Munna Kumar Upadhyaya @ M.Upadhyaya vs State Of A.P.Tr.Pub.Prosecutor on 8 May, 2012

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Bench: Swatanter Kumar, A.K. Patnaik

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1316 of 2008

Munna Kumar Upadhyaya @
Munna Upadhyaya … Appellant

Versus

The State of Andhra Pradesh through
Public Prosecutor, Hyderabad,
Andhra Pradesh … Respondent

J U D G M E N T

Swatanter Kumar, J.

1. The present appeal is directed against the judgment of the High Court of Judicature, Andhra Pradesh at Hyderabad dated 28th March, 2007, confirming the judgment of conviction and order of sentence passed by the learned Third Additional Sessions Judge, Ranga Reddy District at L.B. Nagar

on 22nd January, 2007.

Facts in Brief

2. One Shri Baldevraj Seth was working as Chief Track Engineer, South Central Railway. He was living in Bungalow No.100, Railways Officer's Colony, South Lalaguda of Secunderabad, the official residence allotted to him along with his family members, i.e., his wife, Prabha Seth, son, Master Rishab Seth and daughter Kanika Seth. Accused Chandra Bhushan Upadhyay (Accused No.1) was working as office peon in South Central Railways, Secunderabad and was attached to the bungalow of Shri Baldevraj Seth for the last 7 years. Accused No.1 was married in the year 1997 and was residing in the servant quarters of the said bungalow. In fact, he had been given two servant quarters. Accused No.1 was arrogant, evasive and in the habit of revolting against Smt. Prabha Seth who was a strict person and demanded better performance of duties by accused No.1. The wife of accused No.1, on the occasion of dussehra festival, went to her native place in Bihar, to which all the accused belong. After her departure, accused No.1 became more arrogant. Nearly a week before the occurrence, Smt. Prabha Seth had scolded accused No.1 for his shabby looks and had asked him to have a haircut. This aggravated the grudge of accused No.1 towards her. On the very next day, accused No.1 met his elder brother's son, Munna Kumar Upadhyay (Accused No.2), his brother-in-law, Maheshwar Upadhyay (Accused No.4) and their friend, Monu Singh (Accused No.3). As already noticed, all of them belong to the same village in the State of Bihar. Accused No.3 was working in Bharat Steels. Because of the serious grudge of accused No.1 towards Smt. Prabha Seth, they all planned to kill the entire family of Shri Baldevraj Seth and to decamp with the gold ornaments, etc.

3. In furtherance to their plan, accused No.1 is stated to have purchased two knives from a road side hawker in the market. He also told Accused Nos.2 to 4 to come to the bungalow in the morning of the next Monday to execute their plan. On 17th March, 2003, at about 9.30 a.m., Baldevraj Seth left for his office. At about 10 a.m., accused No.2 to 4 came to the entrance of the bungalow, not permitting their entry from the main gate, accused No.1 took them to the bathroom in the back varandah and closed the door. Accused No.1 closed all the doors from inside. He did not permit the washerwoman to come inside the house and gave her clothes from outside. When the maid servants who used to come to the house everyday to clean the house, came at their respective times, they were sent back by accused No.1 on the pretext that Smt. Prabha Seth wanted the house to be cleaned with acid and phenyl and therefore, they should come on another day. A carpenter, Janagama Maheshwar, PW23 had also come to the premises for fixing some poster beds. However, accused No.1 did not permit him to come into the house and when the carpenter insisted on completing the work, accused No.1 told him that Smt. Prabha Seth was not well and does not want to be disturbed. At about 10.30 a.m., Smt. Prabha Seth went into the bathroom. ACCUSED NO.1 went to the room of Master Rishab, who was watching the television, and on the pretext of showing him something, called him to another bathroom. When Rishab reached the bathroom, accused Nos.2 to 4 held the boy while accused No.1 cut his throat, as a result of which he died instantaneously. His body was kept in the bathroom itself. Thereafter when Smt. Prabha Seth came out of the bathroom, accused No.1 immediately attacked her and accused No.3, Monu Singh, opened fire on her with a countrymade pistol. When she was trying to get free from the grip of accused No.1, there was a

