



2026 INSC 531

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No. _____ /2026
(Arising out of SLP (CRL) No. 3371 OF 2026)

NANDKISHORE MISHRA

...PETITIONER

VERSUS

THE STATE OF MADHYA PRADESH

...RESPONDENT

JUDGMENT

DIPANKAR DATTA, J.

1. Leave granted.
2. Appellant is challenging the judgment and order dated 26th November, 2025¹ passed by the High Court of Madhya Pradesh², at Jabalpur dismissing the appeal³ under Section 374(2) of the Code of Criminal Procedure, 1973. He was convicted under Section 302 of Indian Penal Code, 1860⁴ and sentenced to life imprisonment by the

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JATINDER KAUR
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Reason: Impugned Order

² High Court

³ Criminal Appeal No. 845 of 2023

⁴ IPC

trial court; and the conviction and sentence was affirmed by the High Court vide the impugned order.

- 3.** Having regard to the final order we propose to pass, it is not considered necessary to examine the appeal on its own merits. Appellant was convicted by the relevant sessions court on 20th December, 2022 in respect of the crime of murder committed by him on 16th October, 2020. Thereafter, the appellant carried the conviction and sentence in appeal. It is pertinent to note that the appellant has been in custody since 16th October, 2020 itself as per the custody certificate on record and has remained in custody during the pendency of the appeal.
- 4.** Appellant's appeal was listed on 20th November, 2025 before a Division Bench of the High Court. As per the order passed on that day, since no one was appearing on behalf of the appellant, the Division Bench appointed an *amicus curiae*⁵ to assist the Court and also listed the case for hearing the following week.
- 5.** The *amicus* argued the appeal on 26th November, 2025. He submitted that the eye-witness account is unreliable; pointing particularly towards the account of one Arun Singh (PW-2) who, as per the *amicus*, was unable to explain how he could see the incident from a distance of about 100 metres. Furthermore, stress was also put on PW-2's statements during cross-examination in which he stated that he was not knowing the appellant at the time of the incident and only

⁵ *amicus*

at the instance of one Umashankar, PW-5, who was the brother of the deceased and also the complainant in the case, he got to know that the person who hit the deceased was in fact the appellant. Apart from this, the learned *amicus* also raised the point regarding the appellant being 74 years of age and accordingly prayed for some leniency in the matter. Learned counsel appearing for the State opposed the appeal and argued that the eye witness account is reliable and is supported by the axe recovered at the instance of the appellant on which human blood was found as per the FSL report and whose recovery has been duly proved by the Investigating Officer. Dismissal of the appeal was, accordingly, prayed.

- 6.** Upon consideration of the evidence led at the trial, the Division Bench dismissed the appeal and affirmed the conviction and sentence of the trial court.
- 7.** Appellant was already in custody during the pendency of the appeal.
- 8.** Before us, the learned counsel for the appellant vehemently contended that he was denied justice. According to him, while the appellant was languishing in custody, he was not notified by the High Court that in the absence of the advocate engaged by him, an *amicus* has been appointed. The *amicus* was appointed by an order passed on 20th November, 2025 and the appeal was dismissed on 26th November, 2025, merely six days after the appointment of the *amicus*. In the intervening period, the *amicus* did not meet or have any conference with the appellant who was still lodged in the

correctional home regarding his pending appeal and failed to effectively present his case. This, as per the learned counsel for appellant, denied him an effective opportunity of being heard, in gross violation of principles of natural justice. With regard to the absence of the advocate engaged by the appellant, he submitted that the advocate was taking medical treatment and his illness prevented him to appear before the Court on 20th November, 2025.

9. We had urged the learned counsel appearing for the State of Madhya Pradesh to obtain appropriate instructions with regard to the aforesaid submission. No submission to the contrary has been advanced. There is also nothing on record to show that any notice was served upon the appellant or that he received any communication regarding the consideration of his appeal. In the absence of any such material, we are constrained to draw an adverse inference and accept the submission of the appellant in this regard.

10. Therefore, in our considered opinion, we find that the High Court in its anxiety to deliver justice without further delay and decide the appeal expeditiously had not made an attempt to inform the appellant that in the absence of representation from his side an *amicus* had been appointed to represent him. Furthermore, it also does not seem that the *amicus* had any opportunity to interact with the appellant who was lodged in a correctional home. The High Court was under no obligation to inform the appellant regarding the absence of his advocate. Nevertheless, it would have been a prudent and desirable

step had the appellant been intimated of the same. This acquires added significance in light of the consistent view taken by this Court that legal aid to an accused person must not be a mere ritual or a token formality, but a substantive and meaningful exercise that ensures effective assistance of counsel. While there can be no doubt about the bona fide intention of the High Court in appointing an *amicus* to represent convict whose advocate is not present to argue his appeal with a view to advancing the cause of justice, it would perhaps have better served the ends of justice had a formal notice been issued to the appellant informing him of the hearing and the arrangement made for his representation. Such a course becomes all the more imperative where, as in the present case, the appellant remained incarcerated during the pendency of the appeal.

11.At this juncture, it may be apposite to note that this Court had the occasion to deal with a similar case quite recently. In ***Bhola Mahto v State of Jharkhand***⁶, accepting a similar technical plea raised by the appellant regarding non-service of notice after the appointment of an *amicus*, this Court ordered a *de-novo* hearing of his appeal and remanded the case back to the High Court. While doing so, this Court relied upon and reiterated the directions given in ***Anokhi Lal vs. State of Madhya Pradesh***⁷ by a three-Judge Bench of this Court regarding the appointment of *amicus* while also making certain

⁶ Criminal Appeal No. 1450 of 2026

⁷ 2019 20 SCC 196

additional observations regarding service of notice after such appointment. For the sake of brevity, we do not wish to repeat the directions in **Anokhi Lal** (supra) and **Bhola Mahto** (supra) here. However, having regard to the facts of the present case, we deem it appropriate to emphasise two directions issued in **Anokhi Lal** (supra). First, that the *amicus* must be afforded reasonable time to prepare the matter; and second, that adequate opportunity must be granted to the *amicus* to meet and confer with the accused/convict concerned. Admittedly, neither of these directions appear to have been complied with in the present case.

12. Needless to say, judicial time is both valuable and finite, and ought not to be expended in a casual or avoidable manner. We therefore reiterate, at the cost of repetition, that the directions issued in **Anokhi Lal** (supra), as well as the observations made in **Bhola Mahto** (supra), must be followed scrupulously, in addition to adherence to the relevant rules governing the business and procedure of the courts concerned.

13. We are, therefore, inclined to order a remand for hearing of the appeal *de novo*. The impugned order dated 26th November, 2025 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.

14. The appeal may be listed on any date within 2 months of this judgment. Preferably, the very same member Judges of the Division

Bench who had the occasion to decide the appeal on 26th November, 2025, may be assigned to hear the appeal, but 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.

15. 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.

16. Taking note of the fact that the appellant is a septuagenarian, 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 either in the proceedings before this Court, the present judgment or in the impugned order dated 26th November, 2025.

17. Appellant remained in custody during the pendency of his appeal prior to the dismissal by the impugned order. We clarify that he shall

remain in custody till such time the appeal is disposed of by the Division Bench on its own merits in terms of this order.

18. Accordingly, the appeal stands partly allowed on the aforesaid terms.

Pending application, if any, stands disposed of.

.....**J.**
(DIPANKAR DATTA)

.....**J.**
(SATISH CHANDRA SHARMA)

NEW DELHI;
MAY 22, 2026.