

**AFR**  
**Reserved on : 12.03.2019**  
**Delivered on : 11.09.2019**

**Court No. - 34**

**Case :-** JAIL APPEAL No. - 4239 of 2013

**Appellant :-** Bindhyavasini Gond

**Respondent :-** State Of U.P.

**Counsel for Appellant :-** From Jail, Anil Pratap Singh, Lokesh Kumar Dwivedi, Santosh Dwivedi

**Counsel for Respondent :-** Ratan Singh (A.G.A.)

**Hon'ble Sudhir Agarwal, J.**

**Hon'ble Rajendra Kumar-IV, J.**

***(Delivered by Hon'ble Rajendra Kumar-IV, J.)***

1. Against judgment and order dated 31.07.2013 passed by Additional Sessions Judge, Court No. 7, Varanasi in Sessions Trial No.62 of 2013, Crime No.231 of 2012, under Sections 302 and 201 IPC, Police Station Rohaniya, District Varanasi, accused-appellant has preferred present jail appeal under Section 383 Cr.P.C. from Jail through Superintendent District Jail, Varanasi. By impugned judgement, appellant has been convicted under Section 302 I.P.C. and sentenced to undergo rigorous imprisonment for life with fine of Rs. 25,000/- and in default of payment of fine, one year additional rigorous imprisonment and further he has been convicted under Section 201 I.P.C. and sentenced to undergo five years rigorous imprisonment with fine Rs. 5000/- and in default of payment of fine, six month additional rigorous imprisonment.

2. Factual matrix of case as emerging from First Information Report (hereinafter referred to as "FIR") as well as material placed on record is as follows.

3. P.W.-1 Shyam Lal submitted a written report Ex.Ka-1 in Police

Station Rohaniya, District Varanasi stating that on 2.6.2011, his daughter Anju was married with Bindyavasini Gond son of Lalji Gond village Vishokhar Lathiya, Police Station Rohaniya, District Varanasi. After marriage PW-1 brought her daughter from her matrimonial house in Chauthi ceremony. Thereafter, his son-in-law Bindhyavasini Gond (accused-appellant) never visited his house to bring his daughter (Anju). It was further stated that character of son-in-law was not good. He was angry with his family. Many times Bindhyavasini Gond threatened his son (Rajesh Gond) to kill him. On 18.8.2012, Rajesh Gond went to the house of his elder daughter Manju Devi, village Amra, Police Station Rohaniya, and stayed for two days there. On 20.8.2012 victim Rajesh Gond left for Vidapur but did not reach his house. On 25.8.2012 at about 8:00 AM, PW-1 was informed by his daughter Manju Devi that dead body of Rajesh Gond, wrapped in blanket, was lying in the room of Bindhyavasani Gond (accused). PW-1 along with his daughter Manju Devi, PW-3, visited house of accused-appellant and identified dead body of Rajesh Gond who was murdered by Bindhyavasani Gond. Accused-appellant ran away after locking the room.

4. On the basis of written report Ex.Ka-1, Chick F.I.R. Ex.Ka-4 was registered by PW-5 Babu Ram Yadav as Case Crime No.231 of 2012 against the accused-appellant under Section 302, 201 I.P.C. He also made an entry of the incident in G.D. on 25.8.2012 at 10:35 a.m. copy of which is Ex.Ka-5.

5. Immediately, after registration of case, investigation was undertaken by PW-6, S.I. Ramayan Singh, who proceeded to spot and held inquest over the dead body of Rajesh Gond, prepared inquest report Ex.Ka-2 and other papers relating thereto and sent for

post mortem, visited spot, prepared site plan Ex.Ka-12.

6. PW-4 Dr. Anil Kumar, conducted autopsy over the dead body of deceased and prepared postmortem report (Ex.Ka-3) under his signature, expressing his opinion that death was possible one week prior to postmortem and viscera was preserved for ascertaining cause of death.

7. PW-6 S.I. Ramayan Singh, after completing entire formalities of investigation submitted charge sheet Ex.Ka-14 against the appellant under Section 302 and 201 I.P.C.

8. Case, being exclusively triable by Court of Sessions, was committed by C.J.M. concerned to Court of Sessions for trial after compliance of Section 207 Cr.P.C.

9. Trial Court framed charges against accused-appellant on 12.2.2013 under Sections 302 and 201 IPC which read as under:

### आरोप

मैं, ओमप्रकाश, सत्र न्यायाधीश, वाराणसी एतद्द्वारा आप विन्ध्यवासिनी गोंड, को निम्न आरोपों से आरोपित करता हूँ—

**प्रथम—** यह कि आपने दिनांक 20.08.2012 से दिनांक 25.08.2012 के 8.00 बजे प्रातः के बीच किसी समय बहद ग्राम विशोखर (लठिया), अन्तर्गत थाना रोहनियां, जनपद वाराणसी में वादी मुकदमा श्याम लाल गोंड के पुत्र राजेश की मृत्यु कारित कर हत्या किया और इस प्रकार आपने धारा 302 भा0द0सं0 के अन्तर्गत दण्डनीय अपराध किया, जो इस न्यायालय के प्रसंज्ञान में है।

**द्वितीय—** यह कि दिनांक 25.08.2012 को बहद ग्राम विशोखर (लठिया), अन्तर्गत थाना रोहनियां, जनपद वाराणसी स्थित अपने कमरे में राजेश के शव को, जो इस अपराध का साक्ष्य था, अपने को वैध दण्ड से बचाने के लिए कम्बल से लपेट कर आपने छिपा कर रखा था और इस प्रकार आपने धारा 201 भा0दं0सं0 के अधीन दण्डनीय अपराध किया, जो इस न्यायालय के प्रसंज्ञान में है।

अतएव, मैं निर्देशित करता हूँ कि आपके विरुद्ध उक्त आरोपो का विचारण इस न्यायालय द्वारा किया जावे।

**Charge**

*I, Om Prakash, Sessions Judge, Varanasi hereby charge you Vindhyavasini Gond with following charges :-*

***First** -That at any time during the period from 20.08.2012 upto 8.00 o'clock of the morning of 25.08.2012, you committed the murder of Rajesh- the son of the complainant of the case Shyam Lal Gond within village Vishokhar (Lathiya) under Police Station- Rohaniya, District- Varanasi and thus you committed the offence punishable under Section 302 I.P.C. which is in the cognizance of this Court.*

***Second** -That on 25.08.2012, for the purpose of saving yourself from the legal punishment you had kept hidden the deadbody of Rajesh wrapped in a blanket at your room within village Vishokhar (Lathiya) under Police Station- Rohaniya, District- Varanasi, which was the evidence of this offence and thus you have committed the offence punishable under Section 201 I.P.C. which is in the cognizance of this Court.*

*Therefore, I direct that you be tried by this court for aforesaid charges.*

**(English Translation by Court)**

10. Accused-appellant denied the charges and pleaded not guilty and claimed to be tried.

11. In order to substantiate its case, prosecution examined as many as six witnesses, out of whom PW-1 Shyam Lal, PW-2 Anju Devi and PW-3 Manju Devi are witnesses of fact and PW-4 Dr. Anil Kumar, PW-5 Babu Ram Yadav and PW-6 Ramayan Singh are formal witnesses.

12. On closure of prosecution evidence, statement of accused-appellant under Section 313 Cr.P.C. was recorded by the Court explaining entire evidence and other incriminating circumstances. In the statement under Section 313 Cr.P.C., accused-appellant denied prosecution story in toto and facts of case were stated to be wrong. In

response of question no. 16, he answered that he was ignorant of fact. He desired to produce defence evidence but later on did not produce defence evidence.

13. Trial Court after appreciating entire evidence led by prosecution on record and hearing counsel for the parties, found appellant guilty and convicted him as stated above. Feeling aggrieved and dissatisfied with impugned judgement, present appeal has been filed through Jail.

14. We have heard Sri Lokesh Kumar Dwivedi, learned counsel for appellant and Sri Ratan Singh, learned A.G.A for State-respondent at length and gone through the record available on file carefully.

15. Learned counsel for appellant refuting the impugned judgement, advanced his submissions, in the following manners :-

(i) This is a case of circumstantial evidence and there is no motive to accused to commit murder of Rajesh Gond.

(ii) There is no complete chain of evidence so as to indicate that accused is the only person who has committed crime.

(iii) There are several contradictions rendering prosecution case doubtful.

(iv) FIR has been lodged by PW-1 (father of victim) close relative of deceased on the same day of receiving of information.

(v) PW-1, 2 and 3 are close relatives of the deceased and interested witnesses. No public witness has come forward to supporting the prosecution case.

(vi) It has come in the prosecution evidence that father and elder brother of accused, at first, informed PW-3 that

foul smell was coming out of room of accused but they have not been produced from the side of prosecution.

(vii) Prosecution has failed to prove complete chain of circumstance and trial court committed error in holding the accused-appellant guilty.

16. Per contra learned AGA opposed submissions and urged that PWs-1, 2 and 3 are witnesses of fact, who have supported prosecution and established that accused-appellant was angry with victim, dead body of victim was found in the room belonged to accused-appellant and accused disappeared from there. Accused did not offer any explanation as to how dead body of victim was found in his house which was locked from out side. Circumstances show that accused-appellant is the only and only person who committed murder of Rajesh Gond.

17. We now proceed to consider rival submissions on merits.

18. Admittedly, there is no eye-witness in the present case. This case rests upon circumstantial evidence. It is no doubt a case where there is no eye witness of crime. Prosecution totally rests on circumstantial evidences, which found favour with Court below and finding prosecution version proved beyond reasonable doubt, Trial Court has convicted appellant, as stated above.

19. It will be appropriate to briefly consider the evidence on record. PW-1 is the father of deceased and PW-2 and 3 are real sisters of deceased. PW-2 Manju Devi was residing in the same village. PW-1 supporting prosecution case, deposed that, his daughter Anju Devi was married to accused-appellant on 2.6.2011. After marriage she had gone to her matrimonial house. She came back to her parental house in Chauthi ceremony, since then she was

living in his house and accused-appellant became annoyed with victim, who was in private job in Gujrat. Accused-appellant threatened victim Rajesh to take his life many times. When victim Rajesh Gond came from Gujrat on 18.8.2012 and went to the house of his sister Manju Devi in village Amra which is at a distance of one kilometer from the house of accused, and stayed there for two days. Thereafter, he left for his house but did not reach. At about 8:00 AM on 25.8.2012, PW-3 Manju Devi informed him that dead body of Rajesh was lying wrapped in blanket in the house of accused-appellant. Then he and his daughter Manju Devi went to the house of accused and identified dead body of Rajesh which was decomposed. It was further stated by him that Rajesh was murdered by accused-appellant Bindhyavasini on account of ill-will and dead body was hidden in the room wrapping it in blanket. Dead body was taken out breaking the lock. He submitted written report Ex.Ka-1 in police station concerned, getting it scribed by one Ram Asrey Gond. He further stated that inquest over dead body was held by Sub Inspector of Police in his presence at spot. In cross-examination, he stated that his daughter, when came back from his matrimonial house, told him that accused-appellant harassed and tortured her in demand of dowry but he did not complain anywhere.

20. PW-2 Anju Devi, daughter of PW-1 and wife of accused deposed that she was married to accused Bindhyawasini in June, 2011 and recognized accused in the Court as her husband. She further deposed that when she went with her husband after marriage, she found that his character was not good. In Chauthi ceremony, she came back to her house with her father, her maternal uncle and her brother Babloo. Since then she was living in her parental house. Since her father and brother took her to his house, her husband got

annoyed with her father and brother on this count. She witnessed dead body of her brother in Police Station Rohaniya and identified the dead body. This witness stated nothing regarding the incident hence her statement does not require any further scrutiny.

21. PW-3 Manju Devi deposed that her younger sister Anju was married to accused Bindhyawasini in June, 2011. She came back to her maternal house in Chauthi ceremony and since then living there for the reasons that her husband (accused-appellant) was not a man of good character. Her brother Rajesh Gond was in private job in Gujrat and had come to her house at the time of Rakshabandhan and remained for two days in her house. On 20.8.2012, at about 8:00 AM in the morning, he left her house saying that he would go to his village after seeing his brother-in-law (accused). Five days after, Lalji (father-in-law of Anju PW-2) and Girish (Jeth of Anju) came to her house and told that foul smell was coming out of Bindhyavasini's room and it was locked from out side. Thereupon she went to house of Bindhyavasini along with them and witnessed that house of accused-appellant was locked from out side and foul smell was coming from inside. Then they broke open the lock and saw inside that dead body of Rajesh was lying wrapped in a blanket and smelling. She felt that her brother Rajesh was murdered by accused Bindhyavasini Gond. She informed to her father about the incident.

22. PW-6 S.I. Ramayan Singh Investigating Officer deposed that on 25.8.2012 he was posted as Station Officer in P.S. Rohaniya and undertook investigation of Case Crime No. 231 of 2012 under Sections 302, 201 I.P.C., proceeded to spot, held inquest over the dead body of Rajesh, prepared inquest report Ex.Ka-2 and other papers relating thereto, took shirt of deceased and blanket, in which body was wrapped, in his possession, prepared memo whereof

Ex.Ka-10, recorded statement of Shyam Lal, PW-1, and prepared site plan Ex.Ka-12. Thereafter, he recorded statement of PW-3 Manju Devi and other witnesses, sent viscera of deceased to FSL, Lucknow for examination through constable Ram Asrey, arrested accused-appellant with one Tamancha and two live cartridges on 29.9.2012, recorded statement and after completing entire formalities of investigation submitted charge sheet Ex.Ka-14 against the accused. Witness withstood lengthy cross-examination. In his cross-examination, he deposed that there was no key of lock, therefore, lock of room was broken. Informant, witness of inquest and other person of village were present on spot. The room in which body found, was situated after Varamdhah which was on the road and dead body of Rakesh was kept on concrete in the room, wrapped in a blanket. Body was decomposed and smelling. Dead body was identified by family members on the basis of cloths and appearance (*Huliya*). It was further deposed that meal was cooked in the room.

23. From the evidence of PWs-1, 3 and 6 adduced by prosecution following circumstances are clearly established :

- A. Smt. Anju Devi was married to accused-appellant in 2011 but relations between them were strained and she did not go to her matrimonial house after Chauthi ceremony for the reasons that her husband (accused) was not a man of good character.
- B. Victim went to the house of his elder sister Manju Devi on the festival of Rakshabandhan, prior to incident and stayed there for two days.
- C. Victim Rajesh left her house saying that he would go to his village after seeing his brother-in-law

(accused).

D. Dead body of Rajesh Gond was found lying wrapped in blanket in the house of accused-appellant and his father and elder brother informed PW-3 first about the smell, coming out of house.

E. As per statement of PW-6, meal was cooked in the room and it was locked from out side. I.O. found blood on the spot and body was wrapped in a blanket.

F. When dead body was found in the room of accused, it was locked and accused had disappeared.

G. Postmortem report reveals that death of Rajesh Gond might have occurred one week prior to postmortem. Body was decomposed and smelling.

H. Rajesh Gond was murdered and his body was wrapped in blanket, kept in room which was locked from out side.

24. In the case in hand, there is no eye witness of occurrence and case of prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that circumstances from which an inferences of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and he should be incapable of explanation on any hypothesis other than that of the guilt of the accused and

inconsistent with his innocence.

25. ***Hanumant Govind Nargundkar & Anr. v. State of M.P., AIR 1952 SC 343***, is the basic judgment of the Supreme Court on appreciation of evidence, when the case depends only on circumstantial evidence, which has been consistently relied in later judgments. In this case as long back as in 1952 Hon'ble Mahajan, J expounded various concomitant of proof of a case based purely on circumstantial evidence and said:

*"... circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved..... it must be such as to show that within all human probability the act must have been done by the accused."*

26. In ***Hukam Singh v. State of Rajasthan, AIR 1977 SC 1063***, Court said, where a case rests clearly on circumstantial evidence, inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with innocence of accused or guilt of any other person.

27. In ***Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622***, Court while dealing with a case based on circumstantial evidence, held, that onus is on prosecution to prove that chain is complete. Infirmity or lacuna, in prosecution, cannot be cured by false defence or plea. Conditions precedent before conviction, based on circumstantial evidence, must be fully established. Court described following condition precedent :-

*(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established.*

*(2) the facts so established should be consistent only with the*

*hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*

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

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

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

*(emphasis added)*

**28. In Ashok Kumar Chatterjee v. State of Madhya Pradesh, AIR 1989 SC 1890, Court said:**

*"...when a case rests upon circumstantial evidence such evidence must satisfy the following tests :-*

*(1) the **circumstances** from which an inference of guilt is sought to be drawn, **must be cogently and firmly established;***

*(2) those circumstances should be of a **definite tendency unerringly pointing towards guilt of the accused;***

*(3) the circumstances, taken cumulatively; should form a **chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else;** and,*

*(4) the **circumstantial evidence** in order to sustain conviction must be **complete and incapable of explanation** of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."*

*(emphasis added)*

**29. In C. Chenga Reddy and Others v. State of Andhra Pradesh, 1996(10) SCC 193, Court said:**

*"In a case based on circumstantial evidence, the settled law is that the circumstances from which the **conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature.** Moreover, all the circumstances should be complete and there should be **no gap left** in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. "*

*(emphasis added)*

30. In **Bodh Raj @ Bodha and Ors. v. State of Jammu and Kashmir, 2002(8) SCC 45** Court quoted from Sir Alfred Wills, "Wills' Circumstantial Evidence" (Chapter VI) and in para 15 of judgement said:

*"(1) the **facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt** connected with the factum probandum;*

*(2) the **burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;***

*(3) in all cases, whether of direct or circumstantial evidence the **best evidence must be adduced** which the nature of the case admits;*

*(4) in order to justify the inference of guilt, the **inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation,** upon any other reasonable hypothesis than that of his guilt,*

*(5) **if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.**"*

*(emphasis added)*

31. The above principle in respect of circumstantial evidence has been reiterated in subsequent authorities also in **Shivu and Another v. Registrar General High Court of Karnataka and Another, 2007(4) SCC 713** and **Tomaso Bruno v. State of U.P., 2015(7) SCC 178.**

32. In **State of Punjab versus Karnail Singh, (2003)11 SCC 27,**

Court observed that law does not enjoying the duty on prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on prosecution is to lead such evidence which it is capable of leading.

33. Now the crucial question remain for consideration is “whether accused-appellant has committed crime or not?”

34. It is a case where an offence has taken place inside the privacy of house where accused was residing. Accused has all opportunity to plan and commit offence at the time and in circumstances of his choice. It will be extremely difficult for prosecution to lead evidence to establish guilt of accused if strict compliance of circumstantial evidence as noticed above, is insisted upon by Court.

35. Here it is necessary to keep in mind Section 106 of Indian Evidence Act, 1872 (hereinafter referred to as 'Act, 1872') which says that when any fact is especially within the knowledge of any person the burden of proving that fact is upon him.

36. Dead body of Rajesh was found wrapped in a blanket in the house of accused. House, in which dead body was found, belonged to him has not been disputed by accused. Room was evidently found locked out side and accused disappeared for a long time until he was arrested. Fleeing away of accused from spot is a additional link evidence against him. Hence it was only accused who could explain circumstances in which Rajesh Gond died. In view of Section-106 of Act, 1872, burden of proof lay upon accused who has failed to discharge. The accused by virtue of his special knowledge must offer an explanation which might lead a Court to draw a different inference.

37. In *Trimukh Maroti Kirkan versus State of Maharashtra*, decided on 11.10.2006, Court has held, where an accused is alleged to have committed murder of his wife and the prosecution succeeds in leading evidence to show that shortly before commission of crime they were seen together or the offence takes place in the dwelling home where husband also normally resided, if accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.

38. In *Nika Ram versus State of Himachal Pradesh, AIR 1972 SC 2077*, it was held that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt.

39. In *Ganeshlal v. State of Maharashtra, (1992) 3 SCC 106*, the appellant was prosecuted for murder of his wife which took place inside his house. It was observed by Court that when death had occurred in his custody, appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of prosecution case coupled with absence of any explanation were held inconsistent with the innocence of the accused, but consistent with the hypothesis that appellant is a prime accused in the commission of murder of his wife.

40. Another argument advanced by learned counsel for appellant is that witnesses of fact, PW-1, 2 and 3 are the relatives of deceased, so their testimony can not be said to be reliable and trustworthy.

41. Admittedly, PW-1 is father of deceased and PW-2 and 3 are the real sisters of deceased, who established the circumstances that victim Rajesh had gone to the village of her sister Manju Devi at the time of Rakshabhandan and his dead body was found in the locked house of accused.

42. In ***Ganga Bhawani v. Rayapati Venkat Reddy and Others, 2013(15) SCC 298***, Court has held as under :-

*“11. It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon.*

(Vide: ***Bhagalool Lodh & Anr. v. State of UP, AIR 2011 SC 2292; and Dhari & Ors. v. State of U. P., AIR 2013 SC 308***.)”

43. It is settled law that merely because witnesses are closely relative to deceased, their testimonies cannot be discarded. Relationship with one of the parties is not a factor that affects credibility of witness, more so, a relative would not conceal the actual culprit and make allegation against an innocent person. However, in such a case Court has to adopt a careful approach and analyse the evidence to find out that whether it is cogent and credible evidence.

44. Next argument of learned counsel for the accused-appellant in so far as discrepancies, variation and contradiction in the prosecution case are concerned, we have analysed entire evidence in consonance with the submissions raised by learned counsel's and find that the same do not go to the root of case.

45. In *Sampath Kumar v. Inspector of Police, Krishnagiri, (2012) 4 SCC 124*, Court has held that minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and sense of observation differs from person to person.

46. We lest not forget that no prosecution case is foolproof and the same is bound to suffer from some lacuna or the other. It is only when such lacunae are on material aspects going to the root of the matter, it may have bearing on the outcome of the case, else such shortcomings are to be ignored. Reference may be made to a recent decision of Apex Court (3 Judges) in Criminal Appeal No. 56 of 2018, *Smt. Shamim v. State of (NCT of Delhi)*, decided on 19.09.2018.

47. Next argument of the learned counsel for the appellant is that prosecution has not produced father and brother of accused-appellant from the side of prosecution, therefore, presumption under Section 114(g) Act, 1882 goes against the prosecution.

48. We are not impressed with the argument of learned counsel for the accused-appellant for the reasons that prosecution is not obliged to produce entire witness in its support.

49. Law is well-settled that as a general rule, Court can and may act on the testimony of a single witness provided he/she is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of Act, 1872, but if there are doubts about the testimony, Court will insist on corroboration. In fact, it is not the numbers, the quantity, but the quality that is material. Time-honoured principle is that evidence has to be weighed and not counted. Test is whether evidence has a

ring of truth, cogent, credible and trustworthy or otherwise.

50. In **Namdeo v. State of Maharashtra (2007) 14 SCC 150**, Court re-iterated the view observing that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused inspite of testimony of several witnesses if it is not satisfied about the quality of evidence.

51. In the present case, it is fully established that dead body of Rajesh was found wrapped in a blanket in the house of accused-appellant which was locked from outside and accused had disappeared remained so until his arrest. The medical evidence showed that death of Rajesh Gond might have been occurred one week prior to post mortem, accused-appellant in his statement under Section 313 Cr.P.C. did not offer any plausible explanation as to how Rajesh Gond died, recovery of blood stained concrete and shirt of deceased was made from the house of accused-appellant therefore, there cannot be any hesitation to come to conclusion that it was only the accused who was the preparator of crime.

52. In the entirety of the facts and circumstances and legal proposition discussed herein before, we are of considered view that prosecution has successfully proved its case beyond reasonable doubt against accused-appellant and Trial Court has rightly convicted him for having committed murder of Rajesh Gond, an offence punishable under Section 302 and 201 IPC. No interference is warranted. Appeal lacks merit and liable to be dismissed.

53. So far as sentence of accused-appellant is concerned, it is always a difficult task requiring balancing of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in the individual cases.

54. It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of offence and the manner in which it was executed or committed. It is obligation of court to constantly remind itself that right of victim, and be it said, on certain occasions person aggrieved as well as society at large can be victims, never be marginalised. The measure of punishment should be proportionate to gravity of offence. Object of sentencing should be to protect society and to deter the criminal in achieving avowed object of law. Further, it is expected that courts would operate the sentencing system so as to impose such sentence which reflects conscience of society and sentencing process has to be stern where it should be. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against individual victim but also against society to which criminal and victim belong. Punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality which the crime has been perpetrated, enormity of crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'. [*Vide: Sumer Singh vs. Surajbhan Singh and others, (2014) 7 SCC 323, Sham Sunder vs. Puran, (1990) 4 SCC 731, M.P. v. Saleem, (2005) 5 SCC 554, Ravji v. State of Rajasthan, (1996) 2 SCC 175*].

55. Hence, applying the principles laid down in the aforesaid judgments and having regard to the totality of facts and circumstances of case, nature of offence and the manner in which it was executed or committed, we find that punishment imposed upon accused-appellant-Bindhya Vasini Gond by Trial Court in impugned judgment and order is not excessive and it appears fit and proper and no question arises to interfere in the matter on the point of punishment imposed upon him.

56. In view of above discussion, **the appeal lacks merit and is, accordingly, dismissed.** Impugned judgement and order dated 31.7.2013 passed by Additional Session Judge, Court No.7, Varanasi in Session Trial No. 62 of 2013 (State v. Bindhya Vasini Gond) under Sections 302 and 201 IPC, Police Station Rohaniya, District Varanasi, is **maintained and confirmed.**

57. Lower Court record along with the copy of this judgment be sent immediately to Court and Jail Superintendent concerned for necessary compliance and to apprise the accused forthwith. Compliance report be also submitted to this Court.

**Order Date :-11.09.2019.**  
Manoj