



2026:CGHC:3255-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 573 of 2025

1 - Santosh Gupta S/o Shri Soti Prasad Gupta Aged About 31 Years R/o Village Sagobandh Presently R/o Ikdiri Thana Babhni (U.P.)

2 - Vishal Kashyap S/o Shri Virendra Kashyap Aged About 30 Years R/o Village Dhanwar Thana Basntpur District - Balrampur (C.G.)

---Appellant(s)

Versus

State Of Chhattisgarh Through The District Magistrate Raigarh District - Raigarh (C.G.)

--- Respondent

For Appellant(s) : Mr. Rajendra Patel, Advocate.

For Respondent : Mr. S.S.Baghel, Government Advocate.

CRA No. 659 of 2025

Aashish Vishwakarma S/o Shashi Vishwakarma Aged About 22 Years R/o Village Bhitari, P.S. Lohta, District Varanasi Uttar Pradesh.

--- Appellant

versus

State of Chhattisgarh Through Station House Officer, Police Station Dharamjaigarh District Raigarh Chhattisgarh.

--- Respondent

For Appellant : Mr. Pawan Kumar Kashyap, Advocate.

For Respondent : Mr. S.S.Baghel, Government Advocate.

CRA No. 698 of 2025

Vikas Yadav S/o Shyam Sunder Yadav Aged About 33 Years R/o Village-Chochakpur, Police Station- Karanda, Distt. Gajipur, Present Address- Trimuhali, Police Station- Maduwadih, District- Varanasi (U.P.)

---Appellant

Versus

State Of Chhattisgarh Through- Police Station- Dharamjaigarh, Distt. Raigarh (C.G.)

--- Respondent

For Appellant	: Mr. Awadh Tripathi, Advocate.
For Respondent	: Mr. S.S.Baghel, Government Advocate.

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

Judgment on Board

Per Ramesh Sinha, Chief Justice

20/01/2026

1. Challenge in this appeal(s) filed under Section 415(2) of the Bharatiya Nagrik Suraksha Sanhita, 2023 (for short, the BNSS) is to the judgment of conviction and order of sentence dated 28.02.2025 passed in Sessions Trial No. 83/2021 passed by learned Additional Sessions Judge, Gharghoda, District Raigarh, by which the appellants have been convicted and sentenced as under:

Conviction under Section	Jail sentence (Rigorous)	Fine	Default Jail Sentence (Rigorous)
Appellants-Vikas Yadav and Ashish Vishwakarma			
120 B of the Indian Penal Code (for short, the IPC)	Life	Rs. 1000/-	1 month
397 IPC	10 years	Rs. 1000/-	1 month
302 IPC	Life	Rs. 1000/-	1 month
201 IPC	5 years	Rs. 1000/-	1 month
Appellants-Vishal Kashyap and Santosh Gupta			
411 IPC	3 years	Rs. 1000/-	1 month

2. The convicts/appellants were charged for the offences punishable under Sections 120-B, 397, 302 and 201 of the IPC and Section 27 of the

Arms Act alleging that the appellants Vikas Yadav and Ashish Vishwakarma, during the period between 19.01.2021 and 20.01.2021, within the territorial jurisdiction of Village Charkhapara, Kudariya Pond, Police Station Dharamjaigarh, District Raigarh, Chhattisgarh, committed a criminal conspiracy to commit offences punishable with death or life imprisonment or rigorous imprisonment for a term of two years or more, by murdering the deceased Nazir Ahmed @ Bhola and Mazare Alam and committing robbery; by using deadly weapons such as iron rods and a pistol, from the truck bearing registration number CG-29-AB-9001 belonging to the deceased Nazir Ahmed @ Bhola and Mazare Alam; by causing their deaths and committing robbery; by shooting Nazir Ahmed @ Bhola and Mazare Alam, dead with a pistol; by concealing the dead bodies of Nazir Ahmed @ Bhola and Mazare Alam and causing disappearance of evidence; and by using a deadly weapon (pistol) for committing the murder of Nazir Ahmed alias Bhola and Mazare Alam.

3. The convicts/appellants Santosh Gupta and Vishal Kashyap were charged for the offence punishable under Section 411 of the IPC alleging that during the period between 19.01.2021 and 20.01.2021, within the jurisdiction of Village Charkhapara, Kudariya Pond, Police Station Dharamjaigarh, District Raigarh (C.G.), they purchased 6 quintals and 4 tons 512 kilograms of iron rods respectively, out of the iron rods obtained through robbery by co-accused Vikas Yadav and Ashish Vishwakarma, knowing them to be stolen/robbed property.
4. The case of the prosecution, in brief, is that on the night of 19.01.2021, 30.030 tons of Radhe TMT iron rods were loaded from Anjani Steel Plant, Gerwani, Raigarh, into truck bearing registration number CG-29-AB-9001, and the vehicle driver deceased Nazir Ahmed and helper/cleaner deceased Mazare Alam departed for Adalhat, Uttar

Pradesh. However, they did not reach Adalhat, Uttar Pradesh. Thereafter, the officials of Anjani Steel Plant, Gerwani, traced the location of the truck through GPS. Meanwhile, on 20.01.2021 at about 06:00 a.m., near Village Charkhapara, Kudariya Pond, the informant Surendra Kumar Gupta (PW-2) found the dead body of an unknown person on the bank of the pond. Upon this information, a '0' merg Intimation was registered at Police Outpost Rairumakhurd vide Exhibit P-6, and a numbered Merg Intimation Exhibit P-52 was registered. A spot map was prepared, and blood-stained soil, plain soil, and a blood-stained seat cover were seized vide seizure memo Exhibit P-11, and a vehicle jack, by which the deceased's right leg was tied with a blue plastic rope, was seized vide seizure memo Exhibit P-5.

5. Proceedings of inquest (panchnama) of the dead body were conducted and post-mortem examination was carried out. Dr. S.S.Bhagat (PW-11) conducted the post-mortem of the said unknown dead body and submitted report (Exhibit P-25), finding a penetrating injury caused by a hard and blunt object on the left side of the head and an abrasion injury on the back of the body, and opined that death occurred due to head injury and that the nature of death was homicidal. On the same day, at Police Outpost Rairumakhurd, a '0' FIR Exhibit P-1 was registered under Sections 302 and 201 IPC, and on 21.01.2021, a numbered FIR bearing Crime No. 11/2021 was registered at Police Station Dharamjaigarh vide FIR Exhibit P-44A. As the deceased could not be identified, the dead body was buried, and burial panchnama (Exhibit P-35) was prepared.
6. On 23.01.2021, at Police Outpost Rairumakhurd, Mohammad Taufiq (PW-27), brother of deceased Nazir Ahmed, identified the deceased from photographs as his younger brother Nazir Ahmed. Thereafter, with

the permission of the Executive Magistrate, vide Exhibit P-36, the buried body was exhumed, panchnama (Exhibit P-26) was prepared, and Mohammad Taufiq identified the body to be that of his younger brother Nazir Ahmed, for which identification panchnama (Exhibit P-27) was prepared.

7. On 24.01.2021, from Vinod Kumar Chaudhary (PW-7), the DO letter, bilty, weighment slip, iron rod bill, and e-way bill of Anjani Steel Plant were seized as Articles A-1 to A-5 vide seizure memo (Exhibit P-21). On 28.01.2021, near Bharat Benz Showroom, Chopan, Uttar Pradesh, truck bearing registration number CG-29-AB-9001 was found abandoned on the roadside and was seized vide seizure memo (Exhibit P-24). Based on GPS location, when it was found that the truck was parked near the shop of appellant Santosh Gupta, on suspicion, on 30.01.2021 at 14:00 hours, at Village Ikdiri, Uttar Pradesh, memorandum of appellant-Santosh Gupta was recorded vide Exhibit P-8 in the presence of witnesses Shivlochan Yadav (PW-1) and Shyam Yadav (PW-8). On his disclosure, 12 bundles (approx. 6 quintals) of 10 m.m. Radhe TMT iron rods, and his Vivo company mobile phone, by which he had communicated with appellants-Vikas Yadav and Ashish Vishwakarma, were seized vide seizure memo (Exhibit P-9). On 30.01.2021, Manish Matolia (PW-6), Sales Manager of Anjani Steel Limited, identified the seized iron rods, and identification panchnama (Exhibit P-13) was prepared. Appellant-Santosh Gupta was arrested vide arrest memo, Exhibit P-14.
8. On 07.02.2021, at Luchki Ghat, Ambikapur (C.G.), another unknown dead body was found by Manbodh Suren (PW-5). On his information, Merg Intimation (Exhibit P-19) was registered at Police Station Ambikapur, and numbered Merg No. 12/2021 (Exhibit P-55) was

registered at Police Station Dharamjaigarh.

