

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : April 18, 2016*  
*Judgment Delivered on : April 25, 2016*

+ **CRL.A. 214/2016**

RANJEET ..... Appellant

Represented by: Ms.Saahila Lamba, Advocate

versus

STATE ..... Respondent

Represented by: Mr.Varun Goswami, APP with  
Insp.Rajender Prasad, SHO,  
P.S.Aman Vihar

**CRL.A. 336/2016**

MEERA DEVI ..... Appellant

Represented by: Mr.Pramod Kumar Dubey, Advocate

versus

STATE ..... Respondent

Represented by: Mr.Varun Goswami, APP with  
Insp.Rajender Prasad, SHO,  
P.S.Aman Vihar

**CRL.A. 361/2016**

ANJALI ..... Appellant

Represented by: Ms.Saahila Lamba, Advocate

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP with  
Insp.Rajender Prasad, SHO,  
P.S.Aman Vihar

**CRL.A. 363/2016**

MD. ASLAM

..... Appellant

Represented by: Mr.Rajender Chhabra, Advocate

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, with  
Insp.Rajender Prasad, SHO,  
P.S.Aman Vihar

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**PRADEEP NANDRAJOG, J.**

1. Surender Lal Dev (hereinafter referred to as the 'Deceased') was last seen alive on June 30, 2013, when after settling his dues he left employment of Dinesh Kumar PW-12.
2. The deceased being missing, and in all probability dead, emerged when accused Mohd.Asam rang up the police in the morning of November 24, 2013 and informed that '*a quarrel is taking place at a house situated near Shiv Temple at Mangal Bazar Road, Bhagya Vihar*' as recorded in DD No.16A, Ex.PW-2/A.
3. On being handed over a copy of DD No.16A, accompanied by Ct.Dharampal PW-12, SI Randhir PW-15 reached the house where a

decomposed body, reduced to a skeleton, was recovered from the septic tank within the precincts of the building.

4. Insp. Mahender Singh PW-21 also reached the house and took over further investigation.

5. Needless to state, needle of suspicion pointed towards the five alleged occupants of the house i.e. accused : (i) Mohd.Aslam, (ii) Meera Devi, (iii) Anjali, (iv) Ranjeet and (v) absconder Shyam.

6. Lead could be obtained only by interrogating the occupants of the house; who allegedly stated in unison that the deceased was employed in the shop of Dinesh Kumar, and made confessional statements admitting to the crime of murdering the deceased; the evidentiary value of which confessional statements is nil because no recoveries have been made pursuant to the statements. The learned Trial Judge has wrongly attributed to the accused recovery of the dead body from the septic tank pursuant to the disclosure statements made; and aspect of the evidence which we shall highlight at the appropriate stage while discussing the impugned judgment in the context of the evidence on record.

7. Coincidentally, Rajgir Mandal PW-4, who was not an occupant of the house, but per chance happened to be present in the house in the morning of November 24, 2013, told the Investigating Officer (Inspector Mahender Singh PW-21) that the previous night i.e. on November 23, 2013, he had overheard a heated conversation amongst Mohd.Aslam, Meera Devi, Anjali and Ranjeet, during which Mohd.Aslam threatened the other three that : *'he would dig out the dead body of the deceased from the trench; implicate all three accused persons in a murder case and inform the police that all three accused persons have committed murder of the deceased and*

*thereafter dumped dead body of the deceased in a trench’.*

8. Insp.Mahender Singh recorded the statement Ex.PW-4/A of Rajgir Mandal, wherein apart from disclosing what he had overheard the previous night, he disclosed that since last twenty five years he was working in the sweetmeat shop ‘Ram Kishan Desi Ghee Wala’. About five months ago he got the deceased, who was his neighbour, employed at the said shop. About three months ago, accused Meera Devi, mother-in-law of the deceased, accompanied by Shyam son of her brother-in-law (Jeth) and her brother-in-law (Jija) visited the shop and forcibly got the dues of the deceased settled and took the deceased with them. In the month of November he had visited the house in question where he met Meera Devi, Anjali, Ranjeet and Mohd.Aslam, who informed him that the deceased has gone to Lucknow or Kanpur and is working there. He then again visited the house on November 23, 2013 when he overheard the verbal spat between the accused Mohd.Aslam, Meera Devi, Anjali and Ranjeet, with accused Mohd.Aslam threatening the other three accused to implicate them in the murder of the deceased. Making an endorsement Ex.PW-21/A, Insp.Mahender Singh got the FIR Ex.PW-2/B registered for the offence of murder.

9. The skeletal remains of the dead body was seized and sent to the mortuary of SGM Hospital where Dr.Manoj Dhingra PW-13, conducted the post-mortem on December 01, 2013 and prepared the post-mortem report Ex.PW-13/A recording therein that no definite opinion regarding cause of death could be given due to the high grade of decomposition of the body. He did not record an opinion regarding time since death, but recorded that in the inquest paper it was written that the death was about two and half months prior. A tooth from the skeleton was handed over to the

Investigating Officer for DNA analysis.

10. On November 24, 2013 itself, Insp.Mahender Singh recorded the statement of Guddu Mistry PW-9, in which he disclosed that about two and half months ago he had plastered the septic tank of the house at the instance of accused Mohd.Aslam. Surprisingly, Insp.Mahender Singh recorded in the statement that the accused had confessed in his presence of having committed the offence.

11. Accused Mohd.Aslam, Anjali, Meera Devi and Ranjeet were arrested. The fifth accused Shyam absconded and could not be arrested.

12. Along with the blood samples of the brother of the deceased the tooth of the deceased was sent for DNA analysis. The purpose was to link the skeleton as that of the deceased. Vide FSL report Ex.PX it was opined that DNA could not be generated because the body had disintegrated or probably due to presence of inhibitors.

13. With Shyam being declared a proclaimed offender, the four appellants were sent for trial and the only material with the prosecution was that they were the occupants of the house in the septic tank of which a dead body, reduced to a skeleton, was recovered and the deceased not being heard of or seen since June 30, 2013; accused Mohd.Aslam getting the lid of the septic tank plastered from Guddu Mistry; the heated conversation heard by Rajgir Mandal on November 23, 2013; and the accused telling Rajgir Mandal in early November that the deceased had gone to Lucknow or Kanpur and was working there i.e. a conduct of misleading Rajgir Mandal.

14. The motive set up by the prosecution, for which there was no witness cited, was from the confessional statements made, and hence inadmissible evidence, that accused Anjali was married to the deceased and the deceased

used to suspect her of having illicit relations, which infuriated Anjali who decided to do away with the deceased. In concert with her mother, accused Meera Devi, step father accused Mohd.Aslam, brother-in-law (husband of sister of Anjali), Ranjeet and her cousin brother absconding accused Shyam, Anjali killed her husband and dumped his dead body in the septic tank.

15. At the trial, Rajgir Mandal PW-4, deposed in harmony with his statement Ex.PW-4/A. Additionally, he deposed that on November 04, 2013 when he had visited the house to enquire about the deceased, the accused told him that he had either gone to Lucknow or Kanpur. Regarding what he heard on the night of November 23, 2013, we reproduce his testimony. It reads:-

*“Later on, on 23/11/2013, in the evening, at about 4.00 p.m., I had again reached at the house of accused Meera Devi to know about the arrival of Surrender. At that time, Meera Devi met me there along with her son Sarwan and at that time, Meera Devi had asked me to employ her son Sarwan with me at my shop and she had also demanded Rs.2,000/- from me in advance. Accordingly, I had given Rs.2,000/- to accused Meera Devi. After that, accused Meera Devi sent her son Sarwan to bring fish for eating. Accordingly, he had brought the fish and after preparing the same, we had taken the meals. As it was late at night, so I stayed there. In the late night, a quarrel had taken place between the accused persons namely Aslam, Ranjeet, Anjali and Meera, which continued till late night and during the quarrel, I had heard that accused Aslam was saying “surrender kee lash ko main gadde se nikalvaunga or tum sabko murder case main phasvaunga or police ko batunga kee tum logo ne use murder karke gadde main dala hai.” At that time during course of quarrel between the aforesaid persons, “accused Anjali ne Aslam per jhapata mara due to which, the nail scratches occurred on the face of Aslam and due to the quarrel between the aforesaid persons, I could not sleep on that night. In the morning, at about 8.00/8.15 a.m., accused Aslam had informed the police*

*telephonically.” **(Emphasis Supplied)***

16. Guddu Mistry PW-9, deposed that two months prior to November, 2013, accused Mohd.Aslam had called him to his house and asked him to plaster the septic tank and therefore he plastered the lid of the septic tank. He was cross-examined regarding the accused admitting their guilt in his presence before Insp.Mahender Singh. He resiled from said fact. Even if he admitted said fact it was inadmissible in evidence because any confession made to a police officer is inadmissible in evidence save and except such parts to which Section 27 of the Indian Evidence Act, 1872 is attracted, and in the instant case Nil.

17. Ram Bhagat PW-11, deposed that he was the owner of the house from where the dead body was recovered and that he had let out the house to Mohd.Aslam who was residing there with his wife Meera Devi, daughter Anjali and son-in-law Ranjeet since May, 2013.

18. Dinesh Kumar PW-12, deposed that he is running a sweetmeat shop under the name and style ‘Lala Ram Kishan Dinesh Kumar Desi Ghee Wala’. Rajgir Mandal has been employed at his shop since long. The deceased was also employed as helper in his shop and had left employment on June 30, 2013.

19. In their statements under Section 313 Cr.P.C. the accused pleaded innocence and denied their role. Mohd.Aslam tried to implicate the other accused, and we note questions No.12, 14 and 54 put to him and his response. He said :

*“Q.12. Further that PW4 Rajgir Mandal gave Rs.2000/- to your co-accused Meera Devi who sent her Sharwan to bring fish for eating and after eating the fish, PW4 Rajgir Mandal*

*took the meals there as it was late in night, PW4 Rajgir Mandal stayed there and late in the night, a quarrel had taken place amongst you and your co-accused and during such quarrel, PW4 Rajgir Mandal heard you accused Mohd. Aslam saying that "Surender kee lash ko main gadde se nikalvaunga or tum sabko murder case main phasvaunga or police ko batunga kee tum logo ne use murder karke gadde main dala hai". What do you have to say?*

*Ans. Rajgir used to visit our house and used to talk with my daughter Anjali and that night also he had come and stayed back. I had slapped him as well as my daughter Anjali as I had seen them in objectionable position. Therefore, a quarrel had taken place between us. I left my home to ease myself and returned back. By that time, my another son-in-law Ranjeet had also been called from his adjacent house. Then I was beaten up by Rajgir, my daughter Anjali and Ranjeet and Rajgir had claimed that I also may be killed in the same manner as Surender and put in that tank. I was having another mobile also and with that mobile, I had called up the police.*

*Q.14. Further that as per PW4 Rajgir Mandal, next morning at about 8.00AM/8.15 AM, you accused Mohd. Aslam informed the police telephonically and after sometime police came there and on arrival of police, you accused Mohd. Aslam had broken cemented slab of septic tank situated in the gher of your rented house and one decomposed dead body was recovered from such septic tank. What do you have to say?*

*Ans. I had called up the police but only the previous night I learnt from Rajgir himself that Surender had been killed by Rajgir and my daughter Anjali.*

*Q.54. Do you want to say anything else?*

*Ans. I am innocent. I have been falsely implicated. I have no role to play in the incident in any manner. I was taken away by the police officials and subsequently falsely implicated in the*

*present case. I was made to sign on various papers which were subsequently converted into various documents.”*

20. Being relevant we note that regarding what Rajgir Mandal deposed as having been heard by him in the house on the night of November 23, 2013, whereas Meera Devi said that being drunk what Mohd.Aslam said was untrue, Ranjeet said that since he was not in the house he could not say anything about the quarrel and utterance of Mohd.Aslam. Anjali said that she overheard a quarrel while she was cooking and Mohd.Aslam and Rajgir Mandal were dead drunk.

21. Vide impugned judgment dated December 08, 2015 the learned Trial Judge has held the four accused guilty of the charge of murder. In so concluding, the learned Trial Judge has held:-

*“8.3 In the case in hand, all the proved circumstances, when read together, point out towards accused and accused only. The inference is rational and most-logical and the deduction is inescapable. Such circumstances are as under:-*

*1) Deceased Surender Lal Dev and PW4 Rajgir were working together at a sweet-shop and Surender Lal Dev was made to leave that job and his mother-in-law Meera along with absconding accused brought him back to their house.*

*2) Thereafter Surender Lal Dev was never seen alive by any outsider.*

*3) No missing report was lodged by anyone including his wife Anjali.*

*4) House of accused had a septic tank.*

*5) Accused were in exclusive possession of such house.*

6) Complainant Rajgir Mandal stayed overnight there and witnessed a quarrel amongst accused and overheard conversation which clearly indicated that they all were responsible for murder of Surender and that they had concealed his dead body in a pit.

7) In such quarrel, two accused received injuries, albeit superficial.

8) Accused Aslam himself called up the police next morning and spilled the beans.

9) At the instance of accused, dead body was recovered from septic tank.

10) Such body was in extremely decayed state clearly suggesting that Surender Lal Dev had been killed 2-3 months back and during such period of 2-3 months, no one had seen him alive.

11) Accused Aslam, in order to ensure that no one comes to know about the offence, got the lid/cover of such septic tank plastered through Guddu Mistry after the murder.

12) Accused have failed to explain the mystery behind recovery of dead-body from their house which was in their possession and to the exclusion of all others.

13) Accused were least disturbed or perturbed about the non-appearance of Surender Lal and the fact that they had told a lie to complainant and tried to mislead him by claiming that Surender Lal Dev was away to Kanpur strengthens the story of their complicity.

14) Stance taken by accused Mohd. Aslam in his statement u/s 313 Cr.P.C. shows complicity of all accused. (Emphasis Supplied)

22. Being relevant, we note following observations made by learned Trial Judge regarding stand taken by the accused in their statements under Section 313 Cr.P.C.:-

*“6.29 All the defence counsels have disputed the factum of recovery of dead body at the instance of accused and have also questioned the integrity of complainant Rajgir Mandal.*

*6.30 Let me evaluate their stand one by one.*

*6.31 As far as accused Meena Devi is concerned, she has simply claimed that she was away to her native place and had returned from there on 04/11/2013 and she had no knowledge whatsoever about any such incident. She also claimed that she had no relation whatsoever with accused Md. Aslam. She has also claimed that accused Anjali was innocent and she had been falsely implicated.*

*6.32 Accused Anjali has simply claimed that accused Aslam was residing in their house but she denied there being any relationship between him and her mother Meera Devi. She also claimed that her mother used to live in her native village of Darbhanga and according to her, her mother had returned from Darbhanga in the evening of 23/11/2013.*

*6.33 Thus, both the said accused i.e. Meera Devi and her daughter Anjali are coming up with incongruous versions. According to Meera Devi, she had FIR No. 583/13 PS Aman Vihar Page 16 of 31 returned from her native village on 04/11/2013 but according to accused Anjali, her mother returned on 23/11/2013.*

*6.34 Accused Anjali has also admitted in her statement u/s 313 Cr.P.C. that when she was cooking that night, she heard some quarrel and saw accused Aslam and Rajgir Mandal in drunken condition and they were quarreling with each other. She, therefore, became furious and intervened and told them to go out and then fight. She also claimed that accused Aslam*

*was claiming that he would implicate all of them. She also admitted that accused Aslam had called the police. However, as regards recovery of dead body, she claimed that police had not carried out any investigation in her presence and she did not know anything about the same.*

*6.35 As far as accused Ranjeet is concerned, he claimed that he was residing at a different place. He stated that no quarrel had taken place in the night of 23/11/2013 in his presence and he came to that house next morning when he saw police there.*

*6.36 However, it would be interesting to take note of the stand of accused Md. Aslam.*

*6.37 He has, evidently, something else to say.*

*6.38 He, in his statement u/s 313 Cr.P.C. admitted that Rajgir Mandal had visited their house on the night of 23/11/2013 and according to him, he had seen Rajgir Mandal and his daughter Anjali in an objectionable position and, therefore, a quarrel had taken place and thereafter, he was beaten-up by Rajgir, his daughter Anjali, Ranjeet and then Rajgir had claimed that he may also be killed in the manner as Surrender and then should be put in tank. According to him, he learnt that night only that Surrender had been killed by Rajgir and Anjali.*

*6.39 It will be also beneficial to extract questions no. 12, 13 and 14 put under Section 313 Cr.P.C. and corresponding answers given by accused Md. Aslam:*

*“Q12. Further that PW4 Rajgir Mandal gave Rs. 2000/- to your co-accused Meera Devi who sent her son Sharwan to bring fish for eating and after preparing the fish, PW4 Rajgir Mandal took the meals there and as it was late in night, PW4 Rajgir Mandal stayed there and in the late night, a quarrel had taken place amongst you and your co-accused and during such quarrel, PW4 Rajgir Mandal heard you accused Mohd.*

*Aslam saying that "Surender kee lash ko main gadde se nikalvaunga or tum sabko murder case main phasvaunga or police ko bataunga kee tum longo ne use murder karke gadde main dala hai". What do you have to say?*

*Ans. Rajgir used to visit our house and used to talk with my daughter Anjali and that night also he had come and stayed back. I had slapped him as well as my daughter Anjali as I had seen them in objectionable position. Therefore, a quarrel had taken place between us. I left my home to ease myself and returned back. By that time, my another son-in-law Ranjeet had also been called from his adjacent house. Then I was beaten up by Rajgir, my daughter Anjali and Ranjeet and Rajgir had claimed that I also may be killed in the same manner as Surender and put in that tank. I was having a mobile at that time which was taken by Rajgir. I was having another mobile also and with that mobile, I had called up the police.*

*Q.13. Further that as per PW4 Rajgir Mandal, during such quarrel, your coaccused Anjali pounced over you accused Mohd. Aslam due to which you accused Mohd. Aslam got nail scratches on your face. What do you have to say?*

*Ans. I was beaten up by Anjali, Ranjeet and Rajgir.*

*Q.14. Further that as per PW4 Rajgir Mandal, next morning at about 8.00 AM/8.15 AM, you accused Mohd. Aslam informed the police telephonically and after sometime police came there and on arrival of police, you accused Mohd. Aslam had broken cemented slab of the septic tank situated in the gher of your rented house and one decomposed dead body was recovered from such septic tank. What do you have to say?*

*Ans. I had called up the police but only the previous night I learnt from Rajgir himself that Surender had been killed by Rajgir and my daughter Anjali."*

6.40 It is a startling revelation and admission by accused Md. Aslam which runs along the prosecution line to a great extent.

6.41 He admits the visit of Rajgir at their house on the night of 23/11/2013. He admits that there was a quarrel. He also admits that he was the one who had called the police. However, according to him, he had no inkling that Surender had been killed and he learnt that night only that Surender had been killed by his co-accused Meera and Anjali as well as by Rajgir Mandal. He is thus trying to exculpate himself and inculpate his co-accused besides Rajgir.

6.42 This is surprising for three reasons.

6.43 Firstly, if it was really so, then accused Md. Aslam should have tried to ascertain about the whereabouts of Surender whom he did not hear for nearly three months. Surender was no stranger for him. He was rather his son-in-law.

6.44 Secondly, if at all, accused Md. Aslam had learnt about such fact that Surender had been killed by his co-accused Meera and Anjali with the help of Rajgir Mandal, then would he explain as to why he himself had, earlier, called up Guddu Mistry for repairing the tank. The manner in which he had called Guddu Mistry to repair the tank speaks volume of his involvement and complicity in the matter and he cannot be permitted to say that he learnt about the murder of Surender that night only and that he was never involved in such murder.

6.45 Lastly, there is one more aspect which persuades me to reject such version of accused Md. Aslam. Rajgir Mandal had entered into witness box and was cross examined by all the accused persons. Accused Md. Aslam never put any such question to Rajgir Mandal. No suggestion was put to him that he had seen Rajgir Mandal and his daughter Anjali in a compromising position which was the cause of quarrel. No suggestion was put to him that Surender had rather been killed

by Rajgir Mandal with the help of his two accused. Therefore, now, he cannot be heard taking shelter behind such defence which evidently is false, artificial and manufactured. Naturally, some quarrel took place that night amongst all the accused and accused Aslam must be annoyed for some reason and he then decided to spill the beans. His utterances were overheard by Rajgir. Moreover, next morning, accused Aslam himself had called up the police. He certainly would not have called the police for minor scratches which he had received on his face. Moreover, when police reached, he indicated towards the septic tank and got recovered the dead body from the tank.

6.46 I need not delve much about the admissibility of such utterances of accused Mohd. Aslam. The manner in which the same has been found recorded may, in first blush, indicate that it was self-exculpatory but when read in whole and in conjunction with previous act of accused Mohd. Aslam when he got the tank plastered through Guddu Mistry leaves no doubt in my mind that such statement has all the shades of confession. Such statement falls within the definition of extra-judicial confession. It need not be made, specifically, to any person and even if it is heard by chance by someone, it will not lose it's such character at all. It can bind the other co-accused as well in terms of sec 30 of Indian Evidence Act.

6.47 Answers given in statement recorded u/s 313 Cr.P.C. have also some relevance. Though, such statement u/s 313 Cr.P.C. is not a substantive piece of evidence since it is not recorded on oath nor it is subjected to any cross examination, yet such statement can, be taken into consideration, at the trial, against the accused for the purpose of arriving at the guilt or otherwise of the accused. Since no oath is administered to the accused, the statements made by the accused will not be, strictly speaking, evidence. Sub-section (3) also says that the accused shall not render himself liable to punishment if he give false answer. But, then comes sub-section (4), which provides that answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him

in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed. Thus, the answers given by the accused, in response to his examination, under Section 313, can be taken into consideration in such inquiry or trial. This much is clear on a plain reading of the above sub-section. Therefore, though not strictly construed as evidence, sub-section (4) permits that it may be taken into consideration in the said inquiry or trial. However, such self-incriminating statement indicting co-accused cannot be said to be sufficient in itself. The court can rely on a portion of the statement of the accused and find him guilty but such statement should not be considered in isolation but always in conjunction with evidence adduced by the prosecution. Reference be made to **SANATAN NASKER VS. STATE OF BENGAL AIR 2010 SC 3570. (Emphasis Supplied)**

23. Concededly, in the instant case the dead body recovered from the septic tank could not be identified due to non-generation of DNA and therefore no opinion could be rendered whether the skeletal remains were those of Surender Lal Dev. But there is evidence that after June 30, 2013, Surender Lal Dev was not to be seen. The testimony of Rajgir Mandal, who has successfully withstood the test of cross-examination brings out that on November 23, 2013 there was a heated conversation amongst the accused during which Mohd.Asalam threatened the other three that he would dig out the dead body from the trench and implicate them for murdering the deceased by informing the police. That a dead body reduce to a skeleton was recovered from the septic tank of the house. As we would be noting hereinafter the occupants of the house were Mohd.Asalam, Meera Devi, Anjali, the deceased (and not Ranjeet) and thus it could be said that the fact of the dead body being dumped inside the septic tank was in their knowledge and only they could tell as to whose dead body it was and a

failure by them to do so would entitle the Court to raise a presumption against them that the dead body was that of the deceased. Thus, the prosecution has established that the dead body was that of the deceased. Assuming that there is lack of clinching evidence to prove that the dead body recovered was that of the deceased, the fact of the matter remains that the deceased went missing and his wife, mother-in-law and father-in-law who were residing together did not inform the police of the deceased being missing. Under the circumstances a presumption would have to be raised that the deceased had died. It would at best be a case where the dead body was not recovered. The legal position regarding production of corpus delicti is well settled by a long line of decisions of the Supreme Court. In the decision reported as (1981) 1 SCC 511 Rama Nand & Ors. v. State of Himachal Pradesh, the Supreme Court summed up the legal position on the subject in the following words:-

*“27. . . . In other words, we would take it that the corpus delicti, i.e., the dead-body of the victim was not found in this case. But even on that assumption, the question remains whether the other circumstances established on record were sufficient to lead to the conclusion that within all human probability, she had been murdered by Rama Nand Appellant? It is true that one of the essential ingredients of the offence of culpable homicide required to be proved by the prosecution is that the accused caused the death” of the person alleged to have been killed.*

*28. This means that before seeking to prove that the accused is the perpetrator of the murder, it must be established that homicidal death has been caused. Ordinarily, the recovery of the dead-body of the victim or a vital part of it, bearing marks of violence, is sufficient proof of homicidal death of the victim. There*

was a time when under the old English Law, the finding of the body of the deceased was held to be essential before a person was convicted of committing his culpable homicide. "I would never convict", said Sir Mathew Hale, "a person of murder or manslaughter unless the fact were proved to be done, or at least the body was found dead". This was merely a rule of caution, and not of law. But in those times when execution was the only punishment for murder, the need for adhering to this cautionary rule was greater. Discovery of the dead-body of the victim bearing physical evidence of violence, has never been considered as the only mode of proving the corpus delicti in murder. Indeed, very many cases are of such a nature where the discovery of the dead-body is impossible. A blind adherence to this old "body" doctrine would open the door wide open for many a heinous murderer to escape with impunity simply because they were cunning and clever enough to destroy the body of their victim. In the context of our law, Sir Hale's enunciation has to be interpreted no more than emphasising that where the dead-body of the victim in a murder case is not found, other cogent and satisfactory proof of the homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eye-witness, or by circumstantial evidence, or by both. But where the fact of corpus delicti, i.e. 'homicidal death' is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world, and absolute certainty is a myth. That is why under Section 3, Evidence Act, a fact is said to be "proved", if the Court considering the matters before it, considers its existence so probable that a prudent man ought, under the circumstances of the

*particular case, to act upon the supposition that it exists. The corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculcating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned.*” (emphasis supplied)

24. The decision aforementioned was approved in the decisions reported as (2002) 7 SCC 198 Laxmi Vs. State of UP and (2003) 3 SCC 353 State of Karnataka Vs. M.V.Mahesh.

25. From the evidence on record and especially keeping in view the testimony of Ram Bhagat PW-11 we have the fact that Mohd.Aslam, Meera Devi, her daughter Anjali and her son-in-law i.e. the deceased used to live in the house in question. In his testimony Ram Bhagat has said that Mohd.Aslam, Meera Devi, Anjali and Meera Devi’s son-in-law Ranjeet used to reside in the house. But the learned Trial Judge has rightly observed that this is a mistake in the deposition of Ram Bhagat because Meera Devi had two daughters and the younger one was married to Ranjeet. The deceased was married to Anjali. Thus the reference to the son-in-law by Ram Bhagat was to the deceased. We also note that during cross-examination Rajgir Mandal PW-4 has admitted that Ranjeet was not residing in the house in question and that Ranjeet came to the house in the evening of November 23, 2013, when the quarrel had taken place. That a dead body, reduced to a skeleton, was recovered from the septic tank of the house leads to the logical inference that either the person was killed in the house or the dead body was brought to the house and dumped inside the septic tank. Under either circumstance, any logical mind would reach to a conclusion

that this was not possible without the knowledge of the inhabitants of the house. Surely, a grave suspicion arises. But as held in the decision reported as (2013) 12 SCC 551 Rishipal Vs. State of Uttrakhand, a suspicion howsoever strong is not enough to justify a conviction for an offence of murder and that there is a long distance between ‘*may have*’ and ‘*must have*’.

26. Taking the most charitable and liberal view of the evidence in favour of the prosecution, the incriminating circumstances emerging in the evidence against the accused would be the testimony of Rajgir Mandal that the accused told him on November 04, 2013 that the deceased had probably gone to Lucknow or Kanpur. This would be incriminating because it would be proof of the fact that the accused tried to mislead Rajgir Mandal, knowing fully well that the deceased was dead. The further incriminating evidence would be that the accused, who are closely related to the deceased, did not inform the police of the deceased being missing. The other incriminating evidence would be the deceased being dumped, after being killed in the septic tank which was within the precincts of the house. The next incriminating evidence would be the testimony of Rajgir Mandal, of what he overheard on November 23, 2013 i.e. during a quarrel when Mohd.Asalam threatened Meera Devi, Ranjeet and Anjali that he would spill the beans by informing the police that the deceased had been murdered and his dead body had been dumped by them inside the septic tank. The next incriminating evidence would be the testimony of Guddu Mistry PW-9 that at the asking of Mohd.Asalam he plastered the lid of the septic tank of the house about two months prior to November, 2013 i.e. somewhere in

September, 2013.

27. The learned Trial Judge has used, as an incriminating circumstance, the recovery of the skeletal remains of the dead body at the instance of the accused, a finding which is not supported by any evidence, for the reason evidence establishes that on November 24, 2013 at 8:16 AM, Mohd.Asalam rang up the local police station to inform that a quarrel was taking place in the house. SI Randhir Singh PW-19 and Ct.Dharam Pal PW-15 reached the house and in their testimony they have not stated with clarity as to on whose information the two recovered the dead body from the septic tank. The testimony of Insp.Mahender Singh PW-21 establishes that by the time he reached the house the dead body had already been recovered from the septic tank. He had categorically deposed that thereafter he interrogated the accused and recorded their confessional statements in the presence of Rajgir Mandal.

28. From the incriminating evidence which we have succinctly listed in paragraph 26 above, it needs to be highlighted that the testimony of Rajgir Mandal concerning what he heard in the late evening of November 23, 2013 suggests that Mohd.Asalam was blackmailing the other three accused and therefore an inference needs to be drawn that Mohd.Asalam was not the perpetrator of the crime. Having knowledge of the commission of the crime he was blackmailing the other three accused. No doubt the testimony of Guddu Mistry establishes that Mohd.Asalam summoned him to plaster the lid of the septic tank, but the said conduct could equally be suggestive of he, as a family member would be expected to do, to help the other family members who has committed a crime summoning Guddu Mistry to plaster the lid of

the septic tank so that foul smell from the decomposing body would not emit from the septic tank.

29. But the question arises : Who committed the crime? At what time and on what day the deceased was murdered? There is no evidence. Accused Ranjeet was not a resident of the house. Absconding co-accused Shyam, Mohd.Asalam, Meera Devi and Anjali apart from the deceased were residents of the house. There is no evidence as to on what day the deceased was murdered. There is no evidence as to the place where the deceased was murdered. If murdered in the house, who were present in the house at the time of the murder is sans any evidence. If murdered outside and the dead body brought to the house, we have no evidence as to who did what? Deceased being last seen alive on June 30, 2013 is irrelevant because there is no evidence of even the probable week when the deceased was murdered. Therefore, what emerges from the evidence is knowledge of the occupants of the house that the deceased had been killed and his body dumped in the septic tank within the precincts of the house. Three of the four occupants are three accused and the fourth is the absconding co-accused Shyam. We also have evidence that though Ranjeet was not residing in the house he had knowledge of the said fact.

30. The learned Trial Judge has used the statements made by the accused under Section 313 Cr.P.C. and especially that of Mohd.Asalam to hold that the statements inter-se implicate each other. It is settled law that no statement made by an accused under Section 313 Cr.P.C. can be used as incriminating evidence against other co-accused. The purpose of a statement under Section 313 Cr.P.C. is to enable an accused to give an

explanation regarding the incriminating circumstances appearing in evidence against the accused and if credibly explained, as was in the case of the decision reported as AIR 1972 SC 922 Khatri Hemraj Amulakh Vs. State of Gujarat, the benefit has to be given to the accused; and to be used against the accused as a link in the chain of circumstantial evidence if it is found that a false answer was given by the accused, as held in the decision reported as AIR 2003 SC 25 Anthony D' Souza & Ors. Vs. State of Karnataka.

31. The mandate which the society has given to a Judge i.e. the rule of presumption of innocence, is in criminal law known as **Blackstone's ratio** : *'It is better that ten guilty persons escape than that one innocent suffer'*.

32. The evidence leads one clueless as to who did what in the precincts of the house. The investigating officer has made no attempt to find out as to where was the deceased after he left the employment of Dinesh Kumar PW-12 in the evening of June 30, 2013. Opinion of Dr. Manoj Dhingra PW-13 who conducted the post-mortem on the dead body on December 01, 2013 was not elicited on the probable date of the death of the deceased, and as we have noted hereinabove, on the post-mortem report the doctor simply wrote that as per the inquest papers the death was about two and a half months prior. The tenets of criminal law prohibit raising of a presumption that all occupants of a building would have acted in concert to murder another occupant of a building. Therefore, the prosecution has simply been able to establish that all the accused had knowledge of the deceased being killed and the body dumped inside the septic tank within the precincts of the house.

33. A somewhat comparable situation had arisen in the decision reported

as AIR 1953 SC 420 Ramnath Madho Prashad & Ors. Vs. State of Madhya Pradesh. Four people held proved at the spot when the fatal shot was fired from a firearm and there being no proof of conspiracy, in paragraph 18 the Supreme Court held:-

*“18. . . . Even if it is held proved that all the appellants were seen at that spot at the time of firing this fact by itself could not be held enough to prove a common intention of the appellants to murder Sunder. It can well be that these four persons were standing together and one of them suddenly seeing Sunder fired at him. This possibility has not been eliminated by any evidence on the record. In such a situation when it would not be known who fired the fatal shot none of such persons could be convicted of murder under Section 302, IPC. It seems to us that in this case the High Court failed to appreciate the true effect of the decision of the Privy Council in – ‘Mahbub Shah Vs. Emperor’, AIR 1945 PC 118 (A), and its judgment in regard to the applicability of S.34, IPC has to be reversed.”*

34. A comparable situation could be found in the decision reported as (1972) 42 AWR 866 Smt.Amna & Anr vs. State. In said case, an illegitimate child was born to appellant Amna on February 07, 1968. Appellant Amna was living in a quarter with her mother Banoo, father, younger brother, uncle and grandfather. It was claimed by the prosecution that few hours after his birth, the dead body of the infant was recovered from inside a room of the quarter where Amna was residing, at instance of her mother Banoo. Amna and her mother were convicted for the offence of the murder of the infant. In appeal, the Division Bench of the Allahabad High Court acquitted Amna and Banoo essentially on the ground that it cannot be conclusively held that Amna and Banoo committed murder of infant when there were

other occupants in the quarter wherefrom the dead body of the infant was recovered and who had not only the opportunity to murder the infant but the equally strong motive as the appellants had to do away with the infant. It would be pertinent to note following observations made by the Court:-

*"11. We have carefully considered the circumstances on which reliance had been placed by the learned Judge in recording conviction on the charge of murder against the two Appellants. It was no doubt true that Smt. Amna gave birth to an illegitimate child and there was, therefore, a strong motive to do away with the child. It has, however, to be borne in mind that this motive was not confined to the two Appellants. Every member of the family must have felt the shame which Smt. Amna's indiscretion had brought upon the family and they must have shared the same strong motive to do away with the illegitimate child, It is clear from the statement of Smt. Ram Devi that, apart from the Appellants, Latif (father) and Gafoor (Grandfather) of Smt. Amna resided in the same quarter. Shabir, a brother of Latif, also resided there. Besides these adult members; there were younger brothers of Latif who lived in the same quarter with the Appellants. Latif was working as a bearer in the Aligarh University and Shabir plied a Rickshaw in Aligarh. The time gap between the birth of the child and the recovery of her dead body was about eight or nine hours. The possibility of the adult male members of the family visiting the house during this period and murdering the child could not be ruled out. In a case where the same motive is shared by several members of the family, apart from the accused and where others had an opportunity of committing the crime, the circumstance that the accused had a strong motive could not safely be relied upon to fasten the guilt on the accused. The fact that at the time of the birth of the child and at the time of the recovery of the dead body no male members were present in the house could not lead to the inference that the crime must have been*

*committed by those who were present on those two occasions, which happened after a long interval during which other members of the family must have, in all probability, visited the house and could have had an opportunity to commit the murder."*

35. The decision was not interdicted by the Supreme Court as the petition seeking Special Leave to Appeal there against was dismissed.

36. We are therefore compelled, in light of the evidence before us, to grant benefit of doubt to all the accused for the reason the only conclusion we can draw with certainty is that either the deceased was murdered in the house or murdered somewhere and his dead body was brought to the house and dumped in the septic tank and there has to be complicity of somebody living in the house. But we cannot break the deadlock by ascertaining whom. We reiterate. Howsoever strong a suspicion may arise from the evidence, unless it transforms into proof beyond reasonable doubt, remaining within the realm of a strong suspicion and the requirement of law being proof beyond reasonable doubt, we acquit all appellants of the charge of having murdered the deceased. For parity of reasoning we acquit them of the charge of conspiracy; noting further that there is no evidence of any prior meeting of the mind. The only evidence which prosecution sought to lead in the case is as noted in paragraph 13 above. If this was the material on basis whereof the charge sheet was filed, no case was made out even to frame a charge for the offence of conspiracy to murder the deceased. For parity of reasoning we acquit the accused of the charge under Section 201 IPC.

37. Impugned judgment dated December 08, 2015 convicting the

appellant is set aside and the order on sentence dated December 15, 2015 is quashed.

38. The appellants shall be set free forthwith unless lodged in the prison in some other case.

39. TCR be returned.

40. Five Copies of this decision be sent to the Superintendent Central Jail Tihar. One each to be provided to the appellants and the fifth for the jail record.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(MUKTA GUPTA)**  
**JUDGE**

**APRIL 25, 2016**  
*mamta*