

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

% Reserved on : 7th January, 2016
Date of Decision : 15th January, 2016

+ CRL.A.1206/2014

GUDDI Appellant

**Through: Mr. M. L. Yadav and Lokesh
Chandra, Advs.**

versus

THE STATE Respondent

Through: Ms. Aashaa Tiwari, APP

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

R. K. GAUBA, J:

1. Through the appeal at hand, the appellant seeks to assail the judgment dated 12.08.2013, and order dated 29.08.2013, passed by Additional Sessions Judge-2 (North West) Rohini, Delhi in sessions case no.72/2013 whereby she was held guilty and convicted for offences punishable under sections 302 and 201 of Indian Penal Code, 1860 (IPC) and awarded imprisonment for life with fine of ₹10,000/- besides rigorous imprisonment for three years with fine of ₹5,000/- on the two counts, the gravamen of the charge mainly being that she had committed the murder of her husband (Ram Chander) on or about 01.07.2007, after alluring him from the house in village Qutab Garh within the jurisdiction of Police Station Kanjhawla ("the Police Station"), Delhi to a house in village Kharkhoda District, Sonapat,

Haryana and thereafter having caused disappearance of the evidence with the intention of screening herself from legal punishment by burying his dead body in the said house.

2. There is ample evidence available on record to confirm that the appellant was married to Ram Chander son of Hukam Chand, a person aged about 37 years at the time of his death in July, 2007. Ram Chander, per the evidence of his brother Mahender Singh (PW-2), professed to be an ayurvedic doctor and was earning his livelihood by running a dispensary in village Sohati, close to village Qutab Garh where he would reside with his family including his wife (the appellant) and three children. The testimony of PW-2 would affirm that the other brothers of Ram Chander (hereinafter referred to as “the victim” or “the deceased”) lived separately, PW-2 also being a medical practitioner in ayurved running his own clinic. The date of marriage of the appellant with the deceased has not been clarified by any specific evidence but given her own age (35 years) as stated at the time of lodging the missing report (on 03.07.2007) and the age of the deceased mentioned by her, it must be assumed that they had been married for a number of years.

3. The appellant did not dispute the evidence of the prosecution that on 03.07.2007, she had gone to the local police station, Kanjhawla at about 5.30 PM and lodged a report with Head Constable Surat Singh (PW-8) about her husband having gone missing after he had left the house at about 11 AM on 01.07.2007 on his Hero Honda motorcycle bearing registration no.DL 1L 5036 (“the motorcycle”) carrying along

cash ₹2.5 lakhs. The missing report was reduced into writing in the *roznamcha* by PW-8 vide DD no.30A (Ex.PW-8/A).

4. The evidence on record would show that the police took the requisite steps in the wake of missing report but with no fruitful result till 11.07.2007. On 11.07.2007, Mahender Singh (PW-2), the brother of the victim, went to the Police Station and lodged a report on the basis of his own statement (Ex.PW-2/A) expressing suspicion that the appellant was involved in Ram Chander having been spirited away, with the assistance of one Bijender Singh with the intention of he being killed. The first information report (FIR) was registered vide Ex.PW-3/A by Head Constable Ram Singh (PW-3), the duty officer in the Police Station, on the endorsement made by Inspector Surender Dev, Additional SHO on the aforementioned statement (Ex.PW-2/A) of Mahender Singh (PW-2), for investigation into offence under Section 364/34 IPC registered (vide Ex.PW-3/A) at 2.15 PM on 11.07.2007. According to the FIR, thus registered, Mahender Singh (PW-2) had informed the police that whilst Ram Chander was engaged in his medical practice, his wife (the appellant) was a woman of easy virtue as she had come to be involved with Bijender for the last several years on which account the family had come to be in disrepute. He had tried to show reason to the appellant several times and even his brother (Ram Chander) had tried to counsel her, but she would not mend her ways and instead levelled allegations against her husband (Ram Chander) of being an alcoholic and in case he were to persist with the issue she would also threaten to get him killed. Mahender Singh stated

in the FIR that Ram Chander had gone missing from his house on 01.07.2007 and there was no trace of him in spite of efforts made to search him out with the help of relatives.

5. According to the prosecution case, in the wake of aforementioned FIR being registered, the case was investigated into by ASI Jor Singh (PW-10), who had earlier made enquiries into the missing report vide DD entry no.30A (Ex.PW-8/A). It is stated that when ASI Jor Singh (PW-10) accompanied by Constable Kuldeep (PW-18) and Constable Ramesh visited the house of the appellant in village Kanjhawla, she was found present and upon being interrogated, she made certain disclosures indicative of Ram Chander having been killed, the disclosure statement having been reduced into writing (vide Ex.B-1), which fact was affirmed by PW-10 and PW-18 on oath.

6. ASI Jor Singh (PW-10) deposed that upon disclosures as above being made, he had taken the appellant into custody, having put her under formal arrest vide memo (Ex.PW-10/A) at 4.30 PM on 11.07.2007, though her personal search was not conducted as per the normal practice since no lady constable was immediately available. Since the disclosures made by the appellant statedly gave rise to the possibility that the dead body of the victim (Ram Chander) might be recovered from a property built on a plot of land along Mattindoo Road in village Kharkhoda, District Sonapat, Haryana, ASI Jor Singh (PW-10) shared the information with Inspector (later ACP) Sandeep Byala (PW-23) who was working at the relevant point of time as the Station House Officer (SHO) of Police Station Kanjhawla. It is the evidence

of Inspector Sandeep Byala (PW-23), the final Investigating Officer (IO) of the case, that on learning about the above mentioned disclosure of the appellant, he accompanied by the other police staff including ASI Shiv Narain (PW-21) and Head Constable Suraj Singh had reached village Kharkhoda District Sonapat Haryana. ASI Jor Singh (PW-10) accompanied by the other police staff assisting him, with the appellant in his custody, as instructed, met the SHO there.

7. Having regard to the disclosures made, the SHO (PW-23) made a formal application (Ex.PW-23/A) before the Sub-Divisional Magistrate (SDM) of District Sonapat, Haryana informing him about the background facts and seeking assistance of the local State authorities. The evidence shows that pursuant to the said application of the Investigating Officer, the SDM Sonapat instructed Jagbir Singh (PW-1), the Naib Tehsildar of the area of village Kharkhoda, to participate in the proceedings as per law. On information given by Jagbir Singh (PW-1), the Naib Tehsildar and also of the Investigating Officer (PW-23), officials of the local Haryana Police, including ASI Ramesh Kumar (PW-15) also joined in the investigative process.

8. The report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.), which was submitted in due course on conclusion of investigation into the FIR, shows that for the investigative steps taken out in village Kharkhoda, District Sonapat, Haryana in the wake of disclosures made by the appellant, amongst others, a private photographer Surinder Kumar (PW-5), some local residents including Raju (PW-9) and Ghamandi Lal (PW-11), two

labourers namely Sonu (PW-6) and Manjeet (PW-7), were joined. It is the case for the prosecution that on the pointing out of the appellant, a portion of the floor of the courtyard of a part of the property in village Kharkhoda, to which the appellant had led the Investigating Officer and the witnesses, was dug out with the assistance of PW-6 and PW-7 whereupon a partially naked dead body of a male human being in highly decomposed condition, was found buried at that spot, at the depth of 2/2 ½ feet, it having been identified, in due course, to be that of Ram Chander, the missing husband of the appellant. The relevant witnesses ASI Jor Singh (PW-10) and Constable Kuldeep (PW-18) corroborated the word of the Investigating Officer (PW-23) about formal proceedings in above regard having been reduced into writing, vide memo of pointing out and recovery of dead body (Ex.PW-10/C), to which they are signatory as attesting witnesses.

9. Whilst the Investigating Officer (PW-23) of Delhi Police was investigating the FIR registered in Police Station Kanjhawla, Delhi, the local Haryana Police staff led by ASI Ramesh Kumar (PW-15) also present at the spot, having recorded information vide DD no.24 in Police Station Kharkhoda (Ex.PW-15/A) regarding the arrival of ASI Jor Singh (PW-10) in the area by 5.10 PM on 11.07.2007, prepared their own proceedings (Ex.PW-15/B2) formally proved at the trial. The oral testimony of PW-15, read alongside the proceedings (Ex.PW-15/B2) drawn by him contemporaneously, confirms the evidence of other witnesses, including Inspector Sandeep Bayla (PW-23), Jagbir Singh (PW-1), Surinder Kumar (PW-5), Sonu (PW-6), Manjeet (PW-

7), Raju (PW-9) and Ghamandi Lal (PW-11) about the recovery of the dead body from the place of its secret burial in the compound of the aforementioned property in village Kharkhoda District Sonapat, Haryana at the instance of the appellant in the evening of 11.07.2007.

10. PW-1, though confirming the recovery of the dead body, expressed his inability to identify the appellant as the woman on whose pointing out the dead body had been dug out. PW-6 and PW-7, the two labourers, whose services were availed by the Investigating Officer for the digging work, did affirm that they had helped in recovering the dead body from the place of its burial in the courtyard of a plot of land in village Kharkhoda, but were not inclined to state anything beyond that. They expressed lack of knowledge even as to the gender of the dead body. They pleaded ignorance as to who was the owner of the plot, where the dead body had been found. Similar hesitation in affirming the entire facts was shown by two other witnesses viz., Raju (PW-9) and Ghamandi Lal (PW-11), both local residents joined in the proceedings. In the face of the other credible evidence available on record, which we shall presently note, this reluctance on the part of these witnesses, however, cannot demolish the prosecution case as to either the identity of the deceased or as to the circumstances surrounding the recovery of the cadaver in a highly decomposed state.

11. Surinder Kumar (PW-5) ran a photography shop in the name and style of Sheetal Photo Studio in the area near village Qutab Garh. He was a resident of Village Sohati, Police Station Kharkhoda, Haryana.

He affirmed on oath that on the request of the officers of Police Station Kanjahwla, he had reached the plot of land on Mattindoo Road, Village Kharkhoda and, with the help of digital camera, taken photographs and also prepared videography record of the proceedings concerning recovery of the dead body from the place of its burial beneath earth. He proved eight photographs (Ex.A-1 to Ex.A-8) as prepared by him on the basis of use of the digital camera for still photography and a compact disc (Ex.A-9) containing the video footage. We are inclined to accept the technical objection of the defence that the result of the photography/videography done by PW-5 cannot be looked into in the absence of a formal certification in terms of section 65B of the Indian Evidence Act, 1872 (“the Evidence Act”). After all, the evidence clearly shows, the equipment used for such purpose was a digital camera, its output being covered by the expression “electronic record” within the meaning assigned to it in the Information Technology Act, 2000 as extended to the law of evidence concerning its admissibility. This, however, cannot mean that the oral testimony of the above mentioned witnesses as to the recovery of the dead body from the place in question becomes tainted. The only adverse effect, if the effect can be so called, is that the prosecution is deprived of the concrete material, corroborative and otherwise credible evidence available about the discovery/recovery of the dead body of Ram Chander.

12. Raju (PW-9) and Ghamandi Lal (PW-11), as stated earlier, are residents of village Kharkhoda, District Sonapat, Haryana. While, the former (PW-9) was a *Nagar Palika Parshad* (Municipal Councillor),

the latter (PW-11) was brother of the village *Pradhan*. Both of them were, thus, persons of some influence in the locality. The house, the courtyard of which was the place of burial of the dead body, is located very close to the respective houses of PW-9 and PW-11 inasmuch as both of them spoke of foul smell emanating from the said portion coming to their notice. In fact, PW-9 deposed that the house in question is in the same *mohalla* (locality) where his own house is located.

13. When examined, both witnesses (PW-9 and PW-11) confirmed the fact of recovery of dead body. But, they would not testify that this had happened in their presence. While PW-9 refused to affirm, at the initial stage of his testimony, any connection between the house in question and the appellant, PW-11 though stating that the house belonged to the appellant, she having purchased it a few months ago, and the digging work having been carried out by the Delhi Police at her instance, initially claimed that only garbage had been recovered as a result of digging. Both these witnesses were declared hostile and subjected to cross-examination by the public prosecutor. At this stage of their respective deposition, each of them was confronted with the material contained in the video footage produced in the form of compact disc that had been prepared by PW-5. Upon seeing the said video-footage, both these witnesses testified that the digging work had been carried out in their respective presence at the instance of the appellant, who had been present in the custody of the police at that stage.

14. At the hearing on this appeal, the learned *amicus curiae*, arguing for the defence, submitted that for the same reason as to why the video-footage produced by PW-5 has been excluded from consideration, the evidence of PW-9 and PW-11, to the extent it confirms the presence and role of the appellant at the time of digging out of the dead body from the courtyard of the aforementioned house in village Kharkhoda, District Sonapat, Haryana, must also be excluded from consideration, since such facts were extracted from the witnesses by the public prosecutor using the videography contained in same very compact disc prepared by PW-5. We have considered this submission but find it unmerited. The video footage contained in the compact disc may technically be inadmissible and unavailable as piece of evidence to the court in terms of the ratio in ruling in *State vs. Navjot Sandhu @ Afsan Guru (2005) 11 SCC 600*. But since the aforementioned witnesses (PW-9 and PW-11), upon being confronted with its contents, without any objection from the defence, made certain affirmative statements, correcting the stand taken by them earlier, their oral testimony to the above effect remains available to the prosecution. Pertinently, when the witnesses were being cross-examined by the public prosecutor, particularly when they were confronted with the video footage, it was not even remotely suggested by any quarter, be it the defence or the witnesses themselves, that the material thus shown was a doctored one. The fact remains that upon being reminded of the availability of a video coverage of the police proceedings, PW-9 and PW-11 seem to have refreshed their memory and consciously gave up

the posture of ignorance adopted earlier and offered to lend corroboration to the word of the other witnesses on record confirming that the dead body indeed was taken out from beneath the earth in the courtyard of the house in village Kharkhoda, District Sonapat, Haryana at the instance of appellant in the evening of 11.07.2007, the defence having failed thereafter to budge them from that modified position.

15. Since the dead body had been recovered from the courtyard of a house located in District Sonapat, Haryana, the local police led by ASI Ramesh Kumar (PW-15) conducted the requisite inquest proceedings including in the form of death report (Ex.PW-15/B1 and Ex.PW-16/B2) besides proceedings under Section 374 Cr.P.C. (Ex.PW-15/B2). The dead body was identified to be that of Ram Chander by his brother Mahender Singh (PW-2), and his nephew Rajesh (PW-4), vide formal statements (Ex.PW-2/B and PW-4/A respectively). It was shifted to the mortuary of Government Hospital, Sonapat with application (Ex.PW-15/B) for post-mortem examination to be conducted. As per the endorsement on the said application, the dead body, found to be in advanced condition of decomposition, was referred for autopsy to the Forensic Department of Post Graduate Institute of Medical Sciences (PGIMS), Rohtak. The autopsy was eventually conducted in PGIMS, Rohtak on 12.07.2007 by Dr. Jitender Kumar Jhakar (PW-16), Assistant Professor in Forensic Medicine.

16. The autopsy doctor (PW-16) has proved the autopsy report (Ex.PW-16/A) along with sketch (Ex.PW-16/A-1) indicating the portions where it was found to have been wounded. He (PW-16)

testified that the body was found to be wrapped in shirt with a crepe bandage around the left fore arm. It was emitting foul smell, the body and axillary hair having peeled off, the abdomen, pubic hair, male organ and scrotum having distended and hands with feet degloved, epidermis having peeled off at places. The dead body showed the following ante mortem injuries :

- i. *A lacerated wound of size 2.5 x 1 cm present over the left temporal region situated 5 cm above the left external ear.*
- ii. *A lacerated wound of size 7 x 1 cm present over the left fronto-parietal region situated 3 cm left lateral to antero posterior midline.*
- iii. *A lacerated wound of size 3 x 2 cm present on the left frontal region situated 3 cm posterior to left eyebrow and 7 cm lateral to midline.*
- iv. *A lacerated wound of size 2 x 1 cm present on the right temporal region situated 3 cm right to midline and 13 cm posterior to right eyebrow.*
- v. *A lacerated wound of size 3 x 2 cm present on the left occipital region situated 2 cm lateral to antero posterior midline. On deep dissection underlying deep tissues of all above mentioned injuries were found ecchymosed.*
- vi. *A contusion of size 3 x 2 cm present on the left side of neck situated 4 cm below the angle of mandible and 5 cm left lateral to antero posterior midline. On dissection, underlying tissues were found ecchymosed.*
- vii. *A contusion of size 1 x 1 cm present on the anterior aspect of neck 4 cm below the chin. On dissection underlying tissues were found ecchymosed.*
- viii. *A contusion of size 4 x 3 cm present on the right cheek at the level of angle of mandible. On dissection, underlying tissues were found ecchymosed.*

- ix. A contusion of size 2 x 1 cm present on the right side of lower lip at the level of right canine tooth. On dissection, underlying tissues were found ecchymosed.*
- x. A contusion of size 3 x 2 cm present on the upper lip just left lateral to nose. On dissection, underlying tissues were found ecchymosed.*

17. The autopsy doctor affirmed that the brain matter had liquefied and had become blood tinged, while the liver, spleen, kidney, both lungs and heart had softened and putrefied. In the opinion of the autopsy doctor, the death was homicidal consequent to blow by hard and blunt object with a small striking surface coupled with smothering, the probable time of death being 10 to 15 days anterior to the autopsy.

18. The autopsy doctor had preserved, amongst others, the viscera taken out for chemical analysis which, along with other exhibits, was taken over by the investigating agency, through SI Shiv Narain (PW-21) and eventually sent to Forensic Science Laboratory (FSL), Haryana at Madhuban Karnal, the report (Ex.PW-23/G also Ex.PX) whereof indicating presence of ethyl alcohol in the stomach, small and large intestines, as also in liver, spleen and kidneys.

19. It is the case of the prosecution that the aforestated property in village Kharkhoda, District Sonapat, Haryana, the courtyard of which is the place where the dead body of Ram Chander was found buried, belongs to the appellant, she having purchased it some time before the incidents which are subject matter of the case at hand. Reference to the connection of the appellant with the said property, as noticed earlier, came in the course of testimony of Ghamandi Lal (PW-11) to

which the defence did not bring any challenge. The title of the appellant to the said property, however, was proved at the trial beyond doubt by Arjun (PW-12) from whom the appellant had purchased it for consideration.

20. PW-12 was the owner of the property in question in village Kharkhoda and affirmed on oath that he had sold it to the appellant against consideration of ₹1,60,000/- about 4 or 4 ½ years prior to his testimony in Court (03.10.2011), i.e. a few months prior to the disappearance of Ram Chander. Interestingly, PW-12 deposed that at the time of the purchase of the property, the appellant was accompanied by Bijender, both having come together on a motorcycle. He also added that when he had sold the plot of land, there was one room already constructed and that, later, the appellant had raised construction of 2-3 other rooms. The witness would not remember the exact date of the sale. He was not acquainted with the husband of the appellant nor knew the antecedents of Bijender. PW-12 has stated that he had sold the property to the appellant on the basis of an affidavit, the same mode by which he himself had acquired it earlier.

21. There was no formal document registered about the sale of the property. The sale of the plot of land in question by PW-12 to the appellant may not have been strictly in accordance with the requirements of law. But, the fact remains that the testimony of the above witness (PW-12) about the appellant having paid consideration for purchasing the plot of land in question to him (PW-12) and she having acquired possession thereof, followed by additional

construction of 2-3 other rooms has gone unchallenged and uncontroverted.

22. According to the case for the prosecution, as set out in the report under section 173 Cr.P.C., besides getting the dead body recovered in the manner noted above, the appellant had also led the IO to seizure of a spade which was used for digging out the earth of the place of burial, trousers of the deceased and a piece of blood-stained half brick, besides her own blood stained clothes. In addition, per the prosecution witnesses, blood stains were also found in the house where the dead body had been discovered to be lying buried. Reference has been made to various seizure memos (Exhibits PW-10/H, PW-10/G, PW-10/D, PW-10/F and PW-10/E respectively). But, since none of these articles, when sent to FSL, provided any further confirmation (per reports Exhibits PW-23/E, PW-23/F and PW-23/H), the evidence with regard to seizure of these exhibits in the course of investigation does not brook a detailed analysis.

23. According to the prosecution case, as set out in the charge sheet, Bijender Singh was an active accomplice of the appellant. Bijender Singh was arrested (vide Ex.PW-10/J) in the wake of disclosures by the appellant, at 9.30 PM on 11.07.2007 from Village Qutab Garh after personal search (Ex.PW-10/K). He statedly made a disclosure statement (Ex.PW-10/L) and not only led to pointing out of the place of burial (vide memo Ex.PW-10/M) of the dead body but also to certain recoveries including his own blood-stained clothes (Ex.PW-14/D) besides the motorcycle of the deceased (Ex.PW-14/A-B), his

mobile phone etc. According to the prosecution charge, both the appellant and Bijender Singh had abducted Ram Chander on 01.07.2007 in the morning at about 11 AM from village Qutab Garh, Delhi, alluring him to the aforementioned property in village Kharkhoda, District Sonapat Haryana, in furtherance of their common intention, where he was killed and his dead body disposed of by burial. Both the appellant and Bijender Singh, thus, were put to trial on the charge for offences punishable under Sections 364/34, 302/34 and 201/34 IPC. By the impugned judgment, however, the learned Additional Sessions Judge found the prosecution to have failed to bring home its case against Bijender, holding the evidence adduced respecting his role to be of doubtful character. He was, thus, given benefit of doubts and acquitted of all the charges. The State has not challenged the acquittal of Bijender by way of an independent appeal. Therefore, the result of the case against Bijender Singh has attained finality.

24. It has been argued by the defence that the evidence against the appellant was essentially the same as adduced qua the role of Bijender, and, therefore, benefit of doubts should have been extended to her as well. It is the submission of the learned *amicus curiae* that it is inconceivable that the appellant, a woman, would have been in a position, all on her own, to not only kill her own husband in the manner stated but also to have caused the disappearance of his body by carrying out extensive digging within the courtyard of her house. He

also argued that the motive has not been strictly proved as the evidence about illicit relationship between the appellant and Bijender is shaky.

25. For reasons set out hereinbelow, we find no substance in the above noted submissions of the appellant.

26. It is incorrect to state that the evidence against Bijender (since acquitted) was same as that presented concerning the complicity of the appellant. The recovery of the dead body from beneath the earth with palpable signs of the victim having suffered homicidal death is the most telling circumstance incriminating the appellant which could not be availed by the prosecution against Bijender. The recovery was on disclosure of the appellant. Till then Bijender had not been arrested. Holding the appellant to be complicit in the homicidal death of Ram Chander and unceremonious secret burial of his last remains does not necessarily mean that she would have indulged in various acts of commission or omission all on her own or unassisted by any else. The possibility of some accomplice, in such fact-situation, can never be ruled out. But if the entire truth and evidence implicating an accomplice or identity of such accomplice are not forthcoming, it does not necessarily mean that her role as the main perpetrator, brought out by credible evidence, is to be doubted.

27. It is true that suspicion about the role of the appellant in the sudden disappearance of the victim was expressed in the FIR by his brother Mahender Singh (PW-2) on the basis of allegations that she was involved in an illicit affair with Bijender. It is also true that the evidence adduced by Mahender Singh (PW-2) on this score cannot be

established by documentary evidence. By innuendo PW-2 claimed to have seen both of them in compromising state in the close confines of the house, during the absence of Ram Chander, while the children were playing outside. But this deposition is not rooted in any earlier assertion to such effect either in the FIR or in the statement under Section 161 Cr.P.C. Neither he nor any member of his family nor, for that matter, the husband (Ram Chander) of the appellant, had made any protest or complaint with regard to her character or relationship outside the marriage in the past. The testimony of Arjun (PW-12), from whom the appellant had purchased the plot of land in village Kharkhoda, District Sonapat Haryana, did support PW-2's version as to a connection between the appellant and Bijender. It is incongruous that it was the latter (Bijender), rather than the husband (Ram Chander), who had accompanied her (the appellant) when she went to acquire the said property by investing a huge amount of money.

28. Whilst the allegation of illicit relationship is somewhat sketchy, the evidence of Mahender Singh (PW-2) about the marital relations of the appellant and the deceased not being cordial or happy must be accepted. He had alleged in the FIR (Ex.PW-3/A) that the appellant used to accuse Ram Chander of being an alcoholic and would often threaten to get him killed. This is what he affirmed on oath at the trial and his testimony to such effect remained unchallenged. The fact that the deceased would indulge in alcohol stands substantiated by the viscera report which has already been taken note of. Thus, it clearly

emerges from the available evidence that the appellant was not happy in her marriage with the deceased.

29. In our considered view, the prosecution has proved beyond pale of any doubts the following facts and circumstances :-

(a) The appellant was married to the victim and was living with him as his wife in the house in village Qutab Garh within the jurisdiction of Police Station Kanjhawla, Delhi, having given birth to three children out of the said wedlock;

(b) The appellant was not happy in her marriage with Ram Chander (the victim), one cause whereof was he being alcoholic;

(c) Two or three months prior to 01.07.2007, the appellant acquired, for consideration, a plot of land (with one room already constructed) from Arjun (PW-12) located at Mattindoo Road, village Kharkhoda, District Sonapat, Haryana with assistance of Bijender (since acquitted) and thereafter raised construction of 2-3 additional rooms in the said property;

(d) On 01.07.2007, Ram Chander (the victim) went missing and could not be located by anyone including his brother Mahender Singh (PW-2);

(e) On 03.07.2007, at 5.30 PM, the appellant went to Police Station Kanjhawla, Delhi and lodged missing report respecting her husband Ram Chander vide DD Entry no.30A (Ex.PW-8/A) stating that he had left the house with his motorcycle and cash of ₹2.5 lakhs at 11 AM on 01.07.2007 and that though she had not been able to find him out, despite search, she did not have any suspicion about the involvement of any specific individual;

(f) On 11.07.2007, on the basis of statement (Ex.PW-2/A) of Mahender Singh (PW-2), FIR (Ex.PW-3/A) was registered in Police Station Kanjhawla for investigation. PW-2 had expressed suspicion about the involvement of the appellant and Bijender in the disappearance of Ram Chander, who was missing since 01.07.2007;

(g) Upon interrogation, the appellant made a disclosure (Ex.PW-10/B1) and led the investigating police to the plot of land in village Kharkhoda, District Sonapat Haryana, as purchased earlier from Arjun (PW-12), and at her pointing out, upon a portion of the courtyard of the said house being dug out, the dead body of her husband Ram Chander was recovered in highly decomposed state;

(h) The post-mortem examination of the dead body of Ram Chander revealed that he had suffered death consequent upon being hit by hard and blunt object, coupled with smothering, the dead body revealing ten ante-mortem injuries, and the viscera showing presence of ethyl alcohol.

30. Generally speaking, in cases of direct evidence, the question of motive pales into insignificance. But, it cannot be laid down as a rigid proposition of law that a case of homicidal death founded on circumstantial evidence cannot succeed unless proof of motive is adduced. In the case at hand, the motive alleged by the prosecution has been established given the fact that we have evidence indicating unhappiness in her marriage with the deceased. It cannot be said that the case against the appellant is based on facts showing no motive at all.

31. In our judgment, the facts and circumstances which have been proved form a complete chain from which the complicity of the appellant in the crime with which she has been charged can be unhesitatingly inferred. The appellant had reported to the police on 03.07.2007 that her husband had set out from home on his motorcycle in the forenoon of 01.07.2007 and thereafter had gone missing. Yet, on 11.07.2007, it is she who led to his dead body, bearing tell-tale signs of homicidal death, in highly decomposed state, found buried in the courtyard of a property she had acquired only a few months ago, all

on her own. The very fact that it is she who had the special, rather exclusive, knowledge about the place where the dead body of her husband lay buried beneath the earth unmistakably shows that her knowledge and involvement goes much beyond what she is ready to concede. She owed some explanation with regard to the said special knowledge. Instead, she came up with a bald denial. We hold her to be the perpetrator of the fatal assault on the person of Ram Chander drawing strength from the settled law on the subject as reiterated by the Supreme Court in the following observations quoted from the case reported as *State of Maharashtra V. Suresh* (2000) 1 SCC 471 :

“We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was conceded by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.”

32. The extent of injuries suffered by the victim, and the opinion of the autopsy doctor about the consequent death being homicidal in nature, has already been taken note of. We find no reasons to take a different view. In the given facts and circumstances, there can be no two views about the fact that the perpetrator had intended to bring about the death of Ram Chander by inflicting the said injuries. This brings the case squarely within the first clause of Section 300 IPC rendering the death of Ram Chander a case of murder punishable under Section 302 IPC. Since the dead body was disposed of in a secretive manner it having been buried in the courtyard of the house in village Kharkhoda, it is apparent that the perpetrator intended the evidence of the crime of murder to disappear, the only objective whereof would be to screen self from punishment.

33. For the foregoing reasons, we hold the appeal to be devoid of substance. The impugned judgment and order on sentence suffer from no error, illegality or infirmity and are, consequently, affirmed.

34. Thus, the appeal is dismissed. The appellant be informed through Superintendent, Central Jail with copy of this judgment being made available to her.

R. K. GAUBA
(JUDGE)

SANJIV KHANNA
(JUDGE)

JANUARY 15, 2016/VLD