

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(I) **CRA-D-365 of 2019 (O&M)**

Sailesh Kumar	<i>Versus</i>	Appellant
State of Punjab		Respondent

(II) **CRA-S-1711-2019 (O&M)**

Anuradha Patel	<i>Versus</i>	Appellant
State of Punjab		Respondent

(III) **MRC-4-2019 (O&M)**

State of Punjab	<i>Versus</i>	Prosecutor
Sailesh Kumar		Respondent

Date of Decision:- 08.03.2021

CORAM: Hon'ble Mr. Justice Jitendra Chauhan
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Tejinderbir Singh, Advocate for the appellants.
Mr. H.S. Sullar, Addl. A.G., Punjab for State.

(proceedings conducted through video conferencing)

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Gurvinder Singh Gill, J.

1. This judgment shall dispose off above mentioned reference made by learned Additional Sessions Judge, Bathinda in terms of Section 366 Cr.P.C. for confirmation of death sentence as well as two appeals filed on behalf of Sailesh Kumar and Anuradha Patel as all of them arise out of the same judgment i.e.

judgment dated 15th March, 2019 passed by learned Additional Sessions Judge,

Bathinda vide which the accused have been sentenced as under :-

Sr. No.	Name of accused	Offence u/s	Sentence	Fine	In default of payment of fine
1	Sailesh Kumar	302 IPC	Death sentence (to be hanged by the neck till he is dead)	₹10,000/-	
		365 IPC	To undergo rigorous imprisonment for seven years	₹10,000/-	To further undergo imprisonment for one year
		201 IPC	To undergo rigorous imprisonment for five years	₹10,000/-	To further undergo imprisonment for one year
2	Anuradha Patel	201 IPC	To undergo rigorous imprisonment for five years	₹10,000/-	To further undergo imprisonment for one year

2. The matter pertains to murder of Vipin Kumar Shukla i.e. husband of complainant Kumkum Shukla. Vipin Kumar Shukla went missing on 8.2.2017, whose body was found shredded into pieces on 21.2.2017. The FIR (Ex. PW10/A) was lodged by complainant Kumkum Shukla on 15.2.2017, the translated gist of which reads as under :-

“I am a resident of above mentioned address and do household work. I have two sons. My husband Vipin Shukla was posted as Corporal at Air Force Station Bhisiana where he had joined upon his transfer in the year 2014. Previously, my husband had been residing without family but since 27th December, 2016, he had started residing with his family in quarter No. 208/4, Air Force Station, Bhisiana. My husband served at AFWA shop. On 8.2.2017, my husband after returning back home at about 8:45 p.m.,

left for visiting temple but did not return back. We had submitted an application in Police Post, Baluana on 9.2.2017. Despite search, my husband could not be found anywhere. Now, I suspect that some unknown person had abducted my husband Vipin Shukla and has kept him somewhere. Legal Action be taken. I have made my statement, which is correct.

Sd/-
Kumkum Shukla”

3. A week after lodging of the FIR i.e. on 21.2.2017, Kumkum Shukla and her father-in-law Shri Triveni Shukla came to know that Sailesh Kumar and Shashi Bhushan Patel had abducted Vipin Kumar and had murdered him and that they had concealed his dead body after cutting the same into pieces and that Anuradha Patel wife of Sailesh Kumar had instigated them and had also helped them in concealing the dead body. Upon getting said information, they both went to the quarter of the accused where they noticed a foul smell emanating and they saw Anuradha Patel was trying to shut doors and windows of their house on account of which they became sure that the aforesaid three persons had murdered Vipin Shukla and had concealed the dead body in their house. The said information was conveyed to the police upon which the police came to the spot. The matter was investigated, during the course of which Sailesh Kumar was interrogated on 21.2.2017 who suffered a disclosure statement pursuant to which he got recovered 16 black coloured ploythene bags containing pieces of dead body which were kept in his house. Inquest proceedings were conducted. Post-mortem examination was got conducted on the dead body. Upon conclusion of investigation, a report under Section 173 Cr.P.C. was presented against the accused Sailesh Kumar and Anuradha Patel in the Court of learned JMJC Bathinda. Shashi Bhushan Patel could, however,

not arrested. The learned JMIC, Bathinda vide his order dated 13.7.2017 committed the case to the Court of Sessions. The learned Additional Sessions Judge, upon finding sufficient grounds to presume that the accused had committed offences punishable under Sections 120-B/365/302/201 IPC, framed charges against the accused for the said offences vide order dated 25.7.2017.

4. The prosecution, in order to substantiate its case examined as many as 18 prosecution witnesses. The gist of their depositions is briefly referred to hereinunder.
5. PW-1 Kumkum (complainant) deposed in tune with the allegations levelled in the FIR. She further specifically stated that on 21.2.2017 while she alongwith her father-in-law Triveni Shukla and others were searching for her missing husband, she heard two young persons saying that Sailesh Kumar alongwith her brother-in-law Shashi Bhushan Patel had abducted Vipin Kumar upon instigation of Anuradha wife of Sailesh Kumar and had killed him and after cutting his body into several pieces had kept the same concealed and that their residential quarter was emitting foul smell. She alongwith her father-in-law rushed to the residential quarter of Sailesh Kumar where it was observed that foul smell was emanating from the said premises. Anuradha was noticed standing there but upon seeing the complainant, she started shutting the doors and windows of the quarter. PW-1 further stated that they immediately informed the police and the police came to the spot and recovered chopped pieces of body of complainant's husband which had been kept wrapped in polythene bags in fridge, cupboard and bathroom. She further stated that she identified the chopped up body of her husband from her severed head and other

parts of body.

6. PW-2 Dr. Ishwar Tayal, Assistant Professor, Guru Gobind Singh Medical College, Faridkot stated that on 22.2.2017, the dead body which had been cut into pieces was received for postmortem and that he alongwith Dr. Rajiv Joshi and Dr. Gurjit Singh comprised a Board which conducted postmortem examination. He proved the postmortem report as Ex. PW2/C and opined the cause of death as injury no. 2 which was sufficient to cause death in the ordinary course of nature. The said injury is lacerated wound on parietal region of head wherein fracture of skull was also found.
7. PW-3 Dr. Amit Kamboj, Medical Officer, Civil Hospital, Bathinda stated that on 21.2.2017 while he was posted as Medical Officer at Civil Hospital, Bathinda, a dead body which had been cut into pieces was received for the purpose of conducting postmortem but upon inspection of the same, the Board opined that it was not possible to conduct the same at Civil Hospital, Bathinda and it was advised that the dead body be referred to GGS Medical College, Faridkot. He proved the said opinion as Ex. PW2/A1.
8. PW-4 Vinay Kumar, Branch Manager, SBI Branch Air Force Station, Bhisana deposed that Vipin Shukla was maintaining a bank account in SBI, Branch Air Force Station, Bhisana and that ATM Card No. 4591770007381424 was issued to Vipin Shukla, which was valid till July, 2035. PW-5 S.K.Paul, Canteen Manager, Air Force Station, Bhisana stated that Smart Cards had been issued for purchase of items from the Canteen situated at Air Force Station, Bhisana and that a card (Ex.PW5/A) had been issued in the name of Shri Vipin Kumar Shukla and that he had made a report Ex.PW5/C to this effect.

9. PW-6 Devendra Kumar Pundir, Assistant Adjutant, Air Force Station, Bhisana, deposed that Vipin Kumar Shukla was posted at Air Force Station, Bhisana from 27.5.2013 and had been allotted residential quarter No.208/4. He has proved the relevant extract from the record as Ex.PW6/A and a certificate issued on its basis as Ex.PW6/B. PW-7 Kalyan Dhengle, A.G.E. who had prepared the site plan of place of occurrence has proved the same as Ex.PW7/A.
10. PW-8 Squadron Leader M. Karpal, Air Force Station Jammu, stated that he had been posted at Air Force Station where Vipin Shukla was posted as a Corporal. He had come to know that Vipin Shukla went missing on 8.2.2017 regarding which FIR was lodged on 15.2.2017 by his wife. He deposed that on 21.2.2017 Kumkum Shukla wife of Vipin Shukla nominated Sailesh Kumar, his brother-in-law Shashi Bhushan and Anuradha as perpetrators of the crime and upon which the police interrogated Sailesh who suffered disclosure statement in his presence to the effect that he alongwith his brother-in-law Shashi Bhushan had abducted Vipin Shukla on the instigation of his wife Anuradha and had murdered him and had kept the dead body concealed in a trunk while shifting from his old quarter to his new quarter No. 812/4 on 9.2.2017. PW-8 further deposed that Sailesh Kumar disclosed that subsequently, he with the help of his brother-in-law had cut the dead body of Vipin into pieces which were put in 14 different plastic bags in his new quarter and that he had kept them concealed there and could get the same recovered. PW-8 proved the aforesaid disclosure statement as PW8/A while identifying his signatures upon the same. He further deposed that pursuant to the aforesaid disclosure statement, the accused Sailesh Kumar got recovered 16 plastic bags containing body parts of deceased and

also the shoes and clothes of the deceased which were identified by Triveni Shukla father of the deceased. He duly proved the recovery memos in respect of the aforesaid plastic bags which were taken into possession by the police as Ex.PW8/B and PW8/C. He also proved other search memos and arrest memos as PW8/D to PW8/G. PW-8 further stated that on 23.2.2017 he was again associated with the investigation when Sailesh Kumar made a disclosure statement to the effect that he had thrown away the mobile phones of Vipin Shukla in a well and that pursuant to the said disclosure statement, the two phones were got recovered, which were taken into possession vide recovery memo PW-8/I.

11. PW-9 Anil Kumar, Warrant Officer, Air Force Station Bhisana has proved a certificate Ex.PW9/A pertaining to posting of accused Sailesh Kumar at Air Force Station, Bhisana. PW-10 ASI Jangir Singh stated that on 23.2.2017, accused Sailesh Kumar upon being interrogated in his presence had suffered disclosure statement to the effect that on 8.2.2017 he alongwith Shashi Bhushan had abducted and killed Vipin Shukla and had cut his body into pieces and that the weapons of offence i.e. fire axe, iron '*kappa*' and also the purse of Vipin Shukla had been kept concealed by him by burying the same besides the boundary wall of Air Force Station, Bhisana and that he could get the same recovered. He proved the disclosure statement as Ex.PW10/C. He further deposed that pursuant to said disclosure statement, Sailesh Kumar led the police party to the place of concealment of weapon of offence and got the same recovered along with purse of the deceased which were taken into possession vide recovery memo Ex.PW10/D. He also proved the sketches of the recovered weapon as PW10/E and Ex.PW10/F. He further stated that

thereafter the accused also led the police party to a well and got two mobile phones of deceased recovered, which were recovered in the presence of Squadron Leader M. Karpal, who had been associated with the police party and the same were taken into possession vide recovery memo Ex.PW-8/I.

12. PW-11 Tirveni Shukla, father of deceased stated in corroboration to the statement of complainant PW-1 as regards the murder of the deceased by the accused and regarding recovery of body parts of deceased from the house of the accused. He also stated that he identified parts of body of Vipin Kumar and also his shoes and clothes which were taken into possession vide recovery memo PW-8/B. PW-12 HC Hardev Singh who had clicked the photographs of the place from where the dead body was recovered proved the same as Ex.PW12/A to PW12/H and a CD in respect of the same as Ex.PW12/I.
13. PW-13 ASI Parminder Singh, who is the Investigating Officer in the instant case has stated in detail in respect of the entire investigation conducted in the matter right from lodging of FIR upto the filing of challan. He has deposed about the accused making a disclosure statement in the presence of PW-8 and PW-18 and regarding the accused leading the police to recovery of dead body from his house which had been cut into pieces. He has also stated in respect of the accused having got recovered blood-stained fire-axe and '*daah*' which had been kept concealed by him and as regards getting the same examined from Chemical Examiner who found the same to be blood-stained. He deposed that he also visited the old quarter of the deceased from where the dead body had been taken to his present quarter in a trunk and that he had got the site plan of place of occurrence prepared. He also deposed about recovery of the mobile phones of deceased from a well pursuant to disclosure statement made by the

accused. He proved various documents which were prepared in his presence during the course of investigation. He further stated that the clothes and shoes of Vipin Kumar were identified by his father Triveni Shukla and that his face was also identified by him. PW-14 Sgt. Ramesh Kumar Singh proved record pertaining to allotment of quarter No. 214/10 and 812/04 to Sailesh Kumar and as regards allotment of quarter No. 208/4 to Vipin Shukla(deceased). PW-15 SI Prabhjot Kaur who had been entrusted with a part of the investigation deposed in respect of the same as regards recording statement of Nodal Officer, BSNL and Nodal Officer, Airtel and as regards recording the statement of some other witnesses. PW-16 Pankaj Sharma, Alternate Nodal Officer, Airtel proved the application form pertaining to mobile No. 94632-08308 issued by Airtel Limited in the name of Vipin Kumar as Ex.PW16/A. PW-17 Bal Mukand, Nodal Officer, BSNL proved the application pertaining to mobile No.94652-08308 issued by BSNL in the name of Vipin Kumar Shukla as Ex.PW17/A.

14. PW-18 Lakhwinder Singh Gill, Tehsildar, Moga, deposed that on 21.2.2017, he was posted as Tehsildar-cum-Executive Magistrate, Bathinda and was deputed to join the police party investigating the present case and had gone to Air Force Station Bhisana where he met the police party headed by ASI Parminder Singh. He stated that Sailesh Kumar was interrogated in his presence wherein he suffered a disclosure statement to the effect that he alongwith his brother-in-law Shashi Bhushan had kidnapped and killed Vipin Shukla at the instance of his wife Anuradha and had kept concealed various parts of his body in his quarter. PW-18 deposed that pursuant to said statement Ex.PW-8/A, the accused led the police party to his quarter and got recovered body parts of the deceased from fridge, cupboard and bathroom which had been kept wrapped in

polythene bags. He further stated that the accused also got recovered the shoes and clothes of Vipin Kumar which had been kept in two separate polythene bags which were identified by Triveni Shukla, father of deceased.

15. The prosecution closed its evidence on 18.12.2018. Pursuant to closure of evidence of the prosecution, the entire incriminating evidence against the accused was put to him while recording his statement in terms of Section 313 Cr.P.C. so as to enable him to explain the circumstances appearing against him. However, both the accused denied the entire allegations in toto and pleaded innocence and took a stand that they have been falsely implicated.
16. The accused in their defence examined DW-1 ASI Jagrant Singh who proved the DDR pertaining to arrival and departure of ASI Parminder Singh at Police Post Balluana. DW-2 T.K.Swain, Chief Ward Master, Military Hospital Cantt. produced the medical record pertaining to pregnancy of Anuradha. DW-3 Atul Shakya, Sergeant, Station Medical Care Centre, Air Force Station, Bhisana proved the record pertaining to the vehicle sent to military hospital as per which Anuradha Patel had been taken to hospital for treatment. The accused, after tendered into evidence a birth certificate in respect of child born to Anuradha Patel, closed their evidence.
17. The learned trial Court, upon appraisal of the evidence led by prosecution and also the evidence led by the accused held that the prosecution had been successful in establishing the charges framed against the accused and consequently held the accused Sailesh Kumar guilty of having committed offences punishable under Sections 302/365/201 IPC and accused Anuradha Patel guilty of having committed offence punishable under Section 201 IPC vide judgment dated 15.3.2019. The learned trial Court while considering the

quantum of sentence to be imposed, held it to be a case justifying imposition of penalty of death and while imposing the same has referred the matter to this Court for confirmation. Apart from the reference sent by the learned Additional Sessions Judge, both the accused have also filed separate appeals challenging the impugned judgment vide which they have been found guilty, which are all being taken up together.

18. The learned counsel for the appellants has assailed the impugned judgment *inter-alia* on the ground that it is a case based totally on circumstantial evidence, which is mainly in the shape of disclosure statement of the accused Sailesh Kumar himself which can hardly be said to be a substantial or convincing piece of evidence and is rather a weak type of evidence which would not justify conviction of the appellants in the absence of any other corroborative evidence pointing towards the guilt of the accused.
19. The learned counsel has further submitted that there are several chinks in the evidence led by prosecution and that several links in the chain of circumstantial evidence are missing. It has been submitted that while the husband of the complainant is stated to have gone missing on 8.2.2017 and the FIR came to be lodged a week thereafter on 15.2.2017 wherein nobody was named as accused, the appellants came to be nominated as accused on the basis of some overheard conversation between two young boys which the complainant claims to have overheard on 21.2.2017 to the effect that the deceased had been killed by the appellant Sailesh Kumar and Shashi Bhushan Patel at the instigation of Anuradha, whereas neither the said young persons are named anywhere nor identified nor examined by the prosecution. It has been submitted that it remained unexplained as to how the said two young persons came to know

about the names of the accused.

20. It has also been submitted that since it is a case based on circumstantial evidence, the motive for committing offence would assume importance and since there is absolute lack of motive in the instant case, the conviction of the appellants based on skeltal circumstantial evidence cannot sustain.
21. It has further been submitted that there is no identification of the body parts stated to have been recovered at the instance of the accused and that it cannot be said with certainty that the body parts belonged to deceased Vipin Shukla. The learned counsel has submitted that the police ought to have resorted to some scientific investigation and could have got DNA examination conducted so as to establish the identity of the dead body which was infact beyond recognition.
22. The learned counsel while arguing the case on behalf of appellant Anuradha submitted that there is absolutely no evidence against Anuradha as unlike co-accused Sailesh Kumar, the appellant Anuradha is not even stated to have made any disclosure statement and has been nominated as an accused solely on account of the fact that she happens to be wife of Sailesh Kumar. It has been submitted that there is no evidence to suggest that she had joined hands with her co-accused for the purpose of murdering the deceased or for disposing off his dead body. It has been submitted that infact the appellant Anuradha was 8 months pregnant at the time of the alleged occurrence and in that physical and mental state, she could hardly be expected to have participated in the occurrence in any manner and as such deserves to be acquitted.
23. Opposing the petition, the learned State counsel has submitted that the

evidence collected during investigation is of unimpeachable quality which fully establishes the case of prosecution. It has been submitted that the bare fact that the dead body of the deceased which had been chopped into pieces was recovered at the instance of the appellant Sailesh Kumar from his own house hardly leaves anything to be imagined particularly when apart from recovery of the dead body, the accused also got recovered the weapon of offence and also the mobile phones of the deceased which had been kept concealed by him. It has been submitted that the entire recovery proceedings were conducted in the presence of a well placed officer of Air Force i.e. PW-8 Sqn. Ldr. M. Karpal and also in the presence of PW-18 Lakwinder Singh Gill, Tehsilar-cum-Executive Magistrate, whose testimonies could not be shattered despite lengthy cross-examination. It has, thus, been submitted that in view of the clinching evidence which has gone unrebutted, the findings of the trial Court as regards guilt of appellants do not suffer from any infirmity. It has further been submitted that the brutal manner in which the deceased was murdered and his body was cut into pieces would fully justify imposition of death penalty upon appellant Sailesh Kumar. The learned State counsel has thus, submitted that the murder reference be accepted and the sentence of death as imposed upon the appellant Sailesh Kumar be confirmed and that both the appeals filed by the two appellants be dismissed.

24. We have considered rival submissions addressed before this Court and have also gone through record of the case.
25. It is certainly not in dispute that it is a case based on circumstantial evidence wherein the dead body was recovered after about 15 days from the day when the deceased Vipin Shukla went missing. Though, in the FIR recorded on

15.2.2017, nobody is named as an accused but subsequently, on 21.2.2017, the complainant came to know about the accused. Though, it is correct that the source from which the complainant received the information regarding the identity of the accused on 21.2.2017 is not duly established, but the information which the complainant had gathered on 21.2.2017 was found to be totally correct and duly established. Pursuant to the complainant coming to know about the names of the accused, the complainant went near the house of the accused and noticed foul smell emanating from the said house and thereafter the police was informed. PW-13 ASI Parminder Singh along with other police officials rushed to the spot and associated Sqn. Ldr. Mayank Karpal and also called Tehsildar, Bathinda, Lakhwinder Singh at the spot. Upon interrogating Sailesh Kumar, he suffered a disclosure statement that he alongwith his brother-in-law Shashi Bhushan had kidnapped and killed Vipin Shukla at the instigation of his wife and had concealed parts of his body in his quarter which he could get recovered. Pursuant to the said information, the accused led the police party to his house and got recovered 16 polythene bags which had been kept in fridge, cupboard and bathroom which contained body parts of the deceased and also the shoes and clothes of the deceased.

26. No doubt, a disclosure statement on its own would not be categorized as a very strong piece of evidence but when accompanied by recovery of incriminating evidence as in the instant case where the dead body has been recovered and that too from the house of the accused himself, the disclosure statement and the recovery made pursuant thereto cannot be brushed aside. It needs to be mentioned that the disclosure statement and also the recovery of the dead body were made in the presence of two independent and respectable persons of the

society i.e PW-8 M. Karpal, Squadron Leader, Air Force, and PW-18 Lakhvinder Singh, Executive Magistrate-cum-Tehsildar, who had been associated with investigation at the spot and who have categorically stated regarding the said factum of the accused having suffered a disclosure statement Ex.PW-8/A in their presence and also as regards recovery of the dead body at his instance from his residence. Their statements could not be shattered despite their lengthy cross-examination. The recovery was also got photographed and the photographer i.e. PW-12 HC Hardev Singh specifically stated that he had been called at the spot where said Suresh Kumar got recovered the dead body which had been cut into pieces. He deposed that he had clicked photographs of the recovered pieces of dead body and duly proved the said photographs as Ex.PW-12/A to Ex.PW-12/H. It is pertinent to mention here that during the course of cross-examination not a single suggestion was given to him that the recovery was not made in his presence or that he had not clicked the photographs at the spot. In these circumstances the effect of the accused having made a disclosure statement and having got recovered the dead body from the house cannot be doubted in any manner.

27. Though, it has vehemently been argued by learned counsel for the appellants that the dead body was not identified but a perusal of the testimonies of the complainant and of father of deceased show that the identification was established not only from the shoes and clothes of deceased Vipin Kumar but the same was duly identified from face and body parts. The relevant extract from statement of PW-1 Kumkum, wife of deceased, reads as follows :-

“I had identified the chopped up body of my husband from his severed head and other parts”

The relevant extract from statement of PW-11 Triveni Shukla, father of deceased, reads as follows :-

“The body parts of Vipin Kumar were identified by me alongwith shoes and clothes.”

28. It is worth noticing that during the course of cross-examination of PW-1 Kumkum and of PW-11 Tirveni Shukla, no suggestion as regards incorrect identification was given to the said witnesses. Hon'ble Supreme Court in a recent judgement delivered in Arvind Singh vs. The State of Maharashtra, AIR 2020 (Supreme Court) 2451, while discussing the effect of omission of cross-examination as regards a material aspect held as follows:

“63. Thus, the prosecution is required to bring home the guilt beyond reasonable doubt. It is open to an accused to raise such reasonable doubt by cross-examination of the prosecution witnesses to discredit such witness in respect of truthfulness and veracity. However, where the statement of prosecution witnesses cannot be doubted on the basis of the touchstone of truthfulness, contradictions and inconsistencies, and the accused wants to assert any particular fact which cannot be made out from the prosecution evidence, it is incumbent upon the accused to cross-examine the relevant witnesses to that extent. The witness, in order to impeach the truthfulness of his statement, must be crossexamined to seek any explanation in respect of a version, which accused wants to rely upon rather to raise an argument at the trial or appellate stage to infer a fact when the opportunity given was not availed of as part of fair play while appreciating the statement of the witnesses.”

29. Since, no cross-examination was conducted on PW-1 Kumkum and PW-11 Tirveni Shukla as regards identification of dead body, such an argument that the body could not be identified is not tenable. It was also argued by the

learned counsel for the appellants that the body was beyond recognition and as such, it was not possible for PW-1 Kumkum and PW-11 Tirveni Shukla to have identified the dead body. However, a perusal of the postmortem report Ex.PW2/C shows that the observation recorded therein is that the facial features were bloated. The relevant extract reads as under :-

“Facial features are bloated, pultaceous foul smelling orbital mass bulging out from sockets.”

30. There is nothing in the postmortem report that the body was beyond recognition. In fact, even the doctor was not given any such specific suggestion that the face was beyond recognition. It is no doubt correct that DNA examination was not conducted but there is no mandate that the same needs to be conducted in each and every case. When the identification is otherwise possible and there is no cross-examination to the statement regarding identification made by PW-1 Kumkum and PW-11 Tirveni Shukla, i.e. the wife and father of deceased, the absence of DNA examination will not cause any kind of dent in the case of prosecution. The wife and father would be the best persons to identify the dead body. They couldn't have possibly identified a dead-body of a stranger as dead-body of Vipin Shukla as they, otherwise at that point of time when Vipin Shukla was missing, would be hoping against hope that their son or husband might be alive somewhere. They certainly would not have preferred to project falsely that their son or husband had died by identifying a stranger's dead body as of Vipin Shukla. Consequently, it is held that the dead body recovered from the house of the accused was of deceased Vipin Shukla.

31. The prosecution has not led any evidence as regards the existence of any

motive with the accused for having eliminated the deceased. Proving a motive, particularly in a case based on circumstantial evidence is normally insisted being a corroborative piece of evidence. However, the said requirement cannot be said to be an absolute pre-requisite or *sin-qua-non* for establishing the guilt of the accused. In case the evidence led by the prosecution is found to be of sterling quality, trustworthy and convincing which leads to one and only one conclusion regarding the guilt of accused, the absence of motive would take a back seat. Recovery of dead body from house of accused is one such fact which rules out scope of doubt. As such, the said contention raised on behalf of the appellants cannot be accepted.

32. In the instant case wherein the dead body has been recovered at the instance of the deceased in the presence of respectable persons of the rank of Squadron Leader of Air Force (PW-8) and Executive Magistrate-cum-Tehsildar (PW-18), a burden lay heavy on the accused in terms of Section 106 of the Evidence Act to explain the circumstances regarding recovery of dead body from his own house. The accused has, however, not come out with any explanation to justify his possession of chopped body of deceased. In this context, a reference may be made to provisions of Section 106 of Indian Evidence Act, 1872. Section 106 of Indian Evidence Act is in the nature of an exception to general rule enshrined in Section 101 of Indian Evidence Act, which mandates that the burden of proof lies on the person who asserts the existence of such fact. Section 106 in the Indian Evidence Act, 1872 reads as follows :-

106. Burden of proving fact especially within knowledge. -

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

33. In a judgment reported as (2012) 1 SCC 10 Prithipal Singh v. State of Punjab, the Hon'ble Apex Court has held that if a fact is especially in the knowledge of any person, then burden of proving that fact is upon him and that it would be impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. It was further held therein that Section 106 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 existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, offers any explanation which might drive the court to draw a different inference. Thus, it was held that Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused.
34. The Hon'ble Apex Court, in another judgment reported as (2009) 6 SCC 61 Narendra v. State of Karnataka, where a woman was done to death in the bedroom of the matrimonial home and the accused raised a plea of alibi that he had gone to another place for purchase of milk and was therefore not involved with the crime, upheld conviction of accused wherein the plea of alibi was rejected, while resorting to provisions of Section 106 of the Indian Evidence Act.
35. The Hon'ble Apex Court, in (2016) 12 SCC 665 Harijan Bhala Teja v. State of Gujarat in somewhat identical circumstances where the dead-body had been found in the house of the accused affirmed the judgment of the High Court

reversing acquittal of accused. The relevant extract from cited judgment is reproduced below for the sake of ready reference:

“ Section 106 of the Evidence Act, 1872 provides that when any fact is special within the knowledge of any person, the burden of proving that fact is upon him. Since it is proved on the record that it was only the appellant who was staying with his wife at the time of her death, it is for him to show as to in what manner she died, particularly when the prosecution has successfully proved that she died homicidal death.”

36. The accused having failed to explain the circumstances under which the dead body of deceased was found in his house though a burden lay on him in terms of provisions of Section 106 of Evidence Act is a fact, which points towards complicity of the accused.
37. Further, the aforesaid disclosure statement and recovery of dead body also finds corroboration from the recovery of the weapon of offence i.e. a fire axe at the instance of the accused, pursuant to his disclosure statement (Ex. PW-10/C), which as per report of FSL(Ex.PW-13/J) was found to be blood stained. Still further, the recovery of two mobile phones belonging to the deceased at the instance of accused which were thrown in a well and were recovered vide recovery memo (PW-8/I) is virtually a final nail in the coffin so as to seal the case of prosecution. The sims recovered from the phones were duly proved by PW-16 Pankaj Sharma, Alternate Nodal Officer, AIRTEL and PW-17 Bal Mukand S.D.E. cum Nodal Officer, BSNL, to have been issued in the name of deceased.
38. The discussion made above, shows that the prosecution has proved the following circumstances which point towards the guilt of accused:

- (i) the overheard conversation of two boys by the complainant and her father-in-law to the effect that Vipin Kumar been killed by accused who had concealed his dead-body, which was found to be correct upon recovery of dead body from house of accused;
- (ii) recovery of dead-body of Vipin Kumar from house of accused pursuant to disclosure statement made by accused Sailesh Kumar;
- (iii) recovery of weapon used for killing Vipin Kumar and also his wallet containing his Canteen Card, Aadhar Card and ATM Card, pursuant to disclosure statement made by accused Sailesh Kumar;
- (iv) recovery of two mobile phones of Vipin Kumar from house of accused pursuant to disclosure statement made by accused Sailesh Kumar;
- (v) Report of FSL indicating presence of blood stains on weapon of offence.

39. In the instant case, the quality of circumstantial evidence led by prosecution is of the highest standard. What is required is not the quantitative but qualitative, reliable and probable circumstances to complete the chain connecting the accused with the crime. If the conduct of the accused in relation to the crime comes into question, the absence of ordinary course of conduct of the accused and human probabilities of the case also would be relevant. The Court has to weigh the cumulative effect of the evidence of circumstances and if it reaches the conclusion that the accused committed the crime, the charge must be held proved and the conviction and sentence would follow. In the instant case, the accused having got recovered the dead body from his own residence and that too in the presence of two independent and respectables of the society i.e PW-8 M. Karpal, Squadron Leader, Air Force, and PW-18 Lakhvinder Singh, Executive Magistrate-cum-Tehsildar, and the said proceedings having been duly photographed and the accused being unable to furnish any explanation in respect of the presence of said dead body in his house with further

corroborative evidence in the shape of recovery of the blood stained weapons used in the offence and also the recovery of mobile phones of the deceased at the instance of the accused leaves hardly anything to be explained as regards the guilt of accused. In this respect reference can be made to the following observation of this Court in the case of ***Trimukh Maroti Kirkan v. State of Maharashtra, reported in (2006) 10 SCC 681:***

"In a case based on circumstantial evidence where no eye-witness account is available there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete."

40. Thus, this Court does not find any infirmity as regards the findings of the trial Court to the effect that the deceased had been abducted by the appellant Sailesh Kumar and had been murdered by him and his dead body had been cut to pieces so as to conceal the same. Consequently, the conviction of the appellant Sailesh Kumar for offences under Section 302/365/201 IPC is upheld.
41. As regards, the appellant Anuradha Patel, the trial Court has held her guilty of having committed offence punishable under Section 201 IPC on the premise that she being wife of Sailesh Kumar had helped in keeping the dead body concealed in her house which had been cut into small pieces. In the instant case, it is not in dispute that the appellant Anuradha Patel was pregnant and was carrying a pregnancy of about 8 months when the occurrence took place and infact shortly thereafter she delivered a child as would be apparent from the birth certificate Ex. DX as per which Anuradha Patel delivered a child on

5.3.2017. In these circumstances, when Anuradha Patel was 8 months pregnant as at the time of occurrence, it is highly unlikely that she would have nursed thoughts of murdering the deceased or would have participated in chopping the dead body of deceased. There is no evidence whatsoever to the said effect. Neither is there any disclosure statement of the accused Anuradha Patel nor is there any other overt act on her part to show her participation in chopping the dead body of deceased. She is mainly being attributed with the offence of Section 201 IPC on account of the fact that she happens to be wife of the main accused Sailesh Kumar and resides in the same house. This Court is, however, unable to subscribe to the said view as regards her complicity solely on account of the fact that she happens to be wife of main accused when there is no direct evidence to show her involvement or participation in concealment of the dead body. However, all said and done, she being a resident of the same house where the dead body was kept concealed cannot feign ignorance about commission of the offence by her husband and as regards the presence of material evidence in her house i.e. the body parts of the deceased. She was under a bounden duty to have reported the matter to the police even if the same was to lead to inculpating her husband. She not having done so has rendered herself liable for having committed offence under Section 202 IPC. Section 202 IPC reads as follows :-

“202. Intentional omission to give information of offence by person bound to inform.—

Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

42. Consequently, the conviction of the appellant Anuradha Patel for offence under Section 201 IPC cannot sustain and is hereby modified to that of an offence under Section 202 IPC.
43. The conviction of appellant Sailesh Kumar for offence under Section 302 IPC, apart from other offences under Sections 365 and 201 IPC, having been maintained, the question which eventually falls for consideration is whether the instant case satisfies the test of 'rarest of the rare cases' and falls in such exceptional category where all other alternative sentence would not be justified. A Constitution Bench of Hon'ble Supreme Court in Bachan Singh v. State of Punjab, (1980) 2 SCC 684, while upholding the constitutionality of death penalty under Section 302 I.P.C., struck a note of balance between the protagonists of the deterrent punishment on one hand and the humanity crying against death penalty on the other and elucidated the strict parameters to be adhered to by the Courts for awarding death sentence. While emphasising that for persons convicted of murder, life imprisonment is the 'rule' and death sentence an 'exception', it held that the death sentence be not awarded "save in the rarest of the rare cases" when the alternative option is foreclosed.
44. In Machhi Singh v. State of Punjab, (1983) 3 SCC 470, the Hon'ble Supreme Court while expounding on the tests to determine the "rarest of the rare" cases in which the death sentence can be inflicted held that the relevant factors to be taken into consideration may be motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as:
- (i) Murder is in extremely brutal manner so as to arouse intense and extreme indignation of the community.
 - (ii) Murder of a large number of persons of a particular caste,

community, or locality, is committed.

- (iii) Murder of an innocent child; a helpless woman, is committed.

Some illustrations of brutal murder have been given therein as follows:

- (i) when the house of the victim is set aflame with the end in view to roast him alive in the house.
- (ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.
- (iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.”

45. Bachan Singh's case(supra) and Machhi Singh's case(supra), continue to serve as the foundation-stone as far as the question of sentence in murder cases is concerned. In the instant case, the trial Court has come to a conclusion that it is a case falling within the parameters of the 'rarest of rare' case attracting the penalty of death. The trial Court was mainly swayed by the fact that the dead body had been brutally cut into small pieces and that such gruesome manner in which Vipin Kumar had been killed would shock the conscience of the community at large. This Court, however, finds that it is a case where the death of Vipin Shukla is opined to have been a result of an injury sustained by him on parietal region of his head. There is nothing on record to show that at the time of causing his death, he had been brutally tortured or had been inflicted multiple injuries painfully or that his body parts had been cut slowly in the process of murdering him. On the other hand, it is apparently a case where after killing the deceased, his dead body was cut into small pieces for

the purpose of concealing evidence which is infact a post crime conduct and which cannot be said to be an aggravating circumstance for the purpose of considering the quantum of punishment. The present case would not meet the parameters laid down in the aforesaid two cases justifying imposition of the death sentence. On balancing aggravating and mitigating circumstances, in our opinion, the present case does not fall under the category of 'rarest of rare' case i.e. there being no alternative but to impose death sentence. However, the present case would fall within the special category of cases, where the appellant should be directed to suffer sentence for life i.e. till his natural death, without remission/commutation under Sections 432 and 433 Cr.P.C., 1973.

46. Consequently, while upholding the conviction of the appellant Sailesh Kumar, the sentence of death as imposed upon appellant in respect of offence under Sections 302 IPC, is commuted to life imprisonment out of which the appellant would have to mandatorily serve a minimum 20 years of actual imprisonment without being entitled to any remission/commutation. The convictions in respect of remaining offences under Sections 365 IPC and 201 IPC and the sentences imposed thereupon as awarded by the trial Court are upheld. The fine shall remain unaltered. The appeal bearing No. CRA-D-365-2019 is dismissed with the aforesaid modification in sentence. The Murder Reference no.4 of 2019 also stands decided accordingly.
47. As regards the appellant Anuradha Patel, since her conviction has been altered from an offence under Section 201 IPC to an offence under Section 202 IPC and said offence under Section 202 is punishable for a maximum period of 6 months, the sentence as imposed by trial Court upon Anuradha Patel is also reduced from 5 years to 6 months, being a sentence for offence under Section

202 IPC. The fine shall, however, remain the same. The appeal filed by Anuradha Patel i.e. CRA-S-1711-2019, stands partly allowed to the extent indicated above.

(Jitendra Chauhan)
Judge

(Gurvinder Singh Gill)
Judge

08.03.2021

kamal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No