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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.252 of 2012**

(Arising out of judgment dated 27.1.2012 in Sessions Trial No.48 of 2011 of the learned First Additional Sessions Judge, District Durg)

Mohd. Khan alias Tetku S/o Sherkhan aged about 37 years R/o Paupara
Police Station Utal District Durg Chhattisgarh.

---- Appellant

Versus

State of Chhattisgarh through the Police Station Utai, District Durg
Chhattisgarh.

---- Respondent

For Appellant	: Shri Abhijeet Sarkar, Advocate.
For State/Respondent	: Shri Vivek Sharma, Government Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Pritinker Diwaker, Judge.

Judgment on Board**Per Pritinker Diwaker, Judge**

09/09/2017

1. This appeal arises out of the impugned judgment dated 27.1.2012 passed by the First Additional Sessions Judge, Durg, District Durg in Sessions Trial No.48 of 2011 convicting the Accused/Appellant under Section 302 IPC and sentencing him to undergo rigorous imprisonment for life and to pay a fine of Rs.3000/- and under Section 201 IPC and sentencing him to undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/- with default stipulation.
2. In the present case, name of the deceased is Jahida Begum, wife of the Accused/Appellant. It is stated that on 5.6.2010, the Accused/Appellant and

the deceased had gone to jungle from where the Accused/Appellant returned all alone whereas he gave information to villagers that his wife, Jahida Begum had gone to her parents house. On 19.7.2010, Rasida Begum (PW8) came to the house of the Accused/Appellant and enquired from Heena Begum (PW2) about the whereabouts of Jahida Begum. It was told to her that she had gone to her parents house. Getting the incorrect information, on 19.7.2010, a missing report (Exhibit P/16) was lodged by Heena Begum (PW2), daughter of the deceased. On 2.9.2010, a memorandum of the Accused/Appellant (Exhibit P/6) was recorded wherein he has stated that after committing murder of the deceased, he had buried the dead body in a pit. Based on this disclosure statement, seizure of the dead body (Exhibit P/2) was made and Panchnama (Exhibit P/4) was prepared. On the same day, seizure of axe (Exhibit P/7) was made and as per FSL report (Exhibit P/28), blood was found on the said weapon. Unnumbered merg intimation (Exhibit P/17), unnumbered FIR (Exhibit P/18), numbered merg intimation (Exhibit P/20) and numbered FIR (Exhibit P/19) were recorded on 2.9.2010. Skeleton was sent for examination before the forensic expert, which was examined by Rajkumar Singh (PW10) on 3.9.2010 and it has been opined by the expert that:-

- a) Morphologically bones show human bones' character.
- b) Sex- Female in character.
- c) Age at death about 35 years $\pm$ 05 years.
- d) Few bones show broken effect caused with hard & blunt object but whether were caused during life or after death could not be determined.
- e) Cause of death and duration of death could not be determined.
- f) At places gnawing effect present.

3. While framing the charges, the trial Judge framed the charge against the Accused/Appellant under Sections 302 and 201 IPC.
4. So as to hold the Accused/Appellant guilty, the prosecution examined 11 witnesses in all. Statement of the Accused/Appellant was also recorded under Section 313 CrPC, in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.
5. The trial Court after hearing learned counsel for the parties and considering the material available on record, by the impugned judgment convicted and sentenced the Accused/Appellant as mentioned above.
6. Heard counsel for the respective parties and perused the material on record.
7. Counsel for the Appellant submits that :-
 - i. as no DNA test has been conducted by the prosecution, it cannot be said that the body recovered by the police was of the deceased.
 - ii. though blood has been found on the axe but in absence of serologist report, the prosecution utterly failed to prove that blood group and the origin of the blood and thus the FSL report loses its significance.
 - iii. considering the facts and circumstances, the offence at best will come under Section 304 Part-I of the IPC.
 - iv. the Accused/Appellant is in jail since 2.9.2010 and he may be set free forthwith by reducing the sentence to the period already undergone.

8. On the other hand, counsel for the Respondent/State supports the judgment impugned. Counsel for the State/Respondent submits that
- i. the conviction of the Accused/Appellant is in accordance with law and there is no infirmity in the same.
 - ii. on the disclosure statement made by the Accused/Appellant, dead body was found in a pit vide Exhibit P/2 and the Panchanama of the dead body was prepared vide Exhibit P/4.
 - iii. this fact was within the special knowledge of the Accused/Appellant that the dead body was buried and it was recovered at his instance.
 - iv. likewise, seizure of axe was made from the Accused/Appellant and the blood has been found on the said axe.
 - v. the Accused/Appellant offered false explanation by stating that the deceased had gone to her parents house whereas she was already murdered.
 - vi. Heena Begum (PW2), daughter of the deceased and Accused/Appellant was examined and she has stated that while going towards the jungle, the Accused/Appellant (her father) and deceased (her mother) had gone together whereas the Accused/Appellant returned all alone and it was informed by him that the deceased had gone to her parents house, as such, the Accused/Appellant offered false explanation and this is the additional link to the chain of circumstances.
 - vii. even if the prosecution has not done DNA test, under such circumstances, the judgment under appeal calls for no interference.

9. Lekhpal Sahu (PW1) is a Head Constable, who assisted in the investigation.
10. Heena Begum (PW2) is the daughter of the Accused/Appellant and the deceased. She has stated that in the month of June, 2010, the Accused/Appellant and the deceased had gone to jungle to cut the wood. They did not returned for about 4-5 days and thereafter, the Accused/Appellant returned all alone. She inquired from him about her mother and it was told by the Accused/Appellant that the deceased had gone to her mother's house at village Thakurtoda. She has further stated that the Accused/Appellant used to beat her mother, as a result of which, her mother became very weak and even she was not in a position to go to her workplace. She further stated that during the time when her mother was not there, she and her brother used to have their food in her uncle's house. She further stated that after about 3 months of the incidence, Rasida Begum (PW8) came to her house and informed that the deceased is not there in her house and had not reached to village Thakurtola, thereafter, all of them started searching the deceased. She further stated that the Accused/Appellant was also questioned but he ran away. She has further stated that she had also described the clothes which was worn by the deceased when she had left with the Accused/Appellant. She further stated that missing report (Exhibit P/16) was lodged by her in the Police Station Machadur and thereafter, the skeleton was found. She further stated that the clothes found on the skeleton were of her mother and she identified the same vide Exhibit P/3. She has again reiterated that very often, the Accused/Appellant used to quarrel with her mother.
11. Devanand Sahu (PW3) is the witness of Panchanama of the skeleton

(Exhibit P/4). He is also the witness of Panchnama (Exhibit P/3), by which, the clothes of the deceased were seized vide seizure memo Exhibit P/5. He has also proved the memorandum of the Accused/Appellant vide Exhibit P/6.

12. Kisan Lal (PW4) has stated that the Accused/Appellant has made memorandum vide Exhibit P/6 before him and he has signed in Exhibit P/5, by which, clothes of the deceased were seized. He has also proved the Panchanama of the skeleton vide Exhibit P/4.
13. Somnath (PW5) has stated on disclosure statement of the Accused/Appellant, clothes and bones were recovered in front of him.
14. Mohammad Shafi (PW6) is the witness of seizure memos vide Exhibits P/1 and P/2.
15. Kamlesh Sahu (PW7) is the Patwari, who prepared the spot map.
16. Rasida Begum (PW8) is the sister of the deceased. She has stated that she came to know that the deceased was missing, she and other members had searched the deceased and thereafter, the missing report (Exhibit P/16) was lodged by Heena Begum (PW2). She has further stated that the Accused/Appellant was arrested and there, he made a confession that after committing murder of the deceased, he threw her in the well. After this confession, the water was fetched from the well and clothes of the deceased and skeleton were recovered. She has further stated that she had identified the clothes of the deceased.
17. Nirmala Hirwani (PW9) is the witness of recovery of the skeleton and clothes of the deceased.
18. Rajkumar Singh (PW10) is the forensic expert, who examined the skeleton,

has stated that the skeleton was of a female and he gave a report to this effect vide Exhibit P/15.

19. Ramswaroop Dewangan (PW11) is the investigating officer.
20. Now we have to see whether the circumstantial evidence appearing against the appellant is of such a nature which could form the basis of his conviction.
21. Close scrutiny of the evidence makes it clear that there is no eyewitness account to the incident. On 5.6.2010, the Accused/Appellant left his house alongwith his wife i.e. deceased by saying that he is going to jungle to collect wood. When the couple was going towards jungle, they were seen by Heena Begum (PW2), daughter of the Accused/Appellant and the deceased. After 4-5 days of the incident, the Accused/Appellant returned all alone and when he was questioned by Heena Begum (PW2), the Accused/Appellant informed her that the deceased Jahida Begum had gone to her mother's house. Believing this false explanation, Heena Begum (PW2) kept quiet until her aunt Rasida Begum (PW8) reached to her house and informed that the deceased had not reached her mother's house. Upon coming to know that the deceased is missing, a missing report (Exhibit P/16) was lodged on 19.7.2010 and then, the Accused/Appellant absconded. Subsequently after arrest on the memorandum of the Accused/Appellant (Exhibit P/6), clothes and skeleton of the deceased were recovered from the well vide Exhibits P/1 and P/2.
22. As per the forensic expert, Rajkumar Singh (PW10), the bones and skeleton so collected and found were of a female. The clothes seized from the well were duly identified by Heena Begum (PW2), daughter of the deceased and Rasida Begum (PW8), sister of the deceased. Axe was seized vide Exhibit

P/7 at the instance of the Accused/Appellant and as per the FSL report vide Exhibit P/28, blood was found in the axe (Article 'A') and the clothes of the deceased (Article 'B').

23. True it is, there is no serologist report but considering the facts and circumstances of the case, seizure of axe coupled with the FSL report and non-explanation of the Appellant in this respect goes against the Accused/Appellant and can safely be treated as an additional circumstance against him.
24. Though there is no eyewitness account to the incident but in such a case, the prosecution can very well establish its case on circumstantial evidence.
25. In the matter of ***Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, (2008) 3 SCC 210*** the Supreme Court while dealing with circumstantial evidence observed as under:

11. In *Hanumant Govind Nargundkar v. State of M.P.* [AIR 1952 SC 343], which is one of the earliest decisions on the subject, this court observed as under:

“10. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have

been done by the accused.”

12. In **Padala Veera Reddy v. State of A.P., [(1989) Supp (2) SCC 706]**, this court held that when a case rests upon circumstantial evidence, the following tests must be satisfied:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

13. In **Sharad Birdhichand Sarda v. State of Maharashtra, [(1984) 4 SCC 116]**, it was held that the onus was on the prosecution to prove that the chain is complete and falsity or untenability of the defence set up by the accused cannot be made basis for ignoring serious infirmity or lacuna in the prosecution case. The Court then proceeded to indicate the conditions which must be fully established before conviction can be based on circumstantial evidence. These are:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say,

they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

26. The next thing which is to be seen is whether the evidence relating to the recovery of clothes of the appellant and the half blade, allegedly used for commission of crime, is credible and could be relied on for proving the charge of culpable homicide against the appellant. In this context, it is important to note that the prosecution did not produce any document containing the recording of statement allegedly made by the appellant expressing his desire to facilitate recovery of the clothes and half blade. The prosecution case that the accused volunteered to give information and took the police for recovery of the clothes, half blade and purchase of handkerchief is highly suspect. It has not been explained as to why the appellant gave information in piecemeal on three dates i.e. 3.10.1994, 5.10.1994 and 6.10.1994. Room No.45 of "Ganesh Bhuvan" from which the clothes are said to have been recovered was found to be unlocked premises which could be accessed by anyone. The prosecution could not explain as to how the room allegedly belonging to the appellant could be without any lock. The absence of any habitation in the room also cast serious doubt on the genuineness and bonafides of recovery of clothes. The recovery of half blade from the road side beneath the wooden board in front of Ganesh Bhuvan is also not convincing. Undisputedly, the place from which half blade is said to have been recovered is an

open place and everybody had access to the site from where the blade is said to have been recovered. It is, therefore, difficult to believe the prosecution theory regarding recovery of the half blade. The credibility of the evidence relating to recovery is substantially dented by the fact that even though as per the Chemical Examiners Report the blood stains found on the shirt, pant and half blade were those of human blood, the same could not be linked with the blood of the deceased. Unfortunately, the learned Additional Sessions Judge and High Court overlooked this serious lacuna in the prosecution story and concluded that the presence of human blood stains on the cloths of the accused and half blade were sufficient to link him with the murder.”

26. Yet another important factor of the case is that the Accused/Appellant gave false explanation that the deceased had gone to her mother's house whereas by that time, she was already killed. Offering false explanation, is adding additional link to the chain of circumstantial evidence. Thus, in view of the evidence of the daughter of the deceased i.e. Heena Begum (PW2), it is proved that the Accused/Appellant gave false information to her about the deceased.
27. In the matter of **Sidhartha Vashisht Vs. State (NCT of Delhi), (2010) 6 SCC 1**, the Supreme Court observed as under:

“274. This Court has time and again held that where an accused furnishes false answers as regards proved facts, the Court ought to draw an adverse inference qua him and such an inference shall become an additional circumstance to prove the guilt of the accused. In this regard, the prosecution seeks to place reliance on the judgments of this Court in **Peresadi vs. State of U.P., (1957) Cri.L.J. 328**, [State of M.P. vs. Ratan Lal](#), AIR 1994 SC 458 and [Anthony D'Souza vs. State of Karnataka \(2003\) 1 SCC 259](#) where this Court has drawn an adverse inference for wrong answers given by the appellant under Section 313 CrPC. In the present case, the appellant-Manu Sharma has, inter alia,

taken false pleas in reply to question nos. 50, 54, 55, 56, 57, 64, 65, 67, 72, 75 and 210 put to him under Section 313 of the Code.”

28. In the matter of **S. Govindaraju Vs. State of Karnataka, (2013) 15 SCC 315**, the Supreme Court held as under:

“29. It is obligatory on the part of the accused while being examined under [Section 313](#) CrPC, to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation even in a case of circumstantial evidence in order to decide whether or not the chain of circumstances is complete. When the attention of the accused is drawn to circumstances that inculcate him in relation to the commission of the crime, and he fails to offer an appropriate explanation, or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances. (Vide: **Munish Mabbar v State of Haryana, AIR 2013 SC 912**).

31. The prosecution successfully proved its case and, therefore, provisions of [Section 113](#) of the Evidence Act 1872 come into play. The appellant/accused did not make any attempt, whatsoever, to rebut the said presumption contained therein. More so, Shanthi, deceased, died in the house of the appellant. He did not disclose as where he had been at the time of incident. In such a fact-situation, the provisions of [Section 106](#) of Evidence Act may also be made applicable as the appellant/accused had special knowledge regarding such facts, though he failed to furnish any explanation thus, the court could draw an adverse inference against him.”

29. As per Appellant's own version, he was with the deceased at the time when he and the deceased had gone to the jungle for cutting the wood and after 4-5 days when he came, he offered false explanation to his daughter, Heena Begum (PW2) that her mother has gone to her mother's house at village Thakurtoda. The Accused/Appellant has not only offered false

explanation but has made an attempt to misguide Heena Begum (PW2). He has further failed to offer any explanation in his 313 CrPC statement as to how the deceased died when this fact was within his special knowledge. In the matter of **State of West Bengal Vs. Mir Mohammad Omar and others, (2000) 8 SCC 382**, it has been observed by the Supreme Court as under:

“31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage the offenders in serious offences would be the major beneficiaries, and the society would be the casualty.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of

certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.”

30. The same view has been reiterated by the Supreme Court in the matter of **State of Rajasthan Vs. Thakur Singh, (2014) 12 SCC 211.**
31. Considering the above position of law and the present facts and circumstances of the case, it is apparent that on 5.6.2010, the Accused/Appellant had gone to jungle alongwith his wife i.e. deceased and returned after 4-5 days all alone. When he was asked by Heena Begum (PW2) as to where her mother is, he gave false explanation to his daughter that the deceased had gone to her mother's house whereas this information was totally incorrect and was made just to misguide Heena Begum (PW2). When the sister of the deceased Rasida Begum (PW8) came to the house of the Accused/Appellant and enquired about the deceased, it came to the surface that neither the deceased had reached her parents house nor was there any information about her. In the facts and circumstances of the case, a search was made and ultimately, the dead body of the deceased was found in the well in the form of skeleton at the instance of the Accused/Appellant. In his statement under Section 313 of CrPC he made bald denial of all the proved incriminating circumstances which further serves as an additional link to the chain of circumstantial evidence to make it complete. Considering all the aspects of the case, we are of the view that the trial Court has rightly recorded the finding of conviction of the Accused/Appellant. The said finding does not call for any interference by this Court and deserves to be affirmed.
32. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. It is stated that the Appellant is in

jail, therefore, no further order is required.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Pritinker Diwaker)
JUDGE

Anu