AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on: 16/02/2018

Judgment pronounced on: 15/03/2018

CRA No. 195 of 2011

1. Varun Kumar Pandey S/o Shri Gorakhnath Pandey, aged about 22 years, R/o Subhash Nagar Charcha Colliery, Quarter No. 670, P.S. Charcha, Tah.-Baikunthpur, Distt.-Koria, C.G.

2. Gorakhnath Pandey S/o Shri Devprasad Pandey, aged about 50 years, R/o Subhash Nagar Charcha Colliery, Quarter No. 670, P.S. Charcha, Tah.-Baikunthpur, Distt.-Koria, C.G.

---- Appellants

Versus

- State of Chhattisgarh through District Magistrate, Distt. Durg (CG)

---- Respondent

For Appellants : Shri Manish Sharma, Advocate.
For Respondent/State : Shri Anil Pillai, Dy. A.G. and Shri Rahul Tamaskar, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

CAV Judgment

Per Pritinker Diwaker, J

This appeal arises out of the judgment of conviction and order of sentence dated 11.2.2011 passed by the Sessions Judge, Koria (Baikunthpur) in S.T. No.117/2008 convicting appellant No.1 under Sections 302 & 201 of IPC and sentencing him to undergo imprisonment for life & RI for three months respectively and appellant No.2 under Sections 201 & 202 of IPC and sentencing him to undergo

RI for three years and RI for six months respectively.

02. In the present case, name of the deceased is Shweta @ Guddi Pandey, sister of accused/appellant No. 1 Varun Kumar Pandey and daughter of accused/appellant No.2 Gorakhnath Pandey. It is alleged that on 9.7.2008 as Shweta had not cooked food, in the mid night accused No.1 first beat her and then after pressing her neck committed her murder. It is further alleged that a pit was dug by accused No.1 in the courtyard of his house, salt was put into it and the dead body was buried there after breaking the left arm of the deceased with a spade. Further case of the prosecution is that on 12.7.2008 in the mid night, accused No.1 took out the dead body from that pit, tied it up, took it to a nearby well and after digging a pit buried the same there and covered that area with polythene and leaves. He also threw the spade used for burial into the bushes. On 13.7.2008 the dead body was noticed by PW-8 Pankaj Verma, information was given to the police and based on which merg intimation Ex.P/8 was recorded on 13.7.2008.

In the meanwhile, on 11.7.2008 a missing report (Ex.P/18C) was lodged by accused No.2 informing the police that the deceased had been missing since 8.7.2008. Memorandum of the accused No.1 Varun Kumar was recorded on 15.7.2008 vide Ex.P/9, based on which seizure of spade was effected from the spot vide Ex.P/10. From the place where the dead body was initially buried, a dry stick of blackberry, one ear top, bunch of hair, key ring, bra, inner wear etc. were seized vide Ex.P/11. As per FSL report Ex.P/27, the ear top

seized from the spot and the one found on the body of the deceased are of similar characteristic. On 15.7.2008 dead body identification and recovery panchanama was prepared vide Ex.P/1 and as per said panchanama, accused No.1 disclosed that the dead body is of his sister Shweta Pandey. Inquest on the dead body was conducted vide Ex.P/4 on 15.7.2008 and thereafter the dead body was sent for postmortem which was conducted on the same day by PW-7 Dr. GD Baghel vide Ex.P/7, who noticed that skull was denuded over face, eye socket empty; upper inciser teeth fallen off; tongue protruded; maggots present on various parts of body; 2nd, 3rd, 4th ribs exposed on left side of chest, rest of skin and sub-cutaneous tissues soponiphicated; left humurus bone of left hand fractured and folded towards neck; lacerated wound over left forearm with underlying bone exposed and contusion over neck. According to the doctor, putrefaction was in advance stage and fracture of humurus bone was serious in nature. In his opinion, the cause of death was asphyxia due to throttling and the death was homicidal in nature. After postmortem being done, the dead body was received by accused No.2 Gorakhnath on supurdnama for performing last rites vide Ex.P/5.

After merg enquiry, FIR (Ex.P/21) was registered on 16.7.2008 against the appellants under Sections 302 & 201 of IPC. While framing charge, the trial Judge framed charges under Sections 302 & 201 of IPC against accused No.1 Varun Kumar and 302/201 and 202 of IPC against accused No.2 Gorakhnath.

03. So as to hold the accused/appellants guilty, the prosecution

examined 17 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned above.

05. Counsel for the appellants submits as under:

(i) that there is no eyewitness account to the occurrence and conviction of the appellants is based on circumstantial evidence but none of the circumstances from which inference of guilt can be drawn has been proved beyond reasonable doubt and therefore, there can be no inference that the appellants were perpetrator of the crime in question.

(ii) thought as per prosecution case PW-1 Rajesh Kumar and PW-17 Lageshwar Yadav had heard sound of quarrel coming out from the house of the appellants on the date of incident but it is not clear from their evidence as to whether there was any sound of quarrel with a female and as such, it cannot be said that the accused persons had any quarrel with the deceased at that point of time.

(iii) that as per evidence available on record, apart from the accused persons and the deceased, another son of accused No.2 was also residing in the said house and as such, the question of commission of murder by the appellants alone appears to be doubtful.

(iv) that present is an unfortunate case where though missing report

was lodged by accused No.2 on 11.7.2008 (Ex.P/18C), yet the accused persons have been implicated for committing murder of the deceased.

(v) that merely on the basis of seizure of ear top from the spot and its matching with the one allegedly found on the dead body, it would not be justifiable to uphold the conviction of the appellants because the deceased was residing in the house from where the ear top was seized and therefore, finding of said top in that house is nothing unusual.

(vi) that it was for the prosecution to prove that it is the appellants alone and no one else who could have committed murder of the deceased but the prosecution has failed to discharge its burden.

(vii) that identification of the dead body itself is doubtful and document of Ex.P/1 prepared in presence of police cannot be used against the appellants as it is hit by Section 25 of the Evidence Act.

(viii) that memorandum of accused No.1 Varun Kumar was recorded on 15.7.2008 at 10 AM vide Ex.P/9, seizure of spade was effected at 12.30 noon and other articles as per Ex.P/11 were seized at 1.00 PM but prior to this time, the seized articles were available before PW-6 Dr. Kuldeep Kujur, the then Forensic Scientific Officer, at 12 noon itself as has come in his cross-examination and therefore, it cannot be said that seizure of the articles was at the instance of the accused No.1.

(ix) that at least there is no evidence against accused No.2 Gorakhnath that he in any manner assisted accused No.1 in burying the dead body.

06. On the other hand, State counsel opposing the submission of the appellants and supporting the impugned judgment submits as under:

(i) that present is a case of circumstantial evidence, which if considered together unerringly point towards the guilt of the appellants.

(ii) that conduct of the accused persons is required to be noted where first on 9.7.2008 the deceased was murdered and then her dead body was buried by the appellants in their house and on 12.7.2008 again the dead body was dug out from there and was buried at a little far away place near the dam and covered with plastic and leaves, which was accidentally noticed by PW-8.

(iii) that after committing offence accused No.1 fled from the spot, on 10.7.2008 returned to his house on more than one occasions and was repeatedly leaving the house after locking the same.

(iv) that so far as identification of dead body vide Ex.P/1 is concerned, the said document is admissible in view of Section 8 of the Evidence Act.

(v) that identification of the dead body cannot be disputed by the accused persons as it is accused No.2 Gorakhnath who received the dead body on supurdnama without resisting or offering any protest and performed last rites. Had it not been the dead body of the deceased, the accused persons would not have taken the same on supurdnama and performed her last rites.

(vi) that in respect of arguments of the appellants that there is

contradiction between timing of Ex.P/6, P/10 and mainly P/11, memorandum of accused No.1 was recorded on 15.7.2008 at 10 am, seizure of certain articles was made at 12.30 and 1 in the noon as per Ex.P/10 & P/11. Though in the document of Ex.P/6, the time is mentioned as 12 noon, but it is the time when inspection was done by PW-6 Dr. Kuldeep Kujur and therefore, it cannot be said that the articles so seized were not seized at the instance of the accused No.1. Even otherwise, no such relevant question was put to the concerned officer at the time of cross-examination and what prejudice has been caused to the accused due to this has also not been explained.

(vii) that on the body of the deceased left ear top was found and similar top was seized from the house of the appellants where the body was initially buried and as per FSL report Ex.P/27, both the ear tops bear similar characteristic. However, no explanation whatsoever has been offered by the appellants in this regard in their statement under Section 313 of CrPC.

(viii) that in his memorandum accused No.1 has categorically stated that when he was finding it difficult to bury the dead body, he broke the left arm of the deceased by using a spade which was being used for digging purposes and as per postmortem report, left humurus bone of the deceased was found broken and this part of the admission of the appellant in his memorandum is admissible in Evidence Act because the same led to discovery of a relevant fact which was within the exclusive knowledge of the accused.

(ix) that non-explanation of the proved incriminating circumstances

by the appellants in their statements under Section 313 of CrPC can be taken as an additional link in the chain of circumstantial evidence.

(x) that as per PW-3 & PW-4 at the relevant time, it is the appellants alone who were residing in the house in question along with the deceased and thus, it was obligatory on their part to explain as to how the deceased sustained those injuries and succumbed to the same.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Rakesh Kumar has stated that on the date of incident when he was watching TV in his house at about 9 pm he heard the sound of quarrel coming out from the house of accused No.2 Gorakhnath Pandey. As it was a usual act of quarrel, he did not open the door. However, on the next morning he told his neighbour Lageshwar Yadav that in the house of accused persons quite often quarrel takes place and therefore, the matter is required to be reported to the police. He states that thereafter he along with Lageshwar went to the Ward Member Pankaj Verma, informed him about the same and requested him to inform the police about it. Thereafter, he along with Lageshwar, Pankaj Verma and Anil Singh went to police station and informed the police about the quarrel in the house of the appellants. He states that on the next date, accused/appellant No.2 Gorakhnath had gone for duty whereas activity of accused/appellant No.1 Varun Pandey was suspicious as on number of occasions he would come to his house and after staying for some time would go out after locking the house. On that day he did not see the deceased and on 13th he

came to know that about 100 meters from the house of the appellants, a dead body has been found and recovery panchanama was prepared vide Ex.P/1 which bears his signature. However, as the body was in decomposed condition and was lying in mud, he could not identify the same. He states that after arrest, accused No.1 was brought by the police and then he took the police to the place where he had buried the deceased and that the dead body was identified by accused No.1 Varun Pandey. He further states that inquest was prepared and body was handed over to accused No.2 Gorakhnath. In cross-examination he has stated that financial condition of accused persons was weak and that accused No.2 had spent 14 years in jail.

09. PW-2 Ramadhar @ Ramkumar is a witness of dead body recovery and identification panchanama Ex.P/1. PW-3 Erush Ekka is a neighbour of the accused persons. He has stated that at the time of incident it is the accused/appellants and the deceased who were residing in the house in question and that quite often they used to quarrel. PW-4 Govind Singh is also a neighbour of the accused persons. He has stated that on the date of incident three persons i.e. the accused/appellants and the deceased were residing in the house and that they used to quarrel.

10. PW-6 Dr. Kuldeep Kujur is a forensic expert who went to the place of occurrence for inspection of the spot and gave certain instructions for effecting seizure. PW-7 Dr. GD Baghel conducted postmortem on the body of the deceased on 15.7.2008 vide Ex.P/7 and noticed that skull was denuded over face, eye socket empty; upper

inciser teeth fallen off; tongue protruded; maggots present on various parts of body; 2nd, 3rd, 4th ribs exposed on left side of chest, rest of skin and sub-cutaneous tissues soponiphicated; left humurus bone of left hand fractured and folded towards neck; lacerated wound over left forearm with underlying bone exposed and contusion over neck. According to the doctor, putrefaction was in advance stage and fracture of humurus bone was serious in nature. In his opinion, the cause of death was asphyxia due to throttling and the death was homicidal in nature.

11. PW-8 Pankaj Verma is the lodger of merg. He has stated that PW-1 and other persons informed him that daughter of accused No.2 is missing since 2-3 days and that quarrel used to take place in the house of the accused and therefore, the matter be informed to the police. He is also a witness of spot panchanama Ex.P/2 and dead body recovery and identification panchanama Ex.P/1. He is also a witness to memorandum of appellant No.1. Later on this witness was declared hostile. PW-9 Valmik Mishra, Patwari, prepared the spot map Ex.P/17. PW-10 Ramdev Singh, PW-12 Anuj Yadav, PW-14 Chitra Bahor Yadav & PW-16 Nimesh Sharma, police personnel, assisted in the investigation and PW-15 JP Singh, investigating officer, has duly supported the prosecution case.

12. PW-11 Anil Singh, a witness to memorandum Ex.P/9 and seizure Ex.P/10 to P/13 has partly supported the prosecution case. He is also a witness to Ex.P/1 and has stated that the dead body was duly identified by accused No.2. PW-13 Amit Gupta, Naib Tehsildar,

conducted inquest vide Ex.P/4 and found that left hand of the deceased was broken. PW-17 Lageshwar, neighbour of the accused persons, states that on the date of incident he heard the sound of quarrel coming out from the house of the accused persons and on the next morning PW-1 Rajesh came to him and informed about the quarrel and then they decided to go to Ward Member Pankaj Verma and thereafter a report was lodged. He is also a witness of spot inspection panchanama Ex.P/2, inquest Ex.P/4 and dead body supurdnama Ex.P/5. He states that it was difficult to identify the dead body but in para-5 states that accused No.1 identified the dead body to be of his sister and vide Ex.P/5 the body was given on supurdnama to accused No.2.

13. Close scrutiny of the evidence makes it clear that there is no eyewitness account to the incident and the entire case of the prosecution hinges upon circumstantial evidence. The first circumstance which goes against the appellants is that on the date of incident in the night at around 9, PW-1 Rajesh and PW-17 Lageshwar heard sound of quarrel coming out from the house of the appellants and since then the deceased was not seen alive by anyone. Both these witnesses have remained firm on this point whereas the appellants have denied this fact in their statements under Section 313 of CrPC. Further, as per the prosecution witnesses, on the date of incident only three persons were residing in the house in question i.e. the appellants and the deceased. On 10th the quarrel had taken place and on the next day i.e. 11th, accused No.1 visited his house repeatedly and after staying for some time in the house he would go out by locking

the house and on 13th the dead body was found. This conduct of accused No.1, in the given facts and circumstances, appears to be suspicious and points towards his guilt. The accused persons have failed to offer any explanation as to under what circumstances the deceased died. This apart, to mislead the police a missing report was lodged on 11.7.2008 vide Ex.P/18C by accused No.2.

14. In case where house murder is the issue, heavy burden is on the shoulders of the accused to explain as to under what circumstances the deceased died. While dealing with the matter involving the murder committed inside the house it has been held by the Apex Court in the matter of **Trimukh Maroti Kirkan v. State of Maharashtra** reported in **(2006) 10 SCC 681** as under:

> " 14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecutions (1944 AC 315) – quoted with approval by Arijit Pasayat, J in State of Punjab v. Karnail Singh (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character whichis almost impossible to be led or at any rate extremely difficult to be held. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary

to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

"(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him."

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offeirng no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

15. Further in the matter of **State of Rajsthan v. Thakur Singh** reported in **(2014) 12 SCC 211** it has been held by the Apex Court as under:

"17. In a specific instance in Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681) this Court held that when the wife is injured in the dwelling home where the husband ordinarily resides, and the husband offers no explanation for the injuries to his wife, then the circumstances would indicate that the husband is responsible for the injuries. It was said: (SCC p. 694, para 22)

> "22 Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

18. Reliance was placed by this Court on Ganeshlal v. State of Maharashtra {(1992) 3 SCC 106)} in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

19. Similarly, in Dnyaneshwar v. State of Maharashtra {(2007) 10 SCC 445} this Court observed that since the deceased was murdered in her matrimonial home and the appellant had not set up a case that the offence was committed by somebody else or that there was a possibility of an outsider committing the offence, it was for the husband to explain the grounds for the unnatural death of his wife.

20. In Jagdish v. State of MP {(2009) 9 SCC 495} this Court observed as follows: (SCC 503, para 22)

> "22... It bears repetition that the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt."

> 21. More recently, in Gian Chand v. State of Haryana {(2013) 14 SCC 420} a large number of decisions of this Court were referred to and the interpretation given to Section 106 of the Evidence Act in Shambhu Nath Mehra was reiterated. One of the decisions cited in Gian Chand is that of State of WB v. Mir Mohammad Omar which gives a rather telling example explaining the principle behind Section 106 of the Evidence Act inthe following words: (Mir Mohammad Omar case *(2000) 8 SCC p 393 para 35)*
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> > *"35.* During arguments we put a question to the learned Sernioir Counsel for the respondents based on hypothetical illustration. If a boy is kidnapped from the lawful custody of his guardian in the sight of his people and the kidnappers disappered with the prey, what would be the normal inference if a mangled dead body of the boy is recovered within a couple of hours from elsewhere. The query was made whether upon proof of the above facts an inference could be drawn that the kidnappers would have killed the boy. The learned Senior Counsel finally conceded that in such a case the inference is reasonably certain that the boy was killed by the kidnappers unless they explain otherwise."
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> 22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts."

16. The other circumstance against the appellants is recovery of ear tops. On the body of the deceased left ear top was found and similar top was seized from the house of the appellants where the body was initially buried. According to FSL report Ex.P/27, both the ear tops bear similar characteristic. However, no explanation whatsoever has been offered by the appellants in this regard in their statement under Section 313 of CrPC.

17. As regards identification of dead body, we find no substance in the argument of the appellants that the document of Ex.P/1 is doubtful

as it has been prepared by the police and therefore, cannot be used against the appellant whereas the said document is admissible in view of Section 8 of the Evidence Act. Most importantly, it is accused No.2 Gorakhnath who took the dead body on supurdnama vide Ex.P/5 for performing rituals of the deceased. Had it not been the dead body of deceased, accused No.2 would not have taken it on supurdnama. Witnesses to Ex.P/5 have also supported the prosecution case.

18. In the matter of ***Sandeep Vs. State of UP, (2012) 6 SC 107***, it has been held as under:

> "Section 25 of the Evidence Act can be pressed into service only insofar as it related to such of the statements that would implicate himself while the other part of the statement not relating to the crime would be covered by Section 8 of the Evidence Act and that a distinction can always be drawn in the statement of the accused by carefully sifting the said statement in order to identify the admission part of it as against the confession part of it.
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> It is quite common that based on admissible portion of the statement of accused whenever and wherever recoveries are made, the same are admissible in evidence and it is for the accused in those situations to explain to the satisfaction of the Court as to the nature of recoveries and as to how they came into possession or for planting the same at the places from where they were recovered. Similarly this part of the statement which does not in any way implicate the accused but is mere statement of facts would only amount to mere admissions which can be relied upon for ascertaining the other facts which are intrinsically connected with

> the occurrence, while at the same time, the same would not in any way result in implicating the accused into the offence directly."

19. In the case of ***Suresh Chandra Bahri Vs. State of Bihar, 1995 Supp (1) SCC 80***, the Supreme Court observed as under:

> "But in the present case it was soon after the arrest of appellant Gurbachan Singh that he took the Police Officer while in custody to the place where according to him he had thrown the dead body of Urshia wrapped by the incriminating articles. Those articles were not found lying on the surface of the ground but they were found after unearthing the Khad gaddha dumping ground under the hillock. Those articles were neither visible nor accessible to the people but were hidden under the ground. They were discovered only after the place was pointed out and it was unearthed by the labourers. No fault therefore could be found with regard to the discovery and seizure of the incriminating articles."

20. In ***Ram Lochan Ahir Vs. State of WB, AIR 1963 SC 1074***, the Supreme Court had occasion to examine the aspect of recovery of a dead body at the instance of the accused and observed the same to be highly incriminating evidence. In the case of ***Administration Vs. Om Prakash, AIR 1972 SC 97***, it was held that apart from the admissibility of the information under Section 27, the evidence of the investigating officer and the panchas that the accused had taken them to PW-11 and pointed him out and as corroborated by PW-11 himself would be admissible under Section 8 of the Evidence Act as conduct of the accused. [Also see: *Prakash Chand Vs. State (Delhi Administration),*

AIR 1979 SC 400; State of Maharashtra Vs. Suresh, (2000) 1 SCC 471; Ghanshyam Das Vs. State of Assam, (2005) 13 SCC 387; AN Venkatesh and another Vs. State of Karnataka, AIR 2005 SC 3809; State (NCT of Delhi) Vs. Navjot Sandhu, AIR 2005 SC 3820; Sandeep Vs. State of UP, (2012) 6 SC 107; and Mahboob Ali Vs. State of Rajasthan, (2015) AIR SCW 6123.]

21. So far as arguments regarding contradiction between timing of Ex.P/6, P/10 and mainly P/11 is concerned, record goes to show that memorandum of accused No.1 was reduced into writing on 15.7.2008 at 10 am, seizure was effected at 12.30 and 1 in the noon as per Ex.P/10 & P/11. True it is that the document of Ex.P/6 mentions the time as 12 noon, but it is the time when inspection was done by PW-6 Dr. Kuldeep Kujur and therefore, it cannot be said that the articles so seized were not seized at the instance of the accused No.1. Even otherwise, no such relevant question was put to the concerned officer at the time of cross-examination.

22. Yet another incriminating circumstance is that in his memorandum accused No.1 has categorically stated that when he was finding it difficult to bury the dead body, he broke the left arm of the deceased by using a spade and as per inquest and the postmortem report, left humurus bone of the deceased was found broken and this part of the admission of the appellant in his memorandum is admissible in Evidence Act because the same led to discovery of a relevant fact which was within the exclusive knowledge of the accused.

23. In respect of the aforesaid incriminating circumstances, no

plausible explanation has been offered by the appellants in their statements under Section 313 of CrPC, which further serves as an additional link in the chain of circumstantial evidence. 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 Cr.P.C., 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 inculpate 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 Mabar v State of Haryana, AIR 2013 SC 912).
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> 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."

24. Thus, keeping in view the aforesaid circumstances appearing against the appellants coupled with their non-explanation except making bald denial of the same, this Court comes to conclusion that it is appellant No.1 Varun Kumar Pandey who committed murder of the deceased and then in order to cause disappearance of the evidence of crime buried the same, initially in the courtyard of his house and thereafter, at a little far away place and appellant No.2 Gorakhnath Pandey assisted accused No.1 in causing disappearance of the evidence and also intentionally gave false information to the police by lodging a missing report in respect of the deceased. As such, the findings of the trial Court holding appellant No.1 guilty under Sections 302 & 201 of IPC and appellant No.2 under Sections 201 & 202 of IPC cannot be faulted with and the same are hereby affirmed.

25. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed. Both the appellants are reported to be on bail, therefore, their bail bonds stand cancelled and they are directed to be taken into custody forthwith to serve out the remaining part of their sentence.

Sd/ Sd/

(Pritinker Diwaker) **(Sanjay Agrawal)**
Judge **Judge**

Khan