2026 INSC 257

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2026
[Arising out of SLP (Crl.) No. 19427 of 2025]

BHOLA MAHTO **…APPELLANT**

VS.

THE STATE OF JHARKHAND **…RESPONDENT**

J U D G M E N T

1. Leave granted.

2. Appellant challenges the judgment and order dated 2nd December, 2024[1] of the High Court of Jharkhand at Ranchi[2], which was rendered while disposing of his appeal[3] under Section 374(2), Code of Criminal Procedure, 1973. While partly allowing such appeal by setting aside the conviction recorded by the relevant sessions court against the appellant under Section 302, Indian Penal Code, 1860[4] and the sentence of life imprisonment, a Division Bench of the High

1 impugned order
2 High Court
3 CRADB No. 58 of 2003
4 IPC

Court altered the conviction to one under Section 304 - Part II, IPC and sentenced the appellant to 5 years rigorous imprisonment.

3. While hearing the appeal, we are reminded of the expression "*give him an inch and he will ask for a mile*".

4. Having regard to the final order we propose to pass, it is not considered necessary to examine the appeal on its own merits by appreciating and analysing the evidence – oral and documentary – presented at the trial. Suffice it to note, the appellant was convicted by the relevant sessions court on 25th November, 2002 in respect of the crime of murder committed by him on 28th October, 2000, whereafter he carried such conviction before the High Court in appeal in the early part of 2003 itself. It was initially considered on 21st January, 2003 and then on 25th February, 2003. Right from 29th October, 2000, the appellant was in pre-trial custody. The custody certificate reveals that he was released from custody on 10th March, 2003. Though the relevant order is not on record, we find from the impugned order that the appellant was on bail. It is, therefore, assumed that he obtained an order for suspension of sentence and was consequently released on bail. For long 20 years thence, the appeal was not listed for hearing. Ultimately, the appeal came to be listed before a Division Bench of the High Court on 14th November, 2024. The order passed on that day records that none had appeared on behalf of the appellant despite repeated calls. The appeal having been filed in 2003, the Division Bench appointed an advocate of

more than 15 years' standing as *amicus curiae*[5] to assist the Court. Office was directed to hand over the soft copy of the entire brief to the *amicus* and the appeal was directed to be relisted after two weeks. The name of the *amicus* was also directed to be reflected in the cause list on behalf of the appellant.

5. The learned *amicus* argued the appeal on 2nd December, 2024. He raised the point that the *"case cannot come within the purview of Section 302"* of the IPC. According to him, insofar as the weapon of offence is concerned, the evidence of PW-2 on the one hand and the PW-3 and PW-4 on the other were contradictory. That apart, the entire incident occurred in the heat of passion when a sudden quarrel had taken place due to watering of the field; hence, Exception 4 of Section 300, IPC would be attracted in the case. Learned counsel appearing for the State opposed the appeal and argued that having regard to the nature of injuries suffered by the deceased (four blows on the head and one on the leg), there was clear intention of the appellant to commit murder. The discrepancy pointed out insofar as the weapon of offence is concerned, counsel argued, was immaterial. Since the statement of the autopsy surgeon (PW-1) suggested that the cause of death was due to shock and haemorrhage caused by hard and blunt substance, it substantiated and corroborated the oral evidence of PW-3 and PW-4. Dismissal of the appeal was, accordingly, prayed.

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5 *amicus*

6. Upon threadbare consideration of the evidence led at the trial, the Division Bench formed the opinion that the case falls within Exception 4 of Section 300, IPC. Accordingly, the conviction for murder was set aside and substituted by recording conviction under Section 304 Part - II with a reduced sentence of imprisonment, as noted above. Since the appellant was on bail during pendency of the appeal, such concession was withdrawn and he was directed to forthwith surrender to serve the rest of the sentence, if not already served.

7. The custody certificate dated 16th August, 2025 reveals that as on that date, the appellant suffered incarceration for two years eleven months twenty-seven days. Today, the appellant has served a little less than three years seven months out of the prison term of five years.

8. When the special leave petition, out of which this appeal arises, was taken up for consideration on 7th November, 2025, learned counsel for the appellant had informed a coordinate bench of this Court that the appellant had not been made aware of absence of learned counsel engaged by him to prosecute the appeal before the Division Bench and that such bench proceeded to appoint the *amicus* without the appellant's knowledge. Hearing the same, the coordinate bench had the occasion to call for a report from the registry of the High Court as to whether the statement of the appellant is correct.

9. A report dated 19th November, 2025 has since been filed by the Registrar General of the High Court. On a reading thereof, it does appear that no notice was issued to the appellant to the effect that his learned counsel was not appearing to prosecute the appeal and that an *amicus* had been appointed by the Division Bench.

10. On perusal of such report, notice was issued on 24th November, 2025.

11. At the hearing today, learned counsel for the appellant vehemently contends that there has been a gross failure of justice, in that the appellant has suffered prejudice by not being meted out fair treatment. The grounds which the appellant had raised in his memorandum of appeal filed in the High Court were not urged by the learned *amicus*; instead, he urged a ground which the appellant had not raised in such memorandum. As a result, the Division Bench was disabled from examining whether the appellant had set up a strong case for acquittal.

12. Learned counsel, therefore, urges that he may be allowed to raise all such grounds which the appellant had raised in the memorandum of appeal that was filed in the High Court before us to secure an order of setting aside the conviction under Section 304 Part – II, IPC and the sentence of 5 years rigorous imprisonment and to allow the appeal by recording an acquittal.

13. We are not prepared to accept this argument. It is true that whatever grounds the appellant did raise in the memorandum of appeal were not urged before the High Court by the learned *amicus*.

However, nothing turns on it. If such grounds have not been urged, the blame cannot be placed on the learned *amicus*. The learned *amicus* came to be appointed by the High Court when it was noticed that the appeal remained pending for more than two decades and there was no representation from the side of the appellant despite repeated calls. In his wisdom, the learned *amicus* urged only one ground and succeeded. We see nothing wrong in the approach of the learned *amicus*. Also, the approach of the High Court endeavouring to expedite a decision on the appeal is not unjustified. Appellant was enjoying the concession of bail for two decades without being in any manner concerned about the fate of his appeal. It was not a case where the appellant was in custody and, thus, disabled or inconvenienced to contact his counsel to argue the appeal. Appellant, while enlarged on bail, has himself to blame for not keeping track of his appeal and by not persuading the High Court to decide the appeal at an early date, considering the vehemence with which learned counsel seeks to argue before us that the appellant merits an acquittal based on the multiple grounds raised in the memorandum of appeal. We hasten to add that whatever be the worth of the grounds so raised, the appellant cannot appeal to us to consider the same for the first time once it is found that such grounds were not pressed for consideration by the High Court.

14. Having held so, we find that the High Court in its anxiety to deliver justice without further delay and to decide the appeal expeditiously

upon hearing the learned *amicus*, had not made an attempt to inform the appellant that his appeal having been listed for final hearing (after two decades) and there being absence of representation from his side, (on the first day) an *amicus* had been appointed to represent him. The High Court was under no obligation to inform the appellant of his counsel's absence; however, it would have been a desirable precaution if the appellant were so informed. This is more so, because, this Court has taken the view that assistance in the form of legal aid should be real and meaningful and not by way of a token gesture or to complete an idle formality. None can possibly doubt the High Court's genuine intention to render legal assistance to a non-appearing convict by appointing an *amicus* on his behalf to assist the court render justice but, perhaps, justice would have been better served if an intimation by way of a notice been sent, bearing in mind that the appeal was listed for the first time for hearing twenty-one years after the appellant was released on bail.

15. We are, therefore, inclined to order a remand for hearing of the appeal *de novo*. The impugned order dated 2nd December, 2024 is set aside with the result that the appellant's appeal shall stand revived on the file of the High Court. It shall be decided in the manner observed hereafter.

16. Preferably, the very same member Judges of the Division Bench who had the occasion to decide the appeal on 2nd December, 2024, may be assigned to hear the appeal, subject to their availability. If such

assignment is not possible or is unworkable, we request the Chief Justice of the High Court to assign the appeal to a Division Bench of which at least one of the member Judges, who earlier decided the appellant's appeal, forms the quorum.

17. Since the appellant wishes to be represented by his own counsel before the Division Bench, there shall be no need to appoint an *amicus* if such counsel does not turn up to press the appeal on the date to be notified a week in advance by the Registry. In the unlikely event of the appellant being unrepresented again, the Division Bench would be well advised to decide the appeal in such manner it thinks fit and proper.

18. Having regard to the fact that the incident of crime dates back to 28th October, 2000 and that the appellant claims to be a septuagenarian by now, it would be eminently desirable if the Division Bench decides the appeal as early as possible from the date of first hearing. All points on merit are kept open to be urged by the appellant and the respondent before the High Court. While deciding the appeal, the High Court may not be influenced by the observations/findings made in the impugned order dated 2nd December, 2024.

19. Appellant was released from custody on 10th March, 2003 during pendency of the appeal and taken back into custody on 30th December, 2024 when the appeal was dismissed by the impugned order dated 2nd December, 2024. In view thereof and since the impugned order has been set aside, the *status quo ante* ought to be

restored. He be released on bail forthwith, subject to such terms and conditions as are imposed by the trial court.

20. We clarify that the liberty of the appellant shall not be curtailed till such time the appeal is disposed of by the Division Bench on its own merits in terms of this order.

21. Accordingly, the appeal stands partly allowed on the aforesaid terms. Pending application, if any, stands disposed of.

22. Before parting, we wish to refer to the decision of this Court reported in ***Anokhi Lal vs. State of Madhya Pradesh***[6]. A three-Judge Bench speaking through Hon'ble U.U. Lalit, J. (as the learned Chief Justice then was) poignantly observed as follows:

> **26.** Expeditious disposal is undoubtedly required in criminal matters and that would naturally be part of guarantee of fair trial. However, the attempts to expedite the process should not be at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates, the entire criminal administration of justice is founded. In the pursuit for expeditious disposal, the cause of justice must never be allowed to suffer or be sacrificed. What is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited, but fast tracking of process must never ever result in burying the cause of justice.

Thereafter, the Court proceeded to lay down norms to avoid repetition of infirmities noticed in the case under consideration. It was said thus:

> **31.** Before we part, we must lay down certain norms so that the infirmities that we have noticed in the present matter are not repeated:
>
> **31.1.** In all cases where there is a possibility of life sentence or death sentence, learned advocates who have put in minimum of 10 years' practice at the Bar alone be considered to be appointed as Amicus Curiae or through legal services to represent an accused.

6 2019 20 SCC 196

> **31.2.** In all matters dealt with by the High Court concerning confirmation of death sentence, Senior Advocates of the Court must first be considered to be appointed as Amicus Curiae.
> **31.3.** Whenever any learned counsel is appointed as Amicus Curiae, some reasonable time may be provided to enable the counsel to prepare the matter. There cannot be any hard-and-fast rule in that behalf. However, a minimum of seven days' time may normally be considered to be appropriate and adequate.
> **31.4.** Any learned counsel, who is appointed as Amicus Curiae on behalf of the accused must normally be granted to have meetings and discussion with the accused concerned. Such interactions may prove to be helpful as was noticed in *Imtiyaz Ramzan Khan* [(2018) 9 SCC 160].

23. In continuation of the above and in the light of what has transpired in course of the present proceedings, we wish to make an additional observation. It is a matter of common knowledge that once a convict obtains an order from the appellate court suspending the sentence of imprisonment and is, consequently, released on bail, more often than not, he neglects and/or fails to cooperate with the court and impedes an expeditious decision on his appeal by staying away from the proceedings with a view to ensure that his liberty is not curtailed, if the appeal were to fail. Drawing from experience, we can record that on many an occasion, such convicts become untraceable. These convicts, enjoying the concession of bail and misusing it, need to be dealt with firm and strong hands by the courts. Having regard to the dictum of the three-Judge Bench in ***Anokhi Lal*** (supra) and in order to curb the tendency of convicts to raise technical pleas of the nature which were advanced before us, we observe that, henceforth, whenever an appellate court considers it desirable to appoint an *amicus* to represent a convict whose

counsel is absent, such court may also consider the desirability of issuing a notice from the registry to the address of the convict mentioned in the memorandum of appeal, for such notice to be served on him through the jurisdictional police station, with an intimation that the convict may contact the learned *amicus* and provide him necessary instructions so that his case is argued before the court effectively and meaningfully. In the event the convict contacts the *amicus* and provides instructions, there would ordinarily be no impediment in proceeding with hearing of the appeal. If, indeed, the convict desires to have his own counsel argue the appeal on his behalf and not the *amicus*, the court may hear such counsel in addition to the *amicus*. However, if the service report indicates that the convict was not found at the address or that he refused to accept notice despite being present, it would amount to sufficient compliance if the notice is pasted on the outer wall of the premises, address whereof is mentioned in the cause title of the memorandum of appeal. Should the convict still remain dormant, and it is so reported, the High Court may proceed to decide the appeal without waiting for the convict to turn up either in person or through the counsel of his choice engaged by him. This process, in our view, would substantially serve the purpose of eliminating any plea of unfairness being raised before this Court if an appeal is disposed of upon hearing the *amicus* appointed by the court. Additionally, in a case of like nature where the appeal is listed two decades after grant of bail, this process would ensure obtaining

of information as to whether the appeal survives for decision or stands abated. In case of the latter, the courts could avoid spending precious judicial time deciding an appeal which, by operation of law, may not require a decision on merits. Of course, for a convict in custody who has committed an offence punishable with death or life imprisonment, the directions in ***Anokhi Lal*** (supra) have to be scrupulously followed apart from the relevant rules regulating the business of the courts concerned.

24. We hope and trust that a similar situation does not arise in future.

.....J.
[DIPANKAR DATTA]

.....J.
[SATISH CHANDRA SHARMA]

New Delhi;
March 16, 2026.