9. On 08.02.2021, Mohammad Taufiq Ahmed identified the said unknown dead body as that of his son Mazare Alam, for which identification panchnama (Exhibit P-49) was prepared. Inquest proceedings were conducted and post-mortem was carried out.
10. Dr. Santu Bag (PW-38) conducted the post-mortem and vide his report (Exhibit P-58) found a lacerated wound present on nape of neck extending from occipital region to interscapular junction, muscles deep. Pale surface wound margin, irregular in consistency dimension 18x8.5 c.m. vertically, dried skin present on right thigh, foot with yellowish pale coloured all of these injuries were postmortem injuries. There was an entry wound present in the occipital region 5 c.m. lateral to occipital protuberance 1 x 1 c.m. circular fracture with blackish red pigmented wound margin inward directed wound peripheral margin. Exit wound was present at right side temporal region size 2.5 c.m x 2 c.m. right temporal parietal bone, saggitally. Blackish red ecchymosed temple muscle. Typical circular hole on meninges present on corresponding injury, brain matter shows brownish red coloured pasty brain matter due to hemorrhage. Vide his report Exhibit P-58, he opined that death was caused due to injuries to the head and neck; injury No. 1 was caused by a hard and blunt object, injuries No. 2 and 3 were caused by firearm (pistol) bullets; death occurred within 7 to 21 days, and the nature of death was homicidal.
11. On 17.02.2021, memorandum of accused Vishal Kashyap was recorded vide Exhibit P-28 in the presence of witnesses Santosh Singh (PW-14) and Ramjanak (PW-30). On the basis of his memorandum, on 17.02.2021, from Village Dhanwar, 4 tons 512 kg of looted iron rods were seized vide seizure memo (Exhibit P-29). From Vishal Kashyap's

memorandum, it emerged that he had purchased the iron rods from appellant-Vikas Yadav and Ashish Vishwakarma, after which efforts were made to trace them. It was found that both were already arrested in Crime Nos. 04/2021 and 05/2021 at Police Station Myorpur, District Sonbhadra (U.P.), under Sections 307, 41, 411 IPC and Sections 3, 25, 27 of the Arms Act, and were lodged in District Jail Sonbhadra. After obtaining permission from the Judicial Magistrate First Class, Dharamjaigarh, they were arrested on 09.03.2021.

12. On 11.03.2021, memorandum of appellant-Vikas Yadav and Ashish Vishwakarma were recorded vide Exhibits P-10 and P-12 in the presence of witnesses Shivlochan Yadav and Shyam Yadav at Police Outpost Rairumakhurd. On the disclosure of appellant-Vikas Yadav, on 11.03.2021 at 17:30 hours, from the jungle behind Vishal Kashyap's *dhaba* at Village Dhanwar, two tons of Radhe TMT 10 mm iron rods were seized vide seizure memo Exhibit P-15. On 12.03.2021 at 17:00 hours, from his house at Village Mudela, Uttar Pradesh, one Samsung mobile phone and one Nokia company mobile phone were seized. The appellant further stated that the pistol and cartridges used in the incident were kept by Vikas Yadav and were seized by police at Police Station Myorpur. For obtaining the customer application form (*for short, the CAF*) of the seized mobile phones, necessary correspondence was sent.
13. A site map of the place of occurrence was prepared by the Patwari. During investigation, it was found that appellant Vikas Yadav and Ashish Vishwakarma, after shooting and killing truck driver Nazir Ahmed and helper Mazare Alam inside truck bearing registration number CG-29-AB-9001, disposed of their bodies at Mukundariya Pond, Rairumakhurd, and Luchki Ghat, Ambikapur respectively. Out of the looted iron rods, 6 tons were sold to Vishal Kashyap, 20 tons to Santosh Gupta, 2 tons to

another person, and 2 tons were hidden in the jungle behind Vishal Kashyap's dhaba.

14. After completion of investigation, charge-sheet was filed against the accused persons under Sections 302, 201, 392, 411, 120-B IPC and Sections 25, 27 of the Arms Act before the Judicial Magistrate First Class, Dharamjaigarh, District Raigarh (C.G.), which was committed vide order dated 27.01.2021 to the Court of Additional Sessions Judge, Gharghoda for trial.
15. Charges were framed against Vikas Yadav and Ashish Vishwakarma under Sections 120-B, 397, 302, 201 IPC and Section 27 of the Arms Act, and against Santosh Gupta and Vishal Kashyap under Section 411 IPC. After being read over and explained, the appellants abjured the guilt and prayed for trial.
16. In support of its case, the prosecution has examined the witnesses Mukut Ram @ Chandrika Prasad (PW-1), Surendra Gupta (PW-2), Shivlochan Yadav (PW-3), Sarpanch Rajesh Ekka (PW-4), Kotwar Manbodh Surendra (PW-5), Manish Matolia (PW-6), Vinod Kumar Chaudhary (PW-7), Shyam Yadav (PW-8), Nityanand Bhoy (PW-9), Ravishankar Yadav (PW-10), Medical Officer Dr. S.S. Bhagat (PW-11), Suraj Malik (PW-12), Mukesh Chauhan (PW-13), Santosh Singh Thakur (PW-14), Patwari Govind Kumar Bada (PW-15), retired Sub-Inspector James Kujur (PW-16), Ramashray Yadav (PW-17), Rajesh Prajapati (PW-18), Suraj Yadav (PW-19), Constable Jai Prakash Ekka (PW-20), retired Head Constable Sahdev Khandel (PW-21), retired Assistant Sub-Inspector Pooran Singh Sidar (PW-22), Adarsh Shukla (PW-23), Abhishek Kushwaha (PW-24), Anwar Hussain (PW-25), Farooq Sheikh (PW-26), Mohammad Taufiq (PW-27), Mohammad Qadir (PW-28), Ravindra Nath Pradhan (PW-29), Ramjanak (PW-30), Omprakash

Yadav (PW-31), Neeraj Chaudhary (PW-32), Assistant Sub-Inspector David Toppo (PW-33), Constable Hemlal Bareth (PW-34), Assistant Sub-Inspector Sanjay Kumar (PW-35), Constable Atul Kumar Mishra (PW-36), Inspector Ajay Kumar Singh (PW-37), Medical Officer Dr. Santu Bag (PW-38), and Constable Kanhaiya Lal Bhagat (PW-39), and their statements were recorded. The prosecution has also produced the spot map (Exhibit P-1), map panchnama (Exhibit P-2), identification panchnama (Exhibit P-3), seizure memo Exhibit (P-4) relating to seizure of blood-stained soil, plain soil and seat cover from the place of occurrence, seizure memo (Exhibit P-5) relating to seizure of a vehicle jack, Merg intimation (Exhibit P-6), '0' number First Information Report (Exhibit P-7), memorandum statement of appellant Santosh Gupta (Exhibit P-8), seizure memo (Exhibit P-9) relating to seizure of Radhe TMT 10 mm iron rods and a Vivo company mobile phone from appellant Santosh Gupta, memorandum statement of appellant Vikas Yadav (Exhibit P-10), property seizure memo (Exhibit P-11) relating to seizure of one Itel company mobile phone and one Nokia mobile phone from appellant Vikas Yadav, memorandum statement of accused Ashish Vishwakarma (Exhibit P-12), identification panchnama of seized iron rods (Exhibit P-13), arrest memo of appellant Santosh Gupta (Exhibit P-14), seizure memo (Exhibit P-15) relating to seizure of Radhe TMT 10 m.m. iron rods from appellant Vikas Yadav, spot map of the place of occurrence (Exhibit P-16), notice to remain present during inquest (Exhibit P-17), map panchnama (Exhibit P-18), Merg intimation (Exhibit P-19), spot map (Exhibit P-20), seizure memo (Exhibit P-21) relating to DO letter, bilty, weighbridge slip of Anjani Steel Ltd., iron rod bill and e-way bill, arrest memo of appellant-Vikas Yadav (Exhibit P-22), arrest memo of appellant Ashish Vishwakarma (Exhibit P-23), seizure memo

(Exhibit P-24) relating to seizure of truck bearing registration number CG-29-AB-9001, post-mortem report (Exhibit P-25), exhumation panchnama (Exhibit P-26), identification panchnama (Exhibit P-27), memorandum statement of appellant Vishal Kashyap (Exhibit P-28), seizure memo (Exhibit P-29) relating to seizure of 94 bundles of iron rods from appellant Vishal Kashyap, memorandum sent by In-charge Police Outpost Rairumakhurd to the Tahsildar Dharamjaigarh (Exhibit P-30), letter (Exhibit P-31) forwarding the spot map and panchnama prepared in presence of witnesses, Patwari spot map (Exhibit P-32), spot map prepared on the pointing-out of appellant-Vikas Yadav and Ashish Vishwakarma (Exhibit P-33), notice (Exhibit P-34) issued to panch witnesses to remain present at the time of preparation of dead body panchnama, panchnama (Exhibit P-35) relating to burial of the dead body of an unknown male in presence of panch witnesses, application (Exhibit P-36) sent to the Sub-Divisional Magistrate, Dharamjaigarh seeking permission for exhumation of the body of deceased Nazir Ahmed, application (Exhibit P-37) sent to the Medical Officer, CHC Dharamjaigarh for post-mortem examination, seizure memo (Exhibit P-38) relating to seizure of documents of vehicle bearing registration number CG-29-AB-9001, seizure memo (Exhibit P-39) relating to seizure of black full-sleeve shirt, silver-grey full pant, one blue necklace and the left femur bone of deceased Nazir Ahmed, notice (Exhibit P-40) issued under Section 91 Cr.P.C to appellant Santosh Gupta for production of seized Radhe TMT iron rods and documents, notice (Exhibit P-41) issued under Section 91 Cr.P.C to accused Vishal Kashyap for production of Radhe TMT iron rod bills and documents, application (Exhibit P-42) seeking information regarding the period of custody of appellant Vikas Yadav and Ashish Vishwakarma in Gurma

Jail, application (Exhibit P-43) sent to the Superintendent of Police, Raigarh for obtaining call details of mobile number 6386122264 of deceased Nazir Ahmed, application (Exhibit P-44) for obtaining call details relating to conversation from mobile number 9516478020, numbered First Information Report (Exhibit P-44-A), application (Exhibit P-45) for obtaining call details relating to conversation from mobile number 9935696977, application (Exhibit P-46) for obtaining call details relating to conversation from mobile number 8127213151, arrest memo of appellant-Vishal Kashyap (Exhibit P-47), intimation of arrest (Exhibit P-54), Rojnamchasanha entries (Exhibits P-45-A to P-48), identification panchnama (Exhibit P-29), intimation of arrest of appellant Santosh Gupta (Exhibit P-50-A), post-mortem report (Exhibit P-50), seizure memo (Exhibit P-51) relating to sealed plastic packet received from hospital, numbered Merg intimation (Exhibit P-52), notice under Section 175 Cr.P.C (Exhibit P-53) for Merg panchnama proceedings, application (Exhibit P-54) sent for post-mortem examination of deceased Mazare Alam to the Medical Officer, Ambikapur, Merg diary (Exhibit P-55) sent by Police Station Ambikapur to Police Station Dharamjaigarh, First Information Report (Exhibit P-56) and (Exhibit P-57), post-mortem report (Exhibit P-58), duty certificate issued by In-charge Police Outpost Raisamadhurya (Exhibit P-59), application (Exhibit P-60) sent to the Nodal Officer of Airtel Company regarding SIM numbers 8127813151 and 9935696977 installed in seized mobile phones, application (Exhibit P-61) sent to the Nodal Officer of Vodafone-Idea Company regarding SIM number 9516478020, application (Exhibit P-62) sent to the Nodal Officer of Airtel Company regarding mobile number 6386322264, and DO letter dated 18.03.2021 of Anjani Steel Limited, Ujalpur, Meswani Article A-1, bilty of 30 tons iron rods dated 19.01.2021 Article A-2,

weighbridge slip Article A-3, TMT iron rod bill amounting to ₹14,98,232/- Article A-4, and e-way bill Article A-5, which have been submitted in the case.

17. The statement of the appellant/convict under section 313 Cr.P.C was recorded wherein they have stated that they are innocent and have been falsely implicated in this case. They expressed their ignorance with respect to some of the questions and some of them were denied as well.
18. The learned trial Judge, after considering the evidence on record, convicted and sentenced the appellants/accused as detailed in the opening paragraph of this judgment. Hence, the present appeal(s) by the appellant(s)/convict.
19. Mr. Pawan Kumar Kashyap, learned counsel appearing for the appellant-Aashish Vishwakarma, Mr. Rajendra Patel, learned counsel appearing for the appellants-Santosh Gupta and Vishal Kashyap as well as Mr. Awadh Tripathi, learned counsel appearing for the appellant-Vikas Yadav submit that they have been falsely implicated in this case. There is no eye witness to the incident and the conviction of the appellant is based on circumstantial evidence. No witness has seen the deceased persons with appellants/accused at any point of time. Though the prosecution has tried to establish the motive, but there was no strong motive for the appellants to commit murder of the deceased. the learned counsel for appellants-Visas Yadav and Ashish Vishwakarma argued that in the present case, the truck was seized in an abandoned condition. The memorandums of appellants Vikas Yadav and Ashish Vishwakarma, Exhibits P-10 and P-12, and the seizures made on their basis vide Exhibits P-11 and P-15, have not been supported by witness Shyam Yadav (PW-4). Shivlochan Yadav (PW-3) is the General Manager of Anjani Steel Plant and is an interested witness, and he has

made exaggerated statements. Even regarding proceedings in which he was not made a witness, he has made exaggerated claims. Therefore, his testimony is not of a reliable nature. No property has been seized from appellant Ashish Vishwakarma on the basis of his memorandum. No person has seen the appellants persons with the deceased. The firearm used in the commission of the offence has not been seized in this case. Further, from the evidence it is clear that the seized iron rods are easily available in the open market. Hence, all these facts make the prosecution story doubtful. Therefore, giving the benefit of doubt, the accused persons should be acquitted.

- 20.** The learned counsel for accused Santosh Gupta and Vishal Kashyap argued that the memorandum of accused Vishal Kashyap, Exhibit P-28, and the seizure proceedings based on it vide Exhibit P-29, have not been supported by witnesses Santosh Singh Thakur (PW-14) and Ramjanak (PW-30). Similarly, the memorandum of appellant Santosh Gupta, Exhibit P-8, and the seizure of iron rods on its basis have not been supported by witness Shyam Yadav (PW-8), and the statements of Shivlochan Yadav (PW-3) are not reliable. Therefore, the prosecution has failed to prove its case against these accused persons, and hence they should be acquitted. As such, they pray for acquittal of the appellants.
- 21.** On the other hand, Mr. S.S.Baghel, learned Government Advocate appearing for the State/respondent submits that the learned trial Court has rightly arrived at a finding with regard to the guilt of the appellants and the learned trial Court was fully justified in convicting and sentencing the appellants for the offences in question. From the post-mortem reports Exhibit P-25 and Exhibit P-58, it is proved that the deaths of deceased Nazir Ahmad and Mazare Alam were homicidal in nature. The

dead bodies of both the deceased were identified by Mohammad Taufiq (PW-27). From the statements of Shivlochan Yadav (PW-3), Manish Matolia (PW-6), Vinod Kumar Chaudhary (PW-7), Shyam Yadav (PW-8) and Adarsh Shuja (PW-23), it is clear that from Anjani Steel Plant, Gerwani, a truck bearing No. CG-29-AB-9001 carrying 30 tons 30 kilograms of iron rods had departed for Adalahat, Uttar Pradesh, with driver Nazir Ahmad and helper Mazare Alam, but they did not reach Adalahat, and they were murdered on the way, and the truck was later found abandoned. Shivlochan Yadav (PW-3) has supported the seizure of iron rods on the basis of the memorandums of the accused persons, and the said witness along with Manish Matolia (PW-6) and Ravindra Nath Pradhan (PW-29) identified the seized iron rods as stolen property in the case. Therefore, the prosecution has succeeded in proving the offence against the accused persons and they should be convicted. The judgment is based on proper appreciation of the evidence available on record and as such, the same does not warrant any interference and the appeal(s) deserve to be dismissed.

- 22.** We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
- 23.** According to the prosecution story, the appellants Vikas Yadav and Ashish Vishwakarma hatched a criminal conspiracy to loot iron rods/bars and to commit murder for that purpose. They contacted the appellants-Santosh Gupta and Vishal Kashyap for purchasing the looted iron rods and, on 19.01.2021, took a lift in truck No. CG-29-AB-9001. Thereafter, they shot dead the driver Nazir Ahmad and the helper Mazare Alam, and disposed of their dead bodies respectively at Kudariya Pond, Police Outpost Rairumakhurd, and Luchki Ghat, Police

Station Ambikapur. They sold 6 tons of iron rods to accused Vishal Kashyap, 20 tons of iron rods to appellant Santosh Gupta, 2 tons of iron rods to an unknown person, and concealed 2 tons of iron rods in the forest behind the dhaba of accused Vishal Kashyap. On the basis of the memorandums of accused Santosh Gupta and Vishal Kashyap, 6 quintals of iron rods were recovered from accused Santosh Gupta and 4 tons 512 kilograms of iron rods from accused Vishal Kashyap. Further, on the basis of the memorandums of accused Vikas Yadav and Ashish Vishwakarma, 2 tons of iron rods were recovered from the forest behind the *dhaba* of accused Vishal Kashyap at the instance of appellant Vikas Yadav.

24. There is no dispute that the death of the deceased Nazir Ahmed @ Bhola and Mazare Alam was homicidal in nature which is evident from the postmortem reports (Exhibit P-25 and Exhibit P-58) and the deposition of the Doctors conducting the postmortem, namely Dr.S.S.Bhagat (PW-11) and Dr. Santu Bag (PW-38). This fact has not been disputed by the learned counsel appearing for the respective appellants. As such, we are of the considered opinion that the finding recorded by the trial Court that death of deceased was homicidal in nature is the finding of fact based on evidence available on record. It is neither perverse nor contrary to record. We hereby affirm that finding.
25. Mukut Ram alias Chandrika Prasad (P.W.-1) has confirmed his signatures on the spot map (Exhibit P-1), the panchnama (Exhibit P-2), and the seizure memos (Exhibits P-4 and P-5), but he has not supported the said proceedings. On being asked leading questions by the prosecution, this witness admitted that there was blood on the *pachari*, i.e. the bathing ghat constructed on the bank of the pond, and that a maroon-coloured seat cover was lying near it; and that in his presence

the proceedings of the inquest panchnama of the dead body, (Exhibit P-2), were conducted, and that the police seized a car jack and a blue-coloured plastic rope in accordance with the seizure memo (Exhibit P-5).

26. Surendra Gupta (PW-2) has stated that the incident was of the year 2021. In the morning, he had gone to take a bath at the Kudariya pond of village Charkhapar. At that time, near the *pachri* (steps/embankment) of the pond, he saw the dead body of an unknown person lying there. The body was submerged in water face-down, and his back was visible. This witness has stated that he gave information at the Rairumakhurd Police Outpost regarding the dead body of an unknown person, on the basis of which *Merg Intimation* (Exhibit P-6) was registered. Nityanand Bhoy (PW-9) stated that near the cattle market pond in Gram Panchayat Charkhapar, the dead body of an unknown person was found.
27. Investigating Officer (*for short, the IO*), James Kujur (PW-16) has stated that on 20.01.2021, for the purpose of burying the said unidentified deceased male, he prepared a *panchnama* (Exhibit P-35) in the presence of panch witnesses. This witness has further stated that on 23.01.2021, the said unidentified male dead body was identified from photographs by the deceased's younger brother Taufeeq Ahmad (PW-27) as Nazir Ahmad, son of Sabbir Ahmad, resident of Badhor, Police Station Babhani, District Sonbhadra (U.P.), in relation to which he prepared the identification *panchnama* (Exhibit P-3). This witness has further stated that on 23.01.2021, he sent an application (Exhibit P-36) to the Sub-Divisional Magistrate, Dharamjaigarh, seeking permission for exhumation of the dead body, and on the same date prepared the exhumation *panchnama* (Exhibit P-37). This witness has further stated that after exhumation of the dead body, Mohammad Taufeeq Ahmad identified the deceased as his younger brother Nazir Ahmad, in respect

of which identification *panchnama* (Exhibit P-27) was prepared in the presence of witnesses.

- 28.** Mohammad Taufeeq (PW-27) has stated that his younger brother, deceased Nazir Ahmad, was a truck driver and his owner was Neeraj Chaudhary of Vishrampur, and the truck which he used to drive bore vehicle number CG-29-AB-9001. This witness has stated that on 19.01.2021, when iron rods were loaded in the truck, his elder son Majare Alam had called his mother at their home and told her that they were coming home. Thereafter, on 20.01.2021, when they called the deceased, the phone was showing switched off. After that, on 21.01.2021, vehicle owner Neeraj Chaudhary called the family members of Nazir Ahmad and informed them that the phone of the deceased was not connecting. This witness has further stated that on 22.01.2021, at about 1:00 p.m., the truck owner informed that the truck vehicle was standing empty in village Dala, District Sonbhadra, Uttar Pradesh, and the driver and his helper were not present. Then they became worried. Thereafter, they contacted other drivers of deceased Nazir Ahmad by phone, who told them that a dead body was lying near Chowki Rairumakhurd. Then they obtained photographs of the dead body through WhatsApp and, after seeing the photograph, identified it. Thereafter, on 23.01.2021, they came to Chowki Rairumakhurd and contacted the Chowki In-charge, who got the dead body exhumed from the ground and showed it to them. Then they took the dead body with them to their home in Uttar Pradesh. The said dead body was of Nazir Ahmad. This witness has confirmed his signature on the identification *panchnama* Exhibit P-27.
- 29.** Mohammad Qadir (PW-28) has also, while affirming the statements of Mohammad Taufeeq (PW-27) and his signatures on the identification

panchnama Exhibit P-27, stated that the dead body was taken out from the place where it had been buried and was identified, and then he and his elder brother Mohammad Taufeeq identified the deceased as their younger brother Nazir Ahmad. In respect of the identification *panchnama* Exhibit P-27, the statements of Mohammad Taufeeq (PW-27) and Mohammad Qadir (PW-28) remained unshaken in cross-examination. From this, it is clear that the unidentified person's dead body which was found at Kudariya Pond, village Charkhapar, Chowki Rairumakhurd, was the dead body of deceased Nazir Ahmad.

30. With respect to the second dead body found in this case, Manbodh (PW-5) has stated that he is the Kotwar of village Kantiprakashpur, District Sarguja, and that near Luchki Ghat, a dead body of a person was found, regarding which he gave information at the Police Station. This witness has affirmed his signatures on the Merg Intimation (Exhibit P-19). Rajesh Ekka (PW-4) has also stated that near Luchki Ghat an unknown person's dead body was found, information of which he gave to Police Station Ambikapur through the Kotwar. Assistant Sub-Inspector Sanjay Kumar (PW-35) has also stated that while posted at Police Station Kotwali, District Ambikapur, information was given at Police Station Ambikapur by Chowkidar Manbodh Surendra that at Luchki Ghat, Kantiprakashpur, the dead body of an unknown person was lying, which was swollen and lying face-down, wearing only an underwear, and a foul smell was emanating from the body; thereupon, Sub-Inspector Abdul Munaf registered a zero-number Merg Intimation Exhibit P-19.
31. Assistant Sub-Inspector Sanjay Kumar (PW-35) further stated that on 07.02.2021 he went to the place of occurrence and prepared the spot map Exhibit P-20, and for the proceedings of the inquest (Merg Panchanama) he issued notices to the witnesses vide Exhibit P-53 and

prepared the inquest report of the unknown dead body (Exhibit P-18). Rajesh Ekka (P.W. 4) has also affirmed the proceedings of the inquest report (Exhibit P-18). PW-35 further stated that during investigation, the relatives of the unknown deceased, Mohammad Taufiq, identified the dead body as that of his son Mazare Alam; thereafter, on 08.02.2021 at 10:35 a.m., in the mortuary room of Medical College Ambikapur, in the presence of witnesses Anwar Hussain and Farooq Sheikh, he prepared the identification Panchanama (Exhibit P-49). Anwar Hussain (PW-25) and Farooq Sheikh (P.W. 26) have also confirmed that in their presence the identification Panchanama Exhibit P-49 was prepared. Both these witnesses have further stated that they also identified the deceased in the dead body identification report Exhibit P-50.

32. Mohammad Taufiq (PW-27) has also affirmed his signatures on the identification *Panchanama* Exhibit P-49 and the dead body identification report (Exhibit P-50), and stated that on 07.02.2021, when the police of Police Station Ambikapur sent photographs to their house through WhatsApp on the mobile phone of Mohammad Qadir, he identified them; thereafter they came to Police Station Ambikapur, where the body was kept and the *Panchanama* proceedings were conducted, after which post-mortem examination was done, and thereafter they took the dead body of Mazare Alam with them to their home in Uttar Pradesh. Mohammad Qadir (PW-28) has also corroborated the statements of this witness in this regard.
33. In relation to the fact that the dead body of the unknown person found at Luchki Ghat, Kantiprakashpur, was that of Mazare Alam, the statements of Mohammad Taufiq (P.W. 27), Mohammad Qadir (P.W. 28), Anwar Hussain (P.W. 25) and Farooq Sheikh (P.W. 26) remained unshaken in cross-examination. From this, it is clear that the said dead body was that

of Mazare Alam.

- 34.** Vinod Kumar Chaudhary (PW-7) has stated that his younger brother, Neeraj Chaudhary, owns four trucks, through which they used to carry on the business of transportation, and he himself used to look after the transportation work. This witness has stated that at the time of the incident, one of their vehicles, loaded with Radhe Brand steel rods, had departed from Raigarh for Uttar Pradesh, and immediately after leaving Raigarh, the driver, Nazir Ahmad @ Bhola, informed him over the phone that the vehicle had been loaded with steel rods and had left Raigarh. However, on contacting the driver the next day, his mobile phone was found switched off. Thereupon, when he checked the location of his truck through GPS, it was found to be moving on the correct route and halting in between. This witness has further stated that after 2-3 days, a call was received from the place where the steel rods were to be delivered, stating that the consignment had not yet reached there. Then, when he again checked the location of the vehicle through GPS, it was found standing outside Chopan city in Uttar Pradesh. Thereafter, he went there along with some of his companions and saw that neither the driver nor the cleaner was present in the vehicle, and some valuable items of the vehicle as well as the steel rods were also missing, and the vehicle was lying in an abandoned condition. Then they informed Chopan Police Station, and through Dharamjaigarh Police Station they came to know that the driver and the cleaner had been murdered.
- 35.** Shivlochan Yadav (P.W. 3), General Manager of Anjani Steel Plant, Gerwani, has stated that their company manufactures TMT steel rods, and on 18.01.2021 a vehicle bearing number 9001 had come to their plant for loading steel rods, and the said vehicle, after loading, departed on 19.01.2021 at about 07:00-07:30 p.m. for Adlahat, District Mirzapur,

Uttar Pradesh. This witness has stated that the whereabouts of the said vehicle could not be ascertained, and after 3–4 days, through GPS it was found that the said vehicle was standing by the roadside at Chopan Bazaar, District Sonbhadra, Uttar Pradesh. Thereafter, on 25.01.2021, he went there along with his driver and saw that blood was spread inside the cabin of the vehicle. On seeing the condition of the vehicle, information was given at Chopan Bazaar Police Station. This witness has further stated that the police personnel asked him to make inquiries, whereupon he ascertained the location of the vehicle through GPS and came to know that the vehicle had been standing during the night in Village Ikdiri, Uttar Pradesh. Thereafter, he went to Ikdiri and made inquiries, but nothing could be found out. Then he gave information in this regard at Rairuma Outpost, Police Station Dharamjaigarh, after which the police personnel went to Uttar Pradesh and conducted investigation.

36. Manish Matolia (PW-6), Sales Manager of Anjani Steel Company, Gerwani, has stated that steel rods under the name “Radhe” are sold by their company. This witness has stated that a vehicle of their company loaded with Radhe steel rods did not reach its destination. Shyam Yadav (P.W. 8), who was a driver at Anjani Steel Plant, Gerwani at the time of the incident, has also stated that steel rods had been loaded from their plant, which were stolen on the way. Ravindra Nath Pradhan (PW - 29), Factory Manager of Anjani Steel Company, has also confirmed this fact that steel rods were sent from their plant to Uttar Pradesh through a truck, which were stolen on the way.
37. Adarsh Shukla (PW-23) has stated that he had got steel rods loaded in a truck from Anjani Steel Plant, which was going to Adlahat, Uttar Pradesh, but on the way, the driver of the said truck, whom they used to

call Bhola, and the cleaner, Mazare Alam, were killed and thrown away, and the steel rods were sold, and the price of the said steel rods was approximately ₹15 to 17 lakhs. On being put leading questions by the prosecution, this witness has admitted that on 21.01.2021, when the vehicle did not reach Adlahat, a trader from there had called him stating that the vehicle had not arrived. Then he contacted the driver on mobile number 8127213151, but the mobile was switched off. Thereafter, he contacted the vehicle owner, who informed him that the vehicle had already departed and would reach by morning. This witness has also admitted that on 22.01.2021, when he was in Palamu, at that time the vehicle owner Vinod Chaudhary informed him that the truck was standing near Chopan and that there were no steel rods loaded in it, and he came to know that the truck driver had been murdered by some person. This witness also admitted the prosecution's suggestion that thereafter he went along with the owners of Anjani Steel Plant to Chopan to find out the whereabouts of the vehicle, where the vehicle was found standing in an abandoned condition, the steel rods were not loaded in the truck, and he met the vehicle owner Vinod Chaudhary. This witness has also admitted that the vehicle bearing truck number CG-29-AB-9001, driven by driver Bhola, had departed from Anjani Steel Plant, Gerwani after loading steel rods for Adlahat, and on the way, after the driver was murdered by unknown persons, the truck and the steel rods loaded therein were looted and taken away and sold. However, in cross-examination, this witness has admitted that at the time when the truck departed from Anjani Steel Plant, Gerwani, he was not present, and he cannot state which driver and cleaner had taken the steel rods, and that he had not lodged any report at Police Station Punjipathra or at any other Police Station regarding the non-arrival of the steel rods.

Nevertheless, his statements regarding the loading of steel rods worth ₹14,98,000/- in truck number CG-29-AB-9001 from Anjani Steel Plant, Gerwani for Adlahat, Uttar Pradesh, the non-arrival of the said truck at Adlahat, and the finding of the truck in an abandoned condition at Village Chopan without steel rods, have remained unshaken in cross-examination

38. Mohammad Taufiq (PW-27) has stated that his younger brother, deceased Nazir Ahmad was a truck driver and that he used to drive truck bearing registration No. C.G.-29-A B-9001 belonging to Neeraj Chaudhary of Vishrampur. This witness stated that on 19.01.2021, when iron rods were loaded in the said truck, his son deceased Majare Alam had called his mother at home and told her that they were coming home. Thereafter, when they tried to call the deceased persons on 20.01.2021, the phones were found switched off. Subsequently, on 21.01.2021, the vehicle owner telephoned the family members of Nazir Ahmad and informed them that the phones of the deceased persons were not connecting. Then, at about 01:00 PM, the vehicle owner informed that the truck was found standing empty at village Dala, District Sonbhadra, Uttar Pradesh, and that neither the driver nor the khalasi was present in it. On this, they became frightened, and they contacted other drivers of the deceased Nazir Ahmad over the phone, who informed them that a dead body had been found near Rairumakhurd. When they obtained photographs through WhatsApp and saw them, the dead body was identified as that of Nazir Ahmad.
39. Mohammad Qadir (P.W. 28) has also corroborated this fact that his younger brother Nazir Ahmad was the driver of the Vishrampur truck bearing registration No. C.G.-29-A B-9001, and that his nephew Majare Alam was the *Khalasi* on the said vehicle. Both of them, on 19.01.2021,

after loading iron rods from Anjani Steel Plant, Raigarh, were going in the said truck to village Adlahat, District Uttar Pradesh. For two days thereafter, their mobile phones were found switched off, and later the manager informed him that from the GPS it was revealed that the truck was standing at village Chopan, Uttar Pradesh, and that its battery and iron rods were missing. Subsequently, they came to know that Nazir Ahmad and Majare Alam had been murdered.

40. The IO, James Kujur (PW-16) has stated that on 24.01.2021, he seized from Vinod Kumar Chaudhary the D.O. letter dated 18.01.2021 of Anjani Steel Limited, Ujjwalpur, Gerwani (Article A-1), the consignment note (bilty) dated 19.01.2021 for 30 tons of iron rods (Article A-2), the weighbridge slip (Article A-3), the bill of T.M.T. iron rods valued at Rs. 14,98,232/- (Article A-4), and the e-way bill (Article A-5), as per seizure memo Exhibit P-21. From the perusal of seizure memo Exhibit P-21, it is shown that the said documents were seized from Vinod Kumar Chaudhary in the presence of Neeraj Chaudhary and Ramashray Yadav; however, Vinod Kumar Chaudhary (P.W. 7) has not confirmed the seizure of the said documents from him, and Ramashray Yadav (P.W. 17) and Neeraj Chaudhary (P.W. 32) have also not confirmed that the said documents were seized from Vinod Chaudhary in their presence.
41. Vinod Kumar Chaudhary (P.W.-7), Ramashray Yadav (P.W.-17) and Neeraj Chaudhary (P.W.-32) have not confirmed the proceedings of the seizure memo Exhibit P-21; however, Articles A-1 to Article A-5 have been duly proved by the IO, James Kujur (P.W.-16), and Vinod Kumar Chaudhary (P.W.-7) has admitted that from his truck, the vehicle driver Nazir Ahmed @ Bhola had departed from Raigarh for Uttar Pradesh after loading Radhe steel bars, due to which the steel bars were stolen

on the way.

42. From the evidence of Shivlochan Yadav (PW-3), Manish Matolia (PW-6), Shyam Yadav (PW-8), Adarsh Shukla (P.W.-23), Mohammad Taufik (PW-27), Mohammad Qadir (P.W.-28) and Ravindra Nath Pradhan (PW-29), it is proved that from Anjani Steel Plant, Gerwani, steel bars were loaded in truck bearing registration No. CG-29-AB-9001 on 19.01.2021 and at about 07:00-07:30 p.m. the truck departed for Adalahat, Uttar Pradesh, and the said truck did not reach Adalahat, Uttar Pradesh, and on the way the steel bars were looted and the vehicle driver Nazir Ahmed and the helper Mazare Alam were murdered. Therefore, there is no question to disbelieve the documents Articles A-1 to Article A-5. From the said documents and the evidence that has come on record in the case, it is clear that on 19.01.2021, in truck bearing registration No. C.G.-29-A.B.-9001, 22 bundles of 8 m.m. steel bars weighing 1.020 metric ton, 417 bundles of 10 m.m. steel bars weighing 20.970 metric tons, 95 bundles of 12 m.m. steel bars weighing 5.020 metric tons, and 54 bundles of 16 mm steel bars weighing 3.020 metric tons, thus in total 30.030 metric tons of Radhe T.M.T. steel bars, were dispatched from Anjani Steel Limited, Ujjvalpur, Gerwani, to M/s Kesari Bhandar, Adalahat, Uttar Pradesh, and the said truck did not reach Adalahat, and on the way Nazir Ahmed and Mazare Alam were murdered and the said steel bars were looted.
43. The question that remains for consideration by this Court is whether the said steel bars were seized from the possession of the appellants and whether the appellants-Vikas Yadav and Ashish Vishwakarma, in execution of a criminal conspiracy, caused the murder of Nazir Ahmed and Mazare Alam and looted the said steel bars, and whether the same were sold by them to the appellants Santosh Gupta and Vishal Kashyap

and other persons, and whether the appellants Santosh Gupta and Vishal Kashyap purchased the steel bars knowing them to be stolen property.

- 44.** It appears that the I.O., James Kujur (P.W.-16) has stated that on 30.01.2021 he recorded the memorandum of appellant-Santosh Gupta, (Exhibit P-8), as per his disclosure, in the presence of witnesses, and in accordance with his disclosure, on the same date, as per the seizure memo (Exhibit P-9), seized 12 bundles of 10 mm Radhe TMT steel bars and one Vivo company mobile phone fitted with SIM number 6386122264 from appellant-Santosh Gupta in the presence of witnesses. This witness further stated that on 17.02.2021 he recorded the memorandum of appellant-Vishal Kashyap (Exhibit P-28), in the presence of witnesses, and as per his disclosure, seized 94 bundles of 10 m.m. Radhe T.M.T. steel bars valued at Rs. 2,20,000/- in the presence of witnesses, as per seizure memo (Exhibit P-29). He further stated that on 24.01.2021 he sent a written intimation (Exhibit P-42) to obtain information regarding the detention of appellant-Vikas Yadav and Ashish Vishwakarma in Jail-Gurma, District Sonbhadra. This witness further stated that on 11.03.2021 he recorded the memorandum of appellant Vikas Yadav (Exhibit P-10), and the memorandum of appellant (Ashish Vishwakarma) Exhibit P-12, as per their disclosures, in the presence of witnesses. He further stated that on 11.03.2021, on the pointing out of appellant-Vikas Yadav, from the jungle behind the dhaba of appellant-Vishal Kashyap at village Dhanwar, 40 bundles of 10 mm Radhe T.M.T. steel bars valued at Rs. 1,05,000/- were seized in the presence of witnesses as per seizure memo Exhibit P-15, and that on 12.03.2021, from appellant-Vikas Yadav, one Itel company mobile phone fitted with an Idea company SIM bearing number 9516478020

and one broken Nokia company mobile phone fitted with an Airtel company SIM bearing number 8127213151 were seized in the presence of witnesses as per seizure memo Exhibit P-11.

- 45.** One of the contentions of the learned counsel for the appellants is that no person has seen the appellant Vikas Yadav and Ashish Vishwakarma with the deceased persons, and that the witness Shyamlal Yadav has not confirmed the proceedings of memorandum (Exhibit P-8, Exhibit P-10) and seizure memos (Exhibit P-9, Exhibit P-11 and Exhibit P-15), and that the statements of Shivlochan Yadav are not of a reliable nature. Similarly, the witnesses Santosh Singh and Ramjanak to memorandum (Exhibit P-28) and seizure memo (Exhibit P-29) have not confirmed the said proceedings; therefore, the statements of the IO, James Kujur and the actions taken by him are not reliable.
- 46.** Undoubtedly, the case rests on circumstantial evidence as there is no eye witness to any of the offences. However, on appreciation of the evidence that has come on record in the present case, it appears that the memorandum of appellant-Santosh Gupta, (Exhibit P-8), the memorandum of appellant Vikas Yadav, (Exhibit P-10), and the seizure proceedings carried out on their basis, in relation to seizure memos (Exhibit P-9, Exhibit P-11 and Exhibit P-15), have not been confirmed by Shyam Yadav (P.W.-8). Similarly, the memorandum of appellant-Vishal Kashyap, (Exhibit P-28), and the seizure proceedings carried out on its basis, in relation to seizure memo Exhibit P-29, have not been supported by Santosh Singh (P.W.-14) and Ramjanak (P.W.-30).
- 47.** Shivlochan Yadav (PW-3) has clearly stated that when the truck dispatched from his company did not reach Adlahat, Uttar Pradesh, they traced its location through the truck's GPS, whereupon the said truck

was found standing at Chopan Market, District Sonbhadra, Uttar Pradesh. Thereafter, along with his driver, he went to Chopan Market on 25.01.2021, where the truck was found standing in an abandoned condition. Subsequently, he went to Police Station Chopan Market and gave information, and thereafter informed Police Outpost Rairuma, Police Station Dharamjaigarh. The police personnel then went to Uttar Pradesh for investigation, and during inquiry it was found that the steel bars had been purchased by Santosh Gupta of Village Ikdiri. PW-3, while affirming his signatures on the memorandum of appellant-Santosh Gupta, (Exhibit P-8) and the seizure memo (Exhibit P-9), stated that the police personnel had interrogated appellant Santosh Gupta in his presence, during which he admitted in his presence that he had purchased the steel bars, and the police personnel seized approximately 4.50 tons of steel bars. This witness further stated that the police personnel were also taking the vehicle's location through GPS, and during the course of investigation the vehicle's location was found at Village Dhanwar situated at the Chhattisgarh border, and on that basis, 5.50 tons of steel bars were recovered from dhaba owner appellant-Vishal Kashyap, and he admitted that some of the steel bars had been used by him for casting in his house. This witness further stated that upon examination of the mobile phones, the police personnel found that appellant Vikas Yadav used to have mobile conversations with Vishal Kashyap. PW-3, while affirming his signatures on the memorandum of appellant Vikas Yadav and Ashish Vishwakarma, marked as Exhibits P-10 and P-12 respectively, and on the seizure memo, Exhibit P-15, relating to the seizure of steel bars on the basis of the memorandum of accused Vikas Yadav, as well as on the seizure memo, Exhibit P-11, relating to the seizure of a mobile phone, stated that when the police

personnel apprehended accused Vikas Yadav and interrogated him, he stated that, together with accused Ashish Vishwakarma, he had hatched a conspiracy, contacted Santosh Gupta, come to Chhattisgarh, and robbed the truck loaded with steel bars and murdered its driver and conductor. He further stated that on the night of 19.01.2021, he and Ashish Vishwakarma boarded the truck after asking for a lift, shot the truck driver in the head and killed him before Rairuma Outpost and threw him into a pond, and shot the cleaner and threw him near Luchki Ghat, near Ambikapur, and thereafter took the truck to Uttar Pradesh and sold the looted steel bars to accused Santosh Gupta and Vishal Kashyap. This witness further stated that appellant Ashish Vishwakarma was also interrogated in his presence, during which he admitted that he had made a plan to loot the truck together with Vikas Yadav and had agreed to support the entire plan. This witness further stated that as per seizure memo Exhibit P-15, one mobile phone and two tons of Radhe TMT steel bars were seized from appellant-Vikas Yadav.

- 48.** It is also the argument of learned counsel for the appellants that as per seizure memo (Exhibit P-9), 6 quintals of iron rods were seized from appellant Santosh Gupta; as per seizure memo (Exhibit P-29), 4 tons 512 kilograms of iron rods were seized from appellant Vishal Kashyap; and as per seizure memo (Exhibit P-11), two mobile phones were seized from appellant Vikas Yadav. Whereas Shivlochan Yadav (PW-3) has stated that 4.50 tons of iron rods were seized from appellant Santosh Gupta, 5.50 tons of iron rods were seized from appellant Vishal Kashyap, and one mobile phone was seized from appellant Vikas Yadav. According to the prosecution story, on the basis of the memorandum of appellant-Vikas Yadav, 2 tons of iron rods were seized from the forest behind the *dhaba* of appellant Vishal Kashyap, but this

witness has stated that the said iron rods were seized from the forest in front of the house of appellant Santosh Gupta. Therefore, the statements of this witness cannot be relied upon.

- 49.** There is no disagreement that discrepancies are present in the statements of Shivlochan Yadav (P.W.-3); however, it is noteworthy that the memorandum and seizure proceedings of the accused persons were carried out between the months of January 2021 and March 2021 on 30.03.2021, 17.02.2021 and 11.03.2021, whereas the court testimony of Shivlochan Yadav (P.W.-3) was recorded approximately 2 years and 9 months later on 22.11.2023. The memorandum and seizure proceedings were conducted at different places, namely village Ikdiri, village Dhanwar, Police Outpost Rairumakhurd and village Mudaila in Uttar Pradesh. With respect to different proceedings conducted at different places within a period of two months, it is not possible for any person to narrate the sequence of events verbatim after about 2 years and 9 months, and the discrepancies that have appeared in the statements of this witness are variations arising in the normal course of human nature, and they are not of such a nature that on their basis alone the entire testimony of this witness should be discarded. In cross-examination, Shivlochan Yadav (P.W.-3) has denied the suggestion that the memorandum of appellant Santosh Gupta, Vikas Yadav and Ashish Vishwakarma were not recorded in his presence. This witness has stated in cross-examination that he went to the village Ikdiri of appellant Santosh Gupta, and that the statements of appellant Vikas Yadav and Ashish Vishwakarma were taken at the Police Station, and he has denied the suggestion that iron rods were not seized from Santosh Gupta. This witness has stated that the seized iron rods were not weighed and that he is stating the weight on the basis of bundles. The

IO, James Kujur (PW-16) has also admitted in cross-examination that the seized iron rods were not weighed. Since the seized iron rods were not weighed, it was natural for discrepancies regarding weight to occur, and it would not be justifiable to grant the benefit of such discrepancy to the accused persons.

50. The IO, James Kujur (PW-16) has also clearly stated that Shivlochan Yadav and Shyamlal Yadav had come to Police Outpost Rairuma, therefore he made both the said witnesses witnesses to the memorandum proceedings. Shivlochan Yadav (PW-3) has stated that he went to Chopan Bazar with his vehicle driver, and thereafter went to Chopan Bazar Police Station and from there to Police Outpost Rairumakhurd. Although Shyam Yadav (PW-8) has not confirmed the memorandum proceedings of Exhibits P-8, P-10 and P-11 and the seizure memos of Exhibits P-9, P-11 and P-15, he has stated that he was working as a driver at Anjani Steel Plant, Gerwani, and in relation to this incident he had gone to Uttar Pradesh along with the owner of the plant, Shivlochan Yadav; and when specific questions were put to him, he admitted that he was working as the driver of Shivlochan and used to take him wherever he had to go. From the statements of this witness, it is proved that in connection with the incident he had gone to Uttar Pradesh along with Shivlochan Yadav, and this fact lends support to the statement of Shivlochan Yadav (PW-3) that the memorandum of the accused persons were recorded and seizure proceedings were conducted in his presence.
51. In the present case, during the course of investigation, the *Rojnamchasanha* (station diary) entries relating to departure and return were produced as Exhibits P-40A to P-43A and Exhibits P-45A to P-48A. From a perusal of station diary (Exhibits P-40A and P-41A), it is

evident that on 26.01.2021 at 20:30 hours, departure was recorded and Sub-Inspector James Kujur, along with staff, left for Uttar Pradesh and Bihar for investigation of the case, visiting villages Chopan, Renukut, Maloghat, Myorpur, Sagobandh, Babhani and Ikdiri, and from village Chopan recovered the looted truck and from appellant-Santosh Gupta recovered the looted iron rods at village Ikdiri, arrested him and returned to the Police Station on 31.01.2021 at 06:15 hours, where return was recorded. Similarly, from station diary (Exhibits P-42A and P-43A), it is evident that on 14.02.2021 at 20:30 hours, the IO Sub-Inspector James Kujur, along with staff, departed for tracing offenders and case property, went to villages Babhani and Myorpur, Uttar Pradesh, obtained documents regarding offences registered against the criminals at Police Station Myorpur, Uttar Pradesh, and thereafter, on 17.02.2021, on the basis of secret information, went to Dhanwar and recovered looted iron rods from accused Vishal Kashyap, arrested him, and returned to the Police Station on 17.02.2021 at 05:00 hours, where return was recorded. Similarly, from station diary (Exhibits P-45A and P-46A), it is evident that the IO, James Kujur, along with staff and witnesses Shivlochan Yadav and Shyam Yadav, on 11.03.2021 at 10:45 hours, departed from Police Outpost Rairumakhurd with appellant Vikas Yadav and Ashish Vishwakarma in a private vehicle to inspect the main scene of occurrence and to recover the looted iron rods, proceeding towards Dharamjaigarh, Ambikapur and Wadraf Nagar, and on the disclosure of Vikas Yadav, recovered 2 tons of iron rods from village Dhanwar, and brought the iron rods and both accused back to the outpost, recording return at 23:30 hours on 11.03.2021. Similarly, from station diary (Exhibits P-47A and P-48A) it is evident that on 11.03.2021 at 03:00 hours, IO James Kujur, witnesses Shivlochan Yadav and Shyam Yadav,

accused Vikas Yadav and staff departed in a private vehicle to recover mobile phones at village Mudaila, Trimuhani, Police Station Maduaadih, and on the disclosure of appellant-Vikas Yadav, seized the mobile phones of the accused and deceased Nazir Ahmad from his house at village Mudaila, Trimuhani, thereafter came to village Ikdiri to trace "Guruji", but as the accused did not disclose his name and address, they returned to the outpost and recorded return on 12.03.2021 at 24:45 hours.

- 52.** From a perusal of station diary (Exhibits P-40A to P-43A) and (Exhibits P-45A to P-48A), it is evident that during interrogation of appellant Santosh Gupta at village Ikdiri on 30.01.2021 and seizure of iron rods as per his disclosure, and similarly during interrogation of accused Vikas Yadav and Ashish Vishwakarma at Police Outpost Rairumakhurd on 11.03.2021, followed by seizure of iron rods from village Dhanwar and seizure of two mobile phones from village Mudaila on 12.03.2021, witnesses Shivlochan Yadav and Shyam Yadav were taken along. These documents also confirm that at the time of preparation of memorandum (Exhibits P-8, P-10 and P-11) and seizure memos (Exhibits P-9, P-11 and P-15), Shivlochan Yadav and Shyam Yadav were present. Witness Shivlochan Yadav (PW-3) himself has confirmed these proceedings.
- 53.** It is also noteworthy that IO James Kujur (PW-16) has stated that on 30.01.2021, after seizure of iron rods from appellant-Santosh Gupta, he got the seized iron rods identified at village Ikdiri by an officer of Anjani Steel Plant, Gerwani, and prepared identification memo Exhibit P-13. Exhibit P-13 shows that identification was conducted by Manish Matolia in the presence of Shivlochan Yadav and Ravindra Nath Pradhan. Manish Matolia (PW-6), Sales Manager of Anjani Steel Plant, Gerwani,

also confirmed that iron rods of his company were found in the godown of appellant-Santosh Gupta at village Ikdiri, Babhani, Uttar Pradesh, and that he identified them and signed Exhibit P-13 (portion B to B). Shivlochan Yadav (PW-3) and Ravindra Nath Pradhan (PW-29) have also confirmed the identification proceedings.

- 54.** Ravindra Nath Pradhan (PW-29) has also stated that police called him to village Ikdiri after seizing stolen iron rods, where he identified them, and at that time there were 10–12 bundles of iron rods. Exhibit P-13 also mentions identification of 12 bundles. There is no material or substantive contradiction in the statements of Manish Matolia (PW-6), Shivlochan Yadav (PW-3), Ravindra Nath Pradhan (PW-29) and IO, James Kujur (PW-16), nor has anything emerged in cross-examination to discredit the proceedings. These testimonies clearly establish that looted iron rods were seized from accused Santosh Gupta at village Ikdiri and identified as Radhe TMT iron rods of Anjani Steel Plant, Gerwani.
- 55.** The IO, James Kujur (PW-16) issued notices under Section 91 CrPC to accused Santosh Gupta and Vishal Kashyap to produce purchase bills, but both admitted purchase of iron rods without bills. Appellant-Vikas Yadav also failed to produce any documents regarding iron rods seized on his disclosure. In this context, Section 106 of the Indian Evidence Act is relevant, which states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Thus, the burden was on accused Santosh Gupta, Vishal Kashyap and Vikas Yadav to explain how the iron rods came into their possession, which they failed to do.
- 56.** From the above evidence, it is clear that 6 quintals 76 kg of iron rods were seized from accused Santosh Gupta, 4 tons 512 kg from appellant

Vishal Kashyap, and 2 tons from accused Vikas Yadav. We hereby affirm the said finding of the learned trial Court.

57. It is an admitted position that no weapon for commission of the crime has been seized in this case. Neither there is any ballistic report nor is there any FSL report nor is there any incriminating evidence so as to connect the appellants-Aashish Vishwakarma and Vikas Yadav with commission of murder of the deceased persons.
58. The case of the prosecution rests on the circumstantial evidence. The Apex Court, in the matter of ***Digambar Vaishnav and Another v. State of Chhattisgarh***¹, the Hon'ble Supreme Court has held as under:

“14. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculcate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional circumstance, if other circumstances unfailingly point to the guilt.

15. This Court in *Jaharlal Das v. State of Orissa*² has held that even if the offence is a shocking one, the gravity of offence cannot by itself overweigh as far as legal proof is concerned. In cases depending highly upon the circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof. The court has to be watchful and ensure that the conjecture

¹ (2019) 4 SCC 522

² (1991) 3 SCC 27

and suspicion do not take the place of legal proof. The court must satisfy itself that various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused.

16. In order to sustain the conviction on the basis of circumstantial evidence, the following three conditions must be satisfied:

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and
- (ii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

17. In *Varkey Joseph v. State of Kerala*³, this Court has held that suspicion is not the substitute for proof. There is a long distance between 'may be true' and 'must be true' and the prosecution has to travel all the way to prove its case beyond reasonable doubt.

18. In *Sujit Biswas v. State of Assam*⁴, this Court, while examining the distinction between 'proof beyond reasonable doubt' and 'suspicion' has held as under: (SCC p. 412, para 13)

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance

³ 1993 Suppl (3) SCC 745

⁴ (2013) 12 SCC 406,

between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense”.

59. In the matter of ***Surendra Kumar and Another v. State of Uttar Pradesh***⁵, the Hon’ble supreme Court has held as under:

“11. As the case against the appellants is entirely based on circumstantial evidence, it is necessary to determine whether the available evidence lead only to the conclusion of guilt and exclude all contrary hypothesis. The enunciation on the law of circumstantial evidence stood the test of time since *Hanumant v. State of Madhya Pradesh*⁶ where Mahajan J., has written as under: (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

5 (2021) 20 SCC 430},

6 (1952) 2 SCC 71 : AIR 1952 SC 343

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

12. The nature, character and essential proof required in criminal cases was discussed in detail by Fazal Ali J in *Sharad Birdhichand Sarda v. State of Maharashtra*⁷ and the proposition of law culled out on circumstantial evidence was approved in many subsequent judgments and was recently reiterated by Krishna Murari J., writing the opinion for a three Judges Bench in *Shailendra Rajdev Pasvan & Ors. v. State of Gujarat & Ors.*⁸ where it was succinctly laid down as under:

“17. It is well settled by now that in a case based on circumstantial evidence the courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Each link unless connected together to form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused.”

60. From the deposition of the witness Ajay Kumar Singh (PW-37) who was posted as Incharge Inspector at Police Station Myorpur, District Sonbhadra, Uttar Pradesh, it transpires that the appellants- Vikas Yadav

⁷ (1984) 4 SCC 116

⁸ (2020) 14 SCC 750

and Ashish Vishwakarma were arrested in Crime Nos. 4/2021 and 5/2021 of Police Station Myorpur, Uttar Pradesh and were in judicial custody, and thereafter, with court permission, were taken on police remand on 11.03.2021, when their memorandum (Exhibits P-10 and P-12) were recorded, and on the basis of memorandum of appellant Vikas Yadav, 2 mobile phones were seized vide Exhibit P-11 and 2 tons of iron rods were seized from the forest vide Exhibit P-15, which has been confirmed by Shivlochan Yadav (PW-3). Regarding seizure of pistol used in the offence, memorandum (Exhibits P-10 and P-12) show that the pistol and cartridges used were seized by Police Station Myorpur, Uttar Pradesh. The final report also mentions that after transfer of the diary and seized articles of Crime No. 5/2021 under Sections 307, 41, 411 IPC and Sections 3, 25, 27 Arms Act of Police Station Myorpur, they would be included in the main offence and after examination of seized arms, a supplementary charge-sheet under Section 173(8) CrPC would be filed. However, no supplementary charge-sheet was filed.

- 61.** On a query being made by this Court with respect to the status of the appellants in the case pending in the State of Uttar Pradesh, Mr. Tripathi submits that as per his information, the appellant-Vikas Yadav has been acquitted of the charges.
- 62.** The death of the deceased persons is homicidal in nature is a finding of fact which has been upheld by this Court. However, it is an admitted position in this case that the police has not seized any weapon of offence alleged to be used for commission of the murder of the deceased persons. The said weapon or the bullets have not been produced before the Court nor is there any ballistic report available which may suggest that the alleged weapon (pistol) was used for commission of the murder and the robbery of iron bars. Except for the memorandum statement of

the appellants, there is nothing which may directly connect the appellants-Vikas Yadav and Ashish Vishwakarma with the commission of murder of the deceased persons.

63. Further, in respect of appellant-Ashish Vishwakarma, this Court finds that the prosecution has failed to establish a complete chain of circumstances connecting him with the commission of either murder or the robbery. There is no reliable last-seen evidence, no recovery of any incriminating article at his instance, and no cogent evidence to prove his participation in the alleged conspiracy. The benefit of doubt, therefore, must go to Ashish Vishwakarma.
64. It is well settled that mere suspicion or conjecture, even if compelling, is insufficient to convict an accused; the prosecution must establish guilt beyond reasonable doubt through legally admissible and reliable evidence. Probability cannot substitute proof, and if two views are possible, the one favouring the accused must prevail.
65. From the above analysis, we are of the considered opinion that the view taken by the learned trial Court with regard to conviction and sentence awarded to the appellant(s) namely Santosh Gupta and Vishal Kashyap is just and proper warranting no interference. Accordingly, the appeal **{Cr.A. No. 573/2025}** filed by them, being devoid of merit is liable to be and is hereby **dismissed**.
66. The appellants-Santosh Gupta and Vishal Kashyap are reported to be on bail. Their bail bonds are cancelled and sureties discharged. They are directed to surrender within a period of three weeks from today failing which they shall be taken into custody to serve out the remaining jail sentence as has been awarded by the learned trial Court.

67. The appeal filed by the appellant-Aashish Vishwakarma {Cr.A. No. 659/2025} is **allowed** and he is acquitted of the charges under Sections 120-B, 397, 302 and 201 of the IPC. He is directed to be released forthwith if not required in any other case.
68. Keeping in view the provisions of Section 437-A of the Cr.P.C. (now Section 481 of the Bhartiya Nagarik Suraksha Sanhita, 2023), the appellant-Aashish Vishwakarma is directed to forthwith furnish a personal bond in terms of Form No. 45 prescribed in the Cr.P.C. for a sum of Rs.25,000/with two reliable sureties in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.
69. The appeal filed by the appellant-Vikas Yadav {Cr.A. No. 698/2025} is **partly allowed**. He is acquitted of the charge under Sections 120-B, 302 and 201 of the IPC but his conviction under Section 397 IPC is upheld, however, the sentence awarded to him for the said offence is altered to 7 years rigorous imprisonment, instead of 10 years.
70. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant-Vikas Yadav is undergoing his jail term, as well as the appellants- appellants-Santosh Gupta and Vishal Kashyap {who are on bail} to serve the same on the said appellants informing them that they are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

- 71.** Let a certified copy of this order alongwith the original record be transmitted to trial Court concerned forthwith for necessary information and action, if any.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Head Note

In a case based on circumstantial evidence, the Courts should adopt a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused.