

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No.2943 of 2017**

Arising Out of PS. Case No.-157 Year-2015 Thana- MUFFASIL District- West Champaran

**Md. Kamran @ Amanullah**, S/o Late Quayeem Alam, R/o Mohalla- Naya Tola, Heera Pakardh, P.S.- Manuapul, Bettiah (Muffi.), District- West Champaran Bettiah.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

|                      |   |                                                     |
|----------------------|---|-----------------------------------------------------|
| For the Appellant/s  | : | Mr. Ajay Kumar Thakur, Adv.<br>Mr. Ranjit Jha, Adv. |
| For the Respondent/s | : | Mr. Binod Bihari Singh , APP                        |

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**ORAL JUDGMENT**

**Date : 19-07-2019**

1. Sole appellant Md. Kamran @ Amanullah has been found guilty for an offence punishable under Section 304 Part-I of the IPC and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo R.I. for one month additionally, with a further direction to the effect that the period having undergone during course of trial will be subject to set off in accordance with Section 428 Cr.P.C. vide judgment of conviction dated 14.09.2017 and order of sentence dated 20.09.2017 passed by Additional Sessions Judge, Vith, Bettiah, West Champaran in Sessions Trial No.252/2017 arising out of Bettiah Muffasil P.S. Case no.157/2015.

2. Soni Begum (PW.4) gave her fardbeyan on 28.03.2015 at 07:30 AM at M.J.K Hospital, Bettiah where her



husband Md. Quayum (since deceased) was under going treatment disclosing therein that she happens to be second wife of her husband Quayum. First wife had already died about five years ago. Because of the fact that his first wife always remained to be ill, infirm on account thereof, at her instance her marriage was solemnized. From first wife her husband has got two sons Md. Kamran and Md. Noman and a daughter Nasrin Fatima, since married. After death of first wife, she cared all of them. Now a days, Kamran is quarreling with his father Md. Quayum over some property. Md. Noman is reading in Semra Madarsa. For the last 25 years her husband was living at Kuwait. About two months ago he has come to his house and during his stay, Kamran asked for partition whereupon, her husband has taken decision that after sale of orchard, he will purchase land in favour of Kamran and will construct a house thereupon. In the aforesaid background on 27.03.2015 orchard was sold. Sale deed has already been executed but, she is not knowing who has received the consideration amount. In the aforesaid background, yesterday evening Md. Kamran aged about 23 years, wife of Kamran namely, Noorjaha aged about 19 years and Sali of Kamran aged about 14 years indulged in quarreling with her as well as her husband and during course thereof, all of them apprehended her husband and dragged.



Anyhow she got her husband separated and then, closed him in a room. At about 07:30 PM wife of Kamran got knife and handed over to Kamran. Wife of Kamran and Sali got her husband taken out from the room, caught hold him and then, Kamran gave repeated knife blow over stomach, back, chest and other parts of body as a result of which, her husband became seriously injured. At that very moment, Imteyaz Ansari aged about 22 years who happens to be friend of Kamran, came and took away Kamran over motorcycle. She along with Allauddin took her husband to MJK Hospital, Bettiah wherefrom, he was referred to Patna and in midst of way, her husband died.

3. After institution of Bettiah Muffasil P.S. Case no.157/2015, investigation commenced and after concluding the same, charge sheet has been submitted only against Md. Kamran @ Amanullah while Imteyaz Ansari has not been sent up for trial, keeping investigation pending against Noorjaha and Sabina Khatoon, facilitating the trial meeting with the ultimate result, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of the occurrence. Further been pleaded that informant herself is the assailant of the deceased



and in order to save herself, got this case filed and in order to substantiate the same, adduced oral as well as documentary evidence.

5. In order to substantiate its case, prosecution has examined altogether eleven PWs who are PW.1-Lallu Ram, PW.2-Md. Munif Ansari, PW.3-Alluddin Mian, PW.4-Soni Begum, PW.5-Gulabo Khatoon, PW.6-Majid Mian, PW.7-Md. Khalil, PW.8-Islam Mian, PW.9-Awadhesh Prasad, PW.10-Dr. A.K. Chaudhary, PW.11-Ajit Kumar Singh. Side-by-side has also exhibited, Ext.1-Signature of PW.4 (informant) over fardbeyan, Ext.2-Inquest Report, Ext.3-Fardbeyan, Ext.3/1-Forwarding Report, Ext.4-Formal FIR, Ext.5-Postmortem Report. On the other hand, defence has examined three Dws, DW.1-Md. Nijamuddin, DW.2-Md. Numan, DW.3-Md. Jahagir as well as has also exhibited certified copy of Informatory Petition No.2494/2010, Ext.A.

6. The learned counsel for the appellant while assailing the judgment of conviction and sentence has raised manifold arguments. The first and foremost happens to be that amongst the witnesses so examined, only Soni Begum, PW.4 and her associate PW.2 are the witness of the occurrence while remaining had opted to become volte-face whereupon PW.1,



PW.5, PW.6, PW.7, PW.8 have been declared hostile. Furthermore, it has also been submitted that because of the fact that the informant herself was responsible for causing murder of the deceased with an aid of others, on account thereof completely changed the narration relating to manner of occurrence as well as place of occurrence. Because of the fact that whatever been deposed before the court happens to be substantial evidence on account thereof, taking recourse of Section 157 of the Evidence Act, attention of PW.2 as well as PW.4 have been drawn towards their previous statement, and having comparison thereof, it has become crystal clear that there happens to be material exaggeration, going to root of the murder case, whereupon, the whole prosecution case is fit to be discarded.

7. It has also been submitted that neither initial version nor the changed version as flashed before the court is the correct version of the occurrence and that happens to be the reason behind having inconsistency. Moreover, objective finding of the I.O. regarding the place of occurrence is another circumstance which completely changed the scenario. After parallel scrutiny of the same it is evident that the prosecution case suffers from inherent defects whereupon, the judgment impugned would not survive.



8. It has also been urged that prosecution has to substantiate its case beyond reasonable doubt. Prosecution version could not be allowed to take benefit of weakness of defence nor any step taken at his end during course of discharge of onus, found to be false could be used against. In likewise manner, the statement of an accused recorded under Section 313 Cr.P.C. would not independently be found vile to the accused in accordance with sub-section (4) of Section 313 Cr.P.C that too depend upon facts of each case (exclusive burden to explain), rather it could be an additional link duly recognizable only in case, prosecution version is found duly acceptable, substantiating its case under the garb of settle principle of law.

9. Then it has been submitted that no counter case is there. That means to say, there happens to be no counter version to the occurrence as alleged. So, there was/is no occasion for the court to see genuineness of version and counter version. Whatever been stated at the end of accused during course of statement recorded under section 313 Cr.P.C could not be treated as counter version. That means to say, failing in substantiating the defence version will have no adverse impact against an accused rather, save and except exceptional circumstance that too, were a connecting link, the burden lies or the prosecution to prove its



case beyond reasonable doubt. In addition thereto, it has also been submitted that it is not the case based upon circumstantial evidence, rather is based upon direct evidence and presence of glitch, in the aforesaid facts and circumstances is bound to tremor the prosecution version. Also referred **Reena Hazarika vs. State of Assam** reported in **2018(4) PLJR 368 (SC)**.

**10.** On the other hand, the learned APP while controverting the submission having at the end of the learned counsel for the appellant has submitted that falsus in uno, falsus in omnibus is not the basic rule of appreciation of the evidence and that being so, a duty has been cast upon court to separate the grain from the chaff. If the evidence of PWs are properly scrutinized while following the aforesaid principle, it is apparent that prosecution has succeeded in substantiating its case whereupon, the judgment of conviction and sentence recorded by the learned lower court is fit to be confirmed.

**11.** Apart from this, it has also been submitted that once for all, it has been conclusively decided by the Apex Court that any lapses having at the end of the I.O. during course of investigation would not dent nor adversely affect upon the prospect of the prosecution case and that being so the P.O. near the madarsa is found duly substantiated from the evidence of PW.2 as



well as PW.4. Furthermore, it has also been submitted that there happens to be no occasion for disbelieving testimony of these PWs because of the fact that in spite of having some sort of suggestion given to the PW.2, no document has been adduced to substantiate the prevailing animosity, if any, amongst them. In likewise manner, so far status of PW.4 is concerned she happens to be wife of the deceased as well as, the step mother of the appellant. Furthermore, it has also been submitted that there happens to be no denial at the end of the appellant that their mother died while they were at tender age. The entrance of PW.4 was during the lifetime of their mother and so, she was the person who cared, nourished not only the accused rather DW.2 his brother also along with a sister. Then in that circumstance, was it possible for the PW.4 to have deposed against the appellant, that too when she herself happens to be issueless is having interest with the welfare of appellant as well as DW.2 unless and until faced with misfortune.

**12.** It has also been submitted that even discarding all the witnesses, the fact remains with regard to presence of PW.4 at the place of occurrence, on the date and time of occurrence whereupon she happens to be natural witness. In the aforesaid background, when her sole evidence is taken up, again the



prosecution case is found duly substantiated as, the defence could not be able to elicit any incriminating material from her mouth. In order to give additional support, the learned Additional P.P. took shelter of Section 134 of the Evidence Act which recognizes the evidence of solitary witness to substantiate a case, in case is found reliable. Furthermore, it has also been submitted that during course of statement recorded under Section 313 Cr.P.C., the answer given at the end of appellant along with evidence of DWs additionally support the same.

**13.** Considering the classification of the witnesses, it is evident that out of eleven witnesses so examined, PW.1, PW.3, PW.5, PW.6, PW.7, PW.8 have not supported case of the prosecution and so, they were declared hostile. Being hostile their evidence are not blatantly subject to rejection and so, their evidence are to be seen at an appropriate stage of the judgment hereinafter, how far gave limb to prosecution.

PW.2 and PW.4 only claimed to be an eyewitness to occurrence. PW.9 is the part I.O. PW.11 is formal in nature in the background of fact that he, after receiving the postmortem report, submitted the charge sheet. PW.10 is the doctor who had conducted the postmortem. The earliest medical report examining the deceased is not on the record but, it goes out of controversy as,



there happens to be no dispute with regard to death of Md. Quayum, the father of the appellant, husband of PW.4.

**14.** PW.10 had found following ante-mortem injury.

**External Examination**

(i) One stitched wound over abdomen below umbilicus 1/2" long. After removal of stitch it was abdominal cavity deep and 1/2" depth incised wound.

(ii) One stitched wound Rt.side of the chest lateral aspect 1/2" long. After removal of stitch it was incised and depth was Additional Public Prosecutor to muscle 1/4" deep.

(iii) One stitched wound over left side of the chest below scapula 1" long. After removal of stitch it was incised 1/2" depth and chest cavity deep.

(iv) One stitched wound left arm 3/4" long. After removal of stitch, it was incised 1/4" width.

(v) One stitched wound over left knee. After removal of stitch it was incised 1/4" depth up to bone.

**On dissection**

Chest and abdomen- On opening the chest-chest cavity full of blood and blood clot present with laceration of left lower part of lung tissue 1/2" long. Abdomen cavity full of blood. Blood clot present with laceration small intestine and ascending vessels. Heart-Both Chamber empty. Stomach-empty.

All viscera were found pace. All above five injuries were incised and penetrative caused by sharp cutting substance such as knife.



Time elapsed since death within 24 hours.

Cause of death-shock & haemorrhage due to above injuries especially injury no.1 abdominal injury and injury no.3 chest injury.

**15.** During cross-examination, it is evident that nothing substantial has been flashed. So, the finding recorded by the doctor PW.10 could not be found subject to controversy.

**16.** Now coming to the status of the witnesses, as stated above, the case has been instituted by the PW.4. PW.3 stood as an attesting witness thereupon. Although PW.3 has been declared hostile but, during course of examination-in-chief, he has stated that this case has been instituted by his Bhabhi. Occurrence is about nine months ago. It was 07:30 PM. He had put his LTI over the statement of his Bhabhi. Then has stated that when he had gone there, seen Bhabhi sitting keeping his brother Quayum Mian. He had not seen who had assaulted. He had made statement before the police. Then has denied the statement so confronted to him after declaring him hostile. It is further evident from his evidence that prosecutor had failed to get the accused identified in dock. During cross-examination on behalf of appellant he has stated that statement of his Bhabhi was not recorded in his presence so, he is unable to say what was stated therein. The remaining witnesses that means to say PW.1 had completely disowned and in likewise manner, PW.5, mother of the deceased who during cross-



examination, though has disclosed with regard to status of the deceased having three wives, the first one mother of the appellant, since deceased, the second one, the informant and the third one belonging to Hyderabad. She has also disclosed that the Soni (second marriage) never cared the children and on account thereof, her son was adverse to her. She has also stated that on the alleged date Soni Begum was at Gopalganj and after coming to know about the same, came from her Naihar and then, at the instance of others she got this case instituted. It has also been disclosed by her that PW.2 Md. Munif Ansari is Mokhtar at the court. She has also disclosed that her son and Munif were on strain relationship. Her grandson has gone against him by way of filing an application. Madarsa is over the land having gifted by her family and Munif is adamant to grab the land of Madarsa. PW.6 has also gone volte face to the prosecution who blatantly refused to say anything over the occurrence and in likewise manner, PW.7 happens to be who during cross-examination has stated that Qayum Mian used to remain outside (Arab). He had married there. His second wife used to live at her Naihar. PW.8 has also stood on same category, though during cross-examination he has stated that deceased Quayum was his co-villager. He had three wives out of whom two is alive, one belongs to Gopalganj again



controverted the same by saying that he does not know. After third marriage, his second wife began to live at her Naihar at Gopalganj. Her name is Soniya Khatoon. When Quayum died she was at Gopalganj when she came from Gopalganj he is unable to say. He has further stated that the family of Quayum had gifted land to Madarsa and on account thereof, there happens to be strain relationship with Munif.

**17.** Now the evidence of remaining two, PW.2 as well as PW.4 have to be seen.

**18.** PW.2 has stated that on 27.03.2015 at about 07.30 PM, he was walking near Madarsa. At that very moment, Quayum came running and disclosed that his son is assaulting him whereupon, he is going to police station. His son Kamran came following him having armed with knife, caught hold hand of Quayum, dragged up to 10-15 steps and then gave knife blow, repeatedly. Thereafter, his mother came seeing whom, Kamran ran towards northern direction. Identified the accused in dock. Then has stated that he along with second wife of Quayum, mother of Quayum lifted the injured to hospital (Bettiah) wherefrom Quayum was referred to Patna and in midst of way he died. During cross-examination at para-6 he has stated that it was time of 'Maghrib Namaz' but he is unable to disclose whether Namaz



was offered or not. However, at the time of occurrence it was sunset. On that date he had not performed the Maghrib Namaz. He had not gone but facilitated transportation of injured to hospital on a tempo. He is unable to disclose the owner of the tempo. 10-15 minutes after the occurrence the tempo came. It was passing through road. It was halted and then, injured was sent to Hospital. At para-7 he has stated that at that very time injured was conscious. Mother of Quayum (PW.5) and his second wife (PW.4) have accompanied him. At para-8 there happens to be cross-examination relating to the path leading to his village. In para-10 he has stated that in the western boundary of his house road lies passing through east to west. In para-11 he has stated that Madarsa had southern front. He denied to have eastern front. East to Madarsa, his house lies. There also happens to be gairmajarua land. Madarsa is fenced by a boundary. House of Gulam Rasul lies west having southern front. Adjacent to the house of Gulam Rasul, house of deceased lies having southern front, is fenced by a boundary. A eastern boundary having five feet height. No one could see inside the house from the road. In para-13 he has stated that the land of Madarsa was not given by father of the deceased. In para-14 he denied the suggestion that he fought with Quayum concerning to the aforesaid land. He denied the suggestion he had



forcibly grabbed the madarsa land. He has identified the place by boundary north open land, south-house of Khalil. In para-16 he has stated that hand of Quayum was caught hold and then Kamran dragged him 10-15 steps towards north. He could not get an opportunity to run. He remained static where he was standing. In para-17 he has stated that after sustaining injury Quayum fell down having head towards west and leg towards east. On hearing cry of Quayum, he had not gone near Quayum as, accused was armed with knife. About 1 ½ to two minutes Quayum remained lying there then, he was lifted to road. In para-18 he has stated that his statement was recorded by the police 3-4 days after the occurrence. In para-19 (contradiction) he has stated that he had stated before the police that he was walking near madarsa. At about 7.30 PM Quayum came and said that his son is assaulting him. At that very time his son Kamran followed with knife, caught hold his hand dragged 10-15 steps and then assaulted repeatedly with *Chhura* as a result of which there was bleeding. He shouted. His mother arrived whereupon, Kamran, ran away towards northern side. Then thereafter they lifted injured to tempo to Bettiah Hospital from where he was referred to Patna. He denied the suggestion that it was not 7.30 PM rather, it was dead of night.



In para-21 he had denied the suggestion that on account of land dispute with the family of the Kamran he has deposed falsely.

**19.** PW.4 is the informant, second wife of the deceased Quayum. She has deposed that the occurrence is about eleven months ago. It was 7.00 PM. At that very time she was at her house. There was brawl in between Md. Kamran and her husband Quayum over money. Kamran is son of her Sautin (step son). Her husband was to go to police station whereupon, Kamran directed Noorjaha to give knife which was handed over and then he chased her husband. She also followed. After covering 30-35 steps, her husband disclosed to Munif Mian that his son is assaulting him. By the time, Kamran arrived there, caught hold him, dragged ten steps west and then murdered him by inflicting repeated knife blow over his stomach, inter-coastal region, hand, leg. Her husband fell down. She tried to apprehend Kamran after reaching there but he escaped therefrom. Then, thereafter she lifted her husband. She also began to wale. So many persons assembled. Thereafter then she along with Allauddin lifted her husband to Sadar Hospital, Bettiah where after primary treatment he was referred to Patna and during midst of way, her husband died near Areraj. She lives at Gopalganj (Maika). she has come from her Maika to depose. In para-8 she denied the suggestion that



deceased was very much annoyed with her over callous conduct towards her step son whereupon, deceased was adamant to divorce her. In para-9 she again controverted the suggestion that after death of Kamran's mother she had not looked after Kamran his brother properly. In para-10 she has stated that on account of family feud her husband used to keep her at Gopalganj. She has further said that after having money he (husband) said that he will construct another house and then they will live. In para-11 she has stated that her house is fenced with boundary wall towards the road. House has got southern front. Road lies contiguous to boundary wall. There happens to be gate, affixed over the boundary wall. After closure of the gate no one could see each other side. In para-13 she has stated that house lies east to Madarsa intervened by a house of one person. In para-15 she has stated that house of Munif lies south to her house. Then again corrected eastern southern corner. Then has stated that his house is not visible from her house. After going to road, his house will be visible. In para-17 she has stated that at such wee time, she could not remember the actual time of arrival at the hospital. Again disclosed that it was approximately 7.30 PM. At that very time, her husband was alive and conscious. Police came there. She had narrated the occurrence to the police. They have stayed for two



hours and then thereafter, the doctor had referred to Patna. While they were carrying over ambulance, altogether 6-7 persons were, one person from Madarsa, one her Bhagina, Natin. Then at para-18 there happens to be cross-examination with regard to marital status of the deceased. In para-19 she has disclosed that the deceased died at about 11 PM near Areraj. In para-21 she has stated that boundary wall lies at a distance of ten steps from her house. Her husband was chased by Kamran from her house. Her husband had gone twenty steps away from her house, east side. Kamran was following him. Kamran had disclosed all of them to remain there as he was going to ask for an excuse. At that very time Akhtar, Asgar, Majid, Mansoor Mian and her brother Jumballi were present. In para-23 she has stated that she had seen Kamran assaulting her husband whereupon, she rushed. Her husband was about ten yards ahead, when she saw Kamran. He was by the side to her husband who, after catching him dragged. House of Munif lies ten steps therefrom. Kamran had assaulted with the knife. It was dark. It was winter season. In para-24 she has stated that he was inflicting knife blow indiscriminately. She caught hold her husband and began to Wale. Kamran escaped towards northern direction after inflicting knife blow. His back was towards her. She shouted when Kamran was assaulting her



husband. None came in rescue. There happens to be contradiction at para-25 to the effect that she is not remembering whether she got it scribed in the fardbeyan that she tried to apprehended but Kamran escaped. In para-26 she has admitted that she had not incorporated in the fardbeyan that her husband disclosed to Munif Mian that his son was assaulting him. In para-27 she has stated that she had given statement to the effect that after taking away ten steps south Kamran assaulted her husband. In para-28 she has admitted that she had disclosed in the fardbeyan that she closed her husband in a room. In para-29 she has admitted to have stated during course of recording of fardbeyan that Kamran after taking out her husband killed him. Then at para-30,31,32 she denied the suggestion that Madarsa stood over the land gifted by her husband, she has got no information with regard to informatory petition against Munif. She has also denied the suggestion that she was staying at Gopalganj and after coming to know about murder of her husband she came and at the instance of Munif, she got this case filed implicating the accused, her step son.

**20.** PW.9 is the I.O. He has stated that on 28.03.2015 he was posted as S.I. at Manuarpur O.P. Accordingly, he was entrusted with the investigation of case no.157/2015. He has copied the fardbeyan, inquest report in the CD. He has recorded



further statement of the informant as well as statement of Allaudin Mian, Islam Ansari, Munib Ansari. He inspected the P.O. which happens to be adjacent to 'Pagdandi', near Madarsa, having boundary East-Munib Ansari, West-Madarsa, North-Mango Orchard of Suresh Mahato, South-Pitch Road and then house of Khalil Mian. As he has been transferred on account thereof, he handed over charge to O/c on 08.5.2015. (exhibited other documents). During cross-examination he has stated at para-9 that P.O. was shown by Munif Ansari. He had not investigated over inter se relationship. In para-10 he has stated that he had not prepared sketch map of the P.O. He had not found blood at the P.O. In para-11 he has stated that he had not seized anything at the P.O. In para-12 he has stated that as disclosed the sun had already set. In para-15 he has stated that he is unable to disclose the boundary of the informant's house. He has further stated that no one could see the place of occurrence from the house of informant. In para-16 he has stated that informant had not stated that after quarrel her husband was going to police station but she had not spoken that Kamran asked for knife. She had not spoken that Kamran chased, had not stated that her husband disclosed to Munif that his son is assaulting him, had not disclosed that she tried to apprehended but, he ran therefrom. In para-17 there is



contradiction relating to evidence of PW.2 Munif Mian regarding which he has stated that Munif Mian had not made statement before him that while he was walking near madarsa Quayum came running and disclosed that as his son is assaulting hence he is going to police station. At that very moment, his son Kamran came with knife and then caught hold, gave indiscriminate knife blow. He had not stated that Kamran had assaulted Quayum with knife over different parts of body including chest. Munif had not disclosed that Quayum began to shout whereupon his mother came and they lifted him to hospital wherefrom he was referred to Patna and during midst of way he died.

**21.** From the evidence as discussed herein above, it is evident that deceased was done to death by means of indiscriminate knife blow and that happens to be the finding of PW.10, doctor. Now the only question remains with regard to proper identification of the assailant. At the present moment, the evidence of PW.3 brother of the deceased could be seen who has during his examination-in-chief clearly stated that statement of the informant PW.4 was recorded in his presence over which he put his LTI. During cross-examination though he has stated that statement of his Bhabhi was not recorded in his presence but, he on his own nor at the end of the appellant/accused tested how his LTI



was over the aforesaid fardbeyan. Presence of his LTI over fardbeyan is indicative of the fact that fardbeyan was recorded in his presence by the PW.4 and so, the genuineness of the fardbeyan is found duly substantiated along with presence of PW.4 at that very moment.

**22.** Now coming to the evidence of eyewitness, PW.2, PW.4 in consonance with the evidence of PW.9, the I.O. it is evident that neither the prosecution on its own nor during course of cross-examination, it has been brought up on record that on account of infliction of such kind of injuries copious blood had oozen out, spread over the ground. PW.9 has disclosed during his examination-in-chief alone that he had not found blood at the place of occurrence, nor anything was seized therefrom. Furthermore, he identified the place of occurrence to be near Madarsa adjacent to Pagdandi. I.O. is completely mum over source of identification.

**23.** Contrary to it, the initial prosecution version relating to occurrence happens to be inside the house, which the FIR did contain. However, that too was not shown to the I.O.

**24.** There happens to be an admission at the end of the PW.4 at para-27,28 and 29 that at the time of recording of fardbeyan, she had disclosed that after opening the room Kamran



had caused murder of her husband. During course of trial the aforesaid place has been shifted near about madarsa and for that, there happens to be no explanation at the end of the prosecution.

**25.** The sole purpose, as it appears, to bring the PW.2 as witness, who could not only corroborate the prosecution case, rather, to stand by, by having presence of tempo to the hospital. Be that as it may, from the evidence of PW.4 Para-21, that when Kamran ran following the deceased at one stroke he had been shown to have possessed *Chhura*, at the other end, disclosing that he is going to ask for excuse, so requested then to remain inside house, is found some sort of abnormal conduct having no corroboration, even having presence of so many persons including brother of the informant.

**26.** In the present case, as discussed hereinabovoe, it is evident that save and except substantiating the cause of death by means of knife, the prosecution has shifted from the initial version and further, in the background of para-21, of PW.4, it looks improbable to digest that when the accused was armed with knife then in that circumstance, whether it was probable to say an attempt at the end of the accused to the prosecution party that you people should stay he is going to take pardon.



27. Now, another aspect has to be seen from the statement recorded under Section 313 of the Cr.P.C. it is apparent that there happens to be specific disclosure at the end of the appellant that his step mother and Munif Ansari have assaulted the deceased with knife, also admitted that only Alluddin and his grand mother taken the deceased to hospital, also admitted that he also joined and, on his own detailed the event as “on 17.3.2015 he took his father to Banaras for treatment and after returning therefrom, there was quarrel amongst his father and his step mother and during course thereof, his father had slapped his step mother. Thereafter, his father got her to Gopalganj (Maika). During course of quarrel, his step mother had threatened that you have gifted the land of village to Kamran and Numan and nothing has been left for her and for that, he will be given a lesson. Then thereafter, in the night of 27 at about 12 PM his step mother and her brother came, entered into brawl with his father whereupon, his father invited all of them and then disclosed that he wants to purchase land for her whereupon, they all consented. They have deposited the money but in the evening his step mother murdered his father with the help of Munif Ansari and on that very score, he has examined three DWs, the first one Md. Nijamuddin, who has deposed on the factum of having land gifted to madarsa by the



deceased and the Munif Ansari has got evil eye over the aforesaid land whereupon for the last 30-35 years both were on strain relationship. On the date of occurrence while he was at the place of his Khala, came to know regarding the occurrence and so he was of the view that in the background of land dispute deceased was murdered, DW.2 is Md. Numan, younger brother of the appellant. He has come to depose that Suleman who happens to be pattidar of Quayum had gifted two kattha land to madarsa and in the aforesaid background, Munif is adamant to encroach the land for which Quayum and Munif were on strain relationship since long and in the aforesaid background, Munif and Suleman has conspired and got his father murdered by unknown persons, DW.3 is the father-in-law of the appellant who has come to depose that Suleman Mian was Nana of Quayum. Quayum had gifted property to Madarsa again corrected Suleman had given and for that, there happens to be dispute in between Quayum and Munif. He has further deposed that Quayum solemnized three marriages. Kamran is the son from first wife, second wife is Sony who happens to be informant. Quayum has been murdered in conspiracy with Sony Begum with Munif wherein Kamran has falsely been implicated.

**28.** In criminal trial two words play pivotal role, the first one burden of proof and the second one onus. It is needless to



say that burden of proof never shift but, onus has. Burden of proof lies upon the party who comes to court to have particular verdict. If there happens to be proper evidence then, in that circumstance, some sort of obligation comes over the shoulder of the adversary and that obligation is known as onus. However, the aforesaid eventualities have different interpretation relating to criminal as well as civil litigation are concerned. In criminal prosecution, as there happens to be presumption of innocence in favour of accused, hence burden always remains with prosecution, without having adverse impact whether onus has been discharged by the accused or not, save and except in exceptional circumstance, may be having been confronted with a situation guided under Section 106 of the Evidence Act or falling under general exception, or alibi etc.

**29.** From the evidence on record, it is evident that appellant is not under pressure to explain the circumstance, if any, as has not been alleged so. PW.2 and PW.4 never spoken on that very score rather the story having so advanced is after chase deceased was done to death. From the evidence, it is also manifest that such deflection from initial version is not at all explained. It is further evident that I.O. was not shown the first P.O., that means to say the house, while no incriminating article including blood



has been found at the changed P.O., which, considering nature of injury improbabilities.

**30.** What would be the fate of an accused in consonance with the answer given under section 313 of the Cr.P.C. The learned counsel for the appellant has referred **Reena Hazarika vs. State of Assam** reported in **2018(4) PLJR 368(SC)**, and for better appreciation relevant para is quoted below:

“16. Section 313, Cr.P.C. cannot be seen simply as a part of *audi alteram partem*. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2), Cr.P.C. The importance of this right has been considered time and again by this court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) Cr.P.C. the Court is duty bound under Section 313(4) Cr.P.C. to consider the same. The mere use of the word ‘may’ cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 Cr.P.C., in the given facts of a case, the conviction may well stand vitiated. To our mind, a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 Cr.P.C. and to either accept or reject the same for reasons specified in writing.



17. Unfortunately neither Trial Court nor the High Court considered it necessary to take notice of, much less discuss or observe with regard to the aforesaid defence by the appellant under Section 313 Cr.P.C. to either accept or reject it. The defence taken cannot be said to be irrelevant, illogical or fanciful in the entirety of the facts and the nature of other evidence available as discussed hereinbefore. The complete nonconsideration thereof has clearly caused prejudice to the appellant. Unlike the prosecution, the accused is not required to establish the defence beyond all reasonable doubt. The accused has only to raise doubts on a preponderance of probability as observed in ***Hate Singh Bhagat Singh vs. State of Madhya Bharat***, AIR 1953 SC 468 observing as follows :

“ 26. We have examined the evidence at length in this case, not because it is our desire to depart from our usual practice of declining to assess the evidence in an appeal here, but because there has been in this case a departure from the rule that when an accused person but for the word a reasonable defence which is likely to be true,..... then the burden on the other side becomes all the heavier because a reasonable and probable story likely to be true pitted against a vacillating case is bound to raise a reasonable doubt of which the accused must get the benefit....”

A similar view is expressed in ***M. Abbas vs. State of Kerala***, (2001) 10 SCC 103 as follows :

“10....On the other hand, the explanation given by the appellant both during the cross-examination of prosecution witnesses and in his own statement recorded under Section 313 CrPC is quite plausible. Where an accused sets up a defence or offers an explanation, it is well settled that he is not required to prove his defence beyond a reasonable doubt but only by preponderance of probabilities....”

**31. In Pakkirisamy v. State of T.N. reported in AIR**

**1998 SC 107**, it has been held:



“7. Apart from various circumstances pressed into service by the prosecution which were held proved by the courts below, it mainly relied upon two vital circumstances, namely, (A) extra-judicial confession (Ex.P8) recorded by Ramasami (PW 12), and (B) the recovery of MOs 1 to 4 at the instance of the appellant. The extra-judicial confession (Ex.P8) was said to have been recorded by Ramasami (PW 12) on August 28, 1986 when the appellant himself went to him and made a statement admitting his guilt. After recording the confessional statement, Ramasami (PW12), Marimuthu (PW13) and the appellant then went to the police station where he was produced before the Investigating Officer. Confessional statement (Ex.P8) was handed over to the police officer. Both the courts below found Ex.P8 a voluntary statement of the appellant which was recorded by Ramasami (PW12) being trustworthy. While assailing the concurrent findings of the courts below, learned Counsel for the appellant urged that Ex.P8 ought to have been rejected by the courts below as the possibility of the same being recorded in the police station in the presence of the police officer could not be ruled out. It was further contended that there was no reason for the appellant to make such an extra-judicial confession before Ramasami (PW12). Assuming such a statement was made by the appellant, he retracted the same at the earliest opportunity before the CJM when his statement under Section 164, Cr. P.C. was recorded. He drew our attention to the said statement recorded by CJM and urged that in the face of this retraction, no value could be attached to the alleged extra-judicial confession (Ex.P8). This document was although part of the present proceedings yet both the courts below have not read the same in proper perspective. Taking the last contention first, on perusal of the statement before the CJM, we find that it cannot be called a retraction for the simple reason that the appellant did not make any reference to the extra-judicial confession (Ex.P8). All that he says in his statement before the CJM was that he is innocent and had not committed any crime. It is, therefore, just a denial of the crime. We, therefore, do not attach any importance to the statement recorded by the CJM. Coming to the first part of the argument, we have gone



through the extra-judicial confession (Ex.P8) as also through the evidence of Ramasami (PW 12), who had testified that the appellant came on his own to his office and confessed the guilt and his statement was recorded verbatim. It is only after recording Ex.P8, he along with Marimuthu (PW13) and the appellant went to the police station and submitted the same to the police officer whereupon appellant was arrested. Ramasami (PW12) is an independent witness and held a responsible post in the village. He is not related or anyway connected with the family of the deceased. Nothing was suggested to this witness as to why he should go out of the way to record a false statement of the appellant. He emphatically stated that Ex.P8 was recorded in his office and thereafter they went to the police station. We, therefore, find no substance in any of these contentions raised on behalf of the appellant as regards the genuineness of Ex.P8 or admissibility thereof.

**8.**Mr. Murlidhar, learned Counsel then contended that it is well-settled that the evidence of extra-judicial confession is a weak type of evidence and ordinarily the Court would be slow to accept such type of evidence. He, therefore, urged that Ex.P8 be left out of consideration. We are unable to accept this broad proposition put forth on behalf of the appellant. It is well-settled that it is a rule of caution where Court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It is no doubt true that extra-judicial confession by its very nature rather a weak type of evidence and it is for this reason that a duty is cast upon the court to look for corroboration from other reliable evidence on record. Such evidence requires appreciation with a great deal of care and caution. If such an extra-judicial confession is surrounded by suspicious circumstances, needless to state that its credibility become doubtful and consequently it loses its importance. The same principle has been enunciated by this Court in *Balvinder Singh v. State of Punjab*, 1995 Suppl (4) SCC 259 : (1995 AIR SCW 4555). In the facts and circumstances of this case, we hold that the courts below committed no error in relying upon Ex.P-8 as the same is corroborated from several other proved circumstances.



9. Coming to the next important circumstance relied upon by the prosecution was recovery of the jewels and other valuable articles MOs 1 to 4 at the instance of the appellant pursuant to a disclosure statement under Section 27 of the Evidence Act. Mahendran (PW14) has proved the Panchanama (Ex.14) in respect of recovery of MOs 1 to 4. Narayanan (PW1) and Rangam (PW2) who were residing just opposite the house of Mohambal, had identified these items which were on the person of Mohambal. We have gone through the evidence of Naryanan (PW1), Rangam (PW2) and Ramasami (PW12) and we find that the said evidence does not suffer from any infirmity. The courts below, in our opinion, have rightly accepted the said evidence which again is an important circumstance in the chain of circumstantial evidence.

10. Apart from the aforesaid two vital circumstances, the prosecution also relied upon the evidence of Krishnamoorthy (PW3) who testified that late in the evening at about 10.00 O'clock, he saw a shadow of a person who was moving in the direction of the house of Mohambal and on making inquiry, the said person gave his identity (appellant). On further query, the appellant told that he is going to the house of his master. Thereafter within 15 minutes, he saw the appellant returning towards the tank side and were chatting with Muthu Krishnan by the side of the house of Krishnamoorthy (PW3) at about 11.00 p.m. This evidence, therefore, shows that at odd hours, the appellant had gone to the house of his master, returned to the tank at about 11.00 p.m. and thereafter disappeared. In between what happened was testified by Sh. Vaidyanathan (PW5). According to him, on August 24, 1986, at about 8.30 p.m., he went to bed and during the said night, he heard the noise like "Grrrr". However, he thought that the said noise might be of a dog and thereafter he went to the tank where Bhajan was going on. When he returned home, he saw the appellant near the house of Krishnamoorthy (PW3) and was chatting with somebody and telling him that his younger sister had come here for betrothal and the family of her bridegroom demanded 15 sovereigns but he had no means and does not know what to do. The marriage required to be performed. This circumstance



was relied upon by the prosecution to show that appellant was in a dire need of funds to celebrate the marriage of his sister and it was for this reason, the appellant taking advantage of the helpless couple thought of committing the crime and robbing the valuable ornaments which were on the person of Mohambal. This evidence, therefore, corroborates the fact that appellant was in immediate need of money to perform the marriage of his sister and to secure the money, he committed the crime in question. Both the courts below have accepted this part of the prosecution story. We do not see any reason to defer from the said finding.”

**32. In Nar Singh vs. State of Haryana reported in (2015) 1 SCC 496, it has been held:**

“**10.** There are two kinds of examination under Section 313 CrPC. The first under Section 313(1)(a) CrPC relates to any stage of the inquiry or trial; while the second under Section 313(1)(b) CrPC takes place after the prosecution witnesses are examined and before the accused is called upon to enter upon his defence. The former is particular and optional; but the latter is general and mandatory. In *Usha K. Pillai v. Raj K. Srinivas*<sup>2</sup>, this Court held that: (SCC p. 212, para 3)

3. ... the court is empowered by [Section 313(1)] clause (a) to question the accused at any stage of the inquiry or trial; while [Section 313(1)] clause (b) obligates the Court to question the accused before he enters his defence on any circumstance appearing in prosecution evidence against him.

**11.** The object of Section 313(1)(b) CrPC is to bring the substance of accusation to the accused to enable the accused to explain each and every circumstance appearing in the evidence against him. The provisions of this section are mandatory and cast a duty on the court to afford an opportunity to the accused to explain each and every circumstance and incriminating evidence against him. The examination of the accused under Section 313(1)(b) CrPC is not a mere formality. Section 313 CrPC prescribes a procedural safeguard for an accused, giving him an opportunity to explain the facts and circumstances appearing



against him in the evidence and this opportunity is valuable from the standpoint of the accused. The real importance of Section 313 CrPC lies in that, it imposes a duty on the court to question the accused properly and fairly so as to bring home to him the exact case he will have to meet and thereby, an opportunity is given to him to explain any such point.

12. ....

13. ....

14. ....

15. ....

16. Undoubtedly, the importance of a statement under Section 313 CrPC, insofar as the accused is concerned, can hardly be minimised. The statutory provision is based on the rules of natural justice for an accused, who must be made aware of the circumstances being put against him so that he can give a proper explanation to meet that case. If an objection as to Section 313 CrPC statement is taken at the earliest stage, the court can make good the defect and record additional statement of the accused as that would be in the interest of all. When objections as to defective Section 313 CrPC statement is raised in the appellate court, then difficulty arises for the prosecution as well as the accused. When the trial court is required to act in accordance with the mandatory provisions of Section 313 CrPC, failure on the part of the trial court to comply with the mandate of the law, in our view, cannot automatically enure to the benefit of the accused. Any omission on the part of the court to question the accused on any incriminating circumstance would not ipso facto vitiate the trial, unless some material prejudice is shown to have been caused to the accused. Insofar as non-compliance with mandatory provisions of Section 313 CrPC is concerned it is an error essentially committed by the learned Sessions Judge. Since justice suffers in the hands of the court, the same has to be corrected or rectified in the appeal.”

**33. In State of Karnataka vs. Suvarnamma & anr.**  
**reported in (2015) 1 SCC 323, it has been held:**



**“10.** The court dealing with a criminal trial is to perform the task of ascertaining the truth from the material before it. It has to punish the guilty and protect the innocent. Burden of proof is on the prosecution and the prosecution has to establish its case beyond reasonable doubt. Much weight cannot be given to minor discrepancies which are bound to occur on account of difference in perception, loss of memory and other invariable factors. In the absence of direct evidence, the circumstantial evidence can be the basis of conviction if the circumstances are of conclusive nature and rule out all reasonable possibilities of the accused being innocent. Once the prosecution probalises the involvement of the accused but the accused takes a false plea, such false plea can be taken as an additional circumstance against the accused. Though Article 20(3) of the Constitution incorporates the rule against self-incrimination, the scope and the content of the said rule does not require the court to ignore the conduct of the accused in not correctly disclosing the facts within his knowledge. When the accused takes a false plea about the facts exclusively known to him, such circumstance is a vital additional circumstance against the accused.

**11.** It is also well settled that though the investigating agency is expected to be fair and efficient, any lapse on its part cannot per se be a ground to throw out the prosecution case when there is overwhelming evidence to prove the offence.”

**34. In Edmund S. Lyngdoh vs. State of Meghalaya**

reported in (2016) 15 SCC 572, it has been held:

**“21.** Where the accused gives evasive answers in his cross-examination under Section 313 CrPC, an adverse inference can be drawn against him. But such inference cannot be a substitute for the evidence which the prosecution must adduce to bring home the offence of the accused. The statement under Section 313 CrPC is not evidence. In *Bishnu Prasad Sinha v. State of Assam*<sup>4</sup>, this Court held that conviction of the accused cannot be based merely on his statement recorded under Section 313 CrPC which cannot be regarded as



evidence. It is only the stand or version of the accused by way of explanation explaining the incriminating evidence/circumstances appearing against him. 583 The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to other evidence led by the prosecution. The statements made under Section 313 CrPC must be considered not in isolation but in conjunction with the other prosecution evidence.

22. In the present case, it is not as if the High Court arrived at the conclusion and based conviction only on the statement made by the first accused under Section 313 CrPC. As seen from the reasonings of the High Court extracted above, the statement of the first accused under Section 313 CrPC was taken with the evidence of PW 6 and PW 13 and Item 7(17) of Ext. P-5 as a link to complete the chain of circumstances against A-1. As elaborated earlier, the answers given by the first accused were considered not in isolation but in conjunction with other oral and documentary evidence. We find no substance in the contention that the High Court erred in taking the statement of the first accused under Section 313 CrPC as a link to complete the chain of circumstances.”

35. That being so, by catena of decision, it has been settled at rest that the answers by the accused during course of recording of statement under Section 313 of the Cr.P.C. alone could not be sufficient to draw an adverse inference but, if it is taken together with the other materials, then in that circumstance, it has got a bearing and will be an additional support to the case of prosecution. In same situation, false plea taken by the accused will play pivotal role, in case, the circumstances are within his exclusive domain. Here is not such situation.



**36. In Narendra Singh & Anr. vs. State of M.P.**

reported in **(2004) 10 SCC 699**, it has been held:

“It is now well-settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however, grave may be cannot take place of a proof. It is equally well-settled that there is a long distance between 'may be' and 'must be'. ”

**37. In Kailash Gour & Ors vs State of Assam**

reported in **(2012) 2 SCC 34**, it has been held:

“44. The prosecution it is axiomatic, must establish its case against the accused by leading evidence that is accepted by the standards that are known to criminal jurisprudence regardless whether the crime is committed in the course of communal disturbances or otherwise. In short there can only be one set of rules and standards when it comes to trials and judgment in criminal cases unless the statute provides for any thing specially applicable to a particular case or class of cases. Beyond that we do not consider it necessary or proper to say anything.”

**38. In Digamber Vaishnav & Anr. vs. State of**

**Chhattisgarh** reported in **(2019) 4 SCC 522**, it has been held:

“14. One of the fundamental principles of criminal jurisprudence is undeniably that the burden of proof squarely rests on the prosecution and that the general burden never shifts. There can be no conviction on the basis of surmises and conjectures or suspicion howsoever grave it may be. Strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof. The onus of the prosecution cannot be discharged by referring to very strong suspicion and existence of highly suspicious factors to inculcate the accused nor falsity of defence could take the place of proof which the prosecution has to establish in order to succeed, though a false plea by the defence at best, be considered as an additional



circumstance, if other circumstances unfailingly point to the guilt.”

39. Giving anxious thought over the materials available on record as discussed herein above, it is apparent that the same did not justify the finding so recorded by the learned lower court. Consequent thereupon, the judgment impugned is set aside. Appeal is allowed. Appellant is under custody,hence is directed to be released forthwith, if not wanted in any other case. All the pending I.A. are directed to be dispose of in terms of the judgment.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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