

JAMNADAS

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v.

STATE OF M.P.

(Criminal Appeal No. 156 of 2015)

JUNE 29, 2016

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[PRAFULLA C. PANT AND DR. D.Y. CHANDRACHUD, JJ.]

Penal Code, 1860 – ss. 302/34, 201, 304-B and 498A – Murder of young bride – Within six months of marriage – Body chopped off into two pieces and thrown in the Park – Blood stains found in the matrimonial house – Pws 1 to 5 had seen one of the accused (mother-in-law) throwing the dead body in the park – Charge-sheet against husband, father-in-law, mother-in-law and brother-in-law of the deceased – Defence plea that the deceased had gone to her relative's place and thereafter, she was missing – Brother-in-law discharged – Husband, father-in-law and mother-in-law convicted by trial court – Conviction affirmed by High Court – Appeal in Supreme Court by mother-in-law withdrawn – Present appeal by the husband and father-in-law – Held: Present is a case of circumstantial evidence – The chain of circumstances proved on record against the appellants-accused are complete – The defence version has also been proved to be false, which is an additional link in the chain of circumstances – It is proved that the appellants-accused had common intention with the co-accused (mother-in-law) in the commission of brutal murder of the deceased – Conviction confirmed.

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Evidence Act, 1872 – s.106 – Burden of proof – Where an offence like murder is committed in secrecy, inside the house, though the initial burden is on the prosecution, but such burden would be lighter – There is corresponding burden on the accused to explain as to how the death has occurred.

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Dismissing the appeals, the Court

HELD: 1. The present case is a case of circumstantial evidence. In a case of circumstantial evidence charge can be said to have been established, when (i) The circumstances from

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A which the conclusion of guilt is drawn should be fully established. The accused must be, and not merely may be guilty, before a court can convict and the mental distance between “may be” and “must be” is long and divides vague conjectures from sure conclusions; (ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, (iii) The circumstances should be of a conclusive nature and tendency; (iv) They should exclude every possible hypothesis except the one to be proved; and (v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. [Para 18][614-F-H; 615-A-B]

Sharad Birdhichand Sarda v. State of Maharashtra
(1984) 4 SCC 116 : 1985 (1) SCR 88 – relied on.

D 2. The chain of circumstances proved on the record against the appellants are (i) that the deceased was living in the house of the appellants, after her marriage; (ii) that her death was homicidal in nature; (iii) that she was murdered in the house of the appellants where blood stains were found; (iv) that after murder, her body was cut into two pieces; (v) that the dead body was thrown in the park by her mother-in-law who was seen doing so by PW 1 to PW 5; (vi) that anti-mortem and post-mortem injuries read with statement of doctor establish that the crime could not have been committed by one person alone; (vii) that there were in all five members in the family; (viii) that the appellants have failed to disclose as to how deceased has died which was especially within their knowledge; (ix) that it is nobody’s case that any outsider came in the house; (x) that there was no report lodged to police by the appellants regarding homicidal death of the deceased; (xi) and that false explanation was given by the appellants in their statements under Section 313 Cr.P.C. which is an additional link on the record against them, in the chain of circumstances. The chain of circumstances against the appellants is complete. [Paras 30, 31][619-G-H; 620-A-H; 621-A-C]

H 4. Where an offence like murder is committed in secrecy, inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount

of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation. [Para 22][617-D-F]

Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681 : 2006 (7) Suppl. SCR 156; *Suresh and another v. State of Haryana* (2015) 2 SCC 227 – relied on

Selvi and others v. State of Karnataka (2010) 7 SCC 263 : 2010 (5) SCR 381; *Tomaso Bruno and another v. State of Uttar Pradesh* (2015) 7 SCC 178 : 2015 (1) SCR 721- distinguished.

State of W.B. v. Mir Mohammad Omar and others (2000) 8 SCC 382 : 2000 (2) Suppl. SCR 712; *Narendra Singh and another v. State of M.P.* (2004) 10 SCC 699 : 2004 (3) SCR 1148 – referred to.

5. In a case of circumstantial evidence when the accused offers an explanation and that explanation is found to be untrue, then the same offers an additional link in the chain of circumstances, to complete the chain. In the present case the deceased was murdered inside the house and her body was thrown in the park, and was not missing from the house after going to her relative's place, as pleaded by the appellants in their statements under Section 313 of the Code of Criminal Procedure. They have taken a blatant false plea. The defence story that the deceased had gone to her relative's place and did not return home, gets completely belied as prosecution has proved to the hilt that the deceased was murdered inside the appellants' house. [Paras 25, 26, 29][618-D-E; 619-E-F]

Kuldeep Singh and others v. State of Rajasthan (2000)

- A **5 SCC 7 : 2000 (3) SCR 499**; *Rumi Bora Dutta v. State of Assam (2013) 7 SCC 417* - relied on.
Rajkumar v. State of M.P. 2004 (12) SCC 77 – distinguished.

Case Law Reference

- | | | | |
|---|--------------------------------|---------------|---------|
| B | 1985 (1) SCR 88 | relied on | Para 18 |
| | 2010 (5) SCR 381 | distinguished | Para 19 |
| | 2000 (2) Suppl. SCR 712 | referred to | Para 20 |
| | 2015 (1) SCR 721 | distinguished | Para 21 |
| C | 2006 (7) Suppl. SCR 156 | relied on | Para 22 |
| | 2004 (3) SCR 1148 | referred to | Para 23 |
| | (2015) 2 SCC 227 | relied on | Para 24 |
| | 2000 (3) SCR 499 | relied on | Para 26 |
| D | (2013) 7 SCC 417 | relied on | Para 27 |
| | 2004 (12) SCC 77 | distinguished | Para 28 |

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 156 of 2015

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WITH

CRL. A. No. 155 of 2015.

From the Judgment and Order dated 23.08.2012 of the High Court of Madhya Pradesh, Bench at Indore in Criminal Appeal No. 977 of 2007.

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Sushil Kumar Jain, Sr. Adv., Puneet Jain, Abhinav Gupta, Ms. Chhaya Kirti, Ms. Ankita Gupta, Ms. Pratibha Jain, P. K. Jain, Advs. for the Appellant.

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C. D. Singh, Sandeepan Pathak, Ms. Sylona Mohapatra, Ms. Saumay Kalra, Advs. for the Respondent.

The Judgment of the Court was delivered by

PRAFULLA C. PANT, J. 1. These appeals are directed against judgment and order dated 23.8.2012 passed by High Court of Madhya Pradesh, Bench Indore, whereby criminal appeal no. 977 of 2007 (filed

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by father-in-law of deceased), criminal appeal no. 993 of 2007 (filed by husband of deceased), and criminal appeal no. 1000 of 2007 (filed by mother-in-law of deceased) were dismissed. At the outset, it is relevant to mention that Special Leave Petition (Crl.) No. 9812 of 2013 filed by Dhanwantari (mother-in-law of deceased) was dismissed by this Court as withdrawn on 16.9.2014. The present criminal appeal nos. 156 of 2015 and 155 of 2015 have arisen out of Special Leave Petition(s) filed by father-in-law and husband of deceased, respectively.

2. It is a case where a young bride was brutally murdered within six months of her marriage, her body chopped off in two pieces and thrown in a park.

3. Prosecution story in brief is that on 16.9.2006 at about 19.50 hours (7.50 p.m.) PW 19 Constable Nirmal Kumar Patil received telephonic information at Police Control Room that a middle aged woman came on a scooty, and threw two bundles wrapped in bed sheets in Sewa Ram Zilani Garden, Patel Nagar, Indore, and that some blood stains were visible from the packets. On the basis of the telephonic information, Ext.P.33 was recorded at the Control Room. Within five minutes at about 19.55 hours (7.55 p.m.) the information was transmitted to the concerned police station Juni and information Ext. P.34 was recorded. After Dehati Murg intimation Ext.P.1 entered, PW 17 Head Constable Ashraf Ali left the Police Station Juni along with PW 12 Constable Mohd. M. Ahmad towards the spot. Enquiries were made in the same evening on which PW 1 Mukesh Jaiswal told that as usual on that day (16.09.2006) at about 5.30 p.m., he had gone to temple and was sitting with PW 5 Manohar @ Mannu, PW 4 Udhav Dass and PW 3 Narayana. They sent PW 2 Phugga @ Kamal to bring milk, and after sometime PW 2 Phugga @ Kamal came back and told them that one packet wrapped in colored bed sheet was lying in the park near walking track, in which blood spots were visible. The above named four persons with Phugga went towards the place, and saw the bundle with blood stains. Soon thereafter they saw a woman coming on an Activa who threw another packet, and went away. On this the telephonic information was given to the Control Room. Thereafter Murg inquiry was made by PW-35 SI Mohan Lal Purohit, who registered crime no. 431 of 2006 on the next day 17.9.2006 against unknown persons. Inquest report Ext.P-6 was prepared by the police on 17.9.2006 at about noon after dead body was identified as the one that of Bhoomi @ Richa by PW 6 Sanjay

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A Chhabra, cousin of the deceased. The dead body was sent in a sealed condition for autopsy.

B 4. Thereafter, house of the appellants i.e. 40, Sarvodaya Nagar (Indore) was searched. During investigation blood stains were found in the house of the appellants. Samples of blood stains were taken and search memo Ext.P-54, P-56 and P-57 prepared in the presence of PW 30 Suresh Neema and one Ramesh. Silver colour Activa bearing registration No. MP 09/JX-7556 was also seized.

C 5. The investigation revealed that marriage of Bhoomi @ Richa (deceased), daughter of PW-22 Rajesh Kumar Nachani, was solemnized with appellant Manoj on 22.4.2006 at Indore, whereafter she started residing in 40, Sarvodaya Nagar with her husband (Manoj), father-in-law (Jamnadas), Mother-in-law (Dhanwantari), brother-in-law (Vishal) and minor sister-in-law (Heena @ Madhuri).

D 6. On 19.9.2006, appellants Manoj and Jamnadas along with Dhanwantari (mother-in-law) were arrested. After their arrest, accused were medically examined by PW 27 Dr. G.L. Sodhi, who found marks of simple injuries on the person of Dhanwantari, and medical report Ext.P-50 was prepared. On 23.9.2016, Vishal (brother-in-law of deceased) was also arrested.

E 7. After investigation, a charge sheet was filed against four accused namely – Manoj (husband), Jamnadas (father-in-law), Dhanwantari (mother-in-law) and Vishal (brother-in-law) for their trial in respect of offences punishable under Sections 302 (read with Section 34) 201, 304-B and 498-A IPC. The case appears to have been committed by the Magistrate to the Court of Sessions where the trial court framed charge in respect of all the above offences against the first three accused. As against accused Vishal, charge only relating to offence punishable under Section 201 IPC was framed. All the accused pleaded not guilty and claimed to be tried.

G 8. Prosecution got examined PW 1 Mukesh Jaiswal (who saw Dhanwantari disposing of body of the deceased), PW 2 Phugga @ Kamal (who first noticed the thrown 1st packet), PW 3 Narayana (who was with PW 1), PW 4 Udhav Dass (who was also with PW1), PW 5 Manohar @ Mannu (who was also with above four, and informed the Police Control Room), PW 6 Sanjay Chhabra (cousin of the deceased, who identified the dead body), PW 7 Dinesh (Parking Stand wallah),

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PW 8 Yogendra (Hostile witness), PW 9 Rajesh Agrawal (Contractor of boundary wall of the park), PW 10 Constable Ram Babu Sharma (who received ten sealed packets from M.Y.Hospital for being sent to F.S.L.), PW 11 Head Constable Radhey Shyam Sharma (who prepared Ext.P-25 Murg/ intimation), PW 12 Constable Mohd. M. Ahmad, PW 13 Constable Smt. Savitri, PW 14 Constable Mahabal Singh Chauhan, PW 15 Dr. N.M. Unda (who conducted autopsy on the dead body of the deceased), PW 16 Dr. Anil Kapoor, PW 17 Head Constable Ashraf Ali, PW 18 Dr. Bharti Dwivedi, PW 19 Constable Nirmal Kumar Patil (posted in PCR, Indore who informed the Duty officer), PW 20 Manoj Chauhan (Wireless Operator who received message from PW 19), PW 21 Pankaj Nagpal, PW 22 Rajesh Kumar Nachani (father of the deceased), PW 23 Rajendra Kumar, PW 24 Keshav Kumar, PW 25 Sonam, PW 26 Umesh Nara (uncle of deceased), PW 27 Dr. G.L.Sodhi (who examined injuries on person of Dhanwantari), PW 28 Jeevan Lotani, PW 29 Harish, PW 30 Suresh Neema, PW 31 Yogesh Gupta, PW 32 Madhuri (minor sister-in-law of deceased), PW 33 Padvilochan Shukla (Investigating Officer), PW 34 Raksh Pal Singh (Incharge P.S. Juni), PW 35 Mohan Lal Purohit and PW 36 Sub Inspector K. L. Pandey.

9. The prosecution evidence was put to each one of the accused under Section 313 Cr.P.C to which they replied that the same is false. It is pleaded by the accused that Bhoomi @ Richa was missing after she went to her relative's place. It is further pleaded by the appellants that they were in the shop during the day time when Bhoomi @ Richa went missing. In defence, DW 1 Parmanand Sharma, (servant in the shop) was got examined in support of plea of alibi of the appellants.

10. The trial court after hearing the parties found that charge framed against accused Vishal (brother-in-law of the deceased) regarding his involvement in the crime, was not proved beyond reasonable doubt as such he was acquitted. The trial court found rest of the three accused, namely, Dhanwantari, Jamna das and Manoj guilty of offence of murder with common intention punishable under Section 302 read with Section 34 IPC, and convicted them accordingly. Accused Dhanwantari was further convicted under Section 201 IPC for causing disappearance of evidence of murder. After hearing on sentence, 6th Additional Sessions Judge, (Indore), vide his order dated 24.8.2009, sentenced each of the convicts under Section 302/34 IPC imprisonment for life and directed to pay fine of Rs.5000/-. It was further directed that in default of payment

A of fine, the defaulter shall undergo further rigorous imprisonment for a
 period of one year. Convict Dhanvantari was further sentenced to
 undergo rigorous imprisonment for a period of three years and to pay a
 fine of Rs.5,000/- in respect of offence punishable under Section 201
 IPC and in default of payment of fine she was directed to undergo three
 B months rigorous imprisonment. On other heads, the accused stood
 acquitted from the charge.

11. The three convicts filed separate appeals before the High
 Court and the same were heard together and disposed of by the common
 judgment and order dated 23.8.2012, impugned in these appeals.

C 12. Before further discussion, we think it just and proper to mention
 the ante mortem injuries and post mortem injuries found on the body of
 the deceased (Bhoomi @ Richa), recorded by PW-15 Dr. N.M. Unda,
 Demonstrator, Forensic Medicine and Toxicology Department, M. G.
 M. Medical College & M. Y. Hospital, Indore on 17.09.2006 at 2:00
 D p.m. recorded in Exhibit P-27. The observations in the autopsy report
 are reproduced below:-

E *“Dead body received in sealed condition, in two
 separated pieces in the two bed sheets stained with
 blood. Body appears cleaned and washed. Faint blood
 stained marks on the body, no clotting present. Dorsal
 part and the skin of the hands and fingers showing
 very slight shrinking effect and all the wound part small
 sizes show very scanty amount of blood at deeper level
 while upper part shows clean. Body separated with hard
 and sharp object at just above the umbilicus shows
 F multiple inflections by moving body all around and
 vertebral column cut at inter vertebral disc with multiple
 inflections over the cartilagenous part and on vertebrae.
 Some part of the intestinal loops small and large missing,
 and faecal soiling present and lower part of abdomen
 where vertical present right to umbilicus to pubic
 G symphysis indicating cut mark on the bony and soft
 tissue part. Body separation exposing abdominal and
 Pelvic cavity part are post-mortem in nature with
 separated intestinal opening (available). Some part of
 the kidney blood vessel and soft tissue missing.*

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Multiple post mortem wounds present on the different parts of the body over the foot, leg and wrist shows the intention with post mortem nature to convert body in small pieces for disposal. A

Multiple defence wound present in the both hands and palmer side over the metacarpo phalangeal joint and proximal phalaxin part in a plane with fist closed. Cut mark manner (pattern) shows an object moved within closed fist. Other three deep cut marks present in the palm of left hand also present. Total number given on other page with other small wounds present on both hands. B
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Lower half part 96 cm and upper part 63 cm. adjusted length.

Body average built, eyes closed. Partly, mouth closed and lip approximated. Rigor Mortis present all over body stiffness present. Hypostasis present on the back side of the body and fixed and faint. Cut part circumference 73 cm and 23 cm at chest upper part. Lower part circumference and diameter 27 cm into 20 cm both part matching each other shows the multiple cut marks. Scalp hairs present at places over the body. Other hairs also present. D
E

Stomach some watery fluid light brown in colour about 190 ml with slight altered smell and mucosa healthy. Small intestine - contains little slight digested food. Large intestine - contains little faecal in the lower available part. Liver and Spleen pale und healthy. Kidney - dorceline lower part missing. Genitals - available but shows stabwound in the lower part laterally in the broad ligature. Uterus small size. Slide from cervice opening and uterine cavity made along with vaginal smear slide and swab - pubic hair shaved and preserved for any foreign hair and other evidences. Uterus measured in formation for histopathological examination. F
G

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- A *Anal opening dilated and shows an funnel pattern with multiple superficial indepth heal scar marks ... with mostly healed too.*
- Both lungs pale and healthy*
- B *Trachea pale and healthy injury present described in injury at serial 3.*
- Heart practically completely empty.*
- External injury on scalp described on Injury section.*
- Superficial cut marks present on the skull, Rest healthy*
- C *Brain extremely congested and non specific smell present. Preserved for chemical analysis and sent to pathological examination no subdual or extradual collection found.*
- D *Death was due to shock and hemorrhage as result of (ante mortem) multiple injuries to the body.*
- Death homicidal in nature.*
- Along with ante mortem injuries, post mortem injuries present i.e. post mortem separation of body into two halves and trying (effect of cutting) to into multiple pieces with missing of intestinal parts (loops) and kidney lower part, mesentery and blood vessels.*
- E *Evidence of defence wounds present and effect of leaning i.e. removing stains present.*
- F *Preservation*
- 1. Viscera preserved for chemical analysis.*
- 2. Vaginal smear slides swab preserved along with cervical smear, uterine cavity fluid slide preserved.*
- G *3. Anal swab slide preserved*
- 4. Brain material preserved separately for chemical analysis.*
- 5. Pubic hair preserved with other material after shaving.*
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6. *Trimming of nails all fingers with its content*

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7. *Scalp hair with skin pieces.*

8. *Other hair present*

9. *Both bed sheets*

Brain and uterus preserved for histopathology examination in formation.

B

All articles sealed and handed over to P.S.

Duration of death within 12 to 36 hours since post mortem examination.

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(Emphasis supplied)

Wound marks as recorded in separate sheet annexed with autopsy report are reproduced below:-

I. Four incised wounds present on the left side face including lateral part eye lid to the ear sizes (1) 11 x 1 ½ (2) 10 x ½ (3) 9 x 0.75 (4) (7 x 2) cm all are vertically placed extending up to forehead left side.

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II. Multiple incised wound present on the right face 11 in (Eleven) number with muscle deep size 1.5cm x 1.0cm to 1x1 cm size on upper lip. Rest on cheek and zygomatic area.

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III. Contusion present on the right zygomatic part between 2 incised wound 3.5 x 1.3 cm size transversely placed.

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IV. Stab wound present on the right side cheek just lateral to angle of mouth 3x1.5cm into deep tongue skin deep 3.2 cm other smaller incised on its medial and size 2 x 1cm size this also deep skin.

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V. Injuries as on the neck. Anteriorly 3 x 1.0 cm sizes 2 wounds present just lateral to med in a right side and 2 wounds later mid line on left side. Wound deep to neck tissue structure

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- A *but anteriorly no large vessel cut of wound deep to the sub cut to neck tissue all the soft tissue structure attached to the trachea on right side shows cut marks. Back of the neck. Chop wound present on the back mid line*
- B *part size 6.9cm x 2.5cm x deep to the vertebral column transversely placed with 2 infliction overlapping each other mid line size measured 4.5 cm wound all the muscles and deep structure injury show cut marks.*
- C *VI.2 incised wounds present on the chest 4.0cm medical to the left nipple size 3.0 x 1.2cm at 6th rib other on right side 3.0cm lateral to mid line at 7th rib size 2.8 x 1.0cm depth to the bone. Multiple very small and fine linear large marking wound present on the chest*
- D *0.1cm deep present with varying length.*
- E *VII.Wound on right side upper limb (on the arm) measuring deep wound 15 x 6 cm size deep to muscle up to bone but no cut mark (on the bone) seen. Muscles deep with two other injuries 5 x 2 cm and measuring with 3 superficial injury mark.*
- F *VIII.Forearm multiple superficial injury longer size obliquely placed and fine linear type. (Size not mentioned). At right wrist obliquely placed 2 injury 6 x 2 cm deep to bone on dorsal part 6 x 0.3 cm this also present... medial to it. Defence type wound. 3 incised wound present on right forearm posterior medial border measuring 1x04cm at upper 1/3rd part second at lower 1/3rd part 3.0 x 1.0cm and 2.7 x 1.3 cm with oblique slashing effect. One wound on the dorsal of the thumb right side 1.2 cm x 0.2 cm skin deep. 5 wounds present on the right four finger 10cm to 1.4cm and size width 0.2 to 0.3 cm deep to bone and to knuckle contusion also present.*
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- IX. Injury on left upper limb 4 incised wounds present on the left upper limb (1) 4x2cm (2) 3.5 x 2.0cm (3) 1.5 x 1.0cm and (4) 1 x 1cm size. All are muscle deep. 3 injury present on the back of the arm (1) 6 x 3cm (2) 3 x 1cm (3) 2.5 x 1.0cm all deep to muscle. Left forearm anterior middle part 4 x 2cm size deep to muscle. A
- Practically 3.4 amputated part size of the wound
6 x 4.0 cm. Post mortem (in
nature).....(illegible) B
- X. One stab wound present on the abdomen deep to cavity 3.9cm x 2.0cm and other 6 incised wounds present on the abdomen varying size small deep to subcutaneous tissue. C
- XI. Four incised wounds present on the buttock (1) 2 x 1 (2) 3 x 1 ½ (3) 2 x 1 ½ (4) 3 x 1 ½ cm on right side buttock and below buttock all deep to muscle. D
- XII. Two stab wounds present on the thigh femoral triangle L/3 part size of the wound 9.2 x 3.5 cm deep to the bone part with slight extension effect total depth of the wound 8.5 cm all the tissues and vertical part structure cut wound in nature object is very sharp. There is very less and very slight contusion. Direction of wound is anterior posterior. 2 wounds incised measuring 5.2cm meet each other with overlapping. E
- XIII. Anteriorly Right thigh post mortem nature wound 5 x 1 cm deep muscle. An injury of 9.2 cm on right leg at L/3 and middle 1/3 part of leg. F
- Cutting of both feet with marks of injury present at foot lower and medial part and left foot lateral part. Right foot 6 wounds of 11.00 x 0.5 cm to 1.2 cm size depending upon the depth G
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A *maximum upto 2 cms with cutting of bones.*

(Emphasis supplied)

B 13. PW-15 Dr. N.M. Unda has stated that injury No. IX (in para and injury No. XIII were post mortem in nature. He further opined that except contusion marks ante mortem and post mortem injuries were caused by hard and sharp object. From the autopsy report, quoted above, read with statement of PW-15 Dr. N.M. Unda, it is clear that the deceased died due to shock and haemorrhage as a result of multiple injuries to the body. Death of Bhoomi @ Richa was homicidal in nature with twelve ante mortem injuries mentioned above. PW 15 Dr. Unda has further proved reports (Exhibit P-30, P-30A, P-30B, P-30C, P-30D and P-30E) regarding examination made on 25-09-2006 of weapons (knives and scissors) sent to the M. G. M. Medical College and M. Y. Hospital, Indore.

D 14. Antemortem injuries narrated by PW-15 Dr. N.M. Unda clearly suggest that the deceased attempted to save herself and resisted the assault with all her might before her death, and she appears to have been overpowered by the assailants, and killed brutally.

E 15. Now we would like to examine the injuries stated to have been suffered in the incident by co-accused Dhanwantari. PW-27 Dr. G. L. Sodhi, CMO, M. Y. Hospital, Indore, has examined the injuries found on the person of Dhanwantari (co-accused, mother-in-law of the deceased) on 20.9.2006 and the same are quoted below from Exhibit P-50:-

F “(i) *Healing wound of right thumb pretends of size 1.5 x 0.2 cm x brownish scab. Transversally placed.*

G (ii) *healing wound over right index finger over middle 3rd posterior aspect transversally placed of size 1 x 0.5 cm with brownish scab and palmer aspect transversally oblique of size .75 x .5 cm x healing scab.*

(iii) *Linear healing wound over right ring finger dorsum aspect middle 3rd of size .75 x 0.2 cm x brownish scab.*

(iv) *Linear healing wound 2 in number parallel*

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obliquely placed of size viz 2 x 0.2 cm and 1.75 x 0.2 cm over right cubital region with brownish scab.

(v) *Linear healing wound right cubital region 1.5 cm lateral to injury No. (iv) of size 1 x 0.2 cm with brownish scab*

(vi) *Abrasion over back of right shoulder of size 0.5 x 0.2 cm with brownish scab.*

Cause of the injuries could not be opined due to healing and brownish scab found. Injuries may be caused within 3 to 6 days since examination and injuries are simple in nature."

16. There is also report of Regional Forensic Science Laboratory, Rau (Indore) on record. The relevant extract from the report dated 31-10-2006 (Exhibit P-73) regarding presence of blood on the nails of the three accused is reproduced below:-

| No.1 | Packet Mark | Found inside here Exhibit/detail Mark | From whom/whose seizure dated | Details of tins No., size, colour, distribution | |
|------|-------------|--|-------------------------------|---|-------------------------|
| 35. | V HB) | Nails (04 Nos.) Swab Nails (08 Nos.) Swab | V1 V2 V3 V4 | Memo of accused Accused Dhanwanti from MGM, Indore 20.09.2016 -do- -do- -do- | ----- ----- ----- |
| 36. | W | Nails (08 Nos.) | W | Accused Manoj. 20:09.2016 | ----- |
| 37. | W 1 | Nails (08 Nos.) | W 1 | -do- | ----- |
| 38. | X | Nails (08 Nos.) | X | Accused Jamnadas 20.09.2016 | ----- |
| 39. | X 1 | Nails (08 Nos.) | X 1 | -do- | ----- |

A It is reported on Ex. P-73 that after Benzedrine/Phenaphthelene and crystal test on exhibits were done, it was found that on Exhibits V1, V2, V3 and V4 (i.e. on nails of co-accused Dhanwantari, mother-in-law of the deceased) blood was found and examination of category and group of the blood found on these exhibits was done; and on Exhibits W, W1, X, and X1 (i.e. on nails of the appellants) blood was not found.

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D 17. On the basis of above finding, learned counsel for the appellants argued that unlike the finding against Dhanwantari (mother-in-law of the deceased), it is clear that there is no adverse finding as against the present appellants. It is also pointed out that from the post mortem report Ex. P-27, the incident appears to have taken place sometime during the day, and natural presence of the appellants at that point of time was at the place of their work, which also reflects from the statement of DW-1 Parmanand Sharma, who told that the appellants were in the shop on 16-09-2006 from 9:30 a.m. till 7:30 p.m. It is further submitted that witnesses PW-1 Mukesh Jayswal, PW-3 Narayana, PW-4 Udhvdas and PW-5 Manohar alias Mannu have stated that it was a woman who was seen taking a bundle and threw the same near Sevaram Gilani Garden, situated near Patel nagar, Indore, but there is nothing in their evidence as against the present appellants.

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F 18. We have considered the above submissions in the light of evidence on the record, and the law laid down by this Court applicable to such cases. Undoubtedly, it is a case of circumstantial evidence. In *Sharad Birdhichand Sarada v. State of Maharashtra*¹, a three-Judge Bench of this Court has laid down the law as to when in a case of circumstantial evidence charge can be said to have been established. Five points enumerated in said case are summarized as under: -

- (i) The circumstances from which the conclusion of guilt is drawn should be fully established. The accused must be, and not merely may be guilty, before a court can convict and the mental distance between “may be” and “must be” is long and divides vague conjectures from sure conclusions;
- G (ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

¹ (1984) 4 SCC 116

(iii) The circumstances should be of a conclusive nature and tendency;

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(iv) They should exclude every possible hypothesis except the one to be proved; and

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

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19. On behalf of the appellants, it is submitted that the accused has a right to silence and no adverse inference can be drawn from his silence as to the cause of death of the deceased. In this connection, reliance is placed on paragraph 141 of *Selvi and others v. State of Karnataka*², which reads as under: -

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“141. At this juncture, it must be reiterated that Indian law incorporates the “rule against adverse inferences from silence” which is operative at the trial stage. As mentioned earlier, this position is embodied in a conjunctive reading of Article 20(3) of the Constitution and Sections 161(2), 313(3) and proviso (b) of Section 315(1) CrPC. The gist of this position is that even though an accused is a competent witness in his/her own trial, he/she cannot be compelled to answer questions that could expose him/her to incrimination and the trial Judge cannot draw adverse inferences from the refusal to do so. This position is cemented by prohibiting any of the parties from commenting on the failure of the accused to give evidence. This rule was lucidly explained in the English case of *Woolmington v. Director of Public Prosecutions* (1935 AC 462 : 1935 All ER Rep 1 (HL)), AC at p. 481:

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“The ‘right to silence’ is a principle of common law and it means that normally courts or tribunals of fact should not be invited or encouraged to conclude, by parties or prosecutors, that a suspect or an accused is guilty merely because he has refused to respond to questions put to him

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² (2010) 7 SCC 263

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A by the police or by the Court.”

Above observations are made by this Court in an answer to the legal question raised in the batch of criminal appeals relating to the involuntary administration of certain scientific techniques, namely, narcoanalysis, polygraph examination and the Brain Electrical Activation Profile (BEAP) test for the purpose of improving investigation efforts in criminal cases. In the present case facts and circumstances are different. The above referred case, in our opinion, is of little help to the appellants in the present case.

20. In *State of W.B. v. Mir Mohammad Omar and others*³, this Court, while interpreting the burden of extent of proof on prosecution, observed as under: -

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

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36. In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows: “When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any

³ (2000) 8 SCC 382

explanation which might drive the court to draw a different inference.”

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21. Shri S.K. Jain, learned senior counsel, on behalf of the appellants drew our attention to the case of *Tomaso Bruno and another v. State of Uttar Pradesh*⁴, and argued that to invoke Section 106 of the Evidence Act the prosecution must have proved presence of the appellants in their house at the time of the incident. We have carefully gone through the case cited before us. It was a case where CCTV footage of the hotel was available but not produced to show the presence of the accused in the hotel and, as such, the plea of alibi that the accused had gone to witness “Subah-e-Bararas” from the hotel was accepted. The present case relates to a different kind of incident where a bride has been brutally murdered inside the house and her body, after cutting into pieces, was thrown in the park.

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22. In *Trimukh Maroti Kirkan v. State of Maharashtra*⁵, which is a case similar in nature to the present one, this Court has held as under: -

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

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23. Now we come to the plea of alibi taken by the appellants that they were in the shop at the time of the incident. On behalf of the appellants reliance has been placed on the case of *Narendra Singh and another v. State of M.P.*⁶, in which it has been held that even in a

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⁴ (2015) 7 SCC 178

⁵ (2006) 10 SCC 681

⁶ (2004) 10 SCC 699

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A case where a plea of alibi is raised, the burden of proof remains on the prosecution, and it has been further observed that presumption of innocence is a human right.

24. In response to above Shri C.D. Singh, learned counsel for the State of Madhya Pradesh has referred to the case of *Suresh and another v. State of Haryana*⁷, wherein, discussing the issue in paragraph 19, this Court observed: -

“9.....No doubt, the burden of proof is on the prosecution and Section 106 is not meant to relieve it of that duty but the said provision is attracted when it is impossible or it is proportionately difficult for the prosecution to establish facts which are strictly within the knowledge of the accused.....”

25. Undoubtedly, as proved on the record in the present case the deceased was murdered inside the house and her body was thrown in the park, and was not missing from the house after going to her relative’s place, as pleaded by the appellants in their statements under Section 313 of the Code of Criminal Procedure. They have taken a blatant false plea.

26. In *Kuldeep Singh and others v. State of Rajasthan*⁸, in paragraph 18 a three-Judge Bench of this Court has held that in a case of circumstantial evidence when the accused offers an explanation and that explanation is found to be untrue, then the same offers an additional link in the chain of circumstances, to complete the chain.

27. Similar view has been taken by this Court in *Rumi Bora Dutta v. State of Assam*⁹, wherein it has been accepted that a false answer offered by the accused when his attention is drawn to the circumstances, it renders a circumstance to be of inculcating nature, i.e. in such a situation a false answer can also be counted as providing a missing link for completing the chain.

28. In an answer to above, the appellants have placed reliance on *Rajkumar v. State of M.P.*¹⁰, wherein it has been held that mere false plea does not absolve the prosecution of burden to connect the accused

⁷(2015) 2 SCC 227

⁸(2000) 5 SCC 7

⁹(2013) 7 SCC 417

¹⁰(2004) 12 SCC 77

with the crime. On careful reading of the case referred to above, we find that it was a case where two views were possible, and the trial court took the view that charge cannot be said to have been proved, but the High Court reversed it. In the case at hand there is consistent view taken by both the courts below that the appellants had acted in common intention with co-accused Dhanwantari in commission of murder of the deceased.

29. Defence version of the appellants in the present case is that appellant Jamnadas is a businessman having his shop at 5/2, Murai Mohalla, Sanyogitaganj, Indore. His working hours at the shop were from 9 a.m. till 8-9 p.m. It is contended that it is the usual practice for the shopkeepers in parts of Northern India to have lunch at their shops and that the appellants did not come to their residence for lunch. It is further pleaded that on the date of incident, i.e. 16.9.2006, at about 7.30 p.m. appellant Jamnadas was in his shop along with appellant Manoj and younger son Vishal when he got a telephone call from his wife (Dhanwantari) who was at home and got information that Richa @ Bhoomi (deceased) had gone to her relative's place and did not return home. On hearing this, Jamnadas with both his sons came home and launched a search for his daughter-in-law. It is further pleaded that on 16.9.2006 till 9 p.m., when Richa @ Bhoomi did not return home, Jamnadas along with his two sons went to the police station for lodging missing report. At about 10 p.m. Jamnadas's wife Dhanwantari and their minor daughter Heena @ Madhuri also came to the police station and that thereafter, the police illegally detained them for 3 days without formally arresting them. But this defence story get completely belied as prosecution has proved to the hilt that Bhoomi @ Richa was murdered inside the appellants' house, and there was no question of her going to her relative's place or missing.

30. The chain of circumstances proved on the record against the appellants is as under: -

- (i) It is established that Bhoomi @ Richa (deceased) was living in the house of the appellants, after her marriage on 16.04.2006 with appellant Manoj.
- (ii) It is also established beyond reasonable doubt that death of the deceased was homicidal in nature which occurred on 16.09.2006.

- A (iii) It is also established that the deceased was murdered in the house of the appellants where blood stains were found.
- (iv) It is also conclusively established that after commission of murder, the body of the deceased was cut into two pieces.
- B (v) It is further proved that the dead body was thrown in the park by Dhanwantari (mother-in-law of deceased) who was seen doing so by PW 1 to PW 5.
- C (vi) Perusal of the number of anti mortem and post mortem injuries mentioned in autopsy report read with statement of PW 15 Dr. N.M. Unda establish beyond reasonable doubt that the crime could not have been committed by one person alone.
- D (vii) There were in all five members in the family excluding the deceased – three male members (Jamnadas father-in-law, Manoj – Husband and Vishal brother-in-law of the deceased) and two female members (Dhanwantari mother-in-law and Heena @ Madhuri minor sister-in-law).
- E (viii) PW 32 Heena @ Madhuri (minor daughter of appellant no.1) was too young. She was a student of class VIII when her statement was recorded during trial and she has stated that she had gone to school on the day of incident and after her return she slept. (This witness was declared hostile as she did not fully support the prosecution case). It is nobody's case that she had any role in commission of the crime. This leaves four accused named in the chargesheet, out of whom Vishal, brother-in-law, was acquitted by the trial court (Rather discharged in respect of offence of murder). His acquittal is upheld by the High Court, and nobody has challenged the same. The remaining three in the field are Dhanwantari (mother-in-law) and the appellants.
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- (ix) The appellants have failed to disclose as to how deceased has died which was especially within their knowledge.
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(x) It is nobody's case that any outsider came in the house.

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(xi) There is no report lodged to police by the appellants regarding homicidal death of the deceased who was wife of appellant Manoj and daughter-in-law of appellant Jamnadas as discussed above.

(xii) False explanation has been given by the appellants in their statements under Section 313 Cr.P.C. that the deceased had gone to her relative's place and that she was missing which is an additional link on the record against them, in the chain of circumstances.

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31. The above chain of circumstances against the appellants is complete, and the defence theory that they were in the shop cannot be accepted. Therefore, having re-appreciated the entire evidence on record, we concur with the courts below that appellants Jamnadas and Manoj had common intention with Dhanwantari in commission of brutal murder of Bhoomi @ Richa. It is not a fit case where impugned order requires any interference.

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32. For the reasons, as discussed above, these appeals are liable to be dismissed, and the same are accordingly dismissed.

Kalpana K. Tripathy

Appeals dismissed.

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