scuffle and because of the resultant misfire, accused No.3 himself received injury on his leg. Then, accused No.1, with the knife, succeeded in cutting the throat of Smt. Prabha Seth. Thereafter, the accused shifted her body also to the bathroom. Accused No.1 cleaned the blood stains from the room and watched for Kanika Seth, daughter of Baldevraj Seth, to arrive. She arrived at 11.45 a.m. from the school. When she pressed the call button, accused No.1 directed her to enter from the back door. The moment she stepped in, accused Nos.2 and 4 held her and accused No.1 cut her throat with a knife, as a result of which she collapsed. Her body was then shifted to the bathroom. After killing these three members of the family, they ran towards the bedroom, opened the almirah, took gold ornaments like necklace, chains, rings, wrist watch and net cash of Rs.44,560/-, which they distributed among themselves.

4. Accused No.3, Monu Singh was bleeding as a result of the bullet injury that he suffered. The other accused took him to the premises of Bharat Steel, where he was working as a security guard. There, one Shashidhar Pandey advised them to take accused No.3 to a doctor. The doctor, after observing the injury of accused No.3, asked them to shift the patient to Gandhi Hospital, Secunderabad. In fact, the doctor helped them to get admitted and receive the treatment. accused No.1 gave Rs.2,000/- to the said doctor for medical expenses and after giving that money, accused Nos.1, 2 and 4 left the place. Accuse No.1 sent away Pandu, the watchman, who had come to the residence of Baldevraj Seth, on the pretext of securing sweets. At about 6.50 p.m., Baldevraj Seth, returned from his office to his bungalow. He noticed that the lights of the bungalow were off. As a routine, the driver used to bring the briefcase of Baldevraj Seth inside the bungalow, but on that day, he was prevented from doing so by Accused No.1, who brought the briefcase inside himself. Baldevraj Seth, entered the house and immediately thereafter, accused fired at him and killed him. After killing him, he shifted his body also into the bathroom and cleaned the floor of the hall with phenyl and acid. He called Smt. Anju, accused No.5, who is his sister and was residing with him, to clean the floor, whereafter accused No.1 went away to Mahindra Hills to meet his brother in law. Thereafter, accused Nos.1, 2 and 4 returned to the bungalow and found that Pandu, the watchman was sleeping in the guardroom at the main gate. The accused waited there and at about 11 p.m. and then they took the car from the garage, shifted the dead bodies to the car putting the body of Baldevraj Seth in the dickey of the car. Accuse Nos.1 and 2 took the car near the railway garage. They also dumped their blood stained clothes, as well as those of the deceased, in the car. After taking the car near the railway tracks at SP Nagar, Malkajgiri, and parking there, accused Nos.1 and 2 came back to Tarnaka to buy petrol. Accused No.2 purchased ten litres of petrol at Osmania University filling station, Tarnaka. They brought the petrol to the place where the accused had parked the car, put the petrol on the car and burnt the dead bodies with the car.

5. Thereafter, accused No.1 returned to the bungalow. Upon returning, in the next morning at 6 a.m., the accused informed the neighbour, one Sanjay Kumar Mishra (PW3) and others that Baldevraj Seth had gone with his family for dinner outside, on 17th March, 2003 at about 7.30 p.m. and did not return again. On 18th March, 2003 at about 6.45 a.m., Municipal Counsellor, PW-1 made a report in Malkajgiri Police Station stating that he had come to know that a car was in flames at SP Nagar Road, Malkajgiri, near Railway water tank. The Maruti car was completely burnt and some dead bodies were found in the car, so PW-1 requested the police to take necessary action. Upon this, Sub-Inspector of Police, Malkajgiri, PW-47 registered a case under Sections 302, 201 IPC

noted the engine No. and chassis No. of the vehicle and thereby traced the owner. The dog squad was also put into service. In the meanwhile, the Chief Engineer along with other senior officers visited the spot and informed the police that one Meenal Seth, PW-12, the other daughter of Baldevraj Seth, was on the way from Delhi to Hyderabad in Rajdhani Express and had telephoned them stating that she was calling the phone numbers of the family members, but no one was responding. Thus, he had sent his peon to the house of Baldevraj Seth. However, accused No.1 had given him the same excuse that he had given to the neighbours that the family had gone out. In the morning, he had been told that the family had not returned. The dead bodies, on the basis of the articles recovered from the car itself, were identified. After establishing the identity of the deceased, the investigating officer prepared the inquest report and started the investigation.

6. During the course of investigation, the investigating officer recorded the statements of different witnesses. From the very initial stages, accused No.1 appears to have been the prime suspect. It was for this reason that Pandu, PW8 had informed the investigating officer that he was not permitted to enter the bungalow and the accused had insisted that he remain at the front gate and he was then sent to buy sweets, which he gave to Accused No.5 on his return. When the bungalow of the deceased was examined, at number of places, blood marks were found sprinkled on the wall and the floor had become sticky as it had been washed with phenyl and acid. Since accused No.1 failed to explain all these suspicious circumstances, he was arrested and it is the case of the prosecution that he finally confessed to the offence on 19th March, 2003, upon interrogation conducted in the presence of two mediators. He also admitted that the offence was committed with the assistance of Accused Nos.2 to 4 and Accused No.5. The cell phone and the knife which were used in the commission of the crime were thrown by the accused in the dustbin near the church at Mettuguda. In furtherance to the confessional statement of the accused and at his instance, the cell phone, a portion of the gold ornaments, cash and knife were recovered. On the basis of the information supplied by accused No.1, accused No.5 was also arrested and gold ornaments were seized from her. At the instance of Accused No.2, one country made revolver and one 7.62 M rib and OFV 9208 live cartridge, which were hidden near the railway track, were recovered and seized along with the portion of the gold ornaments recovered from him. The detailed confessional statement and seizure reports were prepared in the presence of witnesses. Finger prints of accused Nos.1 to 5 were collected and sent for comparison with that of chance prints obtained from the house of Baldevraj Seth. Upon recognition, forensic science experts, headed by Dr. Rajagopal Reddy, Professor of Forensic Medicine, Gandhi Medical College, Hyderabad visited the spot and held autopsy. The incriminating articles and other collected materials were also sent for DNA Analysis to the laboratory. The investigating officer recorded the statement of a number of witnesses, obtained the report from the laboratory and finally filed the charge-sheet before the court of competent jurisdiction. All the accused were committed to the Court of Sessions, which charged the accused as follows:-

> "Against A1 – Under Sections 302, 201, 435, 380 or alternatively U/s 411 IPC and U/s 25(1)(a) and 27 of Arms Act.
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> Against A2 – Under section 302, 302 R/w 34, 201, 435, 380 or alternatively 411 IPC.

Against A3 – Under section 302, 380 or alternatively 411 IPC and 25(1)(a) and 27 of Arms Act.

Against A4 – Under Section 302, 302 R/w 34, 201, 380 or alternatively U/s 411 IPC.

Against A5 – Under Section 201, 380 or alternatively U/s 411 IPC."

7. They were tried in accordance with law and by a very detailed judgment dated 24th January, 2007, the trial court found all the accused guilty of different offences as charged and punished them as follows:-

"a) A1 (Chandra Bushan Upadhyay) is sentenced to death for the offence U/s 302 IPC. A1 is also sentenced to suffer R.I. for 3 years each for the other offences U/ss. 201, 435, 411 IPC and section 25(1) (a) and 27(1) of Arms Act. All these sentences shall run concurrently.

b) A2 (Munna Kumar Upadhyay @ Munna Upadhyaya) is sentenced to suffer imprisonment for life for the offence U/s. 302 R/w 34 IPC. He is also sentenced to suffer RI for 3 years each for the offences U/ss. 201, 435 and 411 IPC. All the sentences shall run concurrently.

c) A3 (Monu Singh) is sentenced to suffer imprisonment for life for the offence U/s. 302 R/w 34 IPC. He is also sentenced to suffer R.I. for 3 years each for the offences U/ss. 411 IPC and 25(1)(a), 27 of the Arms Act. All the sentences shall run concurrently.

d) A4 (Maheshwar Upadhyay) is sentenced to suffer imprisonment for life for the offence U/s. 302 R/w 34 IPC. He is also sentenced to suffer R.I. for 3 years each for the offences U/ss.

201, and 411 IPC. All the sentences shall run concurrently.

e) A5 (Smt. Anju Choubey) is sentenced to suffer R.I. for 3 years each for the offence U/s 201 and 411 IPC respectively. The period of detention already undergone by A5 shall be given set off against the sentence imposed as per Sec. 428 Cr.PC. Both the sentences shall run concurrently."

8. Being aggrieved from the judgment of the trial court, all the accused preferred an appeal before the High Court. The High Court, vide its judgment dated 28th March, 2007, acquitted the Accused Nos 3 and 4, namely, Monu Singh and Maheshwar Upadhyay, of all offences with which they were charged. However, it affirmed the conviction of accused No.1, Chandra Bhushan Upadhyay, accused No.2, Munna Kumar Upadhyay and accused No.5, Anju Choubey.

9. While dealing with the order of sentence, the High Court partially accepted the plea of accused No. 1 and commuted the death sentence awarded to him by the trial court, to life imprisonment.

Accused No. 5 had only been convicted for the offence under Sections 201 and 411 IPC and she has not preferred any appeal before this Court. The State has also not preferred any appeal before this Court against the acquittal of accused Nos. 3 and 4. Accused No. 1, Chandra Bhushan Upadhyay, had filed an appeal challenging the judgment of the High Court, but the same was dismissed at the SLP stage itself, as being withdrawn, vide order of this Court dated 6th August, 2007. Thus, in the present appeal, we are only concerned with the contentions raised on behalf of accused No. 2. The learned counsel appearing for the said appellant has contended :

> A. The case being one of circumstantial evidence, the entire evidence is of very weak nature. The prosecution has not been able to establish the chain of circumstances which undoubtedly points only towards the guilt of the accused.
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> B. The High Court has entirely based its order of conviction on the finger prints found at the place of occurrence and there is no evidence as to how the finger prints of the accused persons were collected by the Police and how they were dispatched to the forensic laboratory for the purposes of comparison. The vital link in the evidence relating to finger prints is missing and as such, the judgment of the High Court is liable to be set aside.
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> C. The test identification parade, firstly, was not held in accordance with law and secondly, it was held after considerable unexplained delay, that too, when the photographs of the accused had been published in the newspapers. Thus, the courts could not have relied upon the identification parade in returning a finding of guilt against the accused.
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> D. Lastly, the contention is that the acquittal of accused Nos. 3 and 4 by the High Court on merits is clear indication that the prosecution has failed to prove its case beyond reasonable doubt. Thus, the High Court ought to have acquitted the present appellant as well.

10. There can be no doubt that the present case is one of circumstantial evidence. There is no witness to the commission of crime. Thus, there is a definite requirement of law that a heavy onus upon the prosecution be discharged to prove the complete chain of events and circumstances which will establish the offence and would undoubtedly only point towards the guilt of the accused. To prove this chain of events, prosecution had examined as many as 49 witnesses. This included the persons who were working at the bungalow, neighbours, the worker at the petrol pump from which Accused no.2 purchased petrol, the doctors, forensic experts, fingerprint expert and the only surviving member of the family i.e., daughter Meenal Seth, PW12. This ocular evidence is obviously in addition to the documentary and expert evidence brought by the prosecution on record. A case of circumstantial evidence is primarily dependent upon the prosecution story being established by cogent, reliable and admissible evidence. Each circumstance must be proved like any other fact which will, upon their composite reading, completely demonstrate how and by whom the offence had been committed. This Court has clearly stated the principles and the factors that would govern judicial determination of such cases. Reference can be made to the case of Sanatan Naskar and Anr.

Vs. State of West Bengal [(2010) 8 SCC 249], where the Court held as follows:-

> "27. There cannot be any dispute to the fact that it is a case of circumstantial evidence as there was no eyewitness to the occurrence. It is a settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt complete chain of events and circumstances which definitely points towards the involvement and guilt of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eyewitness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of the accepted principles in that regard.
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> 28. A three-Judge Bench of this Court in Sharad Birdhichand Sarda v. State of Maharashtra held as under: (SCC pp. 184-85, paras 152-54) "152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant Govind Nargundkar v. State of M.P. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail v. State of U.P. and Ram Gopal v. State of Maharashtra. It may be useful to extract what Mahajan, J.

has laid down in Hanumant case: (AIR pp. 345-46, para 10) '10. ... It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the 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. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.'

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.

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 Maharashtra9 where the observations were made: [SCC p. 807, para 19 : SCC (Cri) p. 1047] '19. ... 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.' (emphasis in original) (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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

11. Now, let us examine the prosecution evidence in this case before considering the contentions raised on behalf of the appellant. PW-47 is the police officer who had registered the First Information Report, Ext.P-

134. PW-48 and 49 are the investigating officers who conducted the investigation of the case. The identity of all the deceased and the fact that they were residents of the bungalow in question, that accused Nos. 1 and 5 were living in the premises and that accused No. 2 was nephew of accused No. 1 have been fully established on record by the statements of PW- 3 to PW-8 and PW-12, Meenal Seth, daughter of Baldevraj Seth.

12. The identity of the deceased persons as well as the connection of accused No. 3 with the commission of crime has duly been proved by Ext. P- 96, the DNA Report from the Forensic Science Laboratory Hyderabad, Andhra Pradesh which was specifically recorded and supported by the evidence of PW- 39, Dr. G.V. Jagdamba. According to this witness, he had received the requisition from the Commissioner of Police, Cyberabad for performing DNA test. He stated that he conducted the DNA test on the items which were received by him. The analysis was taken up by organic extraction process and thereby he could establish the identity of deceased, Kanika Seth and Prabha Seth as also the involvement of Monu Singh, accused No. 3 after examination of the submitted blood samples.

13. In fact, there can be no doubt as to the fact that the accused No. 1 was working as domestic servant of Baldevraj Seth and living in the servant quarters. The reason for commission of crime, as per the case of the prosecution, was the persistent grudge of accused No. 1 towards Prabha Seth, the deceased.

14. All the accused planned and then killed all the four members of the family, one by one. They committed the crime in a most brutal manner by cutting the throat of each one of the deceased. Of course, in the process, when accused No. 3 wanted to shoot Prabha Seth in the scuffle, he suffered the gun injury and later they killed Prabha Seth by causing a knife injury at her throat.

15. To this entire occurrence, there is no eye-witness but the attendant circumstances have fully been established by the prosecution. The forensic expert as well as the neighbours and the Investigating Officers had seen the blood stained walls, the floor, having been washed with phenyl

and acid, which was sticky and various incriminating items seized in the presence of the witnesses after confessions of the accused.

16. Furthermore, PW-8, Pandu clearly stated that when he had come to the bungalow, it was accused No. 1 who did not permit him to go inside the house and asked him to wait outside at the main gate and then, had even sent him to get the sweets from the market, which he brought and gave to accused No. 5. Similarly, Janagana Maheshwar, carpenter, PW-23, who had come to repair the wooden bedsteads was again not allowed admission into the house and was sent away to work outside, on the pretext that Prabha Seth was not feeling well and did not want to be disturbed. PW-3 identified accused No.1, accused No.2 and accused No.5 as he had seen them in the bungalow on various occasions. PW-4, Sabita also stated that she was working as a maid servant for sweeping and mopping the floor of the bungalow and on the fateful day, was not permitted by accused No.1 to do her routine job. She found that the rear door from where she used to enter the house normally had been closed from inside and after she called for the accused, he asked her to go away because Prabha Seth was not feeling well. On similar lines were the statements of PW5 and PW6. The following portion of the statement of PW-6, in fact, completely brings out the involvement of accused No. 1 in the commission of the crime.

"Then A1 asserted that madam had gone to a movie, got wild and in an angry mood asked me to go away. I noticed the floor of the hall sticky and wet. Then I asked A1 why the floor in the hall is sticky and wet. A1 replied me that madam asked him to clean the floor of the hall with an acid and accordingly he washed the floor of the hall with an acid and asked me to go away, in an angry mood. Then I returned home. As soon as I came out of the house, A1 closed the rear door from inside. I returned to my house. On the next day i.e. on 18-03-2003 at about 7.30 a.m., I was returning home by purchasing milk from a nearby milk booth. I found A1 and the wife of PW3 talking with each other. She was asking A1 whether B.R. Seth and his family members had come back or they gave any information through telephone, for which A1 replied her that Seth and his family members have not come back. I returned to my house. At about 11.00 a.m. on 18-03-2003, police officials and railway official came to the official bungalow of B.R. Seth. Then I came to know about the death of B.R. Seth and his family."

17. Besides all this is the statement of PW-12, the sole surviving member of Seth family, which has fully corroborated the statement of all these witnesses, as well as that of neighbour PW3. She was travelling from Delhi to Secunderabad by train. A number of times, she claims to have called up the numbers of her father and other family members, but none responded. Upon this, she had rang up PW-3 to find out what had happened. It was only on her arrival at Secunderabad that she came to know about the unfortunate event where her entire family had been murdered by the accused. Accused had disappeared from the premises in question. Prior thereto, he had even told the neighbour, who made enquiry in furtherance to the phone calls by PW-12, that Baldevraj Seth and the family had gone out in the car on the evening of 17th March, 2003, but had never returned back. There is no occasion for so many witnesses to depose falsely implicating the accused in the commission of crime. The statement of these witnesses seen in conjunction with the circumstance that the accused had given different and conflicting versions to different persons (servants and neighbours) at different times, either for not permitting their entry into the house, or claiming that

the family had gone out on 17th March, 2003, fully support the case of the prosecution.

18. PW25 is again a very material witness, who has proved the involvement of accused No. 2 in the commission of the crime. According to this witness, he was working as a helper in the University Filling Station petrol pump. He knew only accused No.2. On the evening of 17/18th March, 2003, at about 12.30 – 1.00 a.m. accused No. 2 had come to the petrol pump and asked for 10 litres of petrol. Accused No. 2 was carrying a plastic container for that purpose. Upon enquiry from this witness, he told this witness that he needed the petrol because his family was travelling in a car and the petrol in the car had finished. On this pretext, he purchased 10 litres of petrol. Accused No. 2 paid this witness Rs.350/- and had to collect Rs.3 as change. When PW-25 was looking for the change, the accused did not wait and went away. This witness duly identified MO 74, the plastic cane in which he had given petrol to the accused. This petrol, according to the prosecution, had been used in burning the car as well as the dead bodies of the deceased persons. PW36, M. Sanjiv Kumar, is the forensic expert who had been sent various items collected from the scene of the car. According to him, he was asked to analyze for detection of flammable material on these items. Upon analysis, he gave a report that the items 1 to 8, 24 and 31 were detected for flammable material. From the burnt clothes, he reported that they bore traces of flammable material. Smell of petrol was also present at the scene and this fact stood confirmed by the statement of PW48, the Investigating Officer. Thus, it is clear that accused No. 2 had taken the petrol from the petrol pump and used it, along with other accused, for the purpose of putting the car and the dead bodies of the deceased persons on fire.

19. PW45, another forensic expert, had found human blood in the rooms where the crime was committed and also on the items which were sent to him for his opinion. The presence of human blood (B+) on these items, including the clothes which were sent for serological examination, clearly indicates that in that house, murder of some human being had been committed. Identities of those human beings stands completely established not only by expert evidence but by the evidence of the neighbours also.

20. The prosecution had also examined the ballistics expert as PW-37. He expressed his opinion that item No. 2 was a live cartridge and he opined that it was a country made pistol with 7.62 MM calibre and that the cartridges recovered had been fired from the recovered pistol. The cartridges were recovered from the bungalow while the pistol and live cartridge was recovered in furtherance to the confessional statements made by accused Nos.2 and 3.

21. The learned counsel appearing for the appellant had argued with some vehemence that the reliance placed by the High Court on the evidence relating to finger prints is misplaced, as it has not even been proved in accordance with law. Firstly, we may notice that the judgments of the Courts below do not solely rely upon the evidence of finger prints, but this was only one of the factors which were taken into consideration by the trial Court. Secondly, the contention itself is without any substance.

22. PW-38, the finger print expert had visited the site and lifted some chance finger prints on the steel almirahs from near the inner lock door and another set of finger prints from the rear side of the bathroom. During the course of investigation, the investigating officer PW-48, with the leave of the

Court, had taken the sample finger prints of all the accused, i.e., accused No.1 to accused No.5. These finger prints were sent to the forensic laboratory to be compared with the chance finger prints that had been lifted by the expert. The Investigating Officer had sent them vide Ext. P52 to the finger print expert. These were examined by the expert, who submitted his Report vide Ext. P73 to the Court and in particular vide Ext. P38, he clearly stated that the chance finger prints matched with the finger prints of accused Nos.1 and 2. This expert was examined as PW38 in the Court. In his statement, he clearly stated that he had not found any chance print, either on the plastic tin or on the burnt car, but with regard to the chance finger prints collected from the bungalow, i.e. inner lock door of steel almirah and the back door of the house, he clearly stated that those matched the finger print slip containing the finger prints of Munna Kumar Upadhyay (accused No. 2), which are marked as "P". This witness was cross-examined at length, without any material to favour the accused. Even in his cross-examination, he clearly stated that when they went to the bungalow, the steel almirah of the bedroom was open. He also examined the wooden door planks of the rear side bathroom and had taken a chance print from there, which was later proved to match the prints of accused No.1.

23. No suggestion was put to this witness in his cross-examination that he never went to the site, never collected the finger prints or that the finger prints of the accused were never sent by the police to him. We may also notice that, even to the investigating officer, this suggestion was never put. The attempt on behalf of the accused to object to the evidence of the finger prints on the ground that the investigating officer has not told in his examination-in-chief that he had taken the finger prints of the accused and sent them to the expert does not carry much weight in view of the above documentary, ocular and expert evidence. It was expected of the Investigating Officer to make a statement in that behalf, but absence of such statement would not weight so much against the prosecution that the court should be persuaded to reject the evidence of PW38 along with the clinching evidence of Ext. P-52, P-72 and P-73 respectively.

24. Equally without merit is the submission on behalf of the appellant that the finger print could be there upon the almirah in the normal course of business, as accused No. 1 was the domestic servant working in the bungalow. What is important is that the presence of finger prints of accused No. 2 found in the house and particularly on the almirah in the bedroom of the deceased, remain unexplained and secondly, no attempt was made by any of the accused persons to take a stand to explain their conduct.

25. The reliance upon the case of Chandran @ Surendran and Anr. Vs. State of Kerala [1991 Supp. (1) SCC 39, para 21 and 24] is again not of help to the accused inasmuch as the facts of that case were totally different and the accused had taken up the plea that the finger prints upon the glass had been taken by the police by coercion. The Court, on the facts of that case and upon the evidence before the Court, came to the conclusion that finger print evidence was not reliable because among all glass pieces, only two had matching finger prints and no appropriate explanation has been given.

26. In the present case, lifting of chance finger prints and on comparison being found to be matching with the sample finger prints of the accused, taken by the Police, is not the only piece of evidence. There is corroborating evidence of the prosecution witnesses on the one hand, and on the

other, evidence of PW-12, the daughter of the deceased, who identified the gold ornaments, which were stolen by the accused from the almirah, as belonging to her deceased mother and which were recovered from the possession of accused persons.

27. This Court, in the case of B.A. Umesh v. Registrar General, High Court of Karnataka [(2011) 3 SCC 85], where the finger prints were found on the handