

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 426 of 2007**

V.K.Pandey, aged about 55 years, son of Late Shri N.P.Pandey, Resident of City Kotwali, Raipur, PS City Kotwali, District Raipur, Chhattisgarh.

---- Appellant

Versus

State through Central Bureau of Investigations, NMDC Rest House, Civil Lines, Raipur, Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Anshul Tiwari, Mr. Aman Tamboli and Mr. Samrath Singh Marhas, Advocates.
For Respondent/C.B.I.	:	Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	:	Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / Complainant	:	Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.

CRA No. 427 of 2007

Abhay Goel, Aged About 31 years, son of Rajeshwar Sharan Goel, Resident of B.34, Tegor Nagar, Police Station Tikrapara, Raipur, District Raipur, Chhattisgarh.

---- Appellant

Versus

The State of Chhattisgarh, through Central Bureau of Investigation (C.B.I) N.M.D.C. Vishram Kaksh, Civil Lines, Raipur, Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Bhaskar Payashi, Advocate.
For Respondent/C.B.I.	:	Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	:	Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / Complainant	:	Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.

**CRA No. 425 of 2007**

Feroz Sidhique S/o Kamaludin Sidhique, aged about 35 years, resident of Cluster Tane, Quarter No. 14, Kashiram Nagar, Raipur, District Raipur, Chhatisgarh.

---- Appellant

Versus

State Of Chhattisgarh Through Central Bureau of Investigation, NMDC Rest House, Civil Lines, Raipur, Chhattisgarh.

---- Respondent

For Appellant	: Mr. Maneesh Sharma, Advocate.
For Respondent/C.B.I.	: Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	: Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / Complainant	: Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.

CRA No. 428 of 2007

Rakesh Chandra Trivedi, aged about 40 years, S/o Late R.L. Trivedi, Sub Inspector Police, Police Line, Durg , Distt.Durg Chhattisgarh.

---- Appellant

Versus

The State of Chhattisgarh, through Central Bureau of Investigation (C.B.I) N.M.D.C. Rest House, Civil Lines, Raipur, Chhattisgarh.

---- Respondent

For Appellant	: Mr. Anshul Tiwari, Mr. Aman Tamboli and Mr. Samrath Singh Marhas, Advocates.
For Respondent/C.B.I.	: Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	: Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / Complainant	: Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.

CRA No. 432 of 2007

Yahya Dhebar Aged About 34 Years S/o Jikar Bhai Dhebar, R/o Baijnathpara, P.S.City Kotwali, Raipur Chhattisgarh.

---- Appellant

Versus



The State of Chhattisgarh, through Central Bureau of Investigation
(C.B.I) N.M.D.C. Vishram Kaksh, Civil Lines, Raipur, Chhattisgarh.

---- Respondent

For Appellant	: Mr. Rajeev Shrivastava, Senior Advocate with Mr. Malay Shrivastava, Mr. Sourabh Sahu, Ms. Kajal Chandra and Ms. Mizba Dhebar.
For Respondent/C.B.I.	: Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	: Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / Complainant	: Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.

CRA No. 438 of 2007

Avinash Singh @ Lallan Singh, aged about 34 years, son of Ranjit Singh @ Ram Bhagat Singh, Resident of Mauparaseen, Police Station Minazpur, District Ajamgarh (U.P.)

---- Appellant

Versus

The State of Chhattisgarh, through Central Bureau of Investigation
(C.B.I) N.M.D.C. Rest House, Civil Lines, Raipur, Chhattisgarh.

---- Respondent

For Appellant	: Mr. Aditya Tiwari, Advocate.
For Respondent/C.B.I.	: Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	: Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / Complainant	: Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.

CRA No. 466 of 2007

Suryakant, aged 48 years, son of Dilipram Tiwari, resident of Purani Basti, Police Station Purani Basti, Raipur, District Raipur, Chhattisgarh.

---- Appellant

Versus

The State of Chhattisgarh, through Central Bureau of Investigation
(C.B.I) N.M.D.C. Rest House, Civil Lines, Raipur, Chhattisgarh.

---- Respondent





For Appellant	: Mr. T.K.Jha and Mr. Amir Khan, Advocates.
For Respondent/C.B.I.	: Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	: Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / Complainant	: Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.

CRA No. 488 of 2007

Amrik Singh Gill son of Sadhu Singh Gill, aged about 52 years, Resident of Tatibandh Udyia Society, Police Station Amanaka Raipur, District Raipur, Chhattisgarh.

---- Appellant

Versus

Central Bureau Of Investigation (C.B.I.) NMDC, Vishram Kaksh, Civil Lines, Raipur, Distt-Raipur, Chhattisgarh.

---- Respondent

For Appellant	: Mr. Anshul Tiwari, Mr. Aman Tamboli and Mr. Samrath Singh Marhas, Advocates.
For Respondent/C.B.I.	: Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	: Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / Complainant	: Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.

CRA No. 491 of 2007

1. Chiman Singh, aged 42 years, son of Late Hom Singh, resident of Jagi Road, Mourigaon, Assam.
2. Harish Chandra, aged 28 years, son of Bhoongaram Sharma, resident of village Jamna, Police Station Dehat Bhind, District Bhind, M.P.
3. Narsi Sharma aged 22 years, son of Sitaram Sharma, Resident of By-pass Road, Bhind, Police Station Bhind, District Bhind, M.P.

---- Appellants

Versus

The State of Chhattisgarh, through Central Bureau of Investigation (C.B.I) N.M.D.C. Vishram Kaksh, Civil Lines, Raipur, Chhattisgarh.

---- Respondent

For Appellant No. 1 and 2	: Mr. Neeraj Mehta, Advocate.
For Appellant No. 3	: Mr. Amiya Bhushan, Advocate.



For Respondent/C.B.I. : Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State : Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / : Mr. B.P.Sharma and Mr. Pushp Kumar Complainant Gupta, Advocates.

CRA No. 534 of 2007

Sunil Gupta aged about 29 (27) years, son of Shri Babulal Gupta, resident of Meera Colony, Behind of Jail, Police Station, City Kotwali, District Bhind, M.P.

---- Appellant

Versus

State, through the Central Bureau of Investigation (C.B.I) Raipur, Chhattisgarh.

---- Respondent

For Appellant : Mr. Amiya Bhushan, Advocate.
For Respondent/C.B.I. : Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State : Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / : Mr. B.P.Sharma and Mr. Pushp Kumar Complainant Gupta, Advocates.

CRA No. 535 of 2007

Raju Bhadauriya aged about 27 (25) years son of Shri Jagdish Singh, resident of Baruli Singh, Sarojani Nagar, Police Station Rural (Kotwali) District Bhind, M.P.

---- Appellant

Versus

State, through the Central Bureau of Investigation (C.B.I) Raipur, Chhattisgarh.

---- Respondent

For Appellant : Mr. Amiya Bhushan, Advocate.
For Respondent/C.B.I. : Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State : Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / : Mr. B.P.Sharma and Mr. Pushp Kumar Complainant Gupta, Advocates.

**CRA No. 536 of 2007**

Anil Pachauri aged about 28 (26) years, son of Shri Radheshyam Pachauri, resident of Meera Colony, Behind Jail, Police Station City Kotwali, Bhind, District Bhind, M.P.

---- Appellant

Versus

State, through the Central Bureau of Investigation (C.B.I) Raipur, Chhattisgarh.

---- Respondent

For Appellant	: Mr. Amiya Bhushan, Advocate.
For Respondent/C.B.I.	: Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	: Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / Complainant	: Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.

CRA No. 537 of 2007

Ravindra Singh @ Ravi Singh aged about 27 (25) years, S/o Shri Bhagwan Singh, R/o Durganagar, Lahar Road, P.S. Rural, Distt-Bhindm. M.P.

---- Appellant

Versus

State, through the Central Bureau of Investigation (C.B.I) Raipur, Chhattisgarh.

---- Respondent

For Appellant	: Mr. Amiya Bhushan, Advocate.
For Respondent/C.B.I.	: Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	: Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / Complainant	: Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.

CRA No. 538 of 2007

Lalla Bhadauriya @ Dharmendra Singh, aged about 26 (24) years, son of Shri Madarsingh, resident of Kisupura, Police Station Surpura, District Bhind, M.P.

---- Appellant

Versus



State, through the Central Bureau of Investigation (C.B.I) Raipur,
Chhattisgarh.

---- Respondent

For Appellant	: Mr. Amiya Bhushan, Advocate.
For Respondent/C.B.I.	: Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	: Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / Complainant	: Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.

CRA No. 539 of 2007

Satyendra Singh aged about 25 (23) years, son of Shri Lal Singh
@ Dorilal, resident of Ashok Nagar, Jamna Road, Police Station
Rural, District Bhind, M.P.

---- Appellant

Versus

State, through the Central Bureau of Investigation (C.B.I) Raipur,
Chhattisgarh.

---- Respondent

For Appellant	: Mr. Amiya Bhushan, Advocate.
For Respondent/C.B.I.	: Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	: Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / Complainant	: Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.

CRA No. 553 of 2007

Shivendra Singh Parihar S/o Kalyan Singh Parihar aged 24 years,
R/o Nandni Road, Near Shiv Temple, Chavni, Distt- Durg, C.G.

---- Appellant

Versus

State Of Chhattisgarh Through Central Bureau of Investigation,
NMDC Rest House, Civil Lines, Raipur, Chhattisgarh.

---- Respondent

For Appellant	: Mr. Neeraj Mehta, Advocate.
For Respondent/C.B.I.	: Mr. Vaibhav A. Goverdhan, Advocate.



For Respondent/State : Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / : Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.
Complainant

CRA No. 616 of 2007

Vinod Singh Rathore S/o Shri Shyamveersingh Rathore, Aged about 30 years, R/o LIG 176, Darpan Colony, Gwalior, P.S. Murar, Gwalior, M.P.

---- Appellant

Versus

State of Chhattisgarh, through Central Bureau of Investigation (C.B.I.) NMDC Vishram Kaksh, Civil Lines, Raipur, Chhattisgarh.

---- Respondent

For Appellant : Mr. K.A.Ansari, Senior Advocate with Smt. Meera Ansari, Advocate.
For Respondent/C.B.I. : Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State : Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / : Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.
Complainant

CRA No. 656 of 2007

Sanjay Singh Kushwaha son of Shri Keshav Chand Kushwaha, aged about 22 years, Occupation-Agriculturist, R/o Ashok Nagar, Bhind, Distt. Bhind, M.P.

---- Appellant

Versus

State of Chhattisgarh, through In-Charge, Central Bureau of Investigation (C.B.I.) N.M.D.C. Rest House, Civil Lines, Raipur, Chhattisgarh.

---- Respondent

For Appellant : Mr. Amiya Bhushan, Advocate.
For Respondent/C.B.I. : Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State : Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / : Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.
Complainant



**CRA No. 703 of 2007**

Rakesh Kumar Sharma son of Tota Ram Sharma, aged about 37 years, Resident of 36, IDPL Babu Gram Rishikesh, District and Police Station Rishikesh, Uttaranchal.

---- Appellant**Versus**

1. The Central Bureau of Investigation, C.B.I. NMDC Circuit House, Vishram Kaksh, Civil Lines, Raipur, Chhattisgarh.
2. The State of Chhattisgarh, through Police Station Modhapara (Collector) Raipur, District Raipur

---- Respondent

For Appellant	: Mr. Satya Prakash Verma and Ms. Ritika Verma, Advocate.
For Respondent/C.B.I.	: Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	: Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / Complainant	: Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.

CRA No. 735 of 2007

1. Vikram Sharma (Died) and deleted as per Hon'ble Court Order Dated 12.10.2023
2. Ashok Singh Bhadoriya S/o Narender Singh Bhadoriya Aged About 27 Years R/o Bhind, Police Station- Dehat, District Bhind, Madhya Pradesh
3. Vivek Singh S/o Kanoi Singh Aged About 25 Years R/o Dharam Nagar, Bye Pass Road, Bhind, Police Station- Bhind, District Bhind, Madhya Pradesh

---- Appellants**Versus**

State of Chhattisgarh Through C.B.I. N.M.D.C., Vishram Kaksh, Civil Lines, Raipur, Chhattisgarh

---- Respondent

For Appellant	: Mr. K.A.Ansari, Senior Advocate with Smt. Meera Ansari, Advocate.
For Respondent/C.B.I.	: Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	: Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Objector / Complainant	: Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.



**CRA No. 922 of 2007**

1. Jambwant S/o Jaimangal Prasad, aged about 20 years, R/o village Kanjha, Police Station Ranipur, District Mau (U.P.)
2. Shyam Sunder S/o Shahjada Sharma, aged about 22 years, resident of village Kanjha, Police Station Ranipur, District Mau (U.P.)
3. Vinod Singh Rajput S/o Jitendra Singh, aged about 21 years, Resident of Post Kanjha, Village Girjapur, Police Station Ranipur, District Mau (U.P.)

---- Appellant**Versus**

Central Bureau of Investigation, (C.B.I) NMDC Rest House Civil Lines, Raipur, Chhattisgarh.

---- Respondent

For Appellant	:	Mr. Vikas Bajpai and Mr. Uttam Pandey, Advocate
For Respondent/C.B.I.	:	Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	:	Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Complainant	Objector /	Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.

CRA No. 966 of 2007

Vishwanath Rajbhar aged about 33 years, son of Jayshree Prasad Rajbhar, Resident of Deendayal Upadhyaya Nagar, Raipur, C.G.

---- Appellant**Versus**

Central Bureau of Investigation, (C.B.I.) NMDC Rest House, Civil Lines, Raipur, Chhattisgarh.

---- Respondent

(Cause Title taken from Case Information System)

For Appellant	:	Mr. Anurag Jha, Advocate.
For Respondent/C.B.I.	:	Mr. Vaibhav A. Goverdhan, Advocate.
For Respondent/State	:	Dr. Sourabh Pande, Deputy Advocate General
For Intervenor/ Complainant	Objector /	Mr. B.P.Sharma and Mr. Pushp Kumar Gupta, Advocates.



Date of Hearing : 29.02.2024
Date of Judgment : 04.04.2024

Hon'ble Mr. Ramesh Sinha, Chief Justice
Hon'ble Mr. Arvind Kumar Verma, Judge

C.A.V. Judgment

Per Ramesh Sinha, Chief Justice

1. The appellants have filed these appeals under Section 374(2) of the Code of Criminal Procedure, 1973 (*for short, the Cr.P.C.*) questioning the impugned judgment dated 31.05.2007 passed in Sessions Trial No. 329 of 2005 by which the learned Special Judge (Atrocities) Raipur, District Raipur, has convicted the appellants and sentenced as under:

CONVICTION UNDER SECTION	:	SENTENCE
Appellant-Chiman Singh, Yahya Dhebar, Abhay Goyal, Feroz Sidhique		
302 of the Indian Penal Code (for short, the IPC)	:	Life imprisonment with fine of 1000/-. In default of payment of fine, 6 moths rigorous imprisonment more.
120-B of the IPC	:	Life imprisonment with fine of 1000/-. In default of payment of fine, 6 moths rigorous imprisonment more.
Appellant-Shivendra Singh Parihar, Vinod Singh Rathore, Rakesh Kumar, Ashok Singh Bhadauriya, Sanjay Singh Kushwaha, Raju Bhadauriya, Ravindra Singh, Narsi Sharma, Satyendra Singh, Vivek Singh, Lalla Bhadauriya, Sunil Gupta, Anil Pachauri, Harishchandra		
302 read with Section 34 IPC	:	R.I. for life and fine of Rs. 1000/-. In default of payment of fine, RI for 6 months.
427 of IPC	:	One year R.I.
Appellant-Suryakant Tiwari, Jambwant, Shyam Sundar, Vinod Singh and Vishwanath Rajbhar and Avinash @ Lallan		
120-B IPC	:	5 years R.I. with fine of Rs. 1000/-. In default of payment of fine, 3 months R.I. more.



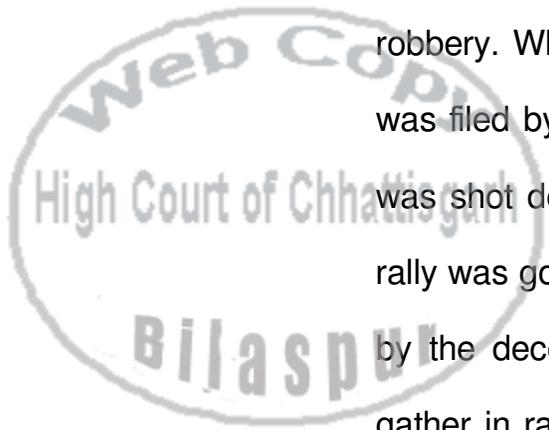
193 IPC	:	5 years R.I. with fine of Rs. 1000/-. In default of payment of fine, 3 months R.I. more.
Appellant-Rakesh Chandra Trivedi, V.K.Pandey, Amrik Singh Gill		
120-B IPC	:	5 years R.I. with fine of Rs. 1000/-. In default of payment of fine, 3 months R.I. more.
193 IPC	:	5 years R.I. with fine of Rs. 1000/-. In default of payment of fine, 3 months R.I. more.
218 IPC	:	2 years R.I.
All the sentences to run concurrently.		

2. The case of the prosecution, in brief, is that one Ram Avtar Jaggi @ Taru Jaggi (*hereinafter referred to as 'the deceased'*), a leader of Nationalist Congress Party was shot at 23:40 hours on 04.06.2003 in his car bearing registration No. CG-04-B-2111 and in this connection a First Information Report was lodged in P.S. Moudhapara, Raipur vide F.I.R. No. 104/2003 for the offence under Sections 447 and 307 I.P.C. on the instance of accused-V.K.Pandey, the Station House Officer of Police Station, Moudhapara. The deceased was sent to Hospital, where he died. On 05.06.2003 at about 2.15 a.m., another report vide F.I.R. No. 105/2003 was registered for the same incident under Section 302 I.P.C. on the instance of Satish Jaggi (PW-41), son of the deceased. Thereafter, 5 accused persons namely- Vinod Singh @ Badal, Avinash Singh @ Lallan, Jambwant Kashyap, Shyam Sunder @ Anand Sharma and Vishwanath Rajbhar were arrested in connection with Crime No. 104/2003 by the State Police and a charge-sheet was filed against them before the concerned Court, the matter was committed and ultimately, it was registered as S.T. No. 334/2003. During the course of trial, an application under Section 173 (8) Cr.P.C. was moved by the Public Prosecutor for allowing a further investigation which was allowed and thereafter, on the instance of the





State Government, the matter was handed over to the Central Bureau of Investigation (*for short, the CBI*) for further investigation and CBI then registered Crime No. R.C-1/5/2004 dated 22.1.2004 under Sections 120-B, 302 and 427 I.P.C and Section 25/27 of the Arms Act. Consequent upon such investigation, the C.B.I filed another charge-sheet against 31 persons including the 5 accused persons of S.T. No. 334/2003. This case was also committed to the Court of Sessions and it was registered as S.T. No. 329/2005. In S.T. No. 334/2003, in which the charge-sheet was filed by the State Police, the prosecution case was that 5 accused persons, referred to above, committed murder of the deceased and the motive of the murder was robbery. Whereas, in S.T. No. 329/2005, in which the charge-sheet was filed by the C.B.I., the prosecution case was that the deceased was shot dead by accused Chiman Singh for political reasons as a rally was going to be organized by the N.C.P. in Raipur on 10.6.2003 by the deceased and it was reported that lacs of people were to gather in rally at Raipur and this posed a political threat to the then Chief Minister Mr. Ajit Jogi and his son Amit Jogi (the acquitted co-accused) and the murder was committed after a criminal conspiracy hatched between Chiman Singh, Amit Jogi, Yahya Dhebar, Abhay Goel and Feroz Sidhique. The CBI alleged that apart from the said accused persons accused Vikram Sharma, Vinod Singh Rathore, Rakesh Kumar Sharma, Ashok Kumar Bhadoriya, Sanjay Singh @ Chunnu, Raju Bhadauriya, Ravindra Singh @ Ravi Singh, Narsi Sharma, Satyendra Singh, Vivek Singh, Lalla Bhadauriya, Sunil Gupta, Anil Pachauri, Harish Chandra and Shivendra Singh Parihar also participated in commission of murder of the deceased. The further case of the prosecution was that then 5 imposters (the





accused persons of S.T. No. 334/2003) were arranged by the real culprits with the help of police officers who had carried a false investigation in Crime No. 104/2003 and a fake and false charge-sheet was filed against them. The imposters and the police officers and the persons who arranged the imposters were arrayed as accused No. 21 to 29 in the C.B.I. case i.e. S.T. No. 329/2005.

3. The learned Special Judge (Atrocities), Raipur, District Raipur, framed charges on 28.11.2005 charging the appellants/convicts as under:

Sl.No.	Name of Accused	Charged under Section
1	Chiman Singh	120-B(1), 302/34, 427/34 IPC
2	Yahya Dhebar	120-B(1), 302/34, 427/34 IPC
3	Abhay Goyal	120-B(1), 302/34, 427/34 IPC
4	Shivendra Singh Parihar	120-B(1), 302/34, 427/34 IPC
5	Feroz Sidhique	120-B(1), 302/34, 427/34 IPC
6	Vikram Sharma (expired)	120-B(1), 302/34, 427/34 IPC
7	Vinod Singh Rathore	120-B(1), 302/34, 427/34 IPC
8	Rakesh Kumar Sharma @ Babu	120-B(1), 302/34, 427/34 IPC
9	Ashok Singh Bhadauriya @ Pintu	120-B(1), 302/34, 427/34 IPC
10	Sanjay Singh Kushwaha @ Chunnu	120-B(1), 302/34, 427/34 IPC
11	Raju Bhadauriya	120-B(1), 302/34, 427/34 IPC
12	Ravindra Singh @ Ravi	120-B(1), 302/34, 427/34 IPC
13	Narsi Sharma	120-B(1), 302/34, 427/34 IPC
14	Satyendra Singh	120-B(1), 302/34, 427/34 IPC
15	Vivek Singh Bhadauriya	120-B(1), 302/34, 427/34 IPC
16	Lalla Bhadauriya @ Dharmendra Singh	120-B(1), 302/34, 427/34 IPC
17	Sunil Gupta	120-B(1), 302/34, 427/34 IPC
18	Anil Pachauri	120-B(1), 302/34, 427/34 IPC
19	Harish Chandra	120-B(1), 302/34, 427/34 IPC
20	Bulthu Pathak @ Mahant	120-B and 193 IPC
21	Suresh Singh	120-B and 193 IPC

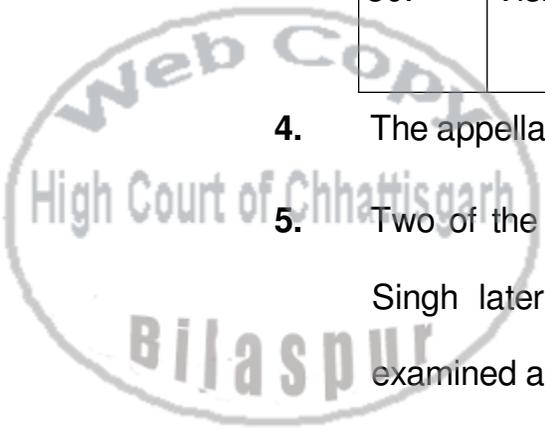


22	Suryakant Tiwari	120-B and 193 IPC
23	Rakesh Chandra Trivedi	120-B, 193 and 218 IPC
24	V.K.Pandey	120-B, 193 and 218 IPC
25	Amrik Singh Gill	120-B, 193 and 218 IPC
26	Avinash @ Lallan Singh	120-B, 302/34, 427 IPC and Section 25(1)(a) of the Arms Act and in the alternative under Sections 120-B, 193/34 IPC.
27.	Jambwant @ Babu	120-B, 302/34, 427 IPC and in the alternative, under Sections 120-B and 193/34 IPC.
28.	Shyam Sunder @ Anand Sharma	120-B, 302/34, 427 IPC and in the alternative 120-B and 193/34 IPC.
29.	Vinod Singh @ Badal	120-B, 302/34 and 427 IPC and in the alternative, under Section 120-B and 193/34 IPC.
30.	Vishwanath Rajbhar	120-B, 302-34, 427 IPC and in the alternative, under Section 120-B and 193/34 IPC.

4. The appellants/convicts denied the charges and prayed for trial.

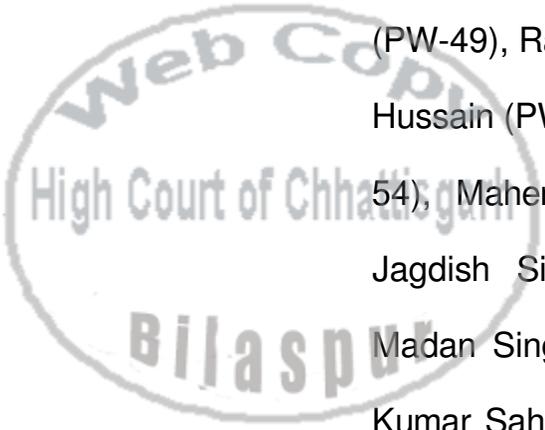
5. Two of the accused namely Bulthu Pathak @ Mahant and Suresh Singh later became the approver and as such, they have been examined as PW-64 and PW-65, respectively.

6. Amongst others, the prosecution has exhibited as many as 169 exhibits and Articles 'A' to 'Q' in support of their case and further, to bring home the offence, prosecution examined as many as 154 witnesses namely, S.S.Shukla (PW-1), Prem Lal Yadav (PW-2), D.P.Mandal (PW-3), Aziz Banerjee (PW-4), G.R. Paikra (PW-5), Mukesh Singh (PW- 6), Dayaram Yadav (PW-7), Brijmohan Giri (PW-8), S.N. Tamrakar (PW- 9), Shivanand Ojha (PW- 10), Ghanshyam Das (PW-11), Anurag Trivedi (PW- 12), Sandeep Singh (PW- 13), R.P. Sharma (PW- 14), Abhijeet Dey (PW-15), Amar Dev (PW-16), Deepak Kumar (PW-17), Parmeshwar Nath (PW-18), Jawahar Lal Mishra (PW-19), B.K.G. Naidu (PW-20), Vimal Tiwari (PW-21), R.S.





Dhruv (PW-22), S.R. Sahu (PW-23), Vijay Kumar Pradhan (PW-24), Pradeep Sharma (PW-25), S.K. Kanwar (PW-26), Gyanu Singh (PW-27), K.K. Dhand (PW-28), C.M. Tiwari (PW-29), Dev Bhushan (PW-30), Kaushal Kishore Shukla (PW-31), Vijay Katkar (PW-32), Harvansh Singh Miri (PW-33), Nitesh Sharma (PW-34), Dr. Shyam Raj Singh (PW-35), Kailash Prasad Verma (PW-36), Mulchand Tiwari (PW-37), Dr. Rajkumar Singh (PW-38), B.L. Dhruv (PW-39), Ravindra Nath Haldar (PW-40), Satish Jaggi (PW-41), Shiv Ji Singh (PW-42), Mohd. Jameel (PW-43), Sanat Kumar Jain (PW-44), Surendra Kumar Sahu (PW-45), Yudhisthir Singh Dhruv (PW-46), Ram Sahay Sahu (PW-47), Prakash Tawri (PW-48), Mohd. Yunus (PW-49), Raees Khan (PW-50), Rajesh Singh Parihar (PW-51), Iqbal Hussain (PW-52), Abdul Jameel Khan (PW-53), Ramratan Bhoi (PW-54), Mahendra Mishra (PW-55), Gaurishankar Shukla (PW-56), Jagdish Singh Bhadauriya (PW-57), Anand Chouhan (PW-58), Madan Singh (PW-59), Nupendra Singh Bilkhu (PW-60), Prashant Kumar Sahu (PW-61), Anil Pradhan (PW-62), Vikas Joshi (PW-63), Mahant @ Bulthu Pathak (PW-64), Suresh Singh (PW-65), Drigpal Tiwari (PW-66), Kedar Prasad Sahu (PW-67), Babulal Sen (PW-68), Dharam Singh Dhruv (PW-69), Manoj Kumar Chouksey (PW-70), Hariom Gupta (PW-71), Karan Saroj (PW-72), Vijay Jain (PW-73), Sachin Jaggi (PW-74), Harish Jaggi (PW-75), Jitendra Makhija (PW-76), Permanand (PW-77), Ramesh Kumar Gupta (PW-78), Shakti Kumar Sahu (PW-79), Hemant Kumar Kashyap (PW-80), Nagendra Rai (PW-81), Jagjeevan Singh (PW-82), Virendra Singh Daga (PW-83), Vimal Kumar Dutt (PW-84), Reginald Jeremiah (PW-85), Shivram Prasad Kalluri (PW-86), R.S. Nayak (PW-87), M.P. Gautam (PW-88), Dr. Anil Verma (PW-89), Amis Das (PW-90), Radheshyam





Soni (PW-91), Kameshwar Baghel (PW-92), Prakash Chand Jain (PW-93), Suresh Jain (PW-94), Nilesh Kumar Pathak (PW-95), Patras Khalkho (PW-96), Siddharth Asati (PW-97), Mukesh Suman (PW-98), Horilal Manhare (PW-99), Raj Singh (PW-100), Krishna Kumar Yadav (PW-101), Prem Bahadur Gurung (PW-102), Bharat Singh Pawar (PW-103), Ajit Singh (PW-104), Vishnu Prasad Thakur (PW-105), Smt. Yamuna Singh (PW-106), Bruno Frank (PW-107), Rajesh Kumar Dubey (PW-108), Shyam (PW-109), K.V. Krishna (PW-110), Congressi Sharma (PW-111), Manoj Tiwari (PW-112), Bablu Masih (PW-113), Harman Michel Khalkho (PW-114), Dinesh Kumar Sharma (PW-115), Mohan Lal Khuntay (PW-116), Sharad Dhankar (PW-117), Prabhas Kumar Parikh (PW-118), Vinay Agrawal (PW-119), Gyanendra Kumar Awasthi (PW-120), Sunil David (PW-121), Teku Nirmalkar (PW-122), Amit Soni (PW-123), Mukti Tirkey (PW-124), Dr. Amod Kumar Singh (PW-125), Rohit Prasad (PW-126), Ranjeet Kusre (PW-127), Banke Bihari Chouhan (PW-128), Dr. Rajendra Singh (PW-129), Anil Verma (PW-130), Dilip Musalik (PW-131), P. Dharmarao (PW-132), Shivkumar (PW-133), Gajanand Gadi Ji Vaid (PW-134), Sunil Kumar Agrawal (PW-135), Anil Sharma (PW-136), Praveen (PW-137), M.R. Nayak (PW-138), N.K.S. Pillai (PW-139), Satpal (PW-140), Smt. Ila Rawat (PW-141), Dr. Smt. Vibharani Dey (PW-142), Sanjay Kumar Shukla (PW-143), Satishchandra Jha (PW-144), J.J. Roy (PW-145), Ashish Gupta (PW-146), K.L. Mojej (PW-147), Raj Singh (PW-148), A.K. Saini (PW-149), Umesh Kumar Goswami (PW-150), Rajesh Khandelwal (PW-151), Chandrashekhar (PW-152), Ramesh Kumar (PW-153) and A.G.L. Kaul (PW-154).





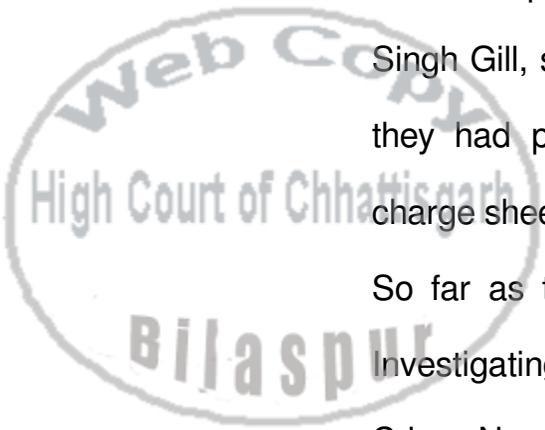
7. The statement of the accused under section 313 CrPC were recorded wherein they have stated that they are innocent and have been falsely implicated in this case. They have expressed their ignorance to the most of the questions and some of them were denied as well.
8. The accused/appellants adduced the evidence of Naeem Siddique (DW-1), Bhartendu Dwiwedi (DW-2), Anil Pillai (DW-3), Ashok Kumar Agrawal (DW-4), V.K. Jain (DW-5), Dharendra Singh (DW-6), Gopal Khonka (DW-7), Arjun Bhagat (DW-8), Michel William (DW-9), Devanshu Bhadauriya (DW-10), Surendra Singh Bagal (DW-11), Janak (DW-12), Ram Gopal (DW-13), Bharat Chaturvedi (DW-14), Komal Lal Deshmukh (DW-15), Sachin Agrahari (DW-16), Tapan Sarkar (DW-17), Raees Siddique (DW-18), Akhil Singh (DW-19), Shekhar Singh (DW-20), Luv Kumar Mishra (DW-21), Atul Singh (DW-22), Satyanarayan Agrawal (DW-23) and got exhibited 23 exhibits, in support of their case.
9. The learned Special Judge (Atrocities) Raipur, District Raipur, after considering the evidence on record, convicted the appellants/accused as detailed in the opening paragraph of this judgment. Hence, the present appeal by the appellants/convicts.
10. In the earlier FIR being No. 104/2003 from which S.T. No. 334/2003, there were five accused namely Vinod Singh @ Badal, Shyam Sundar @ Anand Sharma, Jambwant Kashyap, Avinash Singh @ Lallan and Vishwanath Rajbhar. They all have been acquitted of the charges vide judgment and order dated 31.05.2007 by the learned Special Judge, Special Court, Atrocities, Raipur, District Raipur. In the said trial, 44 Exhibits were exhibited before the learned trial Court and the evidence of 23 witnesses namely Dr. Rajkumar Singh (PW-1), Kaushal Kishore





(PW-2), Krishna Rao (PW-3), Vimal Tiwari (PW-4), Rajkumar Singh (PW-5), Arjun Markam (PW-6), Bhikham Prasad Soni (PW-7), Premalal Yadav (PW-8), Jaid Haidari (PW-9), Bihari Raksail (PW-10), Santosh Nishad (PW-11), Mohd. Gayasuddin (PW-12), Rameshwar Choudhary (PW-13), Guddu Shrivastava (PW-14), Pooran Lal Mahobia (PW-15), Pawan Sarvaiya (PW-16), Mahendra Mishra (PW-17), Jawahar Khanna (PW-18), V.N.Pandey (PW-19), Satish Jaggi (PW-20), Bhartendu Dwivedi (PW-21), Rajesh Mishra (PW-22) and Sarju Prajapati (PW-23) were recorded.

- 11.** Mr. Anshul Tiwari, learned counsel appearing for the accused/appellants-V.K.Pandey, Rakesh Chandra Trivedi and Amrik Singh Gill, submits that the allegation against these persons are that they had prepared incorrect record and false evidence and filed charge sheet against the fake/bogus accused to save the real culprits. So far as the factual aspect of the case is concerned, when the Investigating Officer V.K Pandey had already filed charge-sheet in Crime No. 104/03 and Session Trial No. 334/03 had commenced, there was a change in State Government in State of Chhattisgarh and thereafter the local police sought permission from the court for further investigation under section 173 (8) Cr.P.C and started investigation and pursuant to which statement of Bulthu Pathak (Exhibit D/6) and Suresh Singh under section 161 Cr.P.C (Exhibit D/7) was recorded on 07.01.2004 and thereafter the case was transferred to CBI on 22.01.2004 and Bulthu Pathak (PW-64) and Suresh Singh (PW-65) were arrested on 26.01.2004 i.e after 20 days of their first statement wherein they had already narrated the entire story which itself goes to show that the entire further investigation was done with an ulterior

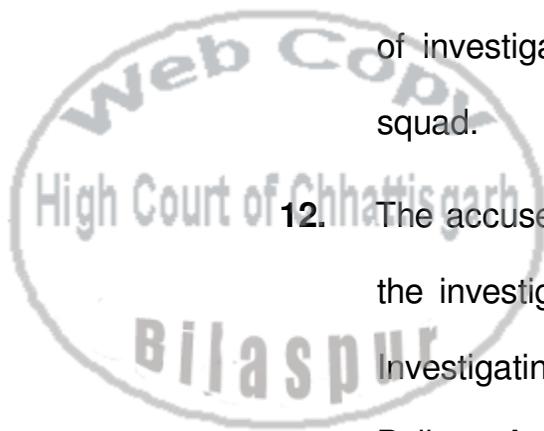




motive and the CBI had entered at the instance of another political party in order to settle political vengeance of which the appellants herein have been made a pawn and falsely implicated. The CBI, for fulfilling the political purpose of this investigation framed the appellants herein by using pick and choose strategy whereof the CBI implicated only V.K.Pandey and A.S Gill out of the investigating team constituted on 05.06.2003 (Exhibit P/32). It is pertinent to mention here that there were 5 officers who were made part of investigating team namely Sohaib Khan, D.K.Sharma, V.K. Pandey, Rajiv Sharma, Bhartendu Dwivedi and Amrik Singh Gill was appointed as supervisor. It is also pertinent to mention herein that R.C.Trivedi was not the part of investigating team and had only assisted as incharge of crime squad.

12. The accused-appellant V.K Pandey was made accused to sabotage the investigation done by him in Crime No. 104/03 as he was the Investigating Officer at the time of incident. The City Superintendent of Police, Amrik Singh Gill was framed merely because he was appointed as Supervisor of the investigating team. R.C.Trivedi was made accused because he was the Incharge of the crime squad at the time of incident and it is also pertinent to mention that Bulthu Pathak (PW-64) and Suresh Singh (PW-65) had previous enmity with R.C.Trivedi as they are history-sheeters and were time and again arrested by the crime squad for various offences which is evident from their cross examination.

13. Mr. Anshul Tiwari would further submit that as far as the legal position is concerned, the procedure for taking cognizance of offences under Section 193 IPC is governed by Section 195(1)(b)(i) read with Section





340 CrPC. It is submitted that there is an absolute bar against taking of cognizance for the offences specified under Section 195(1)(b)(i), Cr.P.C by any means, except upon written complaint by the concerned Court. This is even if the offence of giving false evidence under Section 193 IPC was allegedly committed prior to proceedings before a Court of law. Explanation 2 to Section 193 IPC squarely covers the case in hand since investigation directed by law is specified to be a stage of judicial proceeding. It is also amply clear from the charges framed by the learned trial court wherein it is specified that the alleged offence under Section 193 has been carried out by the accused herein during a stage of judicial proceeding. The cognizance under Section 193 IPC was barred by Section 195(1)(b)(i) Cr.P.C. as no written complaint was lodged by the Magistrate against the appellants, and until and unless the Court trying Session Trial No. 334/2003 gave a finding that the documents/ charge-sheet submitted in that Court were false and fabricated and directed for lodging of complaint against the appellants, the learned Court could not have taken cognizance against the appellants, therefore the offence under Section 193 IPC is not made out, furthermore, the prosecution lodged by the investigating agency against the accused under Section 193 IPC is unsustainable. The appellants herein were public servants, and as such, sanction under Section 197 Cr.P.C was mandatory and the same was not obtained during the trial.

14. The offence under Section 218 IPC is not attracted since the investigation done by the I.O. under the appellant-Amrik Singh Gill was fair and the same gets support from the order of judgment passed in Session Trial No. 334/2003 by the same Judge on the

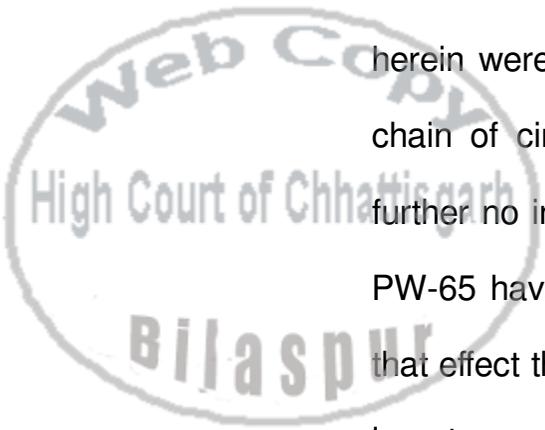




same day as the trial Court has not come to the conclusion that the investigation done by the local police in Crime No. 104/2003 is vague or false on the part of accused No. 23 and 24. No document was found forged by the Court in the investigation done by the accused Nos. 22 to 24 by the Sessions Court, therefore, Section 218 I.P.C. is not attracted and the learned trial Court erred in convicting the accused/appellants under this section.

15. Further, the learned Trial Court has erred in convicting them under Section 120B I.P.C without an iota of evidence to show meeting of minds as from the statement from Bulthu Pathak @ Mahant (PW-64) and Suresh Singh (PW-65), it is not proved as to how the appellants herein were involved in commission of crime so as to complete the chain of circumstances in a manner to prove the conspiracy and further no independent witnesses, or persons named by PW-64 and PW-65 have been examined neither any seizure has been made to that effect therefore, the entire allegations and the basis of conviction is not supported by the evidences available on record. The learned trial Court has erred in convicting the accused under section 120-B and 193 of the IPC by relying on the uncorroborated testimony of Bulthu Pathak (PW 64) and Suresh Singh (PW 65).

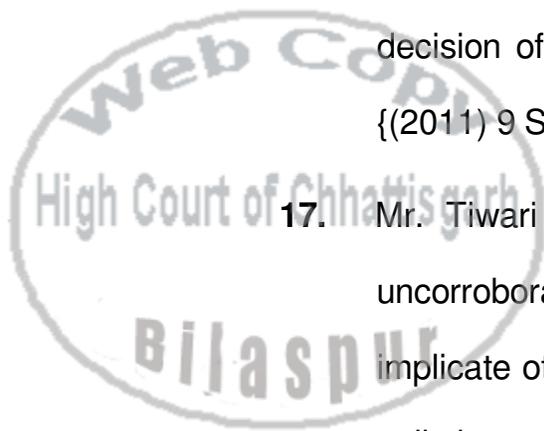
16. Mr. Anshul Tiwari further submits that so far as the value of approver's evidence is concerned, it is a rule of prudence and a universal practice that it is unsafe to rely on uncorroborated testimony of approver. He relies on the decision of the Supreme Court in **Sarwan Singh Rattan Singh v. State of Punjab** {AIR 1957 SC 637}. In the case in hand, the testimony of approvers is suspicious and unreliable for the reason that firstly, they being the tutored witness as they were





prepared by the local police after change of government and secondly, it is uncertain whether CBI has recorded their statement (Exhibit D/31 and D/37) from the Court deposition of Bulthu Pathak (PW 64) at paragraph 25 and Umesh Goswami (PW-150) at paragraph 9 and 13. The approvers have named various other persons involved in commission of crime in their court deposition but they have not been made accused by the CBI. The approver must be an accessory to the crime, however, they have failed to establish the same. There is lack of corroboration of material evidence in order implicate the appellants in the commission of crime and their statements are self-contradictory. Mr. Tiwari further relies on the decision of the Supreme Court in **Mrinal Das v. State of Tripura** {(2011) 9 SCC 479}.

17. Mr. Tiwari submits that it is the settled principle of law that if uncorroborated testimony has to be relied upon his story must implicate other accused in a manner which give rise to conclusion of guilt beyond reasonable doubt. However, in the present case the approver has failed to connect the circumstantial evidence therefore no chain of events has been established in the instant case to believe the story of the approver. Several instances are appreciable in this regard, namely: (a) statement of Nagendra Rai (PW 81) wherein he has stated that he has never arranged any meeting between Suresh Singh and Atul Singh, (b) Statement of Ghanshyam Das (PW-11) wherein he has contradicted the testimony of Suresh Singh and stated that the Marshall jeep was brought to the garage by one Sudhir Choubey (c) Evidence of Ramesh Kumar (PW-153) is contradictory to the statement of PW-11 (owner of Deepu Auto) who has stated that

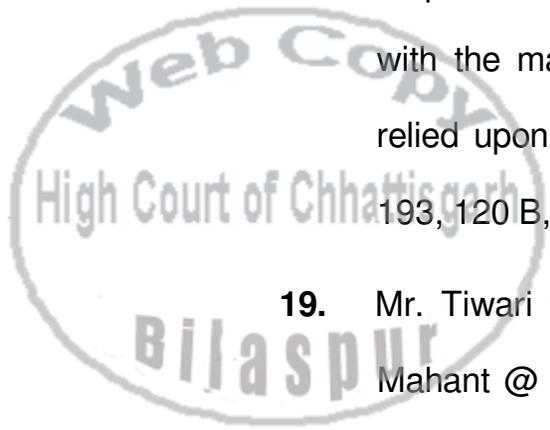




the person who dropped the vehicle was Sudhir Choubey (not examined or made accused). This witness was part of the CBI investigation who has failed to conduct TIP of the persons who left the Marshall vehicle at village Chopan (U.P.) Further, the evidence of Bulthu Pathak (PW-64) and Suresh Singh (PW-65), who are co-accused and who were tendered pardon, was that of the approver and the said evidence has to undergo two tests – namely, (i) witness approver's statement is reliable and his evidence is truthful; (ii) if this is so, then his evidence has to be corroborated on material contents.

- 18.** The testimony of Bulthu Pathak (PW-64) and Suresh Singh (PW-65) as pointed in the below comparative chart have failed to corroborate with the material evidence and therefore their evidence cannot be relied upon to convict the appellants for the offences under section 193, 120 B, 218 IPC.

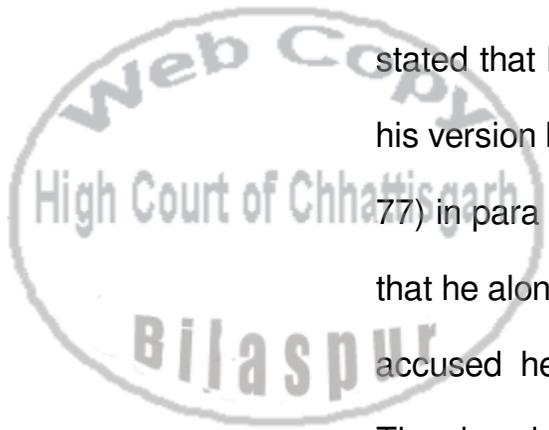
- 19.** Mr. Tiwari draws attention of this Court to the Court statement of Mahant @ Bulthu Pathak (P.W. 64) and Suresh Singh (PW-65) to show the contradictions in their statements given in the Court. Amit Soni (PW-123) who brought accused-Vishwanath Rajbhar to meet Bulthu Pathak turned hostile and denied the story of Bulthu Pathak. Even no call records have been seized (not exhibited by CBI) to corroborate the statement. It is stated by Bulthu Pathak (PW-64) that Vishwanath Rajbhar was a fake accused and was arrested by Crime Squad to make him accused in the instant crime but the same is contradictory to the statement of Jameel Khan (PW-43) who was posted in Crime Squad and has specifically stated in para 9 of his cross examination that just before the incident of murder of Ramavtar Jaggi, Vishwanath Rajbhar was already being searched by the police





for previous murder of a businessman which was done in a similar manner for the purpose of loot and in the instant case also, incident occurred with intention of loot as the deceased also happened to be the treasurer of NCP and upon investigation, it was discovered that Vishwanath Rajbhar along with other co-accused person has conspired the murder of Ram Avtar Jaggi and thereafter he was handed over to the Moudhapara Police Incharge therefore the story narrated by Bulthu Pathak has not been corroborated by the statement of PW-43 or any other evidence.

- 20.** Bulthu Pathak (PW-64) in paragraph 10 has stated that Suryakant Tiwari had called them to meet near Radiant school and it was further stated that he was along with RC Trivedi and 2 other constables and his version has been contradicted by one Constable Parmanand (PW-77) in para 4 has contradicted the version of Suresh Singh and stated that he along with R.C.Trivedi were going to Abhanpur in search of an accused he had stopped by in between when he saw Suryakant Tiwari and they had 5 minutes conversation and they left the place and therefore the evidence of Bulthu is contradictory and not reliable. The statement about Suresh Singh removing Marshall vehicle's chassis number and engine number is contradicting to the evidence of Exhibit P/166 whereby he has stated that Marshall jeep's engine number and chassis number was scored off by Suresh Singh whereas as per Exhibit P/166, the chassis number and engine number of the burnt Marshall vehicle was intact, hence the statement of Bulthu and Suresh is uncorroborated and unreliable.
- 21.** Atul Singh is a hard-core criminal of Ambikapur and as per the statement of Bulthu Pathak (PW-64) he has allegedly helped them in



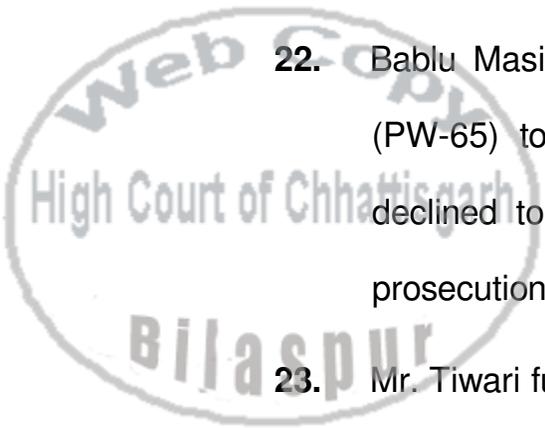


arranging fake accused persons and also in arrangement of another Marshal Jeep by scoring off the engine number and chasis number which was recovered from village Chopan, U.P exhibited as P-21 in S.T No. 334/2003 and the engine number F-1927, chasis number MPL 640 DTHI-8PPXDX-71231 was intact therefore the statement of Bulthu and Suresh is uncorroborated and unreliable. It is important to mention herein that Atul Singh was involved in the crime along with Bulthu and Suresh. In order to corroborate the statement, Atul Singh not been examined neither he was made accused after statement of Bulthu and Suresh which breaks the chain of the inquiry conducted by C.B.I.

22. Bablu Masih (PW-113) was called by Bulthu (PW-64) and Suresh (PW-65) to meet accused/appellant-Suryakant Tiwari but he was declined to be made as accused. He has been examined by the prosecution and not supported the version of approvers.

23. Mr. Tiwari further submits that the statement of Bulthu (PW-64) is self contradictory as in paragraph 25, he has stated that he does not remember of giving any statement to CBI and in cross examination at para 55, he states that he had given statement to CBI but if the same is not mentioned in statement he cannot answer the same, which shows self-contradictory statement by him and improvisation in his own statement which makes him unreliable.

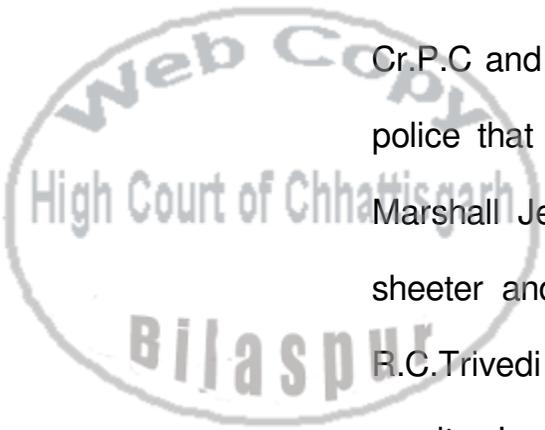
24. This witness was called several times by Moudhapara Police in the month of January after the Government was changed in the month of December 2003 and BJP came into power and local police had started further investigation into murder of the deceased and where he stated everything but he was sent back all the time (which shows





that he was being tutored and getting prepared) and he was neither accused nor a witness in the instant case until C.B.I arrested them. His statement under Section 161 Cr.P.C was recorded on 07.01.2004 (Exhibit D/6) and he was arrested on 26.01.2004 after 20 days of police statement for reasons best known to CBI and was released on default bail due to non-filing of charge-sheet within 90 days by CBI. The entire cross-examination shows improvements in his police statement wherein he never deposed before the police about certain persons, incidents and things and directly stated the same in the court evidence.

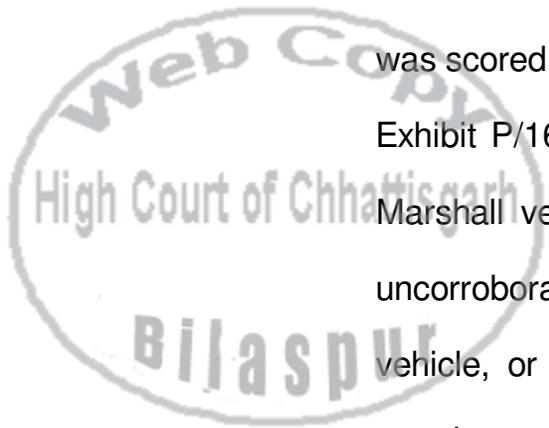
- 25.** There are further contradictions in his statement under Section 161 Cr.P.C and the deposition made in the Court. He had denied telling police that Suryakant Tiwari had given Rs. 3 Lacs for purchasing Marshall Jeep (states that 2.5 lakh was given). He was a history sheeter and was absconding in the year 2001 and the accused- R.C.Trivedi tried to arrest him which shows that he was having enmity. In the cross examination also, Bulthu Pathak has tried to improvise the statement given to the CBI (Exhibit D/37) in his Court statement. As per the statement of Umesh Goswami (PW-150) (the first Investigating Officer of CBI) he has admitted the fact that the statement recorded by C.B.I of Suresh is not present in the record and further in para 14 he has recorded that the statement of Suresh was conventional (usual) in nature. The name of Shekhar Sharma, Tapan Sarkar, Sudhir Choubey, Atul Singh were mentioned in statement by Bulthu and as per the statement they have actively participated in commission of crime either by arranging accused or vehicle but C.B.I has not made them as accused or witness in the instant case in order





to corroborate the version of approver and therefore they are unreliable witness. The statement of Bulthu Pathak and Suresh Singh regarding becoming approver in the name of money is uncorroborated as there is no seizure of any amount or asset converted from the alleged money from either Bulthu or Suresh or from their house.

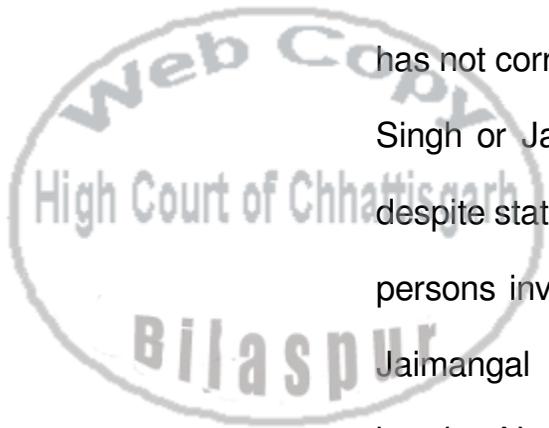
26. Mr. Tiwari further submits that with regard to the second approver namely Suresh Singh (PW-65), his police statement under Section 161 Cr.P.C is Exhibit D/7 and statement given to the CBI is Exhibit D/31. In his Court statement also, there are number of contradictions. This witness contradicts the evidence of Exhibit P/166 whereby he has stated that Marshall jeep's engine number and chassis number was scored off by him by using a chisel and a hammer whereas as per Exhibit P/166, the chassis number and engine number of the burnt Marshall vehicle is intact, hence the statement of Suresh Singh is uncorroborated and unreliable. Further, there was no seizure of vehicle, or exhibition call records, or seizure of mobile number to corroborate the statement of Suresh Singh with respect to role of R.C.Trivedi in the alleged conspiracy. Suresh Singh has named Atul Singh in his story who has allegedly helped in arranging accused and vehicle but Atul Singh has not been examined as witness neither made accused in the case by CBI. This witness has mentioned the name of Vikas Singh in his story as the person who arranged for accused Avinash Singh and Bablu Masih (PW- 113) in Uttar Pradesh but Vikas Singh was neither made accused nor examined as witness. In paragraph 19, Suresh Singh has stated that R.C.Trivedi had supplied a package wrapped in paper, shaped like a gun, which he did not open and see, but his statement in paragarph 35 (of cross





examination) is self- contradictory in which he has admitted that the 'Katta' (*country made pistol*) was already with him which he had kept in his house, and he has further denied the fact that article A1 which is Katta was supplied by R.C.Trivedi to him. Therefore, his story about the chain of events to prove the conspiracy is unreliable. Both Bulthu Pathak and Suresh Singh had suspiciously decided to turn approver together and filed application together.

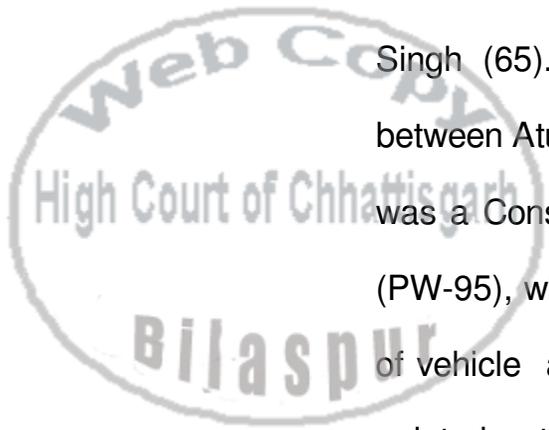
27. In para 17, Suresh Singh stated that Atul Singh purchased the Marshal Jeep in the name of Jaimangal Singh and got the engine number and chassis number removed from Marshall jeep No. CG-15-ZD-0969 and changed the engine of the Marshall jeep, whereas CBI has not corroborated this evidence of Suresh Singh by examining Atul Singh or Jaimangal Singh. Atul Singh has not been made accused despite statement of Suresh Singh against Atul Singh being one of the persons involved in forgery and fabrication of evidence in this case. Jaimangal Singh who is supposed to be owner of Marshall jeep bearing No. CG 15 ZD 0969 has not been examined nor original sale deed has been seized by CBI to corroborate the evidence of Suresh Singh regarding Exhibit P/30A. C.B.I arrested Bulthu Pathak and Suresh Singh on 26.01.2004 from Durg, whereas Bulthu Pathak is a local of Raipur, just after 3 days of transfer of case to C.B.I which is suspicious and evident of the fact that the two are tutored and fake accused prepared by CBI. Default bail was arranged by CBI for Bulthu Pathak and Suresh Singh by intentionally not filing charge-sheet even after 90 days. The same has been corroborated by the testimony of the Investigating Officer A.G.L Kaul (PW-154). Further, the entire cross examination shows improvements in his police statement





wherein he never deposed before the police about certain persons, incidents and things and directly stated the same in the court evidence (similar to that of Bulthu Pathak). Similarly the court evidence has been improvised vis-a-vis statement made to CBI. Regarding arresting of Vishwanath Rajbhar and hiding of gun, name of R.C.Trivedi was not mentioned in statement of Suresh (PW-65) but mentioned in Bulthu Pathak (PW-64) therefore, the same is contradictory to each other.

28. Mr. Tiwari further draws attention of this Court to some of the witnesses namely Nagendra Rai (PW-81) who has not supported the version of the approvers namely Bulthu Pathak (PW-64) and Suresh Singh (65). Nagendra Rai has denied that he arranged meeting between Atul Singh and Suresh Singh. Jagjeevan Singh (PW-82) who was a Constable in Crime Squad has turned hostile. Nilesh Pathak (PW-95), who was also a Constable and a witness relating to seizure of vehicle and witness to the fact that Avinash Singh @ Lallan had pointed out the Garrage in Chopan (U.P.) from where the Marshall Jeep was found and seized as per the Sessions Trial No. 334/2003. Rajesh Dubey @ Pintu (PW-108) is a relative of approver Suresh Singh who was also given an offer by Suresh Singh to become a false accused in the case upon which he was given a sum of Rs. 1 Lac by one Sunil Singh, who is the brother of Suresh Singh. The persons named in paragraph 4 of statement of PW-108, i.e. Sunil Singh, Jambvant's mother, Anand's maternal grandfather were not questioned nor their statement taken by CBI, phone numbers mentioned in paragraph 6 were not verified or investigated by CBI. No recovery of money from PW-108 has been made. Hence, no

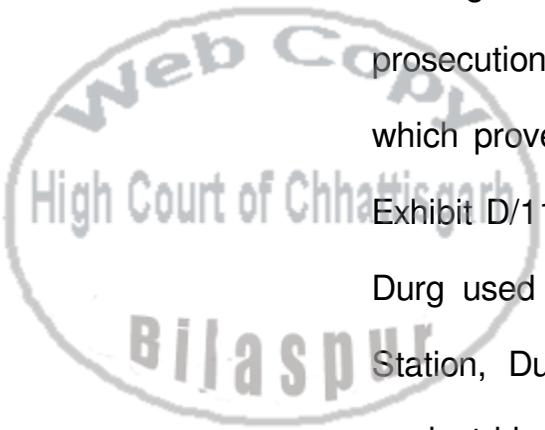




corroboration of PW-65. This witness is not independent and his testimony is unreliable since he has stated in Para 5 that on the day of court deposition he came from the house of Suresh Singh. Further, he stated in para 9 about one Sunil Singh who is the brother of Suresh Singh who has also not been made accused or examined even though he was the person responsible for handing over the money to Rajesh Dubey, no seizure of any phone records and no recovery of money.

29. The other witnesses namely Bablu Masih (PW-113) contradicts the testimony of PW-64 and has turned hostile. Sharad Dhangar (PW-117) who is a Constable (hostile) and from whom the SIM card bearing Mobile No. 98271-95717 was seized vide Exhibit P/112). The prosecution has failed to prove as to in whose name that SIM was which proves that the CBI had produced fake form in the name of Exhibit D/11. Sunil David (PW-121), Sub Inspector in Crime Branch Durg used to call PW-65 several times for interrogation at Police Station, Durg during January, although no crime was registered against him at that time. Amit Soni (PW-123) who is the resident of the locality of Bulthu Pathak, was also declared hostile and has contradicted the testimony of PW-64.

30. It is also argued by Mr. Anshul Tiwari that so far as the evidence relating to crime squad investigation in Crime No. 104/2003 is concerned, Mohammad Jameel (PW-43), Vishwanath Rajbhar was being searched by the crime squad as Vishwanath Rajbhar was an accused in another murder of one Jain businessman carried out in a similar manner with the purpose of loot. His evidence is corroborated by the testimony of Ram Ratan Bhoi (PW-54), Head Constable of Crime Squad, Raipur. The evidence of Rajesh Singh Parihar (PW-

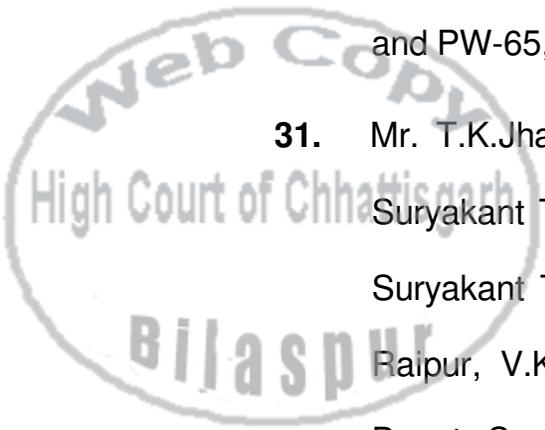




51), Head Constable, Crime Squad, Raipur, proves that the arrest of accused Vishwanath Rajbhar was proper and the allegation that Vishwanath Rajbhar was falsely planted accused by the investigating team, is uncorroborated. Mahendra Mishra (PW-55) Constable in Crime Squad also proves the investigation in similar maner. Another witness namely Anil Pradhan (PW-62) has also proved the investigation in the similar manner. One D.K.Sharma was also a part of the investigating team constituted under the City Superintendent of Police, Amrik Singh Gill, however, he has not been made accused nor examined as witness in the case. Parmanand (PW-77) Constable in Crime Squad, though has contradicted the statement made by PW-64 and PW-65, but he has not been declared hostile.

31. Mr. T.K.Jha, learned counsel appearing for the accused/appellant-Suryakant Tiwari submits that as per the prosecution, the appellant Suryakant Tiwari along with R.C. Trivedi, S.I. Police Crime Squad, Raipur, V.K. Pandey, S.H.O Mouhadapara and Amrik Singh Gill, Deputy Superintendent of Police, in order to save the real culprits had persuaded 5 bogus accused persons and they prepared false documents by which they persuaded Shyamsunder @ Anand Sharma, Jambwant, Avinash Singh @ Lallan Singh, Vishwanath Rajbhar and Vinod Singh Rajput and as such it is alleged that the appellant Suryakant Tiwari has committed offence under Section 120-B and 193 IPC.

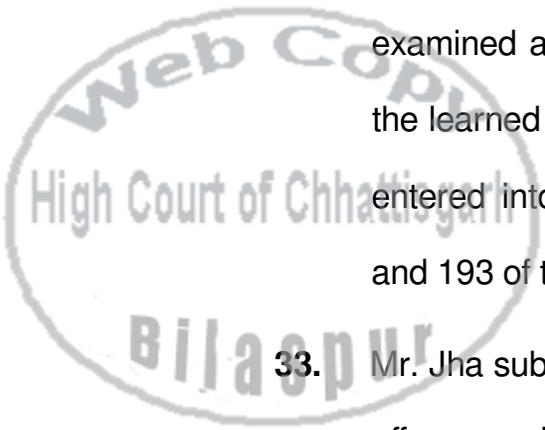
32. As per the CBI, in the month of June-July, 2003, the appellant along with Bulthu Pathak (PW-64), Suresh Singh (PW- 65), co-accused R.C. Trivedi, co accused V.K. Pandey and co-accused Amrik Singh Gill had entered into conspiracy to save real culprits of murder of





Ramavtar Jaggi allegedly committed on 04.06.2003 and by giving heavy amount hired / procured co-accused Vinod Singh, Anand Sharma, Jambwant, Avinash Singh @ Lallan Singh and Vishwanath Rajbhar to the commission of murder of the deceased. The approver Bulthu Pathak (PW-64) thereafter gave details pursuant to which at the instance of Suryakant Tiwari, he procured 5 accused persons and the local police arrested them and prosecuted them for offence under Section 302 and other allied sections for the murder of the deceased. The CBI had made Bulthu Pathak also accused but during the course of trial both Bulthu Pathak (PW-64) and Suresh Singh (PW-65) were tendered pardon, as they turned State witness and they were examined as PW-64 and PW-65 and accordingly on their testimony, the learned trial Judge has come to conclusion that the appellant had entered into criminal conspiracy and charges under Section 120-B and 193 of the I.P.C. were framed against the appellants.

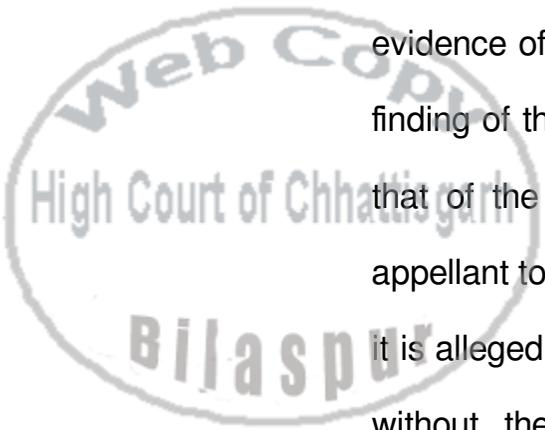
33. Mr. Jha submits that there is no evidence worth the name from which offence under section 120-B or 193 of the I.P.C. is disclosed against the appellant. Because of bar under Section 195 Cr.P.C for taking cognizance under section 193 IPC and bar under section 196 (2) Cr.P.C. for proceeding and taking cognizance under section 120-B IPC. in the absence of a complaint as required by law, all the proceedings against the appellant are bad in law and void *ab initio*. The evidence of Bulthu Pathak (PW-64) and Suresh Singh (PW-65), who are co-accused and who were tendered pardon, was that of the approver and the said evidence has to undergo two tests (i) witness approver's statement is reliable and his evidence is truthful; (ii) If this is so, then his evidence has to be corroborated on material contents.





Even the evidence of Bulthu Pathak (PW-64) and Suresh Singh (PW-65) is completely false, full of contradictions and omissions and there are glaring defects in the said evidence, which has been brought out during cross- examination. There is no independent corroboration to the testimony of the said two witnesses Bulthu Pathak (PW- 64) and Suresh Singh (PW-65). The learned trial Judge has erred in utilizing the statements recorded under section 161 and 164 of the Cr.P.C of Bulthu Pathak (PW-64) and Suresh Singh (PW-65) as substantive evidence and thus has fallen in a grave error which has resulted into grave injustice to the appellant. The evidence of (PW-123) Amit Singh does not inspire confidence and it does not give corroboration to the evidence of Bulthu Pathak (PW-64) and Suresh Singh (PW-65). The finding of the learned trial Judge that the Phone No. 98261-35700 is that of the appellant and one Cell Phone had been given by the appellant to Bulthu Pathak (PW-64) and its number was 3102689 and it is alleged that there was talk on these telephones, but, merely talk without the conversation being available does not make it an incriminating circumstance.

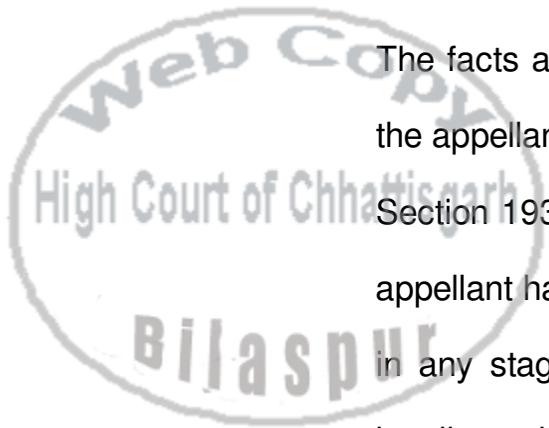
- 34.** Mr. Jha further submits that the evidence of Nagendra Rai, (PW-81) Kedar Prasad (PW-67), Rajesh Kumar Dubey @ Pintu (PW-108), Kangresi Sharma (PW-111), Bablu Masih (PW-113), Jawaharlal Mishra (PW-19), Inspector Satish Chandra Jha (PW-144), Mukesh Singh (PW-6), Manoj Kumar Choukase (PW-70), Ramesh Kumar Gupta (PW-78), Inspector CBI Ramesh Kumar (PW-153), A.G.L.Kaul, DSP CBI (PW-154), Shivanand Ojha (PW-10), Sandip Singh (PW-13), and Vimal Tiwari (PW-21) have not given such evidence which





gives corroboration to the testimony of the approvers Bulthu Pathak (PW-64) and Suresh Singh (PW-65).

- 35.** It is further argued that the transcript of the SCD where the appellant is being confronted with Bulthu Pathak (PW-64) and Suresh Singh (PW- 65), who were also co-accused, and similar statements being given by the appellant for them in presence of Police officers are not admissible in law, as they are hit by Section 162 of the Cr.P.C. The totality of the evidence on these two accounts, that the appellant fabricated any evidence or that he entered into conspiracy to fabricate evidence in order to procure false accused persons in order to save the real culprits is completely baseless and without any foundation. The facts and evidence that have been adduced by the CBI against the appellant do not constitute necessary ingredients of offence under Section 193 of the I.P.C., as there is no evidence on record that the appellant has fabricated false evidence for the purpose of being used in any stage of a judicial proceeding and as such apart from the legality and facts also there is no case made out against the appellant. Similarly, there is not an iota of evidence adduced by the prosecution to make out a case of conspiracy against the appellant and as such the case has to fall apart from the legal provision that has been placed by the defense. The law points and legal situation of the case placed before the learned trial Judge has been miss- appreciated by the learned trial Judge, resulting in verdict of guilt against the present accused appellant. It appears that the learned trial Judge proceeded with prejudice against the appellant and then marred the judicial vision of the Court. The evidence of approver is not believable without corroboration of supporting evidence. The co-accused cannot be



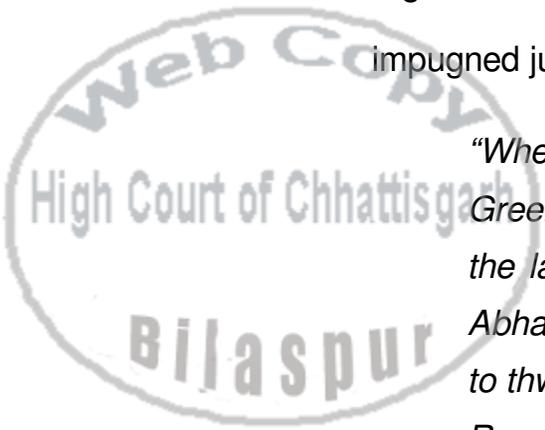


convicted on the same set of evidence upon which main accused has been acquitted. The main accused Amit Jogi has been acquitted, so co-accused also deserve acquitted. He also relies on the decision of **Mrinal Das** (supra).

36. Mr. Rajeev Shrivastava, learned Senior Advocate, assisted by Ms. Kajal Chandra, learned counsel appearing for the appellant/accused-Yahya Dhebar submits that the said accused has been charged for the offences under Section 120-B, 302/24 and 427/34 of the IPC and has been convicted for the offences under Sections 120-B and 302 of the IPC. A question has been framed by the learned trial Court with regard to the appellant-Yahya Dhebar at paragraph 15 of the impugned judgment, the English version of which reads as under:

“Whether before 04/06/2003, during the meetings held in Hotel Green Park, Raipur and Chief Minister's Residence, Raipur in the last week of May the accused Amit Jogi, Yahya Dhebar, Abhay Goel Firooj Siddiqui & Chiman Singh had they agreed to thwart the rally of NCP on 10/06/2003 or to stop NCP leader Ramavatar Jaggi through illegal means or illegal acts?”

37. As per Mr. Shrivastava, the learned trial Court has discussed the investigation carried on by the CBI in its judgment vide paragraphs 6, to 12 according to which the accused Chiman Singh (old supporter of Ajit Jogi, participated in Marwahi and Shahdol election) was called by Amit Jogi to Raipur and was given job at Akash Channel and instructed Yahya Dhebar to make all arrangements of stay and food in Batra House (Akash Channel for M/s A.B.C. Publicity, at 2nd floor), also to provide a new Silver coloured Bolero to Chiman Singh for his personal use and at the same time to provide Rs. 1 lakh to him. Meeting was held at Green Park Hotel (Raipur) between Amit Jogi,





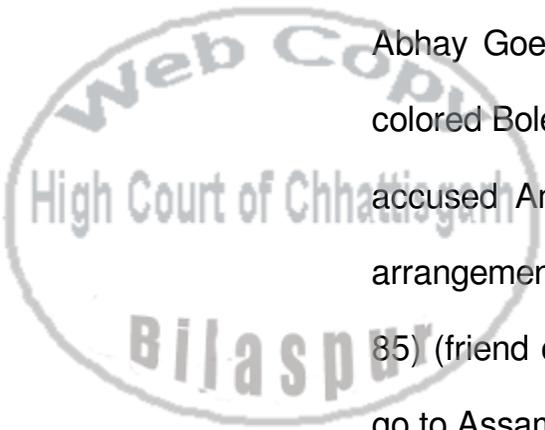
Yahya Dhebar, Abhay Goel how to thwart the NCP rally which was to be held on 10.06.2003 and how to stop the participation of the deceased to attend the rally. A second meeting was held at C.M House (Raipur) between Amit Jogi, Chiman Singh, Yahya Dhebar, Abhay Goel to target the deceased to thwart the rally and for this Chiman Singh and his minions were selected. After the meeting, Yahya Dhebar moved to Gujarat and Amit Jogi and Abhay Goel moved to Dongergarh, Rajnandgaon. Chiman Singh and his minions moved to Batra House and planned to thwart the NCP political rally by hook or crook and asked accused Feroz Siddiquie to provide all the conveniences for the completion of the said work. Whenever it was needed, Feroz Siddiquie used to provide them a rented Maruti Van (Reg. No. M.P./8A/1100) in the name of Akash Channel and accused Shivendra Singh was appointed as the driver. In the light of above criminal conspiracy, at the end of May 2003 Chiman Singh called Vinod Rathore, Vikram Sharma, Rakesh Kumar Sharma alias Baba, Ashok Kumar Bhaduria, Sanjay Singh alias Chaggu, Raju Bhadauria, Ravindra Singh, Narsi, Satyendra Singh, Vivek Singh Bhaduria, Lalla Gupta, Sunil Gupta, Anil Pathoria, Harishchandra and Banke Bihari to Raipur Railway Station and were taken to Batra House in Silver coloured Bolero to Batra House and everything was narrated to them. On 04.06.2003, at 9:30 p.m. accused Shivendra Singh (driver of rented Maruti Van, with naked number plate, overturned by Feroz Siddiquie) contained bamboo sticks, Bisleri bottles filled with petrol came to Batra House along with Banke Bihari Chouhan and Sanjay Singh moved to NCP Office, Budhapara Raipur where meeting was taking place. Silver coloured Bolero was driven by Vinod Rathore. Both the vehicles followed the deceased's Alto car, near Gujarati





School, Maudhapara, Bolero vehicle stopped in front of the deceased's Alto and then all the accused except Banke Bihari got down from their vehicle and started vandalizing the front and rear wind shield of the Alto car and Chiman Singh went near the deceased and shot him down and Rakesh Sharma @ Baba took the Rudraksh Mala of Ramavtar Jaggi with him. All the accused in their respective vehicles moved to Batra House. Chiman Singh called Feroz Siddiquie and told to inform Amit Jogi that the work has been done. Later on, accused Shivendra Singh and Feroz Siddiquie went to hospital and confirmed that the deceased was dead and came back to Batra House and told Chiman Singh and later on called Yahya Dhebar and Abhay Goel through phone. On the next day of murder, the silver-colored Bolero was removed from Batra House by Vinay Agarwal. The accused Amit Jogi gave instruction to Yahya Dhebar to make the arrangement of Rs. 5 lakh and to give it to Rezinald Zeremia (PW-85) (friend of Amit Jogi and first Director of Akash Channel) who will go to Assam and give 5 lakh Rs. to Chiman Singh. The arrangements of his departure to Calcutta were made by Abhay Goel. The CBI investigation proved that the criminal conspiracy was hatched by the accused Amit Jogi, Chiman Singh, Yahya Dhebar, Abhay Goel.

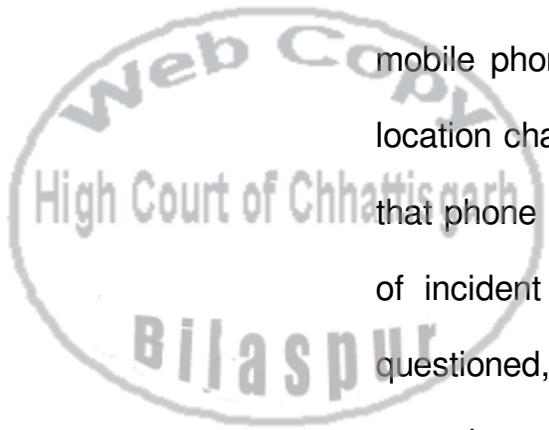
- 38.** Mr. Shrivastava further submits that the appellant-Yahya Dhebar has been convicted by the learned trial Court on the basis of statement made before the learned trial Court by Anand Chouhan (PW-58), Ramesh Kumar (PW-153), Patras Xalxo (PW-96), Prembahadur Gurung (PW-102), Kameshwar Baghel (PW-92), S.R.Naik (PW-87), Prakash Chandra Jain (PW-93), Rohit Prasad (PW-126), Vinay Agrawal (PW-119), A.G.L.Kaul (PW-154) and B.K.G.Naidu (PW-20),





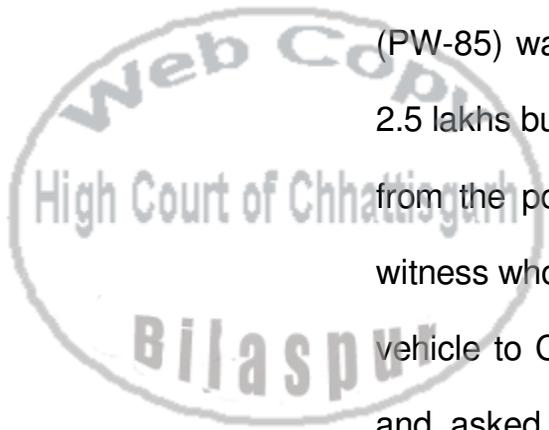
Prabhat Kumar Parekh (PW-118), Siddharth Asati (PW-97), Reginald Jeremiah (PW-85), Babulal Jain (PW-68), Vijay Jain (PW-73), Satish Jaggi (PW-41) and Gauri Shankar Shukla (PW-56).

- 39.** Mr. Shrivastava further submits that so far as the prosecution witness Anand Chouhan (PW-58) is concerned, he was the owner of Shiv Kirpa STD PCO, Kashiram Nagar and was acquainted with Feroz Siddiquie (resident of Kashiram Nagar) used to visit as customer in his STD booth. He stated that mobile No. 98261-49999 did not belong to Yahya Dhebar and the said SIM was in his name and Yahya Dhebar never used the SIM for his use. He further denies that on the date of murder of the deceased, Yahya Dhebar had used the said mobile phone. On the basis of the call details (Exhibit 103A) and location chart (Exhibit 104) the CBI investigation came to conclusion that phone No. 98261-49999 belonged to Yahya Dhebar on the date of incident the location of the mobile was in Gujarat and when questioned, as the said witness was unable to answer it, CBI has come to conclusion that all the accused namely Chiman Singh, Yahya Dhebar, Abhay Goel, Feroz Siddiquie and Reginald Jeremiah (PW-85) were in contact with each other even before and after the incident.
- 40.** Mr. Ramesh Kumar (PW-153) who is the Inspector, CBI, on the basis of statement of Anand Chouhan (PW-58) has arrived at a conclusion that the aforesaid mobile phone No. 98261-49999 was used by Yahya Dhebar, though the same was in the name of Anand Chouhan.
- 41.** Patras Khalkho (PW-96) and Prebahadur Gurang (PW-102) who were deployed on security duty at CM's house were also not able to recognize the accused-Yahya Dhebar. Another witness namely Kameshwar Baghel (P/W-92) who is the Assistant Platoon



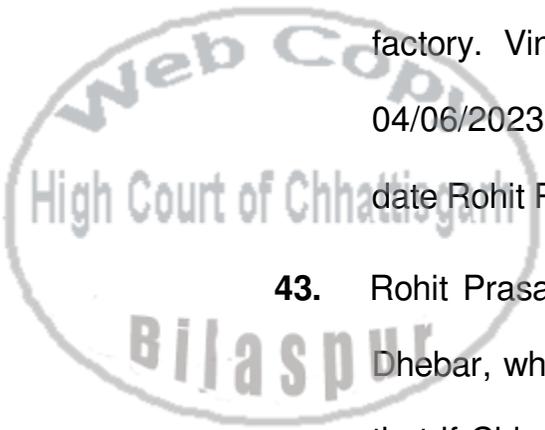


Commander deployed in security duty at CM's house has also turned hostile and stated that except Amit Jogi, he does not recognize any other accused. S.R.Naik (PW-87) was posted as Superintendent, Security Police at CM's house who stated that Yahya Dhebar, Chiman Singh visited the CM's house but there were many other visitors also. Thus, the prosecution does not get any benefit from the names of the accused in the visitors register because the dates on which the accused are mentioned to have come to the CM's residence were not recognized by the security personnel. Another prosecution witness Prakash Chandra Jain (PW-93) is the Consultant Chartered Accountant of Akash Channel. He stated that Reginald Jeremiah (PW-85) was issued a letter to give the details of expenditure of 2 – 2.5 lakhs but was unable to provide the same hence, he was removed from the post of Director. Rohit Prasad (PW-126) is also a hostile witness who stated that the accused Amit Jogi had told him to provide vehicle to Chiman Singh but he said there was no vehicle available and asked Vinay Agrawal to provide the vehicle to Yahya Dhebar whenever needed. Vinay Agrawal (PW-119) is the school friend of Abhay Goel and Yahya Dhebar and partner in ABC publicity with Rohit Prasad (PW-126). Bolero bearing registration No. CG 4P/3835 which was handed over to Yahya Dhebar; the registration work was done after a month from the date of handing over of the vehicle. Later on, Yahya Dhebar returned the vehicle back to him and said whenever he will need the vehicle will ask for it, after one month Rohit Prasad (PW-126) called for Bolero as it was required at CM's House. (may be on 11/06/2003). Yahya Dhebar was out of station gave his Bolero to Vinay Agarwal and kept his Bolero with him.





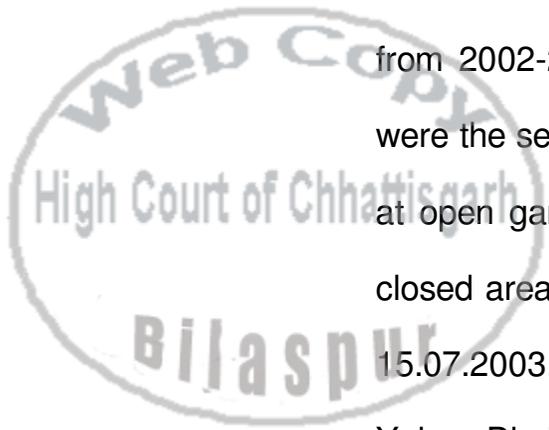
- 42.** A.G.L.Kaul (PW-154) and B.K.G. Naidu (PW-20) (both DSP, Police Officer & Aykar nirikshak) accused that Chiman Singh told that silver coloured Bolero without number used in crime was provided through Yahya Dhebar and was purchased by Rohit Prasad (PW-126) and Vinay Agarwal (PW-119) for the ABC Publicity Company. Rohit Prasad stated that on the instruction of Amit Jogi sometimes he used to provide Rs. 10, 20, 25 thousand to Yahya Dhebar for the political work. When there was requirement of vehicle in Delhi then told Yahya Dhebar to send Bolero, among the 4 Bolero's. Bolero No. (CG 4P/3835) was sent to Delhi in which Ranjit Kusre (PW-127) was driver. The CBI seized the aforesaid vehicle from Ranjit Kusre's factory. Vinay Agrawal (PW-119) went to Bilaspur in Bolero on 04/06/2023, after return from Bilaspur. The Bolero was with him till the date Rohit Prasad (PW-126) asked for the Bolero for the CM's house.
- 43.** Rohit Prasad (PW-126) stated that Batra House belonged to Aizaz Dhebar, who is brother of Yahya Dhebar. He had told Yahya Dhebar that if Chiman Singh comes to Batra House to stay there, he should not be allowed to stay then Yahya Dhebar said that he had received telephonic call from Congress Party for making arrangement for the stay of Chiman Singh.
- 44.** Mr. Shrivastava submits that so far as the telephonic conversation between Yahya Dhebar, Abhay Goel, Feroz Siddiquie and Chiman Singh is concerned, the same is not admissible in evidence as provided by Bruno Frank (PW-107) as the information was not obtained directly from server but from an e-mail and the same has not been verified by any responsible officer. So far as the polygraph examination and brain mapping is concerned, the same is





inadmissible as it was conducted by an unqualified doctor. Dr. Amod Kumar Singh (PW-125) could not produce his testimony regarding qualification for polygraphy examination.

- 45.** Prakash Kumar Parekh (PW-118) was residing in Batra House and looking after the meals of the employees of Akash Channel. He was declared hostile as except Yahya Dhebar, he could not identify any of the other accused persons. Siddharth Asati (PW-97) joined the Akash Channel in January 2003. Rohit Prasad (PW-126), in paragraph 32 of his deposition, has stated that he had given false testimony in front of the Magistrate at Delhi and stated that he was pressurized by the CBI to do so. Vijay Jain (PW-73) who is the Manager of Green Park Hotel from 2002-2004 stated that Abhay Goel, Amit Jogi, Yahya Dhebar were the seldom visitors in a month and they used to come for dinner at open garden area and never had their dinner in a room or in a closed area. No meetings were held in the rooms of the hotel before 15.07.2003. Satish Jaggi (PW-41) has merely stated that Ajit Jogi, Yahya Dhebar and Abhay Goel, Suryakant Tiwari, Vikas Bajaj etc. were very close to each other and were very powerful persons. Similarly, Gauri Shankar Shukla (PW-56), who is friend of the deceased, has only stated that Amit Jogi, Yahya Dhebar, Abhay Goel were very close to each other and they used to carry out the political work for Amit Jogi.
- 46.** Reginald Jeremiah (PW-85) who was appointed as Director of Akash Channel and later on he was fired by Amit Jogi because of his insincerity and dishonesty. He was in Calcutta but he has not proved that Amit Jogi had told him to give money to Chiman Singh through Yahya Dhebar. No call details regarding the money handed to Chiman

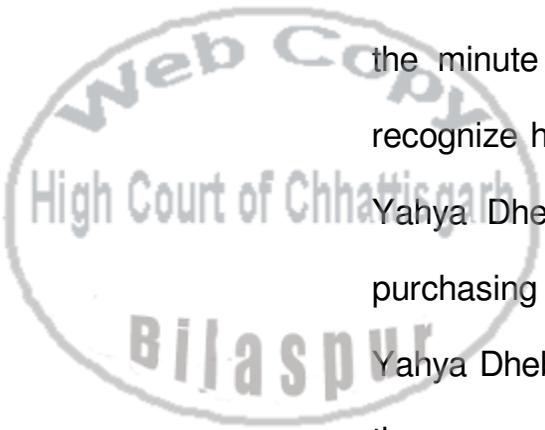




Singh through Reginald Jeremiah (PW-85) was found but the call details of accused Feroz Siddiquie, Abhay Goyal, Chiman Singh and Yahya Dhebar were investigated. Reginald Jeremiah (PW-85) is in the accomplice category and such witness would not be believed unless there is any truth or important support in his testimony. He was threatened by the CBI for giving his statement and if not, then he would also be made an accused. The evidence of this witness is of the nature of co-accused and is contradictory.

47. Mr. Shrivastava would submit that the exhibits produced before the learned trial Court are also not conclusive proof with regard to the criminal conspiracy. There is no entry of the name of Yahya Dhebar in the minute book of CM's house and even the guards denied to recognize him. The phone number 98261-49999 does not belong to Yahya Dhebar and the ration card provided for verification while purchasing the SIM belongs to Anand Chouhan (PW-58) and not Yahya Dhebar. Even the authenticity of the call details is doubtful as they were not the outcome of server but were the result of e-mail sent to Bruno Frank (PW-107) at Nagpur and also not attested by any competent authority.

48. Mr. Shrivastava submits that the appellant-Yahya Dhebar has been charged under Section 120-B(1), 302/34 and 427/34 of the IPC. Even if the entire contents of the charge sheet are taken as correct, it does not constitute or proves that it was the appellant who has done any act which may amount to any of the offences. A bare perusal of the entire facts of the case alongwith the statements of witnesses and exhibits in the present case would show that the entire prosecution case is based on surmises and conjectures. Further, a bare perusal of

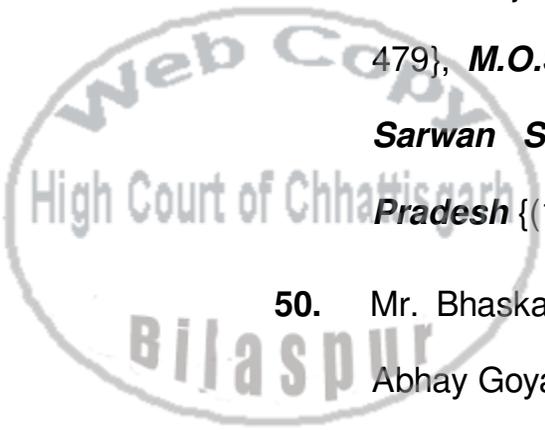




examination of the appellant under Section 313 Cr.P.C. would show that the prosecution has not given any direct suggestion to the appellant with regard to the entire facts of the present case. The conviction is based on circumstantial evidence and the primary principle of circumstantial evidence is that the accused 'must be' and not 'may be' guilty before a Court.

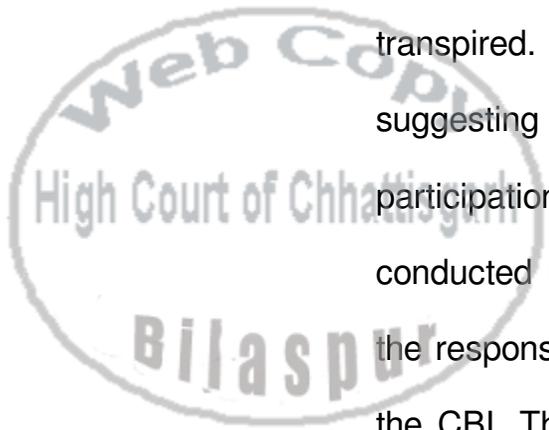
49. Mr. Shrivastava relies on the decisions of the Supreme Court in **Raja Naykar v. State of Chhattisgarh** {2024 SCC OnLine SC 67}, **Pradeep Kumar v. State of Chhattisgarh** {(2023) 5 SCC 350}, **Digamber Vaishnav & another v. State of Chandigarh** {(2019) 4 SCC 522}, **Mrinal Das & Others v. State of Tripura** {(2011) 9 SCC 479}, **M.O.Shamsudhin v. State of Kerala** {(1995) 3 SCC 351}, **Sarwan Singh** (supra) and **Hanumant v. State of Madhya Pradesh** {(1952) 2 SCC 71}.

50. Mr. Bhaskar Payashi, learned counsel appearing for the accused-Abhay Goyal submits that the allegation leveled against the accused-Abhay Goyal is that he was a member of the team involved in conspiracy and participated in alleged meeting held in Hotel Green Park and Chief Minister's House. The appellant comes from a reputed family and is having a business background. His father was running Shri Ganesha Colour & Chemical Company in the year 1974 and accused joined the family business in the year 1988. The accused constituted another Company namely Shri Ganesha Global Gulal Pvt. Ltd. and he was the founder Director of the Company. At present appellant's elder brothers are running this Company. In the year 2019, Abhay Goyal constituted another Company Holy Gala Fun Pvt. Ltd. and around 225 workers are employed in his Company. It is most





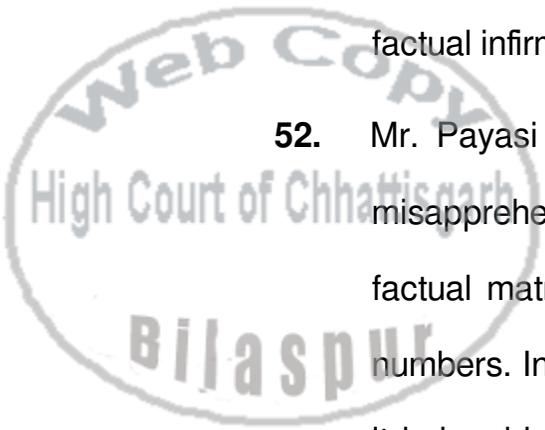
humbly submitted that the accused-Abhay Goyal was neither involved in politics nor having primary membership of any political party. As per prosecution story in the night of 04.06.2003, around 11:30 PM, the deceased was travelling in his Alto Car. Round 100 yards away from the Moudhapara Police Station, Raipur, it is alleged that his car was intercepted and subsequently overtaken by two other vehicles, resulting in damage to deceased's vehicle. In the ensuing events, as the deceased tried to come out from his vehicle, at that point time Chiman Singh caused gun-shot injury to the deceased. The prosecution notably, does not allege or contend that the present appellant was present at the site of the murder when same had been transpired. Furthermore, there is no assertion by the prosecution suggesting that the appellant was directly involved or had any participation in the murder of the deceased. The investigation was conducted by the local Police authorities and later, on 22.01.2004, the responsibility for further investigation was formally transferred to the CBI. The accused was taken into custody on 25.04.2005. It is pertinent to that during the course of his arrest and subsequent Investigation, no incriminating material or evidence was discovered or seized from the appellant. Even during the trial, there was conspicuous absence of any testimony that placed the appellant at the scene of the incident or suggested his active or passive participation in the tragic demise of the deceased. The appellant's stance throughout the proceedings has been consistent, asserting an unequivocal denial of the accusations leveled against him. He contends that the charges and the purported evidence presented against him are not just baseless, but also suggestive of a calculated attempt to falsely implicate him in the matter.





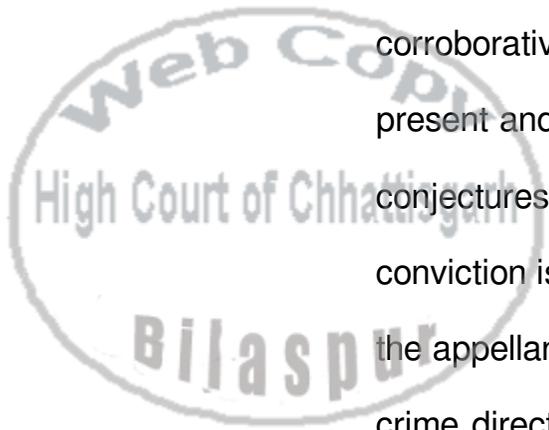
51. Mr. Payashi further submits that the learned trial Judge appears to have erred in the discernment that the appellant Abhay Goyal, in conjunction with Yahya Debhar, frequently convened meetings. The records of the learned trial Court is bereft of any cogent and substantive evidence to bolster such a finding. Furthermore, even if one were to make a hypothetical concession (though not admitted) that these aforementioned meetings occurred with some regularity, it would be unwarranted to infer that the very purpose of dinner at Green Park Hotel was to hatch or nurture a conspiracy targeting the murder of the deceased. Such an inference, devoid of tangible evidence, renders the judgment susceptible to significant legal and factual infirmities.

52. Mr. Payasi submits that there appears to have been a significant misapprehension on the part of the learned trial Judge concerning the factual matrix surrounding the ownership and possession of mobile numbers. In relation to mobile Nos. 94252-08888 and 98261- 33888, it is humbly submitted that the appellant had purchased these SIMs and appellant himself was using the same. In respect of call details of aforementioned numbers, no certificate under Section 65B of the Evidence Act has been placed on record by the prosecution. Apart from it, it is most respectfully submitted before this Hon'ble Court that many people who were acquainted with Dhebar family and Amit Jogi used to call appellant. Mere fact of communication does not automatically render one accomplice in an alleged conspiracy. During the course of the trial, the prosecution introduced a series of witnesses, namely PW-85, PW-97, PW-100 and PW-126 with the ostensible objective of solidifying their case against the appellant.



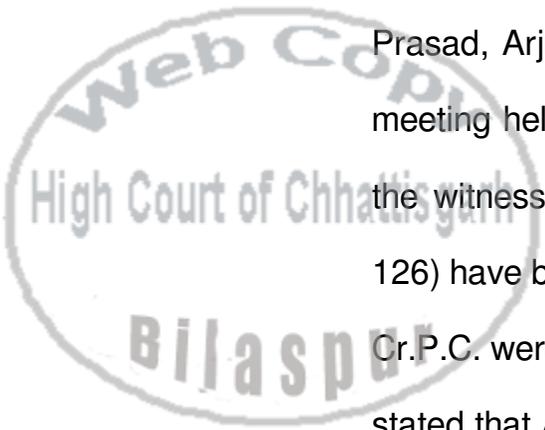


Notably, none of these witnesses offered any incriminating evidence or statements against the appellant except Reginald Jeremiah (PW-85) who stated that appellant was present in the meeting for conspiracy held in Hotel Green Park. Raj Singh (PW-100) and Rohit Prasad (PW-126) were declared hostile. Prosecution earlier got recorded their statement under section 164 of the Cr.P.C. The learned trial Judge had recorded a finding that Reginald Jeremiah (PW-85) is not reliable, even then the learned trial Judge on presumption, without there being any material held the appellant guilty of offence punishable under Sections 120-B/34 and 302/34 of the IPC, without there being any substantial piece of evidence. Apart from it there is no corroborative evidence to theory of hatching alleged conspiracy in the present and trial Judge had convicted the appellant on surmises and conjectures, which is not sustainable in the eyes of law and therefore, conviction is liable to be set aside on this count alone. The defense of the appellant is that he is innocent and had no involvement in alleged crime directly or indirectly and he had been falsely implicated as he was having acquaintance with Yahya Dhebar. The conviction of the appellant seems to rest precariously on evidence that, upon meticulous examination, is inadmissible under the well-established tenets of criminal jurisprudence. The edifice of the conviction appears to be constructed on conjectural grounds rather than on the bedrock of substantive and corroborative evidence. The inferences drawn by the learned trial judge, is based on presumption and speculation, which resulted in miscarriage of justice, given the profound consequences that a conviction entails.





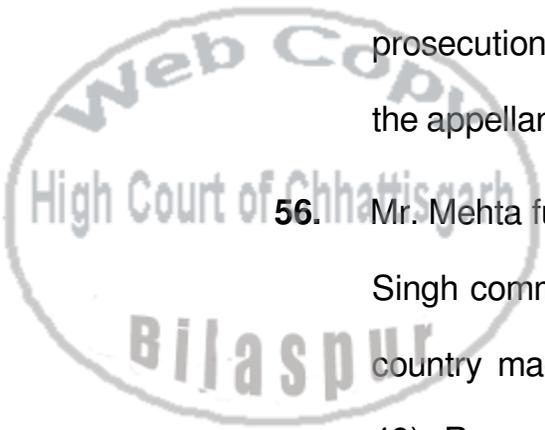
53. Reginald Jeremiah (PW-85) who is one of the witness for the alleged conspiracy, has been disbelieved by the learned trial Court as he has made improvements in respect of the name of the appellant and other accused persons in addition to statement recorded under Section 164 of the Cr.P.C. He has given a false statement to the effect that Abhay Goyal and Rohit Prasad (PW-126) participated in meeting of conspiracy alleged to be held in Hotel Green Park on 21.05.2003 whereas Rohit Prasad (PW-126) was in London. Arjun Bhagat was also in Heathrow Airport, United Kingdom on 21.05.2003. Michale Williams was also in United Kingdom on 21.05.2003. The so called witness of conspiracy Reginald Jeremiah (PW-85) alleged that Rohit Prasad, Arjun Bhagat and Michale Williams were part of conspiracy meeting held on 21.05.2003 which on the face of it is bogus. Two of the witnesses namely Raj Singh (PW-100) and Rohit Prasad (PW-126) have been declared hostile whose statements under Section 164 Cr.P.C. were recorded. So far as Vijay Jain (PW-73) is concerned, he stated that Amit Jogi and others came to Hotel for dinner and used to take dinner in garden restaurant which is not sufficient to hold the appellant-Abhay Goyal guilty of the offence.
54. Reliance has been placed by Mr. Payasi on the decision of the Supreme Court in ***Esher Singh v. State of A.P.***, (2004) 11 SCC 585, ***V.C.Shukla Vs. State (Delhi Administration)*** {1980 AIR 1382 : 1980 SCR (3) 500} and ***Vijay Shankar v. State of Haryana*** {(2015) 12 SCC 644} and ***Sharad Birdhichand Sarda v. State of Maharashtra*** {(1984) 4 SCC 116}.
55. Mr. Neeraj Mehta, learned counsel appearing for the accused-Chiman Singh and Harsih Chandra, submits that the allegation against





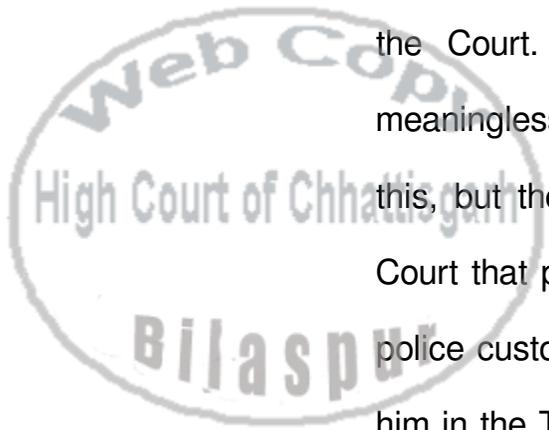
Chiman Singh is that (i) he committed the murder of the deceased by shooting him with a country made pistol, (ii) he entered into a criminal conspiracy with co-caused Yahya Dhebar, Abhay Goel and Feroz Siddiquie to commit the murder of the deceased, (iii) he entered into a criminal conspiracy with Amit Jogi (acquitted co-accused) on 21.05.2003 at the Green Park Hotel and on 25.05.2003 at the C.M. House to commit the murder of the deceased. However, the learned trial Judge has rejected this part of the prosecution story which was based solely on the testimony of Reginald Jeremiah (PW-85). As the CBI has not filed any appeal against acquittal, this finding of the learned trial Judge has attained finality. Therefore, this part of the prosecution case cannot be considered to evaluate the culpability of the appellant.

56. Mr. Mehta further submits that to prove its case that accused Chiman Singh committed the murder of the deceased by shooting him with a country made pistol, the prosecution examined Mohd. Yunus (PW-49), Raees Khan (PW-50), Abdul Jameel Khan (PW-53) and Banke Bihari (PW-128). All these four witnesses have turned hostile in Court and did not identify the Chiman Singh as the assailant of the deceased. Consequently, there is no substantive evidence on record to hold that appellant Chiman Singh shot the deceased dead. However, the learned trial Judge has relied on the case diary statements of these four witnesses recorded under Section 161 of the Cr.P.C. to convict the appellant. It is submitted that it is no longer *res integra* that the statement of a prosecution witness recorded under Section 161 of the Cr.P.C. does not constitute a substantive evidence. The learned trial Judge has also relied upon the statement of Banke





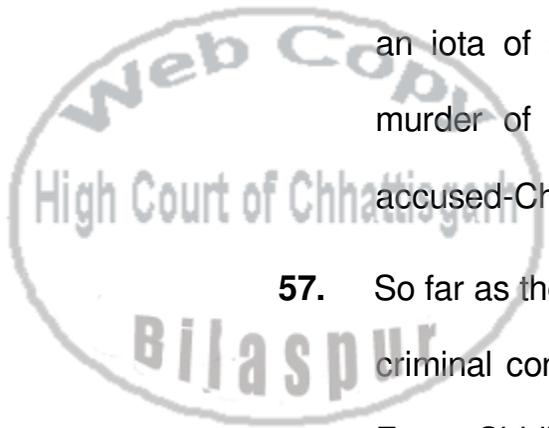
Bihari (PW-105) recorded under Section 164 of the Cr.P.C. to fix the identity of the appellant as the assailant of the deceased. It is submitted that the statement of a witness under Section 164 of Cr.P.C. also does not constitute substantive evidence, even where the witness admits that he gave a truthful statement before the Magistrate under Section 164 Cr.P.C. The learned trial Judge has also treated as substantive evidence the identification of the appellant in a Test Identification Parade (*for short, the TIP*) (Ex.P-44) conducted by Naib Tahsildar, Shri Harvansh Singh Miri (PW-33). In this TIP, the appellant had been identified by Abdul Jameel Khan (PW-53). However, Abdul Jameel Khan (PW-53) did not identify the appellant in the Court. Therefore, the Identification of the appellant in the TIP is meaningless as it does not constitute substantive evidence. Not only this, but the witness Abdul Jameel Khan (PW-53) has admitted in Court that prior to the TIP, he was shown the appellant who was in police custody and was asked by the Investigating Officer to identify him in the TIP. According to this witness, it is for this reason that he identified the appellant in the TIP. It may also kindly be noted that Shri Ghanshyam Singh Miri (PW-33) has stated in paragraph-7 of his evidence that the appellant had complain to him during the TIP that he had been showing to the witnesses. As such, even the identification of the appellant in the TIP is meaningless. The other evidence against the appellant-Chiman Singh, relied upon by the learned trial Judge is that the appellant gave a memorandum (Exhibit P/26) on 28.04.2005 and offered to discover the pistol with which he had shot the deceased. The said pistol was allegedly concealed in Batra House. However, on a search of Batra House, no such pistol was found. Consequently, the memorandum (Exhibit P/26) is totally inadmissible.





For admissibility of a memorandum recorded under Section 27, Evidence Act, discovery of an object is a sine qua non. Further, the confession of the appellant that he had committed the murder of the deceased by shooting him with the pistol is hit by Section 25 of the Evidence Act. The said confession cannot be read by virtue of Section 27 Evidence Act. Even the Panchnama (Exhibit P/7) recorded by the Police allegedly at the behest of the appellant showing the spot where the appellant and the other co-accused slept in Batra House is nothing but a statement recorded under Section 161 of the Cr.P.C. and is hence, barred by Section 162 of the Cr.P.C. Hence, for the reasons mentioned above, no case subsists against the appellant. There is not an iota of substantive evidence to connect the appellant with the murder of the deceased. No recovery has been made from the accused-Chiman Singh.

57. So far as the allegation that the accused-Chiman Singh entered into a criminal conspiracy with co-accused Yahya Debar, Abhay Goel and Feroz Siddiquie, not a single witness has deposed about this fact. This has also been held by the learned trial Judge in paragraph-456 of the judgment. However, to arrive at a finding that the appellant and the four co-accused entered into a conspiracy to commit the murder of the deceased, the learned trial Judge has relied upon circumstantial evidence. It is submitted that none of the circumstances adverted to by the learned trial Judge have been stated by any witness, nor have they been established at the trial. The said findings of the learned trial Judge are based on conjecture, speculation and on nonexistent evidence. Consequently, there is absolutely no proof that the appellant and the co-accused entered into a conspiracy to commit the murder of

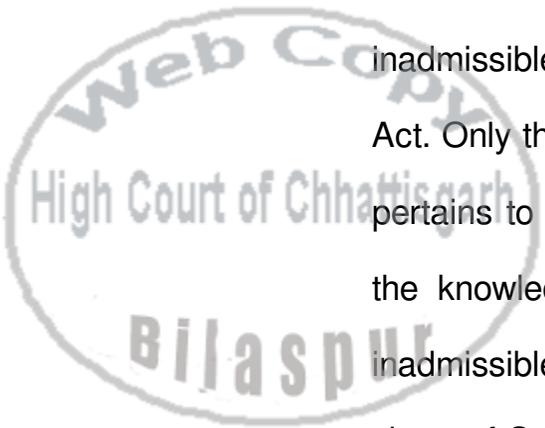




the deceased. However, the learned trial Judge has adverted to telephone calls made by the appellant and the four co-accused after the murder of the deceased. There is no evidence as to what was stated during these telephone calls. Mere talking on a number of occasions between the accused does not constitute any proof of conspiracy. It is further submitted that there can be no criminal conspiracy after the murder has been committed. This is a case of 'no evidence'. Therefore, the accused is liable to be acquitted.

58. The CBI is relying heavily on the confessions made by Chiman Singh and Shivendra Singh in their disclosure statements under Section 27 of the Evidence Act. As stated earlier, these confessions are inadmissible in evidence as they are hit by Section 25 of the Evidence Act. Only that part of the statement can be admitted in evidence that pertains to the object produced, the place where it was hidden and the knowledge of the accused regarding it. All other evidence is inadmissible. The confession of these accused cannot be admitted by virtue of Section 30 of the Evidence Act as under the said Act, only that confession can be read against a co-accused if it is admissible in evidence. Any confession made to a Police Officer during the course of investigation is inadmissible and hence, Section 30, Evidence Act does not come into operation at all.

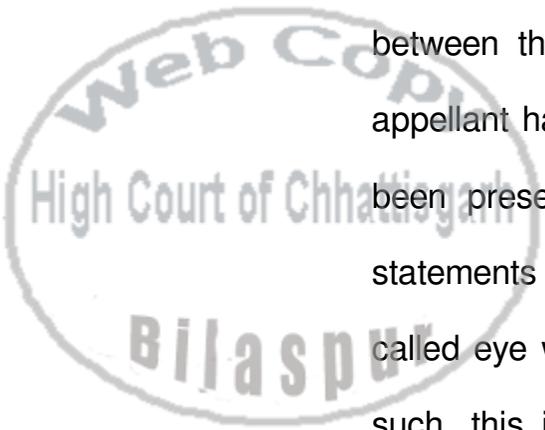
59. Mr. Mehta submits that so far as the appellant-Shivendra Singh is concerned, the allegation against him is that on the night of the murder, he was driving a white Maruti Van bearing Registration No. MP-08/A-1100 in which were seated some of the assailants of the deceased. During investigation, the appellant gave a memorandum (Exhibit P/5) and discovered the said Maruti Van from village named





Akaldee. There are four eye witnesses in this case namely Mohd. Yusuf (PW-49), Raees Khan (PW-50), Abdul Jameel Khan (PW-53) and Banke Bihari (PW-128). All these four witnesses were declared hostile by the prosecution. None of them stated that there was a white Maruti Van at the scene of crime. The FIR (Exhibit P/1) was lodged by V.K.Pandey, Station House Officer, who was subsequently arraigned as an accused. Even in this FIR (Exhibit P/1) and in all other contemporaneous documents recorded by the police, there is no mention of any white Maruti Van being present at the scene of incident. Consequently, even assuming if the appellant had given a memorandum and discovered a Maruti Van, there is no connection between the Maruti Van and the commission of the murder. The appellant has not been identified by any of the witnesses as having been present at the scene of the crime or anywhere. Even the statements recorded under Section 161 and 164 Cr.P.C. of the so called eye witnesses do not constitute substantive evidence and as such, this is a case of 'no evidence' against the appellants. The confessions made by accused-Chiman Singh and Shivendra Singh in their disclosure statements are inadmissible in evidence as they are hit by Section 25, Evidence Act.

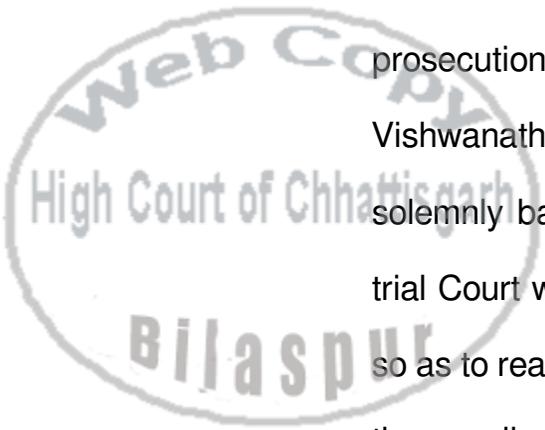
60. Mr. Mehta, in support of his contentions, he relies on the decisions of the Supreme Court in **State of Delhi v. Shri Ram Lohia** {AIR 1969 SC 490 (V 47 C 83)}, **Kiriti Pal v. State of West Bengal** {2015 CRI.L.J. 3152}, **Virender Singh v. State of Haryana** {AIR 2017 SC 1228}, **State of Karnataka v. P.Ravi Kumar alias Ravi etc.** {AIR 2018 SC 3993}, **Asar Mohammad & Others v. State of U.P.** {AIR 2018 SC 5264}, **Chunthuram v. State of Chhattisgarh** {(2020) 10





SCC 733}, **Somasundaram alias Somu v. State Rep. By the Deputy Commissioner of Police** {AIR 2020 SC 3327}, **Gireesan Nair & Others v. State of Kerala** {(2023) 1 SCC 180}, and the decisions of the Delhi High Court in **Hari Shankar & etc. v. The State** {1985 CRI.L.J. 1700}, **Amin Chand & Others v. The State** {1987 CRI.L.J. 1034}.

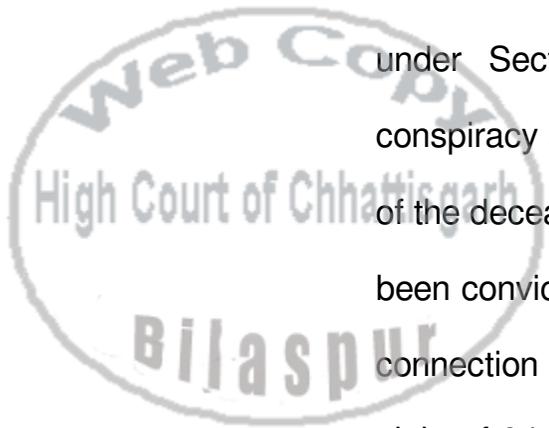
61. Mr. Anurag Jha, learned counsel for the appellant-accused Vishwanath Rajbhar submits that he has been charged for the offence under Section 120-B, 302/34 and Section 427 of the IPC but after conclusion of the trial, he has been convicted and sentenced for the offence under Sections 120-B and 193 of the IPC. He submits that the prosecution has failed to prove its case against the appellant-Vishwanath Rajbhar beyond reasonable doubt. The conviction is solemnly based upon the admission of the accused but the learned trial Court was required to make a detailed analysis of the admission so as to reach to the conclusion that the same was sufficient to convict the appellant or not. Immediately after crime, the appellant was sent to jail and victimized.
62. It has also been argued by the learned counsel for the parties that the second FIR being Crime No. 105/2003 was lodged only after Vidya Charan Shukla and Satish Jaggi pressurized the Station House Officer of Police Station Moudahapara, Raipur to register FIR against Amit Jogi and Ajit Jogi. Around 200 people surrounded the Police Station and created a pressure for registration of the crime. There was a political rivalry between the Congress, NCP and BJP because of which the three police officers namely Amrik Singh Gill, V.K.Pandey and R.C.Chaturvedi were made pawn. Even though there were other





police officers who have also participated in the investigation but they have not been made accused in this case. In Crime No. 104/2003, charge sheet was already filed but the CBI, instead of filing supplementary charge sheet in that case, has investigated the matter in Crime No. 105/2003 which has weekend the investigation carried out by the earlier police officers.

- 63.** Mr. Maneesh Sharma, learned counsel appearing for the accused-appellant-Feroz Siddiquie submits that the appellant, in conjunction with Chiman Singh, Abhay Goyal, and Yahya Debhar, has been erroneously convicted pursuant to Section 302 IPC for the alleged murder of the deceased. They have been wrongfully found guilty under Section 120-B of the IPC, accused of orchestrating a conspiracy at Batra House with the intent to commit the said murder of the deceased. It is pertinent to note that other individuals have also been convicted under Section 302 read with Section 34 of the IPC in connection with the same incident. As per the prosecution, on the night of 04.06.2003, at around 11:30 p.m., the deceased was in the process of returning to his residence in his Alto vehicle. Approximately 100 yards away from the Moudhapara Police Station, located in Raipur, his car was intercepted and subsequently overtaken by two other vehicles, resulting in damage to the deceased's vehicle. In the ensuing events, as the deceased endeavored to disembark from his vehicle, he was, according to the prosecution's claim, fatally shot by co-accused Chiman Singh. The prosecution, notably, does not allege or contend that the appellant was present at the site of the murder when it transpired. Furthermore, there is no assertion by the prosecution suggesting that the appellant was directly involved or had





any participatory role in the murder of the deceased. While the preliminary stages of the investigation were conducted by the local police authorities, on 22.01.2004 the responsibility for the investigation was formally transferred to the CBI. At the time in question, the appellant functioned in the capacity of a contractor/manager for catering at a property known as "Batra House" This establishment was a three- storeyed edifice. The upper two floors of Batra House were leased to "Akash Channel," a media entity under the proprietorship of Mr. Rohit Prasad, referenced in the proceedings as PW-126. The employees affiliated with Akash Channel were residentially accommodated on these top two floors of the said building. The appellant was/is not having any sort of political background not he is/was involve in any political activity. He was taken into custody on 26.04.2005 and during the course of his arrest and subsequent investigative procedures, no incriminating material or evidence was discovered or seized from his personal possession or custody.

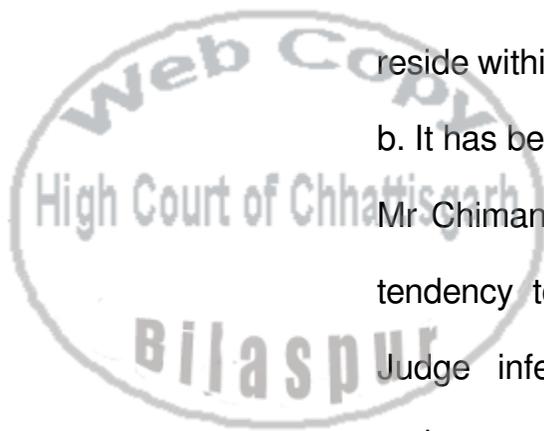
- 64.** Mr. Sharma further submits that during the proceedings of the trial, it was conspicuously observed that none of the witnesses presented before the Court bore testimony to any incriminating fact or circumstance that would implicate the appellant. There was a conspicuous absence of any testimony that placed the appellant-Feroz Siddiquie at the scene of the incident of suggested his active or passive participation in the tragic demise of the deceased. Likewise, there was no witness testimony asserting or even insinuating that Batra House served as a venue for any conspiratorial discussions or plans related to the unfortunate demise of the deceased. The





appellant's stance throughout the proceedings has been consistent, asserting an unequivocal denial of the accusations levelled against him. He contends that the charges and the purported evidence presented against him are not just baseless, but also suggestive of a calculated attempt to falsely implicate him in the matter, thereby undermining the principles of justice. The findings of the learned trial Judge, notably rooted in statements by the co-accused, Chiman Singh, which were recorded under Section 27 of the Indian Evidence Act (and are contended to be both inadmissible and illegal), which is summarised as follows:

- a. Before the murder of the deceased, Chiman Singh was known to reside within the premises of Batra House.
- b. It has been surmised by the trial court that the appellant, along with Mr Chiman Singh, Mr. Yahya Debhar, and Mr. Abhay Goyal, had a tendency to convene frequently at Batra House. The learned trial Judge inferred from this that the group conspired therein to orchestrate the murder of Mr. Ramavtar Jaggi.
- c. The learned trial Judge concluded that the act of murdering Mr. Ramavtar Jagga was executed by Chiman Singh.
- d. After the murder, Mr Chiman Singh reportedly sought refuge in Batra House, where he concealed the crime weapon, referred to as the "Katta", within the servant quarters of the property. It is surmised that he confided to the appellant about this concealment.
- e. It was further inferred by the trial court that the appellant subsequently took it upon himself to remove the said "Katta" and caused its destruction.

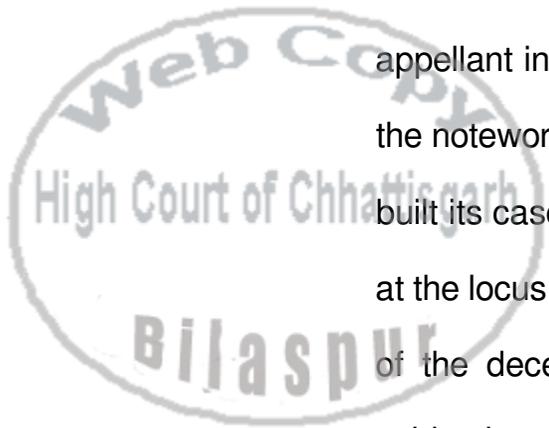




f. A mobile phone bearing the number 9826140111 was registered under the appellant's name. Based on the records, the learned trial Judge deduced that the appellant had active telephonic communication with both Mr. Chiman Singh and Mr. Yahya Debhar on the dates 04.06.2003 and 05.06.2003.

65. Mr. Sharma further submits that the learned trial Judge gravely erred in his determination that the appellant-Feroz Siddiquie was complicit in the murder of Mr. Ramavtar Jaggi, thereby rendering him culpable under Section 302 IPC. He draws the attention of this Court to the glaring fact that, during the entirety of the trial, not even a single witness bore testimony or made any insinuations implicating the appellant in the alleged crime. Further underscoring this contention is the noteworthy fact that the prosecution itself has neither asserted nor built its case on the premise that the appellant was physically present at the locus of the incident or had any direct involvement in the murder of the deceased. Such a determination, not rooted in substantive evidentiary support or corroborative testimony, appears manifestly illegal and patently unwarranted. The appellant earnestly seeks redress and implores the Court to reconsider the veracity of the conviction in the interests of justice

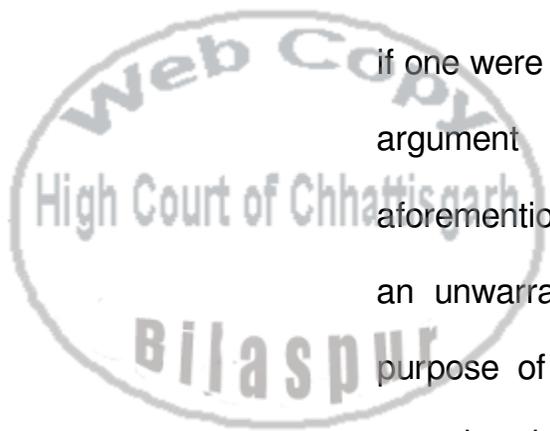
66. As per Mr. Sharma, the learned trial Judge committed a significant oversight in arriving at the conclusion that the appellant, in collaboration with Chiman Singh, Abhay Goyal, and Yahya Debhar, conspired within Batra House to orchestrate the murder of the deceased. Further, the fact that during the extensive proceedings of the trial, not a single witness rendered any testimony corroborating or even hinting at such a conspiracy. Furthermore, it is of paramount





significance to highlight that the narrative of the prosecution itself remained conspicuously silent on the alleged conspiracy being formulated at Batra House, as a result, the conviction of the appellant under Section 120B IPC is devoid of any evidentiary foundation. Such a conviction, predicated upon a manifest absence of evidence, is patently illegal.

67. According to Mr. Sharma, the learned trial Judge appears to have erred in the discernment that the appellant, in conjunction with Chiman Singh, Abhay Goyal, and Yahya Debhar, frequently convened meetings within Batra House. The court record is bereft of any cogent and substantive evidence to bolster such a finding. Furthermore, even if one were to make a hypothetical concession (strictly for the sake of argument and without admitting to the same) that these aforementioned meetings occurred with some regularity, it would be an unwarranted leap in logic to infer or speculate that the very purpose of these meetings was to hatch or nurture a conspiracy targeting the murder of the deceased. Such an inference, devoid of tangible evidence, renders the judgment susceptible to significant legal and factual infirmities. The learned trial judge seems to have committed an oversight in arriving at the conclusion that Chiman Singh, the co-accused, resided at Batra House preceding the murder of the deceased. During the comprehensive proceedings of the trial, there was a conspicuous absence of any witness who testified or corroborated such a claim. Thus, the said finding, devoid of corroboration from any admissible evidence on record, stands on precarious grounds and appears to be an anomaly in the process of adjudication. The prosecution heavily relies upon the alleged



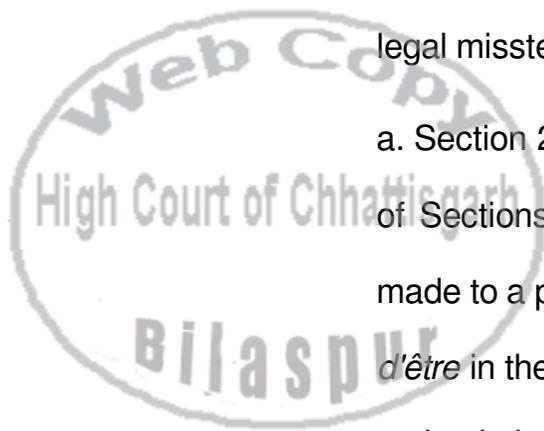


interrogation of Chiman Singh on 28.04.2005 and the subsequent memorandum (Exhibit P/26) scribed by him. The said memorandum avers that Chiman Singh perpetrated the murder of the deceased utilising a 'Katta', which he subsequently concealed in the servants' quarters of Batra House, and made the appellant, Feroze Siddique, privy to this fact. However, a consequential search of Batra House by the police yielded no discovery of the 'Katta' or any other incriminating material. This fact is duly recorded in another memorandum (Exhibit P/27) scribed by the police. Despite the glaring absence of corroborative evidence, the learned trial judge accorded undue weight to the purported confession of Chiman Singh, which seems to be a legal misstep for the reasons stated herein below:

a. Section 27 of the Evidence Act stands as an exception to the trinity of Sections 24, 25, and 26, which emphatically render a confession made to a police officer as inadmissible. This exception finds its *raison d'être* in the belief that a statement leading to the tangible discovery of an incriminating object gains credence from the subsequent recovery. A failure in this discovery renders the confessional edifice devoid of any evidentiary value, making it inadmissible.

b. In the matter at hand, the CBI search subsequent to the memorandum (Exhibit P/26) drew a blank, failing to produce the alleged 'Katta' or any incriminating substance. As a direct corollary, the entirety of the memorandum loses its evidentiary sanctity and cannot be admitted as evidence.

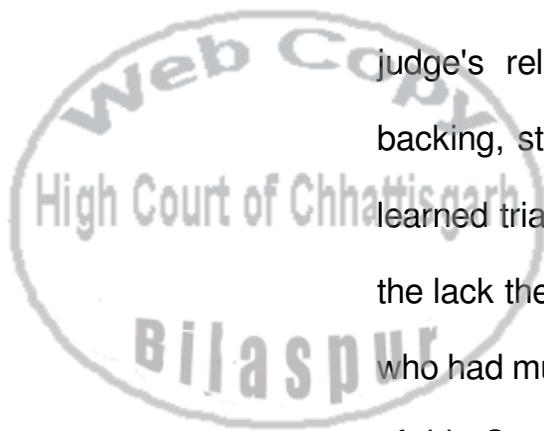
c. A statement eligible under Section 27 of the Evidence Act must exhibit a direct nexus to the object recovered. Extraneous elements within the confession, particularly those recounting past events or





giving a historical account, find no refuge under this section. Therefore, the segment within the memorandum (Exhibit P/26) detailing Mr Singh's purported communication to the appellant about the concealed 'Katta' and other tangential confessions, stands wholly extraneous and impermissible under the Act.

68. Mr. Sharma submits that the learned trial Court appears to have ventured beyond the precincts of established evidentiary principles in determining that the appellant was responsible for concealing or destroying the contentious Katta. Such a finding, seemingly bereft of concrete evidence and anchored largely on conjecture, veers towards what can be termed as speculative jurisprudence. The learned trial judge's reliance on supposition, rather than concrete evidentiary backing, stands as a significant judicial oversight in this matter. The learned trial Court appears to have misapprehended the evidence, or the lack thereof, in concluding that Chiman Singh was the perpetrator who had murdered the deceased. Mr. Sharma has drawn the attention of this Court to the glaring absence of any concrete or corroborative evidence that irrefutably ties Chiman Singh to the commission of this murder. The assertion, as presented by the trial court, is devoid of any substantive underpinning and appears to float on a foundation of conjecture rather than solid evidentiary footing. It is fervently urged that such a monumental finding, absent any tangible evidentiary support, necessitates a judicious re-evaluation. Even for the sake of argument and without conceding to its veracity, if the alleged confessional statement of Chiman Singh were to be considered admissible, such a confession, especially when emanating from a co-accused, cannot stand alone as substantive evidence under the well-





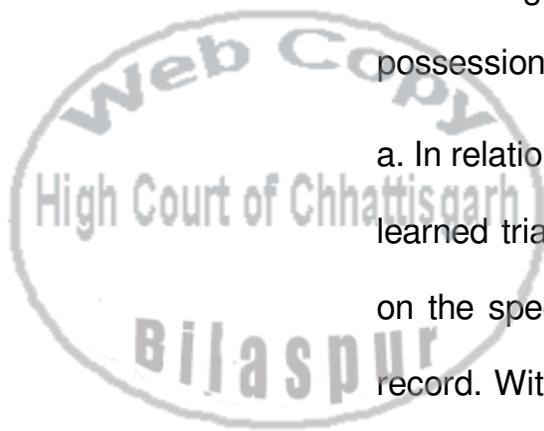
established tenets of our jurisprudence. The weight of precedent and legal principle underscores that the confession of a co-accused must be corroborated by independent and credible evidence to give it probative value. In the absence of such corroborative material, the purported confession remains shorn of any evidentiary strength. Therefore, when viewed through the lens of this principle, it becomes manifestly clear that there exists a conspicuous vacuum of evidence implicating the appellant in the matter at hand.

69. Mr. Sharma would also submit that there appears to have been a significant misapprehension on the part of the learned trial Court concerning the factual matrix surrounding the ownership and possession of the aforementioned mobile numbers:

a. In relation to mobile No. 9826140111, it is humbly asserted that the learned trial Judge's finding that it was in the appellant's possession on the specified date seems to be unsupported by the evidence on record. With all due deference, it is our submission that a close and judicious examination of the evidence would reveal that, in actuality, this mobile number was under the custody and control of Prabhat Pahari during the pertinent time frame.

b. Similarly, regarding mobile No 9826149999, the learned trial judge appears to have erred in attributing its ownership to Yahya Debhar, the co-accused. It is respectfully highlighted that the documentary evidence and testimony clearly demonstrate that this mobile number was registered under the name of Anand Chouhan (PW-58), and indeed, was owned and operated by him.

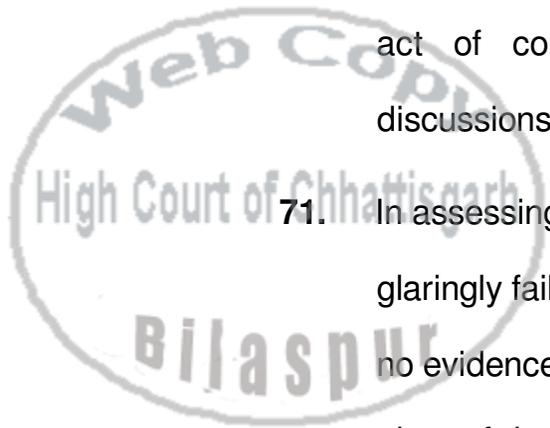
c. Thirdly no certificate under Section 65B of Evidence Act has been placed on record by the prosecution.





70. Mere telephonic communication between the appellant and Chiman Singh, or any other accused for that matter, cannot, in isolation, substantiate the grave allegation of being party to a conspiracy. The foundational tenet of our criminal jurisprudence dictates that the mere act of communication does not automatically render one complicit in an alleged conspiracy. Absent clear evidence that delineates the nature and content of said communication, and without demonstrative proof that such discussions pertained to any nefarious intent or act, it would be perilous to infer complicity based solely on the occurrence of such telephonic exchanges. The essence of a conspiracy lies in the shared intent and purpose, which cannot be inferred merely from the act of communication, especially when the content of such discussions remains undisclosed and unknown

71. In assessing the records of the case, it is evident that prosecution has glaringly failed in proving its case against the appellant. Firstly, there's no evidence to prove the claim that the appellant modified the number plate of the Maruti Van, registered as CG-04-1100, at Batra House. This absence of proof or eyewitness testimony critically undermines this key contention. Similarly, the prosecution's assertion that the appellant meticulously cleaned a Bolero vehicle allegedly used in the crime and then used incense sticks to mask the petrol odour stands unsubstantiated. Furthermore, allegations regarding the appellant's purported concealment or destruction of the murder weapon, known as "Katta", remain ambiguous and unclear, with the prosecution failing to present clear evidence of the appellant's involvement with the weapon. Lastly, the telephonic conversation where Chiman Singh, the co-convict, supposedly informed the appellant with the words "*Kaam*

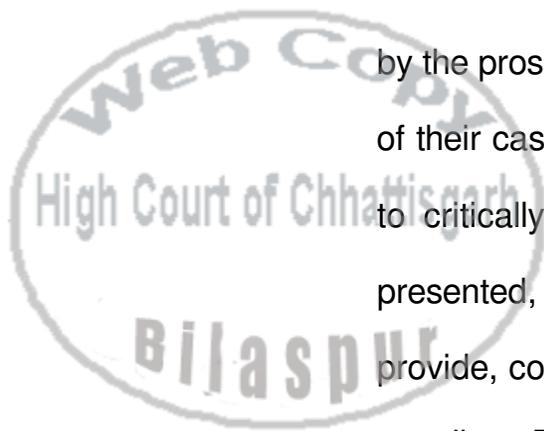




Tamaam Ho Gaya", requires rigorous validation through verifiable call records and voice analysis. In essence, for a verdict to align with the pillars of justice and fairness, it is crucial that the charges against the appellant be rooted in undeniable evidence rather than mere imaginations or speculations.

72. During the course of the trial, the prosecution introduced a series of witnesses, namely PW-58, PW-93, PW-101, PW-118 and PW-137 with the ostensible objective of solidifying their case against the appellant. Notably, none of these witnesses offered any incriminating evidence or statements against the appellant. This conspicuous absence of adverse testimony from the very witnesses brought forth by the prosecution itself raises significant doubts about the foundation of their case. Such a scenario underscores the necessity for the court to critically evaluate the credibility and relevance of the evidence presented, especially when the prosecution's chosen witnesses fail to provide, corroborate or substantiate the allegations made against the appellant. The essence of a fair trial mandates that any assertions of guilt must be anchored in conclusive and consistent evidence, a standard which seems to be missing in this particular context.

73. Mr. Sharma would also submit that the conviction of the appellant seems to rest precariously on evidence that, upon meticulous examination, is inadmissible under the well-established tenets of our jurisprudence. The edifice of the conviction appears to be constructed on conjectural grounds rather than on the bedrock of substantive and corroborative evidence. The inferences drawn by the learned trial judge, it is contended, veer towards speculation and, with great respect, could be characterized as overreaching in their nature. Such





an approach, it is submitted, could inadvertently result in a miscarriage of justice, given the profound consequences that a conviction entails. The version propounded by the defence, buttressed by evidence and testimony, presented a coherent, logical, and credible narrative that should have found favour during the trial. The tenets of our judicial system mandate an impartial examination of both the prosecution's case and the defence's counter-narrative, ensuring that justice is not just dispensed but is also seen to be dispensed. In light of the evidence presented and the arguments advanced, it is contended that the defence's version merited acceptance and endorsement by the learned trial court.

74. He relies on a decision of the Supreme Court in ***Esher Singh vs. State of A.P.*** {(2004) 11 SCC 585}, ***V. C. Shukla vs State (Delhi Administration)*** {1980 AIR 1382 : 1980 SCR (3) 500}, ***Pulukuri Kotayya vs. Emperor*** {AIR 1947 PC 67}, ***Vijay Shankar v. State of Haryana*** {(2015) 12 SCC 644}, ***Hanumant vs The State of Madhya Pradesh*** {1975 AIR 1083}, ***Hukam Singh v. State of Rajasthan*** {AIR 1977 SC 1063}; ***Eradu and Ors. v. State of Hyderabad*** {AIR 1956 SC 316}, ***Earabhadrapa v. State of Karnataka*** {AIR 1983 SC 446}, ***State of U.P. v. Sukhbasi and Ors.*** (AIR 1985 SC 1224), ***Balwinder Singh v. State of Punjab*** {AIR 1987 SC 350}; ***Ashok Kumar Chatterjee v. State of M.P.*** {AIR 1989 SC 1890}, ***Parveen @ Sonu v. The State Of Haryana*** {2021 SCC Online SC 1184, CRL.A. SLP(CRL.) No.5438 of 2020}.
75. Mr. Sharma and Mr. Shrivastava would also submit that the incident took place when there was an election atmosphere in the State of Chhattisgarh. There was political rivalry between the Congress, NCP



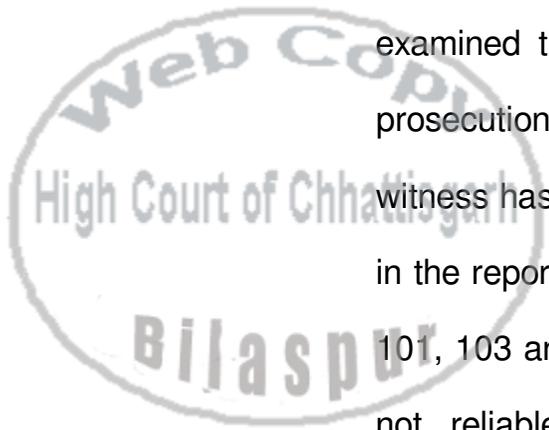
and the BJP. Congress was the ruling party at that point of time and it could be possible that in order to defame the sitting Chief Minister, any of the other political party could have been involved so as to take political mileage of the fateful incident. The second FIR was lodged at the instance and pressure of Mr. Vidya Charan Shukla and Satish Jaggi, who is the son of the deceased who had named the sitting Chief Minister and Amit Jogi as the accused in the said incident. However, Mr. Vidya Charan Shukla, who was in the NCP, later on joined the BJP. It is also submitted that second FIR was lodged when the NCP leaders alongwith more than 200 people surrounded the Police Station and pressurized the Station House Officer to register the FIR. Though the second FIR being Crime No. 105/2003 was registered, however, one more FIR being Crime No. 106/2003 was registered against Vidya Charan Shukla and 100 others on 05.06.2003 at 2:50 a.m. as the supporters of NCP had surrounded the Police Station and created law and order situation, though closure report has been filed in the said FIR.

- 76.** Mr. Satya Prakash Verma, learned counsel for the accused-Rakesh Kumar Sharma, submits that as the eye witnesses namely Rais Khan (PW-50), Jamil Khan (PW-53) and Banke Bihari (PW-128) have not stated the name of present appellant and further that as on the next day of the incident i.e. 05.06.2003, a second FIR No. 105/2003 was lodged by Satis Jaggi (the son of the deceased) wherein also there was neither any incriminating circumstances as against the appellant, nor regards dacoitis under Section 395 of IPC etc. with regard to the "Golden Rudraksh Mala" on which basis without any discovery or recovery under Section 27 of the Evidence Act, the learned trial Court





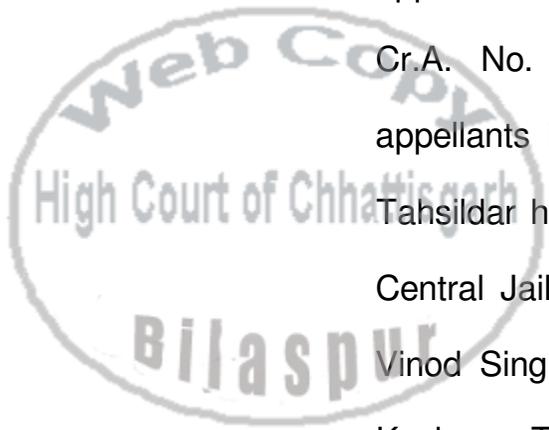
has convicted the appellant/accused. In paragraph 284 and 285 of the impugned judgment, the learned trial Court has described details of the "the letter dated 10.12.2004 (Exhibit P-131) which is undated and unsigned by the appellant and the police during custody with illegal object to prove case against the appellant. The learned trial Court has erred in relying upon the letter (Exhibit P-131) though there is nowhere mentioned about the person who has written the said letter to whom. Further the prosecution has not seized any postal receipt or any courier in respect of said letter. The Handwriting Expert namely Deepak Raj Handa has examined the said letter (Exhibit P-131) and given his report vide Exhibit P-129, but the prosecution has not examined the said Deepak Raj Handa before the trial Court. The prosecution has examined one Anil Sharma (PW-136), but this witness has not given any opinion and his signature is not mentioned in the report (Exhibit P-129), thus non-compliance of Section 35, 45, 101, 103 and 104 of Evidence Act, the said letter (Exhibit P-131) is not reliable. Further, even as per the prosecution case, the photograph of Rudraksh Mala was seized from relative of deceased and allegedly the photograph of Rudraksh Mala was recovered at the instance of memorandum of appellant from Vaishno Photo Studio, Darpan Colony, Gwalior (M.P.), but the prosecution has neither recorded the statement of the proprietor of Vaishno Photo Studio, nor examined the said proprietor before the trial Court and further no certificate under Section 65B of Evidence Act has been produced. Even the prosecution has not examined the persons who has purchased the Rudraksh Mala and further the purchaser (Jeet Jewellers, Bharat Mandir Market, Rishikesh) has not been examined before the learned trial Court as a witness. The prosecution was duty





bound as per provisions of Section 101 of Evidence Act to prove the guilt of the appellant/ accused beyond all reasonable doubts, but in the instant case, the prosecution has not discharged its burden of proof, therefore the impugned conviction and sentence of appellant being unsustainable in the eyes of law, deserves to be quashed so far it relates to the accused-Rakesh Kumar Sharma. Ms. Ritika Verma, learned counsel assisting Mr. Satya Prakash Verma submits that Deepak Raj Handa, who is said to be the handwriting expert has not been examined in this case.

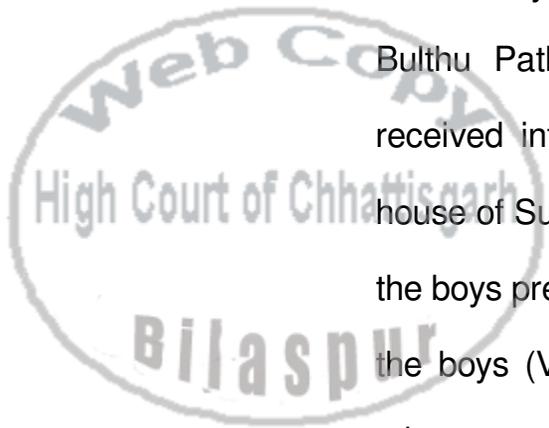
77. Mr. Vikas Bajpai and Mr. Uttam Pandey, learned counsel for the appellants-Jambwant, Shyam Sundar and Vinod Singh Rajpoot {in Cr.A. No. 922/2007} submit that the evidence against these appellants is that Kailash Prasad Verma (PW-36) who is a Naib Tahsildar has conducted the identification parade on 08.10.2004 in Central Jail, Raipur. The identifying witness has correctly identified Vinod Singh and Shyam Sunder but denied to identify Jambwant Kashyap. The appellants/ accused were not afforded opportunity to cross examine this witness by the learned trial Court nor has the learned trial Court asked from the appellants to cross examine this witness. Neither any counsel was engaged by them nor any counsel was given to them under the legal aid. Similarly, Ram Ratan Bhoi (PW-54) who is the Head Constable and member of the Crime Squad at the relevant time, when the accused R.C.Trivedi was the incharge of crime squad. He states that from the possession of the appellant-Vinod Singh, cash of Rs. 460/- was recovered vide Exhibit P-62C. Article L, which is the register of suspects in which entry No. 642, 643 and 644 relates to the appellant Jambwant Kashyap, Anand Sharma





and Vinod Singh, but date has not been mentioned in Exhibit p-63C. Article L entry No. 642, 643 and 644 belongs to Modhapara Police Station relating to police remand and crime squad. Constable Anil Pradhan (PW-62) who was also one of the member of the crime squad, according to the instructions of Vishwanath Rajbhar, the police team had gone to Varanasi and arrested the appellants Jambwant and Vinod (appellant Shyam Sunder was not among three persons who were lodged in the hotel) from a lodge where local police had assisted them. This witness has turned hostile and was subjected to leading questions by the CBI.

- 78.** Mr. Pandey further submits that so far as the deposition of approvers Bultu Pathak (PW-64) is concerned, he has deposed that he received information from Suresh Singh (PW-65) and reached the house of Suresh Singh in a Maruti Van with Amit Soni and talked with the boys present there and thereafter, informed Surya Kant Tiwari that the boys (Vinod Singh, Anand, Babu @ Jambwant) were ready to take responsibility of the crime (he has not uttered the name of appellant Shyam Sunder). Further, in paragraph 11, it has been stated by him that Surya Kant Tiwari had stated that all the arrangements were done and three boys would be arrested near Varanasi. In paragraph 12, he states that Suresh Singh was paid Rs. 15 Lakhs for three accused namely Vinod Singh, Anand Kumar and Babu @ Jambwant. Further, in paragraph 14, he states that Surya Kant Tiwari had stated to Suresh Singh to make available the mobile numbers of Surya Kant Tiwari, R.C.Trivedi and Suresh Singh to the three persons Vinod Singh, Babu @ Jambwant and Anand.

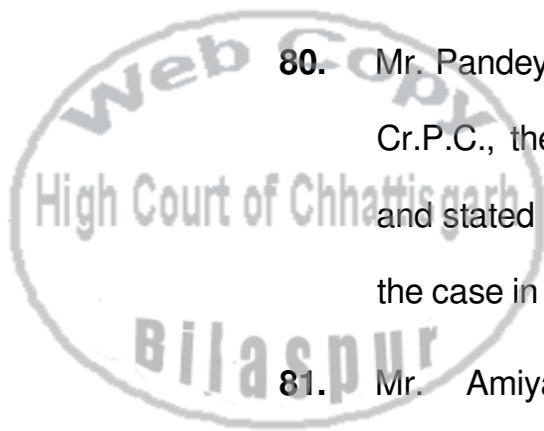




79. Similarly, Suresh Singh (PW-65) has stated that Surya Kant Tiwari had instructed him for arranging 3-4 boys and vehicle marshall. He was informed that three persons Vinod Singh, Anand and Jambwant were ready to become culprits and identify them in Court. Further, he has stated that Bulthu Pathak informed him the three persons Vinod Singh, Anand and Jambwant were ready to take the allegation of murder of the deceased. This witness had given his pone number as well as phone number of Bulthu Pathak and instructed them to go to Varanasi and stay in hotel and to inform regarding the place of lodging as well as Rs. 15 Lakhs were handed over to them and they were sent to Varanasi in Sarnath Express.

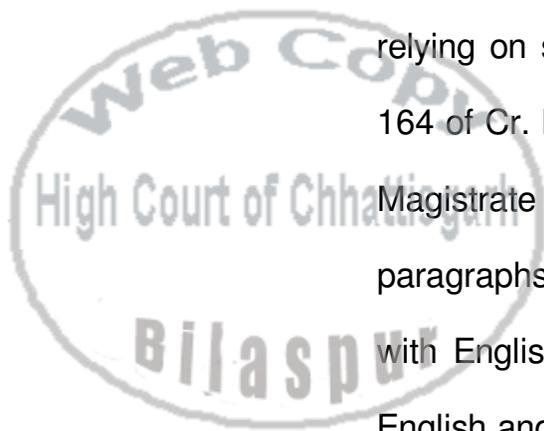
80. Mr. Pandey further submits that in the statements under Section 313 Cr.P.C., these accused had admitted their guilt in a separate page and stated that in greed of money, they nodded to become accused in the case in place of real offenders.

81. Mr. Amiya Bhushan, learned counsel appearing for the appellants/accused-Narsi Sharma, Sunil Gupta, Raju Bhadauriya, Anil Pachauri, Ravindra Singh @ Ravi Singh, Lalla Bhadauriya @ Dharmendra Singh, Satyendra Singh and Sanjay Kushwaha, adopts the submission made by the learned counsel for the other accused/appellants and submits that this is a case of no evidence and only on the basis of presumption, the appellants have been roped in this case. There is nothing to connect the appellants/accused with the crime in question but even then they have been convicted and sentenced for the offence under Section 302/34 and Section 427 of the IPC.





82. Mr. Bhushan would submit that as per case of prosecution only allegations against the aforesaid appellants are that they were present at place of incident along with main accused persons. Except that, there is no overt act alleged against them. For proving the guilt of present appellants, prosecution had examined Banke Bihari Chauhan (PW-128) as eyewitness who has turned hostile and has not supported the case of prosecution. In paragraph 29 of his deposition, he categorically stated that he do not identify any of the accused persons present in the Court and first time he was seeing the appellants. He made further statement that he never came to Raipur before that day. The learned trial Court convicted the appellants relying on statement of Banke Bihari Chauhan made under Section 164 of Cr. P.C. (Exhibit P/120). This statement was recorded by CBI Magistrate at Delhi in English language. In his deposition at paragraphs 29 and 30, this witness stated that he was not conversant with English language. He further stated that Exhibit P/120 was in English and he was not aware of the fact what is written in it. In para 23 and 31, he further stated that Magistrate asked the questions to him in English and as per instructions of CBI Officers, he used to nod his head only. In paragraph 6 of his examination-in-chief, he made categorical statement that he made wrong statement before the Magistrate at Delhi under the threat of CBI officers. He explained that he made false statement because of threatening given to him by CBI Officers of encountering him and his father. Merely on the basis of last line of his deposition, the appellants have been convicted. Paragraph 348 to 361 of the judgment of the learned trial Court discusses the statement of this witness and finding with regard to the same is at paragraphs 432 and 467, which is perverse. When the learned trial





Court asked the question from witness which of his statement, given during trial or given before Magistrate under Section 164 of Cr.P.C. is true, then the witness answered with folded hand "आप जैसा मान लें, मुझे कुछ नहीं कहना है". On the basis of this statement of witness, the learned trial court relied upon the statement made under Section 164 Cr.P.C. before magistrate and convicted the appellants for offences under Sections 302 read with 34 of IPC and imposed sentence of life imprisonment. The learned trial Court failed to appreciate the legal position that statement made during trial is substantial evidence and statement under Section 164 of Cr.P.C. can never take place of substantial evidence. That can be used only to corroborate the fact or to contradict the witness. Conviction on the basis of 164 Cr.P.C. statement is perverse and deserves to be set aside. The prosecution has not produced any other evidence against appellants. There is no evidence available on record to corroborate the statement of Banke Bihari Chauhan (PW-128).

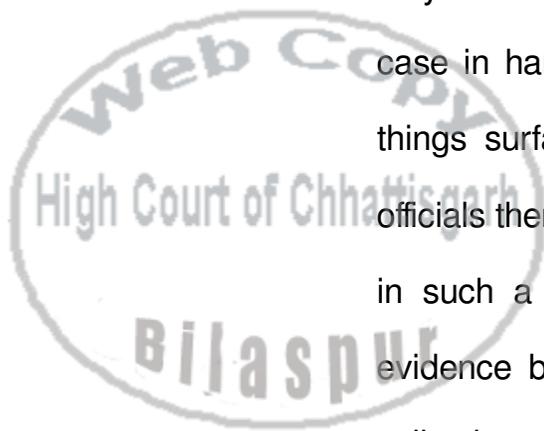
- 83.** So far as other eye witnesses Mohd. Yunus (PW-49), Raees Khan (PW-50) and Abdul Jameel Khan (PW-53) are concerned, they have not stated that Banke Bihari Chauhan (PW-128) was present at the place of incident. Since presence of PW-128 has not been established by the prosecution, hence no reliance can be placed on his statement. Further, there is no recovery from the appellants and they don't have any other criminal antecedents.
- 84.** On the other hand, Mr. Vaibhav A. Goverdhan, learned counsel for the C.B.I and Dr. Sourabh Pande, learned Deputy Advocate General appearing for the State/respondent would submit that there is ample evidence on record to connect the appellants/accused with the crime



in question. The learned trial Court, after making a detailed analysis of the statement of witnesses and the evidences available on record, has rightly convicted the appellants/accused as aforementioned. The same does not warrant any interference.

- 85.** Mr. Goverdhan submits that since in the crime in question, the police officials and the persons associated a political party which was a ruling party at that point of time are involved and in order to give a free passage to the real culprits, a concocted and fabricated case was made by earlier lodging an FIR against five accused persons against whom also the investigation was conducted in such a manner that they all were acquitted of the charges by the learned trial Court. In the case in hand, when the CBI entered into investigation, much more things surfaced and it turned out to be a crime where the police officials themselves were involved. The entire conspiracy was hatched in such a manner that there was least possibility of getting any evidence but despite that, the prosecution had been successful in collection of the evidence and after appreciation of the statement of the witnesses, the learned trial Court has rightly arrived at a conclusion with regard to the guilt of the appellants/accused which does not warrant any interference.

- 86.** Mr. Goverdhan would further submit that the memorandum statement of Chiman Singh has been proved by B.K.G.Naidu (PW-20), the memorandum statement of accused Shivendra Singh Parihar has been proved by D.P.Mandal (PW-3). The involvement of one Marshal vehicle is undisputed although Chiman Singh as stated that the vehicle to be Bolero, however since appearance wise, since the





Marshal and Bolero are similar, therefore, the involvement of the vehicle has also been proved by the prosecution.

- 87.** So far as criminal conspiracy is concerned, the statement of Rohit Prasad (PW-126), Vijay Jain (PW-73), Reginald Jeremiah (PW-85), Raj Singh (PW-100), Ajit Singh (PW-104), Vishnu Prasad Thakur (PW-105), have proved the involvement of Yahya Dhebar, Abhay Goyal, Chiman Singh, Rakesh Kumar @ Baba and Vikram. Accused Rakesh Sharma has given disclosure statement Exhibit P/38 wherein accused Rakesh Sharma has stated that he was present at the time when Chiman Singh had caused murder of the deceased and that he had purchased a Katta from Gwalior 1½ - 2 months before the incident, Exhibit P/39, wherein he states that he had picked the Rudraksh Mala of the deceased after the murder which was later on sold by him because of paucity of money, Exhibit P/40 which is in respect of sending a photo taken at Vaishno Photo Studio, Gwalior, which was sent by him to Chiman Singh. The owner of the shop Manoj Tiwari (PW-112) has also been examined in this regard.
- 88.** The call details (Exhibit P/101, P/102, P/103, P/104, P/105 and P/106) have been proved by witness Bruno Frank (PW-107). Exhibit P/106 makes it clear that which mobile number belongs to whom and the accused were in contact with each other on 04.06.2003 at 21:57 to 05.06.2003 at 10:24 hours.
- 89.** So far as evidence with regard to involvement of accused Suryakant Tiwari, Jambwant, Shyam Sunder, Vinod Singh, Vishwanath, Rajbhar and Avinash @ Lallan in the case is concerned, the prosecution has examined Mahant @ Bulthu Pathak (PW-64) and Suresh Singh (PW-65) who were the accused but have later turned to be approvers, have





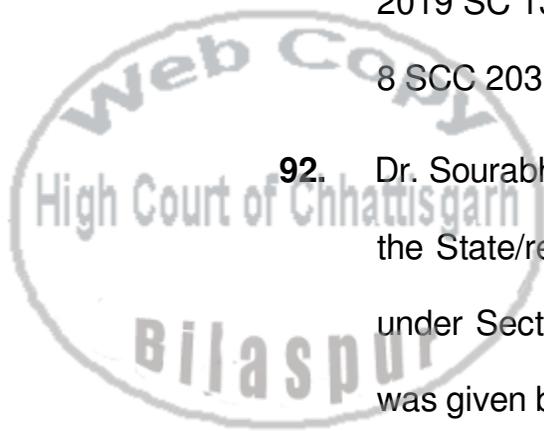
categorically narrated the entire case and the manner in which accused Suryakant Tiwari managed other persons to get themselves involved in the murder charge of deceased Ramavtar Jaggi in order to save real culprits.

90. Mr. Goverdhan further submits that the statement of the approver Bulthu Pathak (PW-64) corroborates with the statement of other witnesses which In support of his contentions,

91. In support of his contentions, Mr. Goverdhan relies on the decision of the Supreme Court in **Badri Rai & Another v. State of Bihar** {AIR 1958 SC 953} **Vidyalakshmi alias Vidya v. State of Kerala** {AIR 2019 SC 1397}, **State of Kerala v. P. Sugathan & Another** {(2000) 8 SCC 203}.

92. Dr. Sourabh Pandey, learned Deputy Advocate General appearing for the State/respondent submits that so far as submission of certificate under Section 65B of the Evidence Act is concerned, no suggestion was given by the defence in this regard before the learned trial Court.

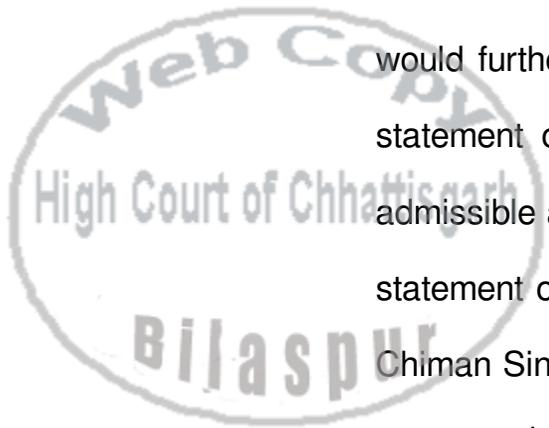
93. Mr. B.P.Sharma, learned counsel appearing for the intervenor/ objector/ complainant submits that the present is a case which falls under the category of rarest of the rare as the State machinery was also involved in commission of the murder of the deceased. The police personnel were themselves involved in assisting and facilitating the criminals for commission of the crime. Even the fake/bogus accused persons were arranged so as to save the real culprits. The deceased was firstly threatened to stay away from political activities and in furtherance of that threat, he was done to death. In the first FIR lodged, the investigation by the Police Officers who are the accused/appellants in these appeals also, was done in such a manner





that all the accused therein were acquitted. The appellants/accused could be convicted only when the second FIR was lodged at the instance of the son of the deceased and other leaders of the NCP and when the investigation was taken over by the CBI, then only the perpetrators of the crime could be arrested but it appears that there may be some other persons also involved in commission of the crime who have not been arrayed as accused in this case. Lastly, he would support the order passed by the learned trial Court and submit that no interference is warranted.

- 94.** In rebuttal to the arguments advanced by learned counsel for the CBI, Mr. Shrivastava, learned counsel for the appellant-Yahya Dhebar would further submit that to corroborate the evidence memorandum statement of Chiman Singh (Exhibit P/26) has been shown to be admissible as evidence by CBI. Further, it was submitted by CBI that statement of B.K.G. Naidu (PW-20) has proved the memorandum of Chiman Singh. In this regard, Mr. Shrivastava would submit that the memorandum statement under the Evidence Act is for the purpose of collecting evidence for the prosecution and statement should be support by the way of evidence collected by prosecution. In the present matter no evidence has been collected by prosecution as per the memorandum statement made by Chiman Singh. Furthermore, as per the statement of Chiman Singh no name of any accuse person has been narrated, which itself fails to create any nexus between Chiman Singh and Yahya Dhebar. Even according to this memorandum, Chiman Singh was introduced to the other accused persons by Amit Jogi and even according to his memorandum, there was no instruction to Chiman Singh to commit murder. According to

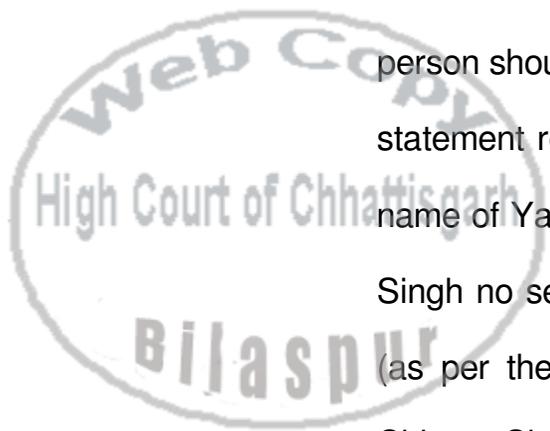




this memorandum, the murder was just by an accident. This memorandum has no evidentiary value.

95. Section 30 of the Evidence Act provides for consideration of proved confession affecting person making it and others jointly under trial for same offence. When more persons than one are being tried jointly for the same offence, and a confession made by one of such 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. It is clear from the perusal of the said Section that when more person than one are being tried jointly for the offence and confession made by one person should affect the other persons. In the present case, as per the statement relied by CBI of Chiman Singh, he has not mentioned the name of Yahya Dhebar, further on the bases of statement of Chiman Singh no seizure of any weapon has been made by the prosecution (as per the statement of PW-20, B.K.G. Naidu). The statement of Chiman Singh has no evidentiary value as it is not supported by any evidence.

96. Further, the memorandum statement cannot be considered to be a confession as it was not taken in presence of any judicial person. So far as seizure of vehicle is concerned, the CBI failed to appreciate the evidence that Mohmmad Yusuf (PW-49), Raees Khan (PW-50), Jamil Khan (PW-53) and Banke Bihari (PW-128) have turned hostile and have not supported story narrated by CBI. Furthermore, they have failed to establish any nexus between the crime and the vehicle seized. The presumption is also perverse on the ground that Rohit Prasad had made available a vehicle through Vinay Agrawal to Yahya





Dhebar which was being used by Chiman Singh, this is neither in the statement of Rohit Prasad nor in statement of Vinay Agrawal PW-1 on the contrary Vinay Agrawal in Para 4 has stated that the vehicle was handed over to Yahya Dhebar on phone call of Rohit Prasad that vehicle is required in CM house and this vehicle was returned back to Vinay Agrawal and this vehicle was with Vinay Agrawal on 03.06.2003 to 05.06.2003 when Vinay Agrawal went to Bilaspur.

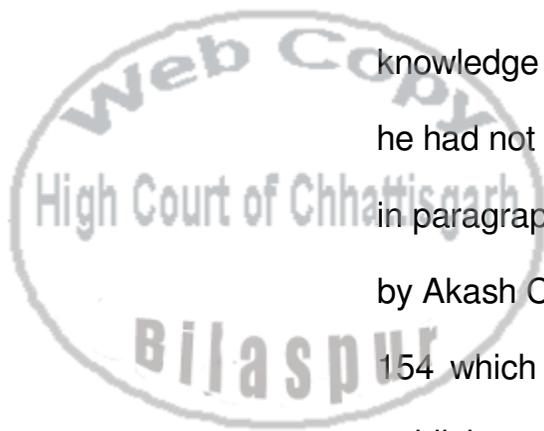
97. So far as the evidence with regard to criminal conspiracy is concerned, the submission of the CBI is based on statement of Rohit Prasad (PW-126), Reginald Jeremiah (PW-85) and Vijay Jain (PW-73). The statement of Vijay Jain is only to the extent that he was manager of Hotel Green Park. In the night, restaurant was runed in the garden where 14 to 16 tables where placed at the distance of 7 to 8 feet. In para 8 of his deposition, he has stated that Amit Jogi, Yahya Dhebar and Abhay Goel were visiting the hotel once or twice in month along with 4-5 persons and used to leave the restaurant after taking dinner. At the time of dinner other person also present and one waiter was used to place about 2-3 feet from there table. At para 9, PW-73 has specifically stated that accused had never taken dinner inside the room In para 3 he has stated that 14 rooms were booked in the hotel from 15.07.2003 by the then Chief Minister Mr. Ajit Jogi for the election purpose and in para 9 he has categorically stated before 15th July 2003 no meeting took place inside the room of the hotel. So far as Reginald Jeremiah (PW-85) is concerned, he has not alleged that this appellatant has conspired for the murder. He has merely stated that it was the idea of accused-Amit Jogi to kill the deceased which was objected to by some of the other persons present in the said meeting.





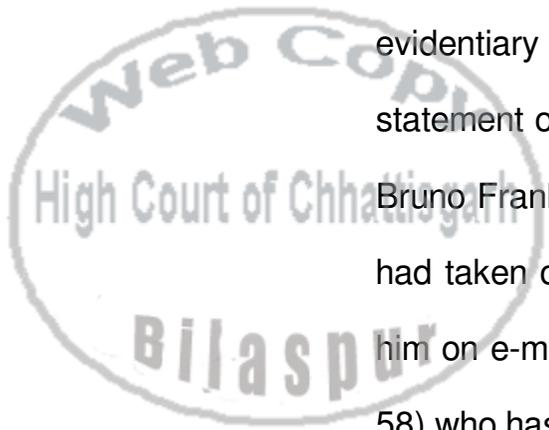
Mr. Shrivastava draws the attention of this Court to paragraph 7 and 8 of the deposition made by this witness before the Court.

- 98.** So far as Rohit Prasad (PW-126) is concerned, he was called by accused-Amit Jogi. Reginald Jeremiah (PW-85) in paragraph 8 of his statement has specifically stated about the witness (Rohit Prasad) that he was present with Amit Jogi and Chiman Singh in the room. Therefore this witness appears to be the main conspirators. This witness in para 10 has stated that he is partner with Vinay Agrawal in ABC publicity. This witness has not stated of the prosecution case about any conspiracy of murder even for the stay of Chiman Singh at Batra House. In paragraph 20, he has stated that he had no personal knowledge about the stay of Chiman Singh at Batra house because he had not gone to see by himself. Not only this, though he has stated in paragraph 20 that it was wrong that Batra House was taken on rent by Akash Channel, however, CBI/prosecution has exhibited Exhibit P-154 which shows that Batra house was obtained in lease by ABC publicity and this witness has stated in para 10 that he is partner of ACB publicity. However the learned trial Court vide para 454 and para 455 of its judgment has categorically recorded the finding that it is not proved beyond reasonable doubt that on 21.05.2003 or some days after, at C.M. House in presence of Amit Jogi, Chiman Singh, Siddhart Asati, Abhya Goyal, Yahya Dhebar, Arjun Bhagat, and this witness Reginald Jeremiah (PW-85) and Lav Kumar any meeting or conspiracy for committing murder of the deceased was held.
- 99.** So far as evidence regarding call details is concerned, to establish the conspiracy, CBI has supported the investigation by means of mobile numbers and call details of particular number exhibited in Exhibit





P/139. The mobile number are as follows (1) 98262-17056 which belongs to Chiman Singh, (2) 98261-49999 which belongs to Anand Chowhan, (3) 98261-33888 which belongs to Abhay Goel, (4) 98261-40111 which belongs to Feroz Siddiquie and (5) 98261-50000 which belongs to the then Chief Minister. It is evident that none of the above mentioned number was registered in the name of Yahya Dhebar. Furthermore, the investigation agency has itself seized Exhibit P-84 which shows that the number was requested by one Anand Chowhan (through application No. 003568) and he was allotted the number, which was owned and operated by Anand Chowhan. It is worth here to mention that the learned court below in its judgment has denied the evidentiary value of the call details which was supported by the statement of Bruno Frank (PW-107) and has acquitted Mr. Amit jogi. Bruno Frank, in his statement at paragarpah 6 has has stated that he had taken out the print out of the call details which was received by him on e-mail. As per the witness of the CBI, Anand Chowhan (PW-58) who has specifically stated in paragraph 3 that the phone number 098261-49999 is his phone and it was used by him. Not only this, in para 6 he has denied this fact that the phone number 98261- 49999 was used by Yahya Dhebar. In paragraph 8, he has categorically dined this fact that on the date of incident the mobile was being used by the appellant Yahya Dhebar. In para 17, he has specifically stated that 98261-49999 is mobile phone of IDEA and it is in his name. Anand Chouhan (PW-58) has specially stated that he doesn't know Yahya Dhebar. He has denied that phone number 98261-49999 was used by Yahya Dhebar. Not only this, Amish Das (PW-90) who is the witness of the CBI, in his statement at paragraphs 3 and 4 states that 98261-49999 was allotted to Anand Chouhan (PW-58).

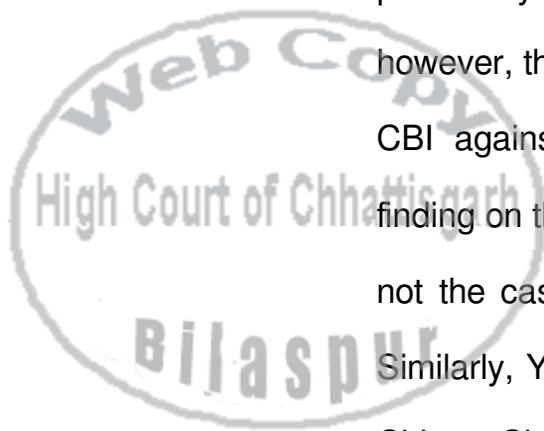




100. Thus, it is the case of the CBI that 98261-49999 was the phone of Anand Chouhan. Anand Chouhan (PW-58) has stated that he doesn't know Yahya Dhebar and he was using the phone number 98261-49999 at the relevant point of time and witness of ExhibitP-106, Bruno Frank has also categorically stated that e-mail call details are right or how he doesn't know, which number belong to which person he doesn't know.

101. Mr. Shrivastava would lastly submit that the charge framed against the appellant that along with Amit Jogi and others that the conspiracy was hatched at Hotel Green Park and CM House has not been found proved by the learned trial Court vide para 455 of the judgment, however, the learned trial Court, traveling beyond the case framed by CBI against the appellant has drawn presumption and recorded finding on the basis of presumption to show "Sawami Bhakti" which is not the case of the CBI, has only presumed about the conspiracy. Similarly, Yahya Dhebar and Abhay Goyal got permission for stay of Chiman Singh is also perverse as Rohit Prasad has stated that he had not seen Chiman Singh in Batra house and second, it is no where stated that he was staying with the permission of Yahya Dhebar or Abhay Goyal and on the contrary in paragraph 12, he has stated that when he asked Yahya Dhebar, it was told that it is Amit Jogi who has asked to make arrangement of stay of Chiman Singh and in paragraph 7, he has stated that on query, Rohit Prasad (PW-126) has been informed by Yahya Dhebar that a call has been received from Amit Jogi in which he has been asked for stay of Chiman.

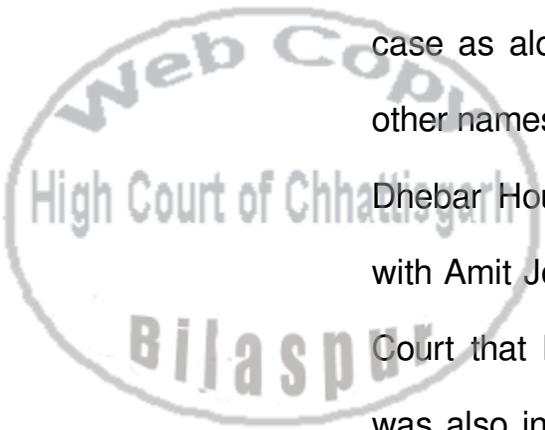
102. Lastly, learned counsel for the respective appellants would submit that the learned trial Court has merely assumed that the meeting was





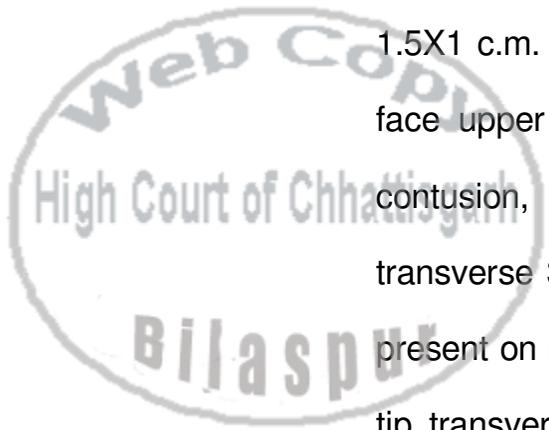
being conducted in Green Park hotel and that any meeting was held in Chief Minister's house has been disbelieved by the learned trial Court but then also the appellants have been convicted. The learned trial Court has further merely presumed that the conspiracy could have been hatched in Batra House as it was owned by brother of Yahaya Dhebar as in the Batra House, the accused Chiman Singh was residing. Feroz Siddiquie was the Catering Manager of Batra House and Abhay Goel used to visit there. Neither there is any evidence nor any charge was framed in this respect. There is no evidence neither any charge was framed in this respect. Mere presence of name in the visitor's register is not sufficient to implicate him as an accused in this case as alongwith the name of this appellant, there are number of other names present. Feroz Siddiquie was merely catering manager in Dhebar House he does not have any personal acquaintance either with Amit Jogi or Ajit Jogi, hence the presumption of the learned trial Court that because of devotion towards his masters, the appellant was also involved in the crime in question, is misplaced. Even the learned trial Court has disbelieved the statement of Rejinald Jeremiah (PW-85) who was also presumed to be an approver when the fact is that he was not the accused so he cannot be an approver.

- 103.** We have heard learned counsel for the parties, perused the pleadings and records of the learned trial Court with utmost circumspection.
- 104.** There is no dispute with regard to the nature of death of the deceased being homicidal which is apparent from the postmortem report. Dr. Raj Kumar Singh (PW-38) is the Doctor who had conducted the postmortem of the deceased and his report is Exhibit P/49-C. This witness states that the dead body of the deceased was brought to Dr.





Bhimrao Ambedkar Memorial Hospital, Raipur on 10:05 a.m. on 05.06.2003. He alongwith Dr. V.K.Dhruw had conducted the postmortem. On external examination, he found the body was hefty built and his clothes were soaked in blood. His eyes were slightly open and there were stains in the membrane, mouth was closed but the lips were apart, rigor mortis was present all over the body. Blood was present in the nostrils in dried form. The face was a bit bluish. This witness has stated the following injuries : (1) contusion on the right ear, middle part, posterior half part transverse 1X0.5 c.m, (2) contusion, abrasion present on left side of face 2 c.ms lateral slightly below the left side of face 2 cms lateral and slightly below the left eye 1.5X1 c.m. (3) contusion (rail pattern) present on the left side of the face upper part 4 c.m lateral to left eye transverse 5X1 c.m. (4) contusion, abrasion present on the left part of neck obliquely transverse 3X1.2 c.m. (5) entry wound - contused lacerated wound present on right side upper chest region anterior just below shoulder tip transverse 2X1c.m. with narrowing effect laterally. The margins were slightly inverted. There was abrasion all around the wound. The abrasion was wider medially on both upper and lower borders medial ½ part. Medially the width of abrasion while at borders 0.5 c.m. wide, while laterally, it was 0.4 c.m. The wound had extended into right side of chest cavity through 2nd rib and second intercostal space, soft tissue and then into right lung and from right lung, it has existed out and entered into soft tissue and then into right lung and from right lung and made a passage into the anterior coronary descending artery and in the muscles there was an injury 9X2 c.m. and a metallic bronze bullet had entered into the abdomen. The size of the bullet was 3 c.m. In the right abdominal cavity had around 750 m.l., left abdominal





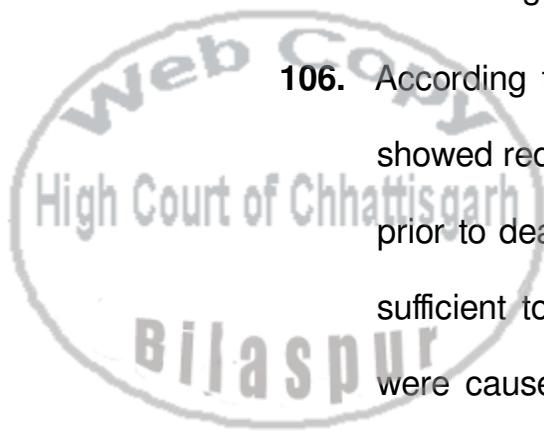
cavity had 400 m.l. and thoracic cavity contained about 400 m.l. of blood. Ecchymosis was present. The direction of this wound was right to left, above downwards and from anterior plane to posterior plane. Height of the entry wound from right greater trochanter is 10” and from heel, it was 45”. The tissue in the tract were showing stretch laceration effect from entry wound towards the lodgement of the bullet.

105. Two contusion and abrasions were present on the right side of the upper chest anterior slightly medially to wound No. 5 entry site. Upper one was 3.5 x 0.7 c.m. and the second one was 1.5 x 0.5 c.m. The abrasions were dermal deep. They had rail pattern and had intervening health effect between the two rows of contusion.

106. According to the postmortem report, all the injuries were fresh and showed red clotted blood echymosis and was caused within 12 hours prior to death. Injury No. 5 was a firearm injury by a bullet and was sufficient to cause death in ordinary course of nature. Rest injuries were caused with hard and blunt object. Rail pattern bruises were caused with hard blunt and yielding object and were simple in nature. Viscera was preserved for chemical analysis in saturated common salt solution in a bottle. The bullet was labelled, sealed and handed over to the Police Constable.

107. The Doctor has opined that the death was due to shock and hemorrhage as a result of firearm injury to the body. Death was homicidal in nature and the duration of death was within 24 hours prior to postmortem examination. The entire postmortem was videographed also.

108. Now the question before this Court would be whether the accused/appellants are the conspirators/perpetrators of the crime in



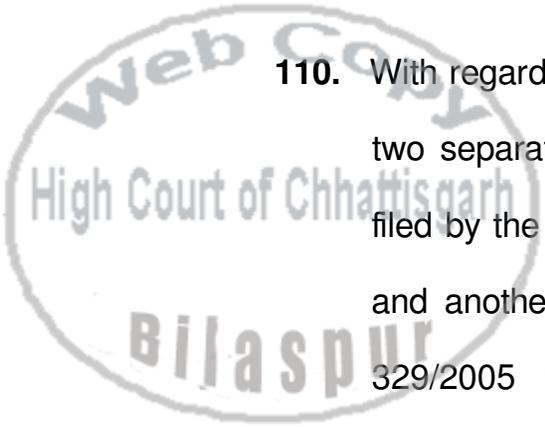


question as according to the learned counsel for the appellants/accused, there is no direct/tangible evidence against their conviction and sentence is based purely on circumstantial evidence.

109. Admittedly, the incident took place on 04.06.2003 at about 23:40 hours near Moudahapara Police Station, Raipur. The deceased was the treasurer of the NCP and the accused/appellants are alleged to be either belonging to or the supporter of the Congress party, which was the then ruling party in the State of Chhattisgarh. According to the prosecution, the accused/appellants in order to ruin the rally which was to be held by the NCP, hatched a conspiracy and in furtherance of the said conspiracy, the deceased was done to death by gunshot.

110. With regard to the aforesaid incident, two cases were registered and two separate charge sheets were filed. The first charge sheet was filed by the State Police on which S.T. No. 334/2003 was registered and another charge sheet was filed by the CBI on which ST. No. 329/2005 was registered. In S.T. No. 334/2003 which was investigated by the State Police, Vinod singh @ Badal, Shyam Sundar @ Anand Sharma, Jambwant Kashyap, Avinash Singh @ Lallan and Vishwanath Rajbhar were the accused. They all were acquitted of the charges vide judgment and order dated 31.05.2007, as the prosecution could not prove its case beyond all reasonable doubt.

111. In the investigation by the CBI, Amit Aishwarya Jogi, Chiman Singh, Yahya Dhebar, Abhay Goyal, Shivendra Singh Parihar, Feroz Siddiquie, Vikram Sharma, Vinod Singh Rathore, Rakesh Kumar, Ashok Singh Bhadoriya, Sanjay Singh Kushwaha, Raju Bhadoriya, Ravindra Singh, Narsi, Satyendra Singh, Vivek Singh, Lalla Bhadoriya, Sunil Gupta, Anil Pachauri, Harishchandra, Suryakant,

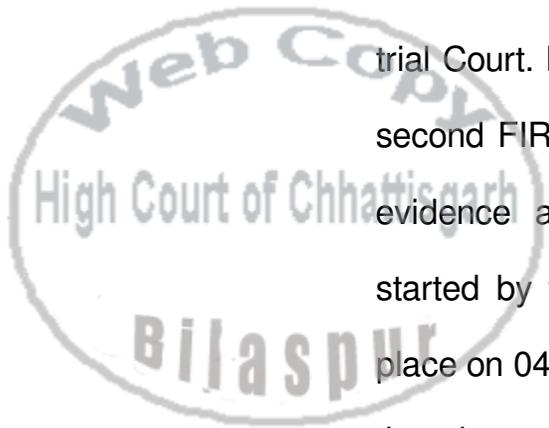




Rakesh Chandra Trivedi, V.K.Pandey, Amrik Singh Gill, Avinash Singh @ Lallan Singh, Jambwant, Shyam Sunder, Vinod Singh Rajput and Vishwanath Rajbhar, were made accused in this case out of which only one accused i.e. Amit Aishwarya Jogi has been acquitted of the charges and rest of them have been convicted and sentenced as mentioned in the opening paragraphs.

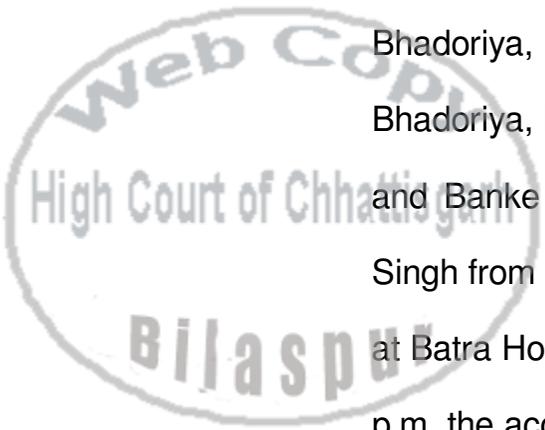
112. Three of the accused namely Amrik Singh Gill, V.K.Pandey and R.C.Trivedi are the Police Officers who were investigating the crime registered in the first FIR. The manner in which the investigation was done in the first FIR registered i.e. 104/2003 itself speaks volumes as all the five accused in that case have been acquitted by the learned trial Court. Had it been a case where the CBI did not investigate the second FIR, it was not possible for the prosecution to bring out any evidence against the appellants/accused. The investigation was started by the CBI on 22.01.2004 whereas the incident had taken place on 04.06.2003. During this long gap, there was every possibility that the evidences could have been tampered or witnesses being tutored and the present being a case where the Police Officers themselves were involved who are conversant with the criminal jurisprudence, they would have taken every care to save themselves and also to save those for whom they were working.

113. In the investigation made by the CBI, it has been revealed that Chiman Singh was an old supporter of Ajit Pramod Kumar Jogi, the then Chief Minister of Chhattisgarh and he had helped him in the elections at Marwahi and Shahdol. Chiman Singh was called by Amit Jogi and Yahya Dhebar was asked to make arrangements for the lodging and boarding of Chiman Singh at Raipur. In the month of May





2003, Amit Jogi, Yahya Dhebar, Abhay Goyal hatched conspiracy at Hotel Green Park, Raipur for disrupting the rally of the NCP which was to be held with regard to the forthcoming assembly elections. Some part of the conspiracy was also hatched in the CM's House in which Chiman Singh also participated. After making plans, Yahya Dhebar went to Gujarat and Abhay Goyal and Amit Jogi went towards Rajnandgaon and Dongargarh area. The other accused namely Feroz Siddiquie, Chiman Singh and his other associates made arrangements for finance etc. In furtherance of the said conspiracy, in the end of May, 2003, Vikram Sharma, Rakesh Kumar Sharm @ Baba, Ashok Kumar Bhadoriya, Sanjay Singh @ Channu, Raju Bhadoriya, Ravindra Singh, Narsi, Satyendra Singh, Vivek Singh Bhadoriya, Lalla Bhadoriya, Sunil Gupta, Anil Pachori, Harsichandra, and Banke Bihari came to Raipur. They all were taken by Chiman Singh from Raipur Railway Station to Batra House and they all stayed at Batra House. According to their plan, on 04.06.2003, at about 9:30 p.m. the accused Shivendra Singh Parihar, who was the driver of the Maruti Van and the registration plate of which vehicle was flipped. Chiman Singh, alongwith other accused persons was sitting in Bolero which was being driven by Vinod Rathore. They had kept bamboo stock, petrol in Bisleri bottle. They all reached near the NCP office near Budhapara, Raipur. The deceased came out of the said office and took his Alto car and went towards Jaystambh Chowk which was followed by the accused. The car of the deceased was overtaken by the Bolero vehicle and as soon as the alto car stopped, the appellants / accused who were sitting in the Bolero and Maruti Van came out of their respective vehicles and started vandalising the Alto car. Chiman Singh came near the car and fired upon the deceased. At





that time, Rakesh Kumar Sharma @ Baba took the Rudraksh Mala of the deceased. Thereafter, all the accused/appellants fled from the spot on their vehicles towards Fafadih chowk. Chiman Singh informed Feroz Siddiquie on his mobile number 98261-40111 that the work has been done. All the accused reached Batra House in a group of two-three persons. Feroz Siddiquie was asked to go to Hospital and see whether the deceased was still alive or dead then accused Shivendra and Feroz Siddiquie went to the Hospital and found that the deceased was dead. They came to Batra House and informed Chiman Singh. Feroz Siddiquie informed the accused/appellant Yahya Dhebar and Abhay Goyal on phone. The manner in which the talks were made between the accused, is detailed in the charge sheet. After the incident, accused Amit Jogi asked Reginald Jeremiah (PW-85) who was his friend and Director of Akash Channel that he should go to Assam and given Rs. 5 Lacs to accused Chiman Singh. His arrangement for flight was made by Abhay Goyal. Reginald Jeremiah (PW-85) called Chiman Singh to Calcutta where he gave the amount.

- 114.** In the investigation made by the CBI, it has also been found that Suryakant Tiwari, Bulthu Pathak, Suresh Yadav, R.C.Trivedi, V.K.Pandey and Amrik Singh Gill had hatched a criminal conspiracy and in order to protect the actual culprits and the fake/bogus culprits namely Avinash Singh, Jambwant Kashyap, Shyam Sundar, Vinod Singh, Vishwanath Rajbhar were implicated and were asked to take the blame on themselves as named FIR was lodged against Ajit Jogi and Amit Jogi.
- 115.** The learned trial Court, in order to consider the criminal liability of the accused/appellants, had framed 9 questions for consideration.



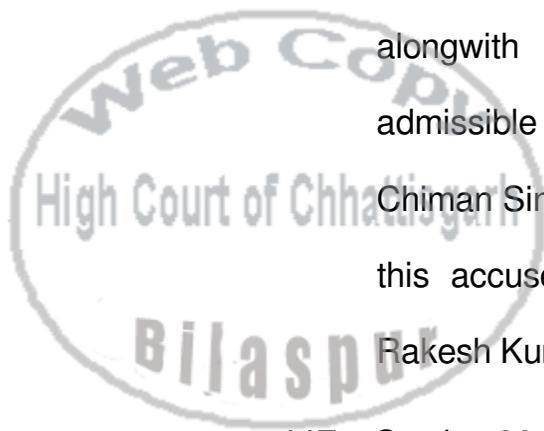
116. In the case in hand, the accused-Chiman Singh is alleged to be the main accused who had fired the gunshot on the deceased. The accused-Chiman Singh was identified in the TIP by Abdul Jameel Khan (PW-53) and as such, the presence of the accused at the spot has been proved by the prosecution. The said TIP has also been supported by Nayab Tahsildar, Harvansh Singh Miri (PW-33), who had conducted it. The memorandum statement of Chiman Singh (Exhibit P-26) has been proved by B.K.G.Naidu (PW-20). The accused, in his confessional statement has narrated the entire incident and has also stated about the involvement of co-accused Yahya Dhebar, Abhay Goyal, Rakesh Kumar @ Baba and Vikram alongwith himself and therefore, this confessional statement is admissible under Section 30 of the Evidence Act, not only against Chiman Singh but also against co-accused who have been named by this accused in his statement *i.e.* Yahya Dhebar, Abhay Goyal, Rakesh Kumar @ Baba and Vikram.

117. Section 30 of the Evidence Act, 1872 reads as under:

“30. Consideration of proved confession affecting person making it and others jointly under trial for same offence. - When more persons than one are being tried jointly for the same offence, and a confession made by one of such 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.

Explanation - “Offence”, as used in this section, includes the abetment of, or attempt to commit the offence.

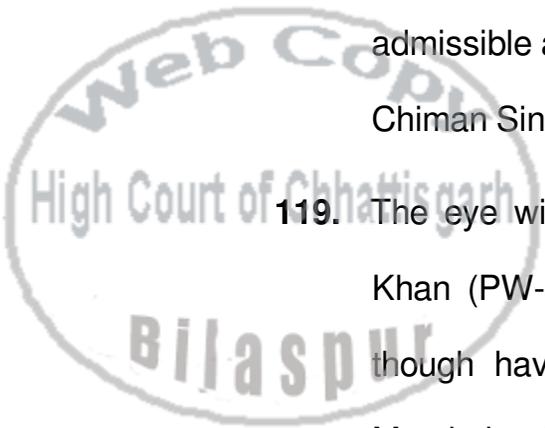
118. All the accused named by Chiman Singh have been tried together for the same offence and this statement has been proved by B.K.G.Naidu





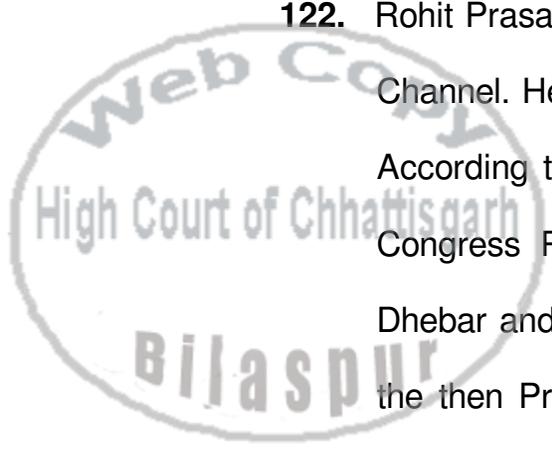
(PW-20). Hence, all the ingredients of Section 30 of the Evidence Act is proved by the prosecution and as such, this Court can take into consideration such confession against Chiman Singh alongwith Yahya Dhebar, Abhay Goyal, Rakesh Kumar and Vikram. Similarly, the accused Shivendra Singh Parihar has also given his memorandum statement (Exhibit P-5) which is duly proved by D.P.Mandal (PW-3) and based on his memorandum, Maruti Van used in commission of crime bearing registration No. MP/08/A/1100 was recovered vide seizure memo Exhibit P/6. Shivendra Singh has given his confessional statement implicating himself alongwith Chiman Singh, therefore, this version of accused Shivendra Singh Parihar is admissible and can also be considered against him as well as against Chiman Singh.

119. The eye witnesses to the incident i.e. Mohd. Yusuf (PW-49), Rais Khan (PW-50), Jameel Khan (PW-53) and Banke Bihar (PW-128) though have turned hostile, but from their evidence, use of one Marshal vehicle is undisputed. Although Chiman Singh stated that vehicle to be Bolero, but since appearance wise Marshal and Bolero look alike as they are manufactured by the same Company, therefore, use of the vehicle is also proved by the prosecution. The Bolero vehicle, used in commission of crime numbered as CG/04/B/3835 is narrated by Chiman Singh in Exhibit P/28, which is his disclosure statement dated 29.04.2005, as well as witness Vinay Agrawal (PW-119) in his Court statement. This goes to show that it was the same vehicle which was used in commission of crime. The said vehicle was provided to him by Yahya Dhebar and Rohit Prasad.





- 120.** So far as criminal conspiracy is concerned, the Hon'ble Supreme Court has specifically held in catena of judgments that '*conspiracy is hatched in secrecy and executed in darkness*' and therefore, seldom the prosecution is able to bring direct evidence of criminal conspiracy and most of the time, it has to be inferred from the circumstantial evidences and materials collected by the prosecution.
- 121.** The conspiracy part has been proved by number of witnesses and this Court deems it appropriate to take note of the important prosecution witnesses who have deposed against the main conspirators of the crime.
- 122.** Rohit Prasad (PW-126) who is one of the founder member of Akash Channel. He was well acquainted with Amit Jogi and Chiman Singh. According to this witness, Chiman Singh was the old worker of the Congress Party. He stated that Batra House belonged to Yahya Dhebar and the brother of Yahya Dhebar namely Aizaz Dhebar was the then President of NSUI. When Chiman Singh used to come to Batra House for staying there, he asked his employees of Akash Channel not to allow Chiman Singh to stay there. He had asked Yahya Dhebar about Chiman Singh who informed him that he was instructed by the CM House and Congress Party to make arrangement for the stay of Chiman Singh. At paragraph 7 of his Court statement, he states that he had given a statement to the CBI that Amit Jogi and Yahya Dhebar had decided to disrupt the rally of NCP at any cost which included use of physical force. He further states that he had asked Yahya Dhebar with regard to staying of Chiman Singh at Batra House then Yahya Dhebar informed him that Ajit Jogi had

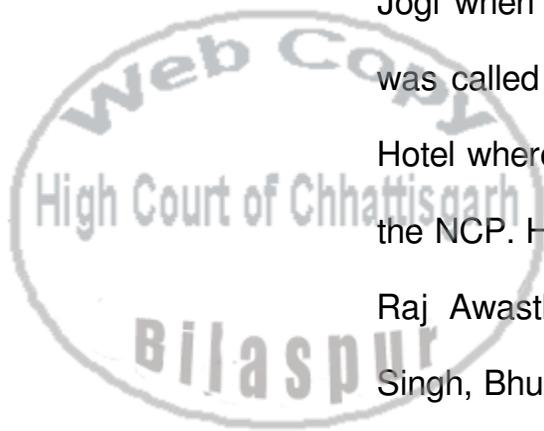




asked him over telephone to making arrangement for the stay of Chiman singh.

123. Vijay Jain (PW-73) who was the manager of Hotel Green Park, Raipur has also at paragraph 4 and 8 of his deposition stated that he knew the accused Amit Jogi, Yahya Dhebar, Abhay Goyal who used to visit that hotel often for taking dinner. Sometimes, these accused were accompanied by some other 4-5 persons also. It has further been stated that before their arrival, he used to get phone calls from the CM House for reserving a table. These persons were given VIP treatment.

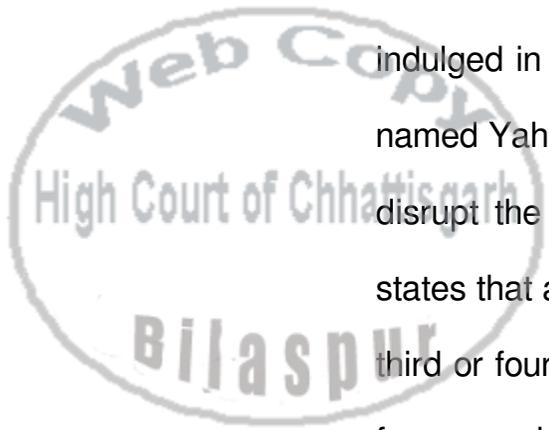
124. Reginald Jeremiah (PW-85), stated that he was acquainted with Amit Jogi when they were studying in St. Stephens College at Delhi. He was called by the accused Amit Jogi on 21.05.2003 to Green Park Hotel where a planning was being discussed to sabotage the rally of the NCP. He has confirmed the presence of Amit Jogi, Rohit Prasad, Raj Awasthi, Moksh Sinha, Arjun Bhagat, Michale Williams, Raj Singh, Bhupinder Singh, Navnit Joshi, Siddharth Asati, Abhay Goyal, Yahya Dhebar etc. In the said meeting, Amit Jogi gave a suggestion to kill Balwinder Jaggi, Pramod Choubey, and the deceased who belonged to NCP upon which this witness alongwith other two-three persons present there, asked Amit Jogi not to cause any harm to any of the members of the NCP but Amit Jogi did not listen to anyone. Amit Jogi asked this witness who had called Chiman Singh over phone to Hotel Green Park. When Chiman Singh came, the accused Amit Jogi asked other persons to leave the room and inside the room, only Amit Jogi, Rohit Prasad and Chiman Singh were there. Siddharth Asati (PW-97) who had also joined the Akash Channel in the year 2003, has made similar statements with regard to the





meeting held at Green Park Hotel and presence of the accused persons.

- 125.** Siddharth Asati (PW-97) who is also one of the school friends of Amit Jogi, states that he had given his statement (Exhibit P/87) to the Magistrate at Nagpur. He used to often meet Amit Jogi at Delhi. On the asking of Amit Jogi, he had joined Akash Channel at Raipur. He stated that the meeting of the officers of Akash Channel used to be held at Country Club and Dhebar House in which he alongwith Raj Singh (PW-100), Navneet Joshi, Moksh Sinha, Bhupendra Singh, Rohit Prasad, Raj Awasthi used to participate. NCP was formed in the State of Chhattisgarh and a rally was to be held. They all were indulged in portraying the rally of the NCP to be a total flop. He also named Yahya Dhebar, Abhay Goyal and Amit Jogi who were trying to disrupt the rally which was objected to by this witness. He further states that accused Chiman Singh had come to him at Bilaspur in the third or fourth week of the May, 2003 and told him that he had come for campaigning work and he wanted a house for his stay. This witness helped him for arranging him for his stay at a Guest House. 5-6 other persons were also there alongwith Chiman Singh. This witness came to know about the death of the deceased through newspaper. The other persons accompanying Chiman Singh had left the guest house but Chiman Singh stayed there for about 4-5 days. Whenever he used to talk to Chiman Singh, he used to tell him that he had come for political work on being asked by Amit Jogi and Ajit Jogi, however, he was not given any vehicle or money. Chiman Singh further told him that since Amit Jogi was under the influence of Rohit Prasad, his dedication towards Jogi family was going in vain.

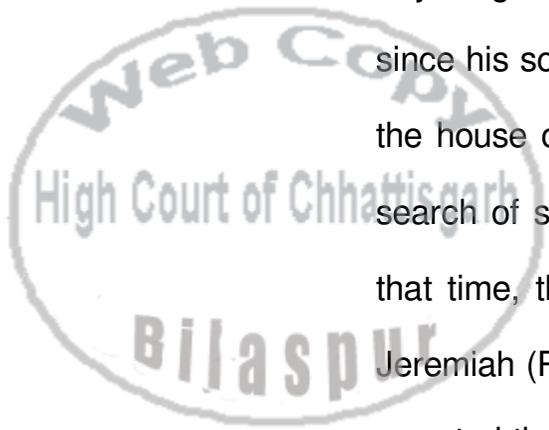




Thereafter, Chiman Singh also left Bilaspur without informing him and his belongings were still left there. In the third week of November, this witness received the phone call of Chiman Singh from Assam who asked him to hand over his belongings to one Amit Das who would be coming to take his belongings. This witness has admitted that in the statement given before the Magistrate at Nagpur, he had stated that a meeting was held in the Country Club in the third week of May 2003 with regard to disrupting the rally of the NCP which was objected to by this witness. The suggestion of Amit Jogi was supported by Yahya Dhebar and Abhay Goyal.

126. Raj Singh (PW-100) was also acquainted with accused Amit Jogi since his school days. He had met Chiman Singh in the year 1995 in the house of Amit Jogi at Delhi. He stated that Raj Awasthi was in search of some business people who could join Akash Channel. At that time, this witness alongwith Siddharth, Moksh Sinha, Reginald Jeremiah (PW-85), Navneet Joshi joined the Akash Channel. He has narrated that how plannings were being made to disrupt and to show the rally of the NCP to be flop. He also stated in his statement under Section 164 Cr.P.C. that Chiman Singh was given a Bolero vehicle by Yahya for political activities. Further, he has stated after the incident of murder of the deceased, Chiman Singh used to say to Siddharth that now he has done the work but now no body is helping him and his Bolero vehicle was also taken from him and such attitude of Chiman Singh showed that he had done something wrong.

127. Ajit Singh (PW-104) who is the Manager of Park Hotel, Kolkata stated that Reginald Jeremiah (PW-85) had stayed in his hotel regarding which he had shown the register (Exhibit P/97). Exhibit P/96 is the

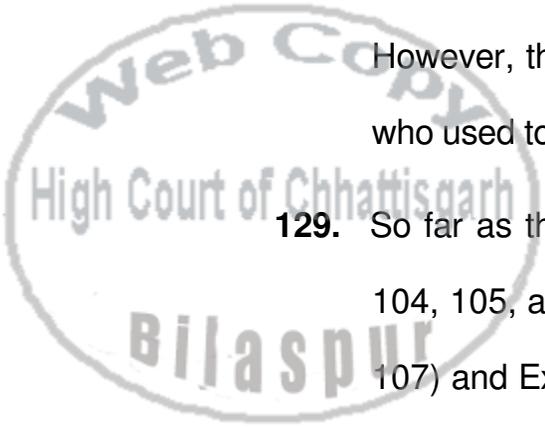




copy of the Hotel Bill with regard to Reginald Jeremiah (PW-85). This fact has been admitted by Reginald Jeremiah (PW-85) in paragraph 12 of his deposition. Vishnu Prasad Thakur (PW-105) who is the employee of Ajay Travels has proved the Air Tickets (Exhibit P/69, P/70 and P/71) of Reginald Jeremiah (PW-85).

128. On perusal of the statement of witnesses namely Madan Singh (PW-59), Patras Khalkho (PW-96), Prem Bahadur Gurung (PW-102), Kameshwar Baghel (PW-92), R.S.Nayak (PW-87), who were in security duty of CM House have in one or the other way stated that Chiman Singh, Surya Kant Tiwari, Law Kumar Mishra, Moksh Sinha, Raj Awasthi, Abhay Goyal, Yahya Dhebar used to visit the CM House. However, they have deposed that there were number of other people who used to visit the CM House.

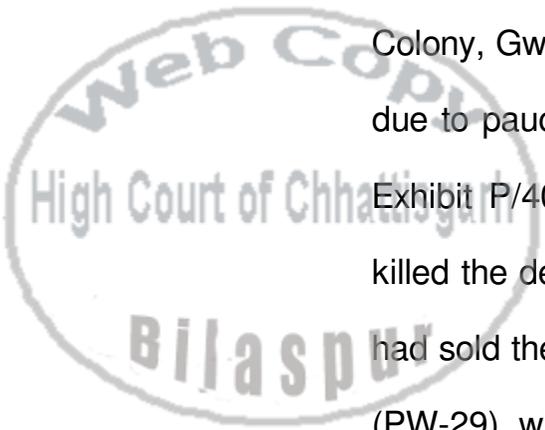
129. So far as the call details of are concerned, Exhibit P/101, 102, 103, 104, 105, and Exhibit P/106 have been proved by Bruno Frank (PW-107) and Exhibit P/139 shows the details of the phone number of the accused which has been proved by Ashish Gupta (PW-146) who is the Senior Executive (Legal) of Idea Cell. Indore. He states that as desired by the CBI, he had sent the details through letter dated 11.04.2005. From perusal of the same, it is evident that mobile No. 98261-49999 is in the name of Anand Chouhan, 98261-33888 is in the name of Abhay Goyal, 98261-40111 is in the name of Firoz Siddiqui, 98261-5000 is in the name of the then Chief Minister. Exhibit P/106 would go to show that the accused Chiman Singh, Yahya Dhebar, Abhay Goyal and Firoz Siddiquie were in contact with each other on 04.06.2003 at 21:57 to 05.06.2003 at 10:24 hours.





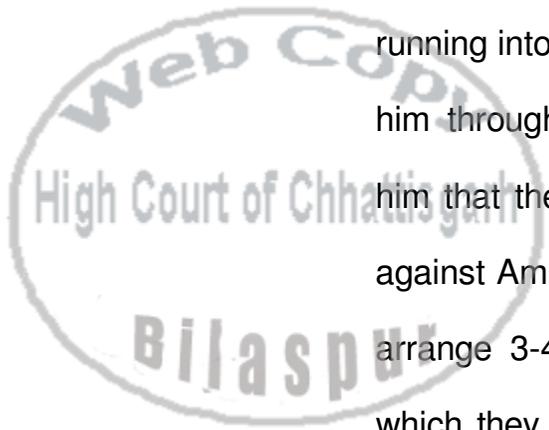
130. So far as the accused Rakesh Sharma is concerned, he has given his disclosure statement Exhibit P/38 wherein this accused had stated that when Chiman Singh killed the deceased by firing a gun shot, he was present on the spot and the Katta by which he had caused murder, was purchased by him from Gwalior at a price of Rs. 1500/- 1½ - 2 months before the incident. Vide Exhibit P/39, this accused has further disclosed that how he alongwith other accused committed the crime and after shooting the deceased, this accused had picked up the Rudraksh Mala of the deceased which was gold plated. He had sent a photograph of the said Rudrakash Mala to Chiman Singh. The said photograph was taken in a photo studio situated at Darpan Colony, Gwalior, namely Vaishno Photo Studio. He further states that due to paucity of funds, he had sold the said Rudraksh Mala. Vide Exhibit P/40, this accused has disclosed that when Chiman Singh killed the deceased by firing with Katta, he was with him and that he had sold the said Rudraksh Mala for a sum of Rs. 3200/-. C.M.Tiwari (PW-29), who is the S.D.O. in B.S.N.L. Office, Rishikesh, Uttaranchal, is the witness to the said disclosure statements. This accused had written a letter to the son of the deceased, Satish Jaggi showing his willingness to become an approver which is Exhibit P/131. The said handwriting of the letter was matched with the specimen handwriting of the accused and the Central Forensic Science Laboratory, New Delhi vide Exhibit P/136. The said document also stands proved by Anil Sharma (PW-136), a forensic expert.

131. So far as the evidence with regard to involvement of accused Suryakant Tiwari, Jambwant, Shyam Sunder, Vinod Singh, Vishwanath Rajbhar and Avinash @ Lallan Singh, in the present case





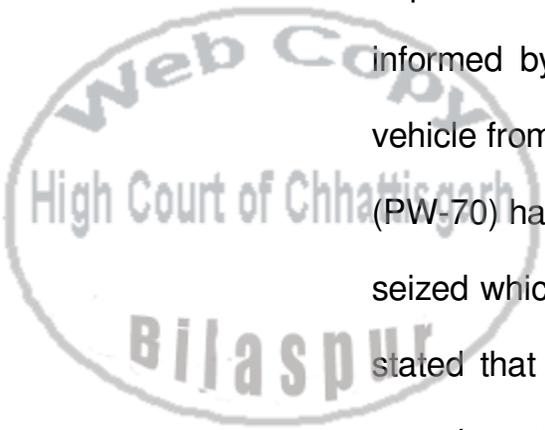
is concerned, Mahant @ Bulthu Pathak (PW-64) and Suresh Singh (PW-65) have categorically narrated the entire case and the manner in which the accused Suryakant Tiwari managed other persons to get themselves involved in the murder charge of deceased to save the real culprits. Mahant @ Bulthu Pathak is a history-sheeter and before the present incident, he was charged in two murder cases out of which he was acquitted in one case and other was stated to be pending before the High Court. There were 7 cases for the offences under Section 307 IPC in which he has been acquitted. He states that in the year 1992-1993, he met Suresh Singh (PW-65) from which time they are friends. This witness has given a quite detailed statement running into 26 pages. He has described how Suryakant Tiwari called him through Shekhar Sharma. Accused-Suryakant Tiwari informed him that the deceased was murdered and an FIR has been lodged against Amit Jogi and Ajit Jogi and in order to save them, he should arrange 3-4 persons who can take the liability on themselves for which they would be paid good amount and the Government would also help them in all respects. He also asked him to arrange a Marshal vehicle and a Katta. He also assured that since the Government was in their favour, the said fake/bogus accused would be released soon. This witness had introduced Suresh Singh with Suryakant Tiwari. Suresh Singh (PW-65) informed him that he had arranged three boys from Uttar Pradesh who were ready to take the blame on themselves. These three persons were Vinod Singh, Anand and Babu @ Jambwant. Suryakant Tiwari and R.C.Trivedi had explained these persons the entire plan. They were given Rs. 15 Lacs through Suresh Singh. Vinod Singh, Babu @ Jambwant and Anand were asked to go to Banaras and they were given the mobile number of Suresh Singh,





Bulthu Pathak, Suryakant Tiwari and R.C.Trivedi. This witness further states that Suresh Singh (PW-65) had purchased a Marshal vehicle on asking of Suryakant Tiwari. The said vehicle was taken to a road towards the forest in between Katghora-Ambikapur and the same was set on fire and returned back to Bilaspur. Thereafter, again Suryakant Tiwari asked him to arrange for 7-8 boys and one Marshal vehicle. This witness has narrated the entire sequence of events and how he alongwith Suresh Singh arranged for fake/bogus accused persons who could take the blame on themselves.

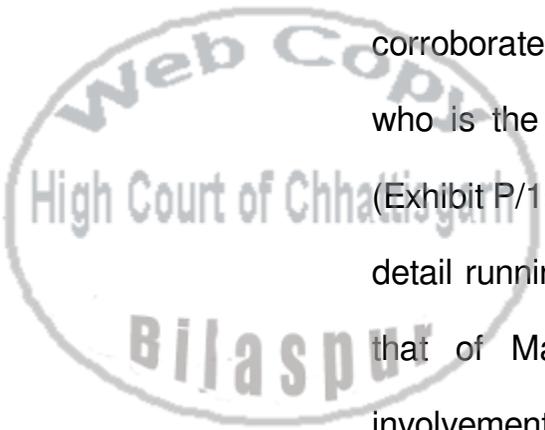
- 132.** Similarly, Suresh Singh (PW-65) who is another approver, has also deposed that he was asked to arrange a Marshal vehicle which was informed by him to Bulthu Pathak (PW-64) and they purchased a vehicle from Choukse Auto Deal, Sector - 10 Bhilai. Manoj Chouksey (PW-70) has been examined in this regard and register etc. were also seized which corroborates the statement made by PW-64. He further stated that according to the plan, the fake/bogus accused persons were to reside in a Hotel at Banaras which has also been proved by the prosecution by examining Vimal Tiwari (PW-21) who is the Manager of Pratap Hotel, Banaras who has stated that in his hotel, Vinod, Jambwant and Anand Sharma had stayed in room No. 4 which is evident from Hotel Register Exhibit P/29. He further states that he had stayed in Banaras at Vishnupriya Hotel and in order to corroborate his testimony, prosecution had examined Shivanand Ojha (PW-10) who is the receptionist of Vishnupriya Hotel and the register of the hotel and bill book were also seized vide Exhibit P/14 which bears the name of Suresh Singh at serial No. 647 at page No. 53. This witness further states that he had purchased one more Marshal





Jeep bearing No. CG/15 ZD/0969 (Old No. MP/27/B/5116) as per the instructions given to him, in the name of Jaimangal Singh. This statement is corroborated by the statement made by Ravindranath Haldar (PW-40) who sold his vehicle to Jaimangal Singh and sale deed was also seized and marked as Exhibit P/30A. RTO Officer, R.S.Dhruw (PW-22) corroborates this evidence who states that the aforesaid Marshal vehicle belonged to Ravindranath Haldar which was subsequently transferred in the name of Jaimangal Singh (Exhibit P/30A). Further, in paragraph 20 of his deposition, he stated that as per the instructions of R.C.Trivedi, he gave the said Marshal jeep for repairing work at Deepu Auto Centre at Chopan. This statement is corroborated by the deposition made by Ghanshyam Das (PW-11) who is the owner of Deepu Auto Centre from whom relevant bills (Exhibit P/15A to P/15F). The deposition of this witness is also in quite detail running into 28 pages. He has also given similar statement as that of Mahant @ Bulthu Pathak (PW-64) which proves the involvement of other accused persons in this case.

- 133.** With regard to non-recovery of the Katta used for commission of the crime is concerned, the learned trial Judge has dealt this aspect in paragraph 242 of its judgment. Exhibit P/26 is the disclosure memo of the accused Chiman Singh wherein he stated that on 04.06.2003 in the night at about 10:00 p.m., he alongwith Rakesh Sharma @ Baba, Vikram and some boys from Bhind came on a silver coloured Bolero and a white Maruti Van armed with Lathi and Stick and went to threaten the deceased. They were knowing that the deceased was in the office of NCP and would be leaving for his house. They all went near the NCP office and waited. Chiman Singh was sitting in white

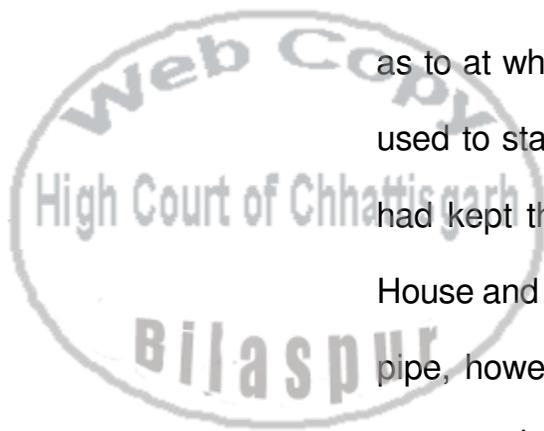




Maruti Van which was driven by Shivendra Singh Parihar. When the deceased came out of the NCP office, he was intercepted by them and some of the boys broke the glasses of the alto car of the deceased. Chiman Singh was heavily drunk and in order to threaten him, he pointed his Katta on the neck of the deceased. Being scared, the deceased tried to come out of the car because of which accidentally the trigger was pressed. In panic, all the accused fled from the spot and after reaching Batra House, he hid the Katta in a cement pipe of the servant quarter. He was ready and willing to disclose the place where he had kept the Katta.

- 134.** When the accused-Chiman Singh was asked by A.G.L.Kaul (PW-154) as to at which place he used to stay, Chiman Singh informed that he used to stay in the top floor and when he was asked as to where he had kept the weapon, he took them to the servant quarter of Batra House and showed the place where he had kept the Katta in a cement pipe, however, despite searching for it, the said Katta could not be recovered. In this regard, Exhibit P/27 which is memorandum of the accused Chiman Singh, under Section 27 of the Evidence Act clearly states that he had told the accused Feroz Siddiquie with regard to place where he had hidden the Katta 10-15 days after the incident and in such a situation, it would not be surprising that the Katta could not be recovered as the same would have been thrown or destroyed by Feroz Siddiquie. The incident took place on 04.06.2003 and the investigation was started by the CBI after two years and in all probability, the Katta could not be lying there for two years.

- 135.** In the case in hand, with respect to proving the criminal conspiracy, it is well settled that the same can be proved by either direct or





circumstantial evidence. However, since a conspiracy is usually hatched in a secret which is why it is almost impossible to produce any affirmative evidence about the date of the formation of the criminal conspiracy, the persons involved in it or the object of such conspiracy or how such object is to be carried out. All of this is more or less a matter of inference.

136. In *P. Sugathan & Another* (supra), the Supreme Court, observed as under:

“**10.** Criminal conspiracy is defined under Section 120-A of the Indian Penal Code as under:

“120-A. *Definition of criminal conspiracy.* - When two or more persons agreed to do, or cause to be done,-

(1) an illegal act, or

(2) an act which is not illegal by illegal means,

such an agreement is designated a criminal conspiracy:

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

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

11. Section 120-B prescribes the punishment for criminal conspiracy which by itself is an independent offence, punishable separately from the main offence. The offence of criminal conspiracy can be established by direct evidence or by circumstantial evidence. Section 10 of the Evidence Act introduces the doctrine of agency and will be attracted only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an





offence or an actionable ground, that is to say, there should be a prima facie evidence that the person was a party to the conspiracy before his acts can be used against the co-conspirators. This Court in *Bhagwan Swarup Lal Bishan Lal vs. State of Maharashtra* [AIR 1965 SC 682] held that the expression "in reference to their common intention" in Section 10 is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Anything said, done or written is relevant fact only

"as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it".

It was further held:

"In short, the section can be analysed as follows: (1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour."

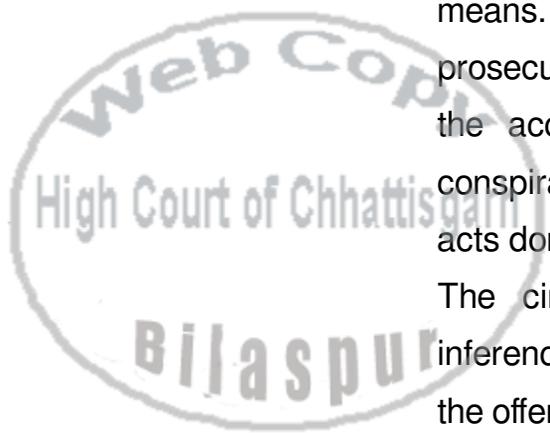
12. We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of a purpose in common between the conspirators. This Court in *V.C. Shukla v. State (Delhi Admn.)* [1980(2) SCC 665] held that to prove criminal conspiracy there





must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

13. In *Kehar Singh vs. State (Delhi Admn.)* [AIR 1988 SC 1883] it was noticed that Sections 120-A and Section 120-B IPC have brought the Law of Conspiracy in India in line with English law by making an overt act inessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must enquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not





sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B of the Indian Penal Code.

14. After referring to some judgments of the United States Supreme Court and of this Court in *Yash Pal Mittal v. State of Punjab* [1977 (4) SCC 540]; *Ajay Aggarwal vs. Union of India* [AIR 1993 SCW 1866], the Court in *State of Maharashtra v. Som Nath Thapa* [AIR 1996 SC 1744] summarised the position of law and the requirements to establish the charge of conspiracy, as under:

"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy *knowledge* about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, *intent* of unlawful use being made of the goods of services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a *particular* unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use."

137. Section 10 of Indian Evidence Act, 1872 contains the principle that once a conspiracy to commit an illegal act is proved, an act of one conspirator becomes the act of another. Section 10 deals with the admissibility of evidence in a conspiracy case. It provides that anything said, done or written by any one of the conspirators in respect of their common intention is admissible against all the

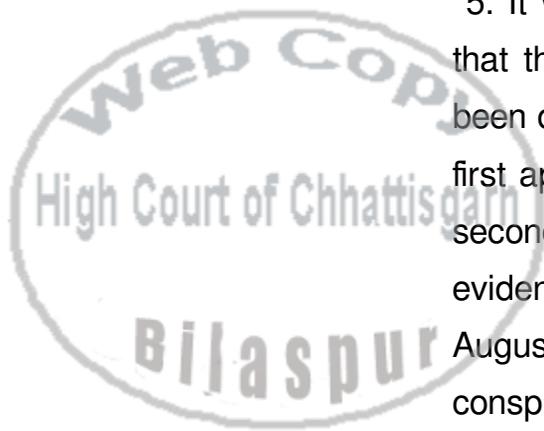




conspirators for proving the existence of the conspiracy or that any such person was a party to the conspiracy. However, before such fact can be admitted, there should be reasonable ground to believe that two or more persons have conspired to commit an offence or an actionable wrong and that anything said, done or written by any one of them about their common intention will be evidence against the others provided it is said, done or written after the time when such intention was first formed by any one of them.

138. In ***Badri Rai & Another*** (supra), the Supreme Court, at paragraph 5 observed as under:

“5. It was faintly suggested on behalf of the second appellant, that the charge under S. 120B of the Indian Penal Code, had been deliberately added by the prosecution in order to make the first appellant's statement of August 31, admissible against the second appellant, as otherwise, it could not have been used as evidence against him. As already indicated, the incident of August 24, is a clear indication of the existence of the conspiracy, and the court was perfectly justified in drawing up the charge under S. 120B also. It is no answer in law to say that unless the charge under that section had been framed, the act or statement of one could not be admissible against the other. Section 10 of the Indian Evidence Act, has been deliberately enacted in order to make such acts and statements of a co-conspirator admissible against the whole body of conspirators, because of the nature of the crime. A conspiracy is hatched in secrecy, and executed in darkness. Naturally, therefore, it is not feasible for the prosecution to connect each isolated act or statement of one accused with the acts or statements of the others, unless there is a common bond linking all of them together. Ordinarily, specially in a criminal case, one person cannot be made responsible for the acts or statements of another. It is only when there is evidence of a concerted action in furtherance of a common intention to commit a crime, that the

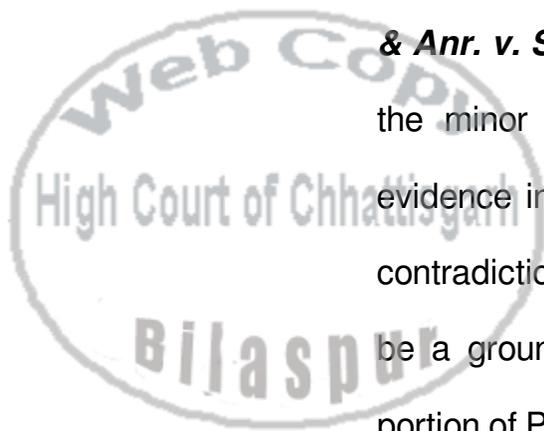




law has introduced this rule of common responsibility, on the principle that every one concerned in a conspiracy is acting as the agent of the rest of them. As soon as the court has reasonable grounds to believe that there is identity of interest or community of purpose between a number of persons, any act done, or any statement or declaration made, by any one of the co-conspirators, is, naturally, held to be the act or statement of the other conspirators, if the act or the declaration has any relation to the object of the conspiracy. Otherwise, stray acts done in darkness in prosecution of an object hatched in secrecy, may not become intelligible without reference to the common purpose running through the chain of acts or illegal omissions attributable to individual members of the conspiracy.”

139. The Supreme Court, in the case of **Narayan Chetanram Chaudhary & Anr. v. State of Maharashtra**, {2000} 8 SCC 457} has considered the minor contradictions in the testimony, while appreciating the evidence in criminal trial. It was held in the said judgment that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. Relevant portion of Para 42 of the judgment reads as under:

“42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any



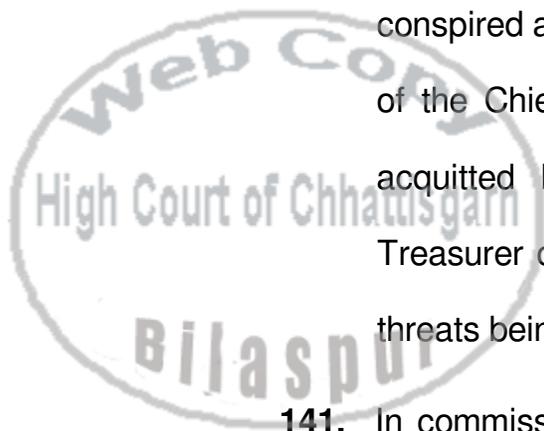


material point, that is no ground to reject the whole of the testimony of such witness.”

140. Considering the entire material and evidence available on record, it is apparent that the crime in question was an off shoot of political rivalry between the two highly ambitious political leaders of the Congress party out of which one had formed a new party i.e. NCP in the State of Chhattisgarh. The attempt of the then sitting Chief Minister was to restrain the NCP from coming into power. Though the then Chief Minister was not made an accused in this case, the learned trial Court has opined that the convicted accused/appellants in order to show devotion towards their master i.e. the then sitting Chief Minister, had conspired and committed the crime in question without the information of the Chief Minister and further his son Amit Jogi has also been acquitted by the learned trial Court. The deceased being the Treasurer of the NCP was picked up to be eliminated as even after threats being given, he did not stop his political campaign.

141. In commission of the crime, when the police authorities themselves are found to be involved, it is but natural that any concrete/tangible evidence would be available against the accused. Criminals were hired for execution of the plan and fake/bogus accused were also prepared who could take the accusation on themselves so that the real culprits could be saved, who were involved in the entire conspiracy. Vidya Charan Shukla, who belonged to the NCP and Ajit Pramod Kumar Jogi, who was the then Chief Minister and was in Congress Party, both are no more.

142. The effort of the then Chief Minister of the State was to restrain the NCP from coming into power and the deceased was the Treasurer of

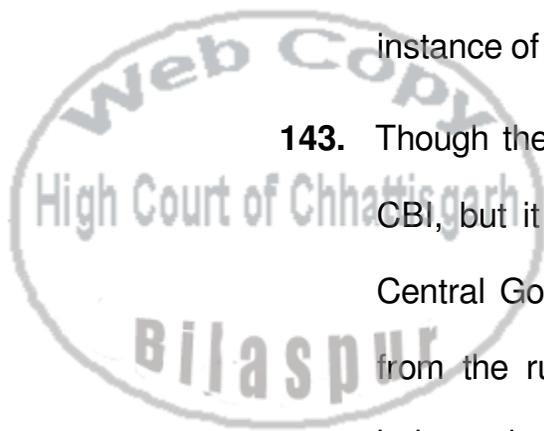




NCP. The frequent visit of the accused/appellants to the CM House, Batra House and meetings held in Hotel Green Park, Raipur, which has been proved by the prosecution, itself is a pointer to the fact that conspiracy was hatched for disrupting the rally of the NCP which was scheduled to be held on 10.06.2003. The three Police Officers themselves indulged in arranging criminals for executing the plan and further fake/bogus accused persons who could take the blame on themselves so as to save their masters. The three police personnel namely Amrik Singh Gill, V.K.Pandey and R.C.Trivedi had actively participated in the incident and played a vital role in misleading / concealing the main culprits involved in the present incident at the instance of the then ruling party.

143. Though the investigation of the present case was taken over by the CBI, but it appears that the CBI was under some influence of the Central Government, as the ruling party in the Centre was different from the ruling party in the State, and the then ex-Chief Minister belonged to the ruling party in the Centre. The prosecution case was weakened by the manner in which the investigation was carried out and influenced by the persons who were in the helm of affairs of the State at the time of the incident. There can be no hesitation to hold that the evidence collected and produced before the learned trial Court by the CBI and the statement of the prosecution witnesses referred to above are sufficient to hold the accused/appellants guilty of the offences for which they have been charged.

144. There is no dispute with regard to the proposition of law laid down by the Hon'ble Surpeme Court in the cases cited by the learned counsel for the appellants/accused, however, applicability of the same

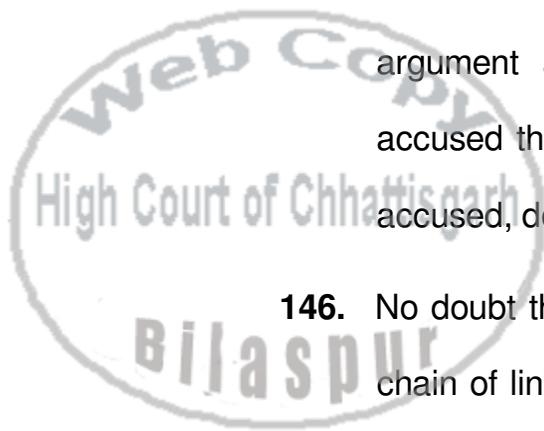




depends on the circumstances of the case and in the peculiar facts and circumstances of this case, the same may not be applicable.

145. The present is a case of organised crime. It is not a crime where one person has been done to death by an individual or a group of people. Here, a conspiracy at a very high level was hatched involving political persons, Police Officers, hired professional criminals, even fake/bogus persons who were ready to take the blame to save their masters and the conspirators had taken all precautionary measures so as to not leave any evidence which may lead to their conviction. Despite that, the CBI has managed to collect enough evidence so as to hold the appellants/accused guilty of the offences. Hence, the argument advanced by the learned counsel for the appellants/accused that there is not an iota of evidence against the appellants/accused, does not merit acceptance.

146. No doubt the case in hand rests on circumstantial evidence, but the chain of link is complete as the motive has been proved, conspiracy hatched has been proved, the criminals hired, money and weapons arranged for execution of the plan, the vehicles used, and the participation of the police authorities in the crime, all go to suggest that it was the appellants/accused who have committed the offence in question and the involvement of the accused/appellant cannot be ruled out. The learned trial Court has taken note of all the aspects of the matter and has dealt with the evidence and the statement of the witnesses in quite detail. The findings arrived at by the learned trial Court does not warrant interference and as such, in light of the above discussion, this Court finds that these appeals being devoid of merit, deserves to be and are accordingly **dismissed**.





147. All the accused/appellants, namely, V.K.Pandey, Abhay Goel, Feroz Siddiquie, Rakesh Chandra Trivedi, Yahya Dhebar, Avinash Singh @ Lallan Singh, Suryakant Tiwari, Amrik Singh Gill, Chiman Singh, Harish Chandra, Narsi Sharma, Sunil Gupta, Raju Bhadauriya, Anil Pachauri, Ravindra Singh @ Ravi Singh, Lalla Bhadauriya @ Dharmendra Singh, Satyendra Singh, Shivendra Singh Parihar, Vinod Singh Rathore, Sanjay Singh Kushwaha, Rakesh Kumar Sharma, Ashok Singh Bhadoriya, Vivek Singh, Jambwant, Shyam Sunder, Vinod Singh Rajput and Vishwanath Rajbhar, are reported to be on bail. Their bail bonds are hereby cancelled and sureties are discharged from their liabilities. They shall surrender within a period of one week from today failing which they shall be taken into custody to serve out the remaining part of the sentence as has been awarded to them by the learned trial Court.

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

Sd/-

(Arvind Kumar Verma)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice



HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 426 of 2007

Appellant : V.K.Pandey

Versus

Respondent : State through Central Bureau of Investigation

&

Other connected appeals.

Head Note

An organised crime committed in a deep rooted criminal conspiracy for murder should not go unpunished because of some flaw in the investigation and the accused can be held guilty on the basis of the circumstantial evidence and the conduct of the accused before and after committing the crime.

