of the accused Deepak Kumar and mobile no.- 7520172347 is mobile number which was used at the house of deceased Suraj Kumar. When accused Deepak Kumar was knowing that his brother-in-law Suraj Kumar has gone home after seeing the fair on 28.7.2023 and had not reached his house, he did not made any effort to search him. There is evidence on record (exhibit-24) to show that he was in touch with parents of Suraj Kumar through mobile but there is no defence evidence on record to show

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that between 28.07.2023 and 03.08.2023, he had ever gone to his in-law's house or to the house of any relative or friends of the deceased in his search or made any attempt to search him anywhere. This is grave suspicious conduct on the part of accused Deepak Kumar, relevant under section 6 and 8 of Indian Evidence Act, 1872.

44. Exhibit-20 is a certificate issued by the competent authority under section 65(B) of the Indian Evidence Act. Exhibit-21 is the SDR of the mobile number 9060270090 and the subscriber's name is Mantu Kumar (accused) Exhibit-22 is the SDR and CDR of mobile number 9014319391 and the subscriber's name is Mantu Kumar (accused). Exhibit-23, 24 & 25 are the CDR and SDR of the mobile number 7544051222, 7250108317 and 6201431379 and the subscriber's name is Deepak Kumar(accused). Exhibit-26 is the SDR and CDR of the mobile number 8092299577 and the subscriber's name is Daya Chaudhary (Father of accused Deepak Kumar). Exhibit-27 is the SDR and CDR of the mobile number 6206631248 and the subscriber's name is Sweta Kumari (Sister-in-law of accused Deepak Kumar). Exhibit-28 is the SDR and CDR of the mobile number 9334614863 and the subscriber's name is Rekha Devi (Mother of Anish Kumar). Exhibit-29 is the SDR of the mobile number 7520172347 and the subscriber's name is Suraj Kumar (deceased).

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45. PW-7, who is I.O. of this case has deposed at para-10 of his evidence that 7544051222 is the mobile number of accused Deepak Kumar and its tower location has been found at the third place of occurrence on 28.07.2023, at 18:54 PM and at 21:01 PM its tower location has been found at his house in Kushahar Purvi Tola. It is corroborated from perusal of CDR and SDR of mobile number 7544051222 (Exhibit-23). Similarly mobile number 9334614863 is the mobile number of Rekha Devi which was possessed by her son accused Anish Kumar. On 28.07.2023 between 13:57 PM to 18:06 PM he had talked to co-accused Deepak Kumar on his mobile number 6201431379 eighteen times and between 16:36 PM and 17:16 PM its location has been found at the third place of occurrence from where dead body has been recovered on their statement and thereafter its location has been found in Kushahar Purvi Tola (Exhibit-28). It is pertinent to mention here that record of co-accused Anish Kumar has been separated and transferred to Juvenile Justice Board after finding him to be minor. PW-7, has further deposed in his evidence at para-10 that on 28.07.2023, from mobile number 9102274893 (of accused Mantu Kumar) there has been thirteen times talk with co-accused Anish Kumar on his mobile number 9334614863 between 13:27 PM to 18:35 PM and its mobile tower location has also been found at third

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place of occurrence at 18:58 PM and thereafter at 20:36 PM its location has been found at Kushahar Purvi Tola. It is pertinent to mention here that though CDR and SDR details of mobile number 9102274893 which is alleged to be mobile number of accused Mantu Kumar is on record though it has not been marked exhibit on behalf of prosecution. However, in statement recorded u/s 313 CrPC of accused Mantu Kumar, he has admitted in answer to question no.-4 that he owns and possess mobile number 9102274893, 9014319391 and 9060270090. He has further said that its tower location shows of the place of occurrence even if he is in his house.

46. All the three charged accused are resident of the same village Surgahi. From perusal of CDR and SDR of mobile number of 9060270090 (of accused Mantu Kumar, Exhibit-21 and 22), of mobile number 7544051222 (of accused Deepak Kumar, Exhibit-23), of mobile number 7250108317 (of accused Deepak Kumar, Exhibit-24), of mobile number 6201431379 (of accused Deepak Kumar, Exhibit-25) it is clear that the statement of co-accused Mantu Kumar recorded u/s 313 CrPC that the tower location of his mobile number shows the location of the place of occurrence even if he is in his house is false. Perusal of above mentioned CDRs of accused Mantu Kumar and

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Deepak Kumar shows exactly the same place of tower location where they were at the relevant point of time on 28.07.2023 or any other day.

47. There is no document/evidence on record to show that co-accused Bhola Kumar @ Srikant possessed which mobile number and on 28.07.2023 at the relevant time he was present at the third place of occurrence. Merely confessional statement of co-accused before police is not sufficient to convict another co-accused even if both are tried jointly. In the interest of justice, for relying upon a confessional statement it requires corroboration from other independent evidence, which is not so in the instant case against accused Bhola Kumar @ Srikant.

48. In view of above discussed evidence which has transpired on record during the course of trial, it is amply clear that the prosecution has been able to prove beyond all reasonable doubt the place of occurrence, manner of occurrence and motive behind killing of Suraj Kumar by charge accused Deepak Kumar and Mantu Kumar. Motive is lodged in the heart and the mind of the accused, particularly when the accused and the deceased are close relative and one reposes faith upon another. Both the above mentioned accused persons conspired with each other and murdered Suraj Kumar.

49. Thus, in nutshell, taking in totality the evidence of each witnesses, the prosecution has proved that place of occurrence is the

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(Tariyani PS Case No.-190/2023)

CNR No. -BRSO01-002457-2024

State Vrs. Deepak & Others

third place from where body of Suraj Kumar has been recovered, he has been killed by strangulation by wire, accused Deepak Kumar was newly married to the sister of the deceased Suraj Kumar, and both were only one brother and sister of their parents, the motive was to grab valuable lands after his death, the dead body has been identified by uncle and father of the deceased, the reason for delay in lodging FIR has plausibly been explained, tower location of both accused Deepak Kumar and Mantu Kumar has been found at the same place and at the same time where Suraj Kumar was killed by them. However, the prosecution has not been able to prove the involvement of charged accused Bhola Kumar @ Srikant in the alleged offence and has also not been able to prove offence charge under section 364/34 of the Indian Penal Code, against all the three charged accused persons, namely, Deepak Kumar, Bhola Kumar and Mantu Kumar.

50. In the result, this Court finds and holds accused Deepak Kumar and Mantu Kumar guilty under section 302/34, 201/34 and 120(B) of the Indian Penal Code and accused Bhola Kumar @ Srikant not guilty under section 302/34, 364/34, 201/34 and 120(B) of the Indian Penal Code Accordingly, I convict accused Deepak Kumar under section 302/34, 201/34 and 120(B) of the Indian Penal Code and Mantu

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Kumar under section 302/34, 201/34 and 120(B) of the Indian Penal Code.

51. All the three accused are in custody. Since accused Bhola Kumar @ Srikant has not been found guilty he is directed to be released from jail, in connection with this case. His sureties are discharge from their respective liabilities. The Jail Superintendent, Sheohar is directed to produce convicted accused Deepak Kumar and Mantu Kumar on 14.05.2026 on the point of hearing on sentence.

Dictated and corrected by me.

Sd/-
(Deepak Kumar)
Principal Sessions Judge,
Sheohar
Dated: 13.05.2026

Sd/-
(Deepak Kumar)
Principal Sessions Judge,
Sheohar
Dated: 13.05.2026

Date of Judgment	13.05.2026
Date of Reserving Judgment	06.05.2026
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