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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.580 of 2014

{Arising out of judgment dated 6-6-2014 in Sessions Trial No.187/2013 of the 6th Additional Sessions Judge, Bilaspur}

Sunil Kumar Ratre @ Kuglu, S/o Chintaram Ratre, aged about 22 years, R/o Rahgi, Jogipur, Police Station Hirri, District Bilaspur (C.G.)

(In Jail)

---- Appellant

Versus

State of Chhattisgarh, through Station House Officer, Police Station Chakarbhatha, District Bilaspur (C.G.)

---- Respondent

AND

Criminal Appeal No.783 of 2015

Vandana Vishwakarma, W/o Manoj Vishwakarma, aged about 23 years, R/o Village Jhalfa, P.S. Hirri, District Bilaspur (C.G.)

(In Jail)

---- Appellant

Versus

State of Chhattisgarh, Through P.S. Chakarbhata, District Bilaspur (C.G.)

---- Respondent

For Appellant – Sunil Kumar Ratre @ Kuglu in Cr.A.No.580/2014: -
Mr. Rajesh Kumar Jain, Advocate.

For Appellant – Vandana Vishwakarma in Cr.A.No.783/2015: -
Mr. Mohit Kumar, Advocate.

For Respondent / State: -
Mr. Wasim Miyan, Panel Lawyer.

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Radhakishan Agrawal, JJ.

Judgment On Board
(21/03/2023)

Sanjay K. Agrawal, J.

1. Since both the above captioned criminal appeals have arisen out of

one and same judgment dated 6-6-2014 passed by the 6th Additional Sessions Judge, Bilaspur in Sessions Trial No.187/2013 and since common question of fact and law is involved in both the appeals, they have been clubbed together, heard together and are being disposed of by this common judgment.

2. These two criminal appeals have been preferred by the two appellants herein under Section 374(2) of the CrPC against the impugned judgment convicting them for the offences punishable under Sections 302 read with Section 34 & 201 read with Section 34 of the IPC and sentencing them to undergo imprisonment for life with fine of ₹ 100/- each, in default, to further undergo additional rigorous imprisonment for one month and rigorous imprisonment for three years with fine of ₹ 100/- each, in default, additional rigorous imprisonment for one month, respectively, with a direction to run both the sentences concurrently.

3. The sole appellant in Cr.A.No.580/2014 namely, Sunil Kumar Ratre @ Kuglu (A-1) and the sole appellant in Cr.A.No.783/2015 namely, Vandana Vishwakarma (A-2), both, have assailed their conviction and sentences for offences under Sections 302 read with Section 34 & 201 read with Section 34 of the IPC.

4. Case of the prosecution, in a nutshell, is that in the intervening night of 13th & 14th August, 2013, at Village Chakarbhatha (Ward No.7, House of Sadhelal Satnami), Police Station Chakarbhatha, District Bilaspur, the appellants in furtherance of their common intention strangulated Manoj Vishwakarma {husband of appellant Vandana Vishwakarma (A-2)} and committed his murder and in order to

screen themselves from the offence, destroyed the evidence and thereby committed the aforesaid offence. It is the further case of the prosecution that appellant Vandana Vishwakarma (A-2) has solemnized love marriage with Manoj Vishwakarma (deceased) and out of their wedlock, they were blessed with a son, and A-2 was residing with him at the time of offence and they were residing in the tenanted premises of Sadhelal Satnami (PW-8) in Ward No.7, Chakarbhatha Camp. It is also the case of the prosecution that on 14-8-2013, Arun Vishwakarma (PW-2) came to Police Station Chakarbhatha and informed that he has been informed by Sadhelal Satnami (PW-8) at Village Jalfa that Manoj Vishwakarma – brother of Arun Vishwakarma (PW-2), is lying dead in his room and his wife A-2 and his son are absconding, pursuant to which morgue intimation Ex.P-4 was registered and Inspector V.P.S. Chouhan (PW-11) reached to the spot and issued notices to the witnesses under Section 175 of the CrPC vide Ex.P-1 and prepared inquest vide Ex.P-2. Dead body of deceased Manoj Vishwakarma was sent for postmortem which was conducted by Dr. S.S. Gupta (PW-10) and his postmortem report is Ex.P-20. As per the postmortem report, cause of death is asphyxia due to strangulation and nature of death was homicidal. Thereafter, spot maps Exs.P-11 & P-12 were prepared. The appellants were apprehended and their memorandum statements were recorded vide Exs.P-7 & P-8 pursuant to which scarf was seized vide Ex.P-9 from the possession of accused / appellant Vandana Vishwakarma (A-2) and sickle was recovered vide Ex.P-10 from the possession of accused / appellant Sunil Ratre (A-1). Statements of the witnesses

were recorded under Section 161 of the CrPC and after usual investigation, the two appellants herein were charge-sheeted for the aforesaid offences and charge-sheet was filed before the jurisidictional criminal court in which they abjured the guilt and entered into defence stating that they have not committed the offence and they have been falsely implicated.

5. In order to bring home the offence, the prosecution has examined as many as 11 witnesses and exhibited 22 documents Exs.P-1 to P-22. The defence has examined one witness Smt. Jyoti Ratre (DW-1) – wife of accused / appellant Sunil Ratre (A-1), but exhibited no document in support of its case. The accused / appellants were examined under Section 313 of the CrPC in which they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question.

6. The trial Court after appreciating oral and documentary evidence on record, convicted and sentenced the appellants herein under Sections 302 read with Section 34 & 201 read with Section 34 of the IPC in the manner mentioned in the opening paragraph of this judgment against which these appeals have been preferred.

7. Mr. Rajesh Kumar Jain, learned counsel appearing for appellant Sunil Kumar Ratre @ Kuglu (A-1) in Cr.A.No.580/2014, would submit that there is no legally admissible evidence against Sunil Ratre (A-1) as he was never seen before or after the date of offence in the house of deceased Manoj Vishwakarma & accused / appellant Vandana Vishwakarma (A-2) and even the motive has not been established, only on the basis of suspicion, appellant Sunil

Ratre (A-1) has been convicted which is liable to be set aside.

8. Mr. Mohit Kumar, learned counsel appearing for appellant Vandana Vishwakarma (A-2) in Cr.A.No.783/2015, would submit that love relationship of Sunil Ratre (A-1) & Vandana Vishwakarma (A-2) has not been established and memorandum and consequent recovery of scarf from A-2 is of no use to the prosecution and further, A-2 has been convicted on the basis that the two appellants (A-1 & A-2) were arrested from the same place and same spot which is not the correct factual finding recorded by the trial Court. Furthermore, A-2 has been convicted only on the basis of her statement recorded under Section 313 of the CrPC, particularly answer to question No.43, which is per se illegal and against the well settled law in this regard, particularly the recent decision of the Supreme Court in the matter of **Premchand v. The State of Maharashtra**[1] and therefore conviction and sentences of the two appellants herein are liable to be set aside.

9. Mr. Wasim Miyan, learned Panel Lawyer appearing for the State / respondent, would submit that the trial Court is absolutely justified in convicting the present two appellants for the offences in question, as such, the appeals deserve to be dismissed.

10. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

11. The first question is, whether the death of the deceased was homicidal in nature?

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12. The trial Court relying upon postmortem report Ex.P-20 in which mode of death is said to be asphyxia due to strangulation and nature of death to be homicidal and also taking into consideration the statement of Dr. S.S. Gupta (PW-10) who conducted postmortem on the dead body of the deceased, came to the conclusion that death of the deceased was homicidal in nature which has even not been seriously controverted by learned counsel for the appellants, as such, we are of the opinion that the trial Court is absolutely justified in holding that nature of death was homicidal. The said finding is a finding of fact which is neither perverse nor contrary to the record and we hereby affirm the said finding.

13. Now, the next question would be, whether the appellant has rightly been held by the trial Court to be the person who has committed the murder of deceased Manoj Vishwakarma by strangulation?

14. Admittedly and undisputedly, the case is not based on direct evidence as it is not available and it is based on circumstantial evidence. The prosecution was required to establish the five golden principles which constitute the *panchsheel* of the proof of a case based on circumstantial evidence as laid down by the Supreme Court in the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**[2] in which it has been held by their Lordships in paragraph 153 as under:-

> "153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

2 (1984) 4 SCC 116

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra*[3] where the following observations were made:

> Certainly, it is a primary principle that 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.
>
> (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."

15. Before entering further, we will notice the incriminating circumstances that have been relied upon by the prosecution and found proved by the trial Court in order to convict the appellants herein, which have been catalogued by the trial Court in paragraph 21 of the judgment: -

> 21— अभियुक्त वंदना द्वारा धारा–313 दंप्रसं के कथन में घटना दिनांक को स्वयं को पति एवं बच्चों के साथ नींद लग जाने के बाद मृतक मनोज विश्वकर्मा द्वारा फांसी लगा कर आत्महत्या कर लेने और उसके द्वारा उसकी सूचना देने के लिए स्वयं को ससुराल वालों के पास जाने किंतु उसका और उसके पति का अंतरजातीय प्रेम विवाह होने के कारण उसके ससुराल पक्ष वाले उनके रिश्ते से नाखुश होने के कारण उसे सहयोग न

3 (1973) 2 SCC 793

कर झूठा फंसाना व्यक्त किया है। जबकि उमाशंकर विश्वकर्मा अ.सा.1, अरूण विश्वकर्मा अ.सा.2, अशोक विश्वकर्मा अ.सा.3, रामाधार विश्वकर्मा अ.सा.6 ने न्यायालय में कहीं भी आरोपिया वंदना विश्वकर्मा को ससुराल आने के संबंध में कोई भी कथन नहीं किया है और न ही उक्त संबंध में बचाव पक्ष की ओर से उक्त साक्षीगणों को प्रतिपरीक्षण में कोई प्रश्न ही पूछा गया है। दंप्रसं की धारा– 313 के अधीन की गई अभियुक्ता के कथन को अभियोजन के मामले की सत्यता या अन्यथा मूल्यांकन करने के लिए विचारण के लिए लिया जा सकता है। यह प्रकरण परिस्थितिजन्य साक्ष्य पर आधारित है। यह सत्य है कि उन कथाओं में जहां मृत्यु गृह के भीतर होती है, प्रत्यक्ष साक्ष्य का प्राप्त करना अत्यधिक कठिन होता है, परंतु परिस्थितिजन्य साक्ष्य का मूल्यांकन कर अभियुक्तगण को दोषसिद्ध किया जा सकता है। प्रकरण में जहां तक हितबद्ध साक्षियों की साक्ष्य से अभियोजन के मामले को साबित किया जा सकता है। अभियुक्ता वंदना यदि घटना के समय घटनास्थल पर थी, तो उसे समाधानप्रद ढंग से उक्त स्थिति को स्पष्ट करना था। घटना के बाद अभियुक्ता वंदना द्वारा उसके पति की मृत्यु होने के बाद किसी प्रकार से कोई चिल्लाहट, शोरगुल, रोना आदि नहीं किया गया। अभियुक्ता वंदना को उसके ससुराल में जाना भी सिद्ध नहीं पाया गया है, जो कि प्रकृति के विरूद्ध आचरण प्रतीत होता है और घटना के तत्काल पश्चात् अभियुक्तगण का फरार होना उनके दोष की ओर संकेत करता है। जो तथ्य विशिष्ट रूप से किसी व्यक्ति के ज्ञान में है, तो उस तथ्य को साबित करने का भार उसी पर होता है। अभियोजन के लिए विशिष्ट रूप से अभियुक्तगण के ज्ञान के अंतर्गत जो कतिपय तथ्य हैं, उन्हें साबित करना असंभव है।

16. From the aforesaid finding recorded by the trial Court, the trial Court has found established the following circumstances: -

1. Love affair between Sunil Ratre (A-1) & Vandana Vishwakarma (A-2) is duly established which constitutes the motive of A-1 & A-2 to cause death of deceased Manoj Vishwakarma so that they may live the life happily.
2. Pursuant to the memorandum statements of A-1 & A-2, incriminating material has been seized from their possession.
3. A-1 & A-2, both have been arrested vide arrest memos Exs.P-13 & P-14 at the same place.
4. Conduct of A-2 of remaining absconding from her house after

the death of her husband Manoj Vishwakarma (deceased) was suspicious, she did not raise any alarm nor did she reported the matter to any of her neighbours or to the police and her absence from the place of incidence when near and dear reached to the spot is one of the incriminating circumstances against her.

5. A-2 in her examination under Section 313 of the CrPC while answering question No.68, has clearly admitted that in the house, on the date of incident, she herself, her husband and her son, all three were sleeping and when she went asleep, her husband committed suicide, as such, answer to question No.68 in her examination under Section 313 of the CrPC has been taken as one of the most incriminating circumstances against her which she was obliged to explain by virtue of Section 106 of the Evidence Act, but she has not explained.

17. Now, we shall discuss the correctness of the above-stated incriminating circumstances whether they have been held proved by the trial Court.

Love Affair between A-1 & A-2: -

18. The trial Court has recorded a finding by taking into consideration the statements of Umashankar Vishwakarma (PW-1), Arun Vishwakarma (PW-2), Ashok Vishwakarma (PW-3) – brothers of the deceased and Ramadhar Vishwakarma (PW-6) – father of the deceased, that there was love relationship between Sunil Ratre (A-1) & Vandana Vishwakarma (A-2), and A-1 has threatened the deceased (Manoj Vishwakarma) to kill him if he interferes with the

relationship between him and A-2. However, a careful perusal of the statements of Umashankar Vishwakarma (PW-1), Arun Vishwakarma (PW-2) & Ashok Vishwakarma (PW-3) – all three being brothers of the deceased, would show that they have not stated anything about the love affair between A-1 & A-2, they have only stated that A-2 & Manoj Vishwakarma have entered into love marriage and on that account, they were not happy, however, Ramadhar Vishwakarma (PW-6) – father of the deceased, has simply stated in his statement before the Court that his son Ashok has informed him that A-1 used to call A-2 over phone and on his being asked, Manoj has informed him that A-2 has love affair with A-1 and on that account, there was dispute also which took place between A-1 & Manoj and A-1 has threatened Manoj. Ramadhar Vishwakarma (PW-6) has not stated anything about the love and relationship of A-1 with A-2.

19. Similarly, the prosecution has also failed to establish that A-2 has any link or affair with A-1 because, the prosecution has not brought any evidence who has seen them together before or after the incident and even the memorandum statement of A-1 or A-2 nowhere states that there is any love and relationship between A-1 & A-2. Though it has been seriously attributed that on account of love affair relationship between A-1 & A-2, in furtherance of their common intention, they have caused the death of Manoj Vishwakarma – husband of A-1, but has not been established. However, the Supreme Court in the matter of **Suresh Chandra Bahri v. State of Bihar**[4] has held that if motive is proved that would

4 1995 Supp (1) SCC 80

supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, in the matter of **Babu v. State of Kerala**[5], it has been held by their Lordships of the Supreme Court that absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused and observed in paragraph 25 as under: -

> **"**25. In *State of U.P. v. Kishanpal*[6] this Court examined the importance of motive in cases of circumstantial evidence and observed: (SCC pp.87-88, paras 38-39)
>
> > "38. … the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.
> >
> > 39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.""

20. Similarly, in the matter of **Pannayar v. State of T.N.**[7], it has been held by the Supreme Court that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in

5 (2010) 9 SCC 189
6 (2008) 16 SCC 73
7 (2009) 9 SCC 152

favour of the accused.

21. The aforesaid judgments have been noticed by the Supreme Court authoritatively in the matter of **Nandu Singh v. State of Madhya Pradesh (now Chhattisgarh)**[8] and reviewing its earlier case laws on the point, their Lordships have clearly held that though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances.

22. In view of the aforesaid legal position, it is quite vivid that in the instant case, though there is no direct evidence on record and conviction of the two appellants herein is based on circumstantial evidence, but the prosecution has miserably failed to prove that there is love affair between both the appellants, by leading evidence of clinching nature, however, the suspicion raised on behalf of Ramadhar Vishwakarma (PW-6) – father of the deceased, would not help the prosecution to prove the motive of the appellants for the commission of the alleged offence.

Seizure of incriminating material subsequent to memorandum statement: -

23. The trial Court in paragraph 22 of its judgment has held that pursuant to the memorandum statement of appellant Sunil Kumar Ratre (A-1), sickle – the weapon of offence, which was used in the commission offence, has been seized from him vide Ex.P-10, but seizure and memorandum witnesses have not supported the case of the prosecution and have turned hostile and only on the basis of

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the testimony of investigating officer V.P.S. Chouhan (PW-11), seizure of the said sickle pursuant to the memorandum statement has been held to be proved. However, the effect of seizure would be considered in the later part of the judgment.

Arrest of both the accused at same place and spot: -

24. The next circumstance the trial Court has found proved is both the appellants herein (A-1 & A-2) were arrested from same place and spot and they have murdered the deceased and were absconding for four days. Though they have been arrested at same place as per the arrest memos, but both of them have given their explanation that they were not absconding. However, a careful perusal of the arrest memo (Ex.P-13) would show that appellant Sunil Kumar Ratre (A-1) was arrested vide Ex.P-13 at Chakarbhatha on 19-8-2013 at 4:00 p.m. and he is the resident of Rahangi, Jogipur, Police Station Hirri, District Bilaspur, and appellant Vandana Vishwakarma (A-2) has also been arrested on 19-8-2013 at 4:05 p.m. vide Ex.P-14 at Chakarbhatha, however, her local address in the arrest memo is mentioned as Jhalfa, Police Station Hirri, District Bilaspur, whereas, her present address has been mentioned as Ward No.7, Chakarbhatha Camp, Police Station Chakarbhatha, District Bilaspur. Chakarbhatha is a village / locality in Tahsil Bilha, District Bilaspur with an estimated population of 3,472 in the year 2023, however, according to the 2011 census, population of Village Chakarbhatha is 2,789. Considering the population of the locality of Chakarbhatha, particularly by residing in same village or same place, it cannot be

concluded that they were living together on the date and time of arrest, as the prosecution has failed to establish that they were arrested at the same place and the same house, particularly when there is difference of 5 minutes in arrest of both of them. As such, this circumstance is also not clearly established beyond reasonable doubt.

Conduct of accused Vandana Vishwakarma (A-2): -

25. The next circumstance that has been found proved by the trial Court is that accused / appellant Vandana Vishwakarma (A-2) remained absconding from her house and did not explain in her examination under Section 313 of the CrPC which she was required to explain, as while answering question No.68 in her examination under Section 313, she made admission that on the date of offence, she was along with her husband and son which states as under: -

> ''प्र0 68. क्या आपको बचाव में कुछ कहना है?
>
> उत्तर :– घटना दिनांक को मैं अपने पति एवं बच्चे के साथ सोयी हुई थी, मेरे नींद लग जाने के बाद मेरे पति नें फांसी लगाकर आत्महत्या कर लिया, जिसकी सूचना देने के लिए मैं अपने ससुराल वालों के पास गयी थी, किन्तु मेरा और मेरे पति का अन्तर्जालीय प्रेम विवाह होने के कारण मेरे ससुराल पक्ष वाले हमारे रिश्ते से नाखुश थे, इस कारण वे मुझे सहयोग न कर झूठा फंसा रहे हैं। मैं अभियुक्त सुनील रात्रे को नहीं जानती हूँ।''

26. The question would be, whether the admission of A-2 in her examination under Section 313 of the CrPC constitutes substantive evidence within the meaning of Section 3 of the Evidence Act?

27. In the instant case, conviction is substantially based on the above-stated admission of A-2 in her examination under Section 313 of

the CrPC. The Supreme Court in the matter of **Raj Kumar Singh alias Raju alias Batya v. State of Rajasthan**[9] has clearly held that the statement made under Section 313 of the CrPC cannot be made basis for conviction as it is not subjected to oath and it cannot be treated as evidence within the meaning of Section 3 of the Evidence Act, and observed as under in paragraph 36: -

> "36. In view of the above, the law on the issue can be summarised to the effect that statement under Section 313 Cr.P.C. is recorded to meet the requirement of the principles of natural justice as it requires that an accused may be given an opportunity to furnish explanation of the incriminating material which had come against him in the trial. However, his statement cannot be made a basis for his conviction. His answers to the questions put to him under Section 313 Cr.P.C. cannot be used to fill up the gaps left by the prosecution witnesses in their depositions. Thus, the statement of the accused is not a substantive piece of evidence and therefore, it can be used only for appreciating the evidence led by the prosecution, though it cannot be a substitute for the evidence of the prosecution. In case the prosecution's evidence is not found sufficient to sustain conviction of the accused, the inculpatory part of his statement cannot be made the sole basis of his conviction. The statement under Section 313 Cr.P.C. is not recorded after administering oath to the accused. Therefore, it cannot be treated as an evidence within the meaning of Section 3 of the Evidence Act, though the accused has a right if he chooses to be a witness, and once he makes that option, he can be administered oath and examined as a witness in defence as required under Section 315 Cr.P.C.
>
> An adverse inference can be taken against the accused only and only if the incriminating material stood fully established and the accused is not able to furnish any explanation for the same. However, the accused has a right to remain silent as he cannot be forced to become witness against himself."

9 AIR 2013 SC 3150

28. Similarly, in the matter of **Dehal Singh v. State of Himachal Pradesh**[10], it has been held that statement of accused under Section 313 of the CrPC is not an evidence and the said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act, and observed as under in paragraph 23: -

> "23. Statement under Section 313 of the Code of Criminal Procedure is taken into consideration to appreciate the truthfulness or otherwise of the case of prosecution and it is not an evidence. Statement of an accused under Section 313 of the Code of Criminal Procedure is recorded without administering oath and, therefore, said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act. The appellants have not chosen to examine any other witness to support this plea and in case none was available they were free to examine themselves in terms of Section 315 of the Code of Criminal Procedure which, inter alia, provides that a person accused of an offence is a competent witness of the defence and may give evidence on oath in disproof of the charges. There is reason not to treat the statement under Section 313 of the Code of Criminal Procedure as evidence as the accused cannot be cross-examined with reference to those statements. However, when an accused appears as witness in defence to disprove the charge, his version can be tested by his cross-examination. Therefore, in our opinion the plea of the appellant Dinesh Kumar that he had taken lift in the car is not fit to be accepted only on the basis of the statements of the appellants under Section 313 of the Code of Criminal Procedure."

29. In the matter of **Ashok Debbarma alias Achak Debbarma v. State of Tripura**[11], relying upon the matter of **Mohan Singh v. Prem Singh**[12], it has been held that the statement made in defence by the accused under Section 313 of the CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only

10 (2010) 9 SCC 85
11 (2014) 4 SCC 747
12 (2002) 10 SCC 236

a part of such statement under Section 313 of the CrPC cannot be made the sole basis of his conviction, and observed in paragraphs 24 and 25 as under: -

> "24. We are of the view that, under Section 313 statement, if the accused admits that from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed aside. This Court in *State of Maharashtra v. Sukhdev Singh*[13] held that since no oath is administered to the accused, the statement made by the accused under Section 313 CrPC will not be evidence stricto sensu and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being examined under Section 313 CrPC. But, sub-section (4) says that the answers given by the accused in response to his examination under Section 313 CrPC can be taken into consideration in such an inquiry or trial. This Court in *Hate Singh Bhagat Singh*[14] held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In *Narain Singh v. State of Punjab*[15] this Court held that when the accused confesses to the commission of the offence with which he is charged, the Court may rely upon the confession and proceed to convict him.
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> 25. This Court in *Mohan Singh v. Prem Singh*[12] held that: (SCC p. 244, para 27)
>
> > "27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction."
>
> In this connection, reference may also be made to the judgments of this Court in *Devender Kumar Singla v. Baldev Krishan Singla*[16] and *Bishnu Prasad Sinha v.*

13 (1992) 3 SCC 700
14 Hate Singh Bhagat Singh v. State of Madhya Bharat, AIR 1953 SC 468 : 1953 Cri LJ 1933
15 (1964) 1 Cri LJ 730
16 (2005) 9 SCC 15

> *State of Assam*[17]. The abovementioned decisions would indicate that the statement of the accused under Section 313 CrPC for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution."

30. Very recently, in **Premchand** (supra), Dipankar Datta, J. speaking for the Supreme Court has clearly held that the explanation furnished by the accused cannot be considered in isolation but has to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the section 313 statement(s) and statements of the accused in course of examination under Section 313 do not constitute evidence under Section 3 of the Evidence Act, and observed in paragraphs 14 and 15 as under: -

> "14. A bench of three Hon'ble Judges of this Court in *State of U.P. vs Lakhmi*[18] has extensively dealt with the aspect of value or utility of a statement under section 313, Cr. P.C. The object of section 313, Cr. P.C. was explained by this Court in *Sanatan Naskar vs. State of West Bengal*[19]. The rationale behind the requirement to comply with section 313, Cr. P.C. was adverted to by this Court in *Reena Hazarika vs. State of Assam*[20]. Close on the heels thereof, in *Parminder Kaur vs. State of Punjab*[21], this Court restated the importance of section 313, Cr. P.C. upon noticing the view taken in *Reena Hazarika* (supra) and *M. Abbas vs. State of Kerala*[22].
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> 15. What follows from these authorities may briefly be summarized thus:

17 (2007) 11 SCC 467
18 (1998) 4 SCC 336
19 (2010) 8 SCC 249
20 (2019) 13 SCC 289
21 (2020) 8 SCC 811
22 (2001) 10 SCC 103

a. section 313, Cr. P.C. [clause (b) of sub-section 1] is a valuable safeguard in the trial process for the accused to establish his innocence;

b. section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him;

c. when questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court;

d. the accused may even admit or own incriminating circumstances adduced against him to adopt legally recognized defences;

e. an accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him;

f. the explanations that an accused may furnish cannot be considered in isolation but has to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the section 313 statement(s);

g. statements of the accused in course of examination under section 313, since not on oath, do not constitute evidence under section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case;

h. statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission; and

i. if the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyze and consider his statements;

j. any failure to consider the accused’s explanation of incriminating circumstances, in a given case, may vitiate

the trial and/or endanger the conviction."

31. Reverting to the facts of the case in light of the aforesaid legal position, it is quite vivid that though the trial Court has recorded a finding that the presence of Vandana Vishwakarma (A-2) with the deceased on the date of offence in the house is not established by oral or circumstantial evidence brought out on behalf of the prosecution, but since she has admitted in her statement under Section 313 of the CrPC while answering to question No.68 that she was in her house and she has also given explanation that her husband has committed suicide and she has gone to her in-law's house to give information and basing the said admission of A-2 in shape of question No.68 that she was in house along with her husband and thereby, she has furnished explanation, the trial Court has proceeded to convict her for offence under Section 302 read with Section 34 of the IPC, whereas it is the well settled legal position as noticed herein-above that conviction cannot rest on the admission made by the accused under Section 313 of the CrPC as lastly held in **Premchand** (supra), and the prosecution was required to establish that A-2 and her husband (deceased), both were in the house on the date of offence and none other else was there in the house by leading oral and documentary evidence on record which it has basically failed to prove. Furthermore, since the statement of the accused under Section 313 of the CrPC is not substantive evidence within the meaning of Section 3 of the Evidence Act and similarly, there is no legally admissible evidence to connect A-1 with the commission of offence as he was not seen

along with A-2 before or after the commission of offence, therefore, conviction recorded by the trial Court relying upon her statement under Section 313 of the CrPC is liable to be set aside.

32. The next circumstance that has been found proved by the trial Court is that the appellants, particularly Vandana Vishwakarma (A-2) was absconding from the house after the death of her husband and though her husband was found to be dead, she did not raise any alarm nor she did report the matter to any of the neighbours. However, in our considered opinion, the mere act of absconding, on the part of the accused particularly A-2, alone would not necessarily lead to a final conclusion about the guilt of the accused, as there may be many reasons for abscondence. The Supreme Court in the matter of **Durga Burman Roy v. State of Sikkim**[23] relying upon its earlier decision in the matter of **Sunil Kundu and another v. State of Jharkhand**[24] held that absconding by itself does not prove the guilt of a person. A person may run away due to fear of false implication or arrest. It has been observed in **Durga Burman Roy** (supra) as under:

> "13. "To abscond" means, go away secretly or illegally and hurriedly to escape from custody or avoid arrest. It has come in evidence that the accused had told others that they were going from their place of work at Gangtok to their home at New Jalpaiguri. They were admittedly taken into custody from their respective houses only, at New Jalpaiguri on the third day of the incident. Therefore, it is difficult to hold that the accused had been absconding. Even assuming for argument's sake that they were not seen at their work place after the alleged incident, it cannot be held that by itself an adverse inference is to be drawn against them ..."

33. In that view of the matter, alleged abscondence of A-2 immediately

23 (2014) 13 SCC 35
24 (2013) 4 SCC 422

after the incident, if any, would not lead to the conclusion of her guilt unless the chain of circumstances are fully established.

34. Concludingly, the prosecution has failed to establish motive of the offence, even it could not establish that both the appellants (A-1 & A-2) were arrested at same place and same time simultaneously and the weapon seized could not be connected with appellants for the offence in question and presence of A-2 with the deceased could not be established beyond reasonable doubt, conviction cannot rest only on the statement under Section 313 of the CrPC as the said statement is not substantive evidence within the meaning of Section 3 of the Evidence Act.

35. In view of the aforesaid analysis, we are unable to maintain conviction and sentences awarded to the two appellants herein and they are entitled for benefit of doubt.

36. Resultantly, the impugned judgment dated 6-6-2014 passed by the 6th Additional Sessions Judge, Bilaspur in S.T.No.187/2013 is hereby set aside. The appellants are acquitted of the charges alleged against them. They are in jail. They shall be released forthwith, unless they are required in connection with any other case.

37. The criminal appeals are allowed.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Radhakishan Agrawal)
Judge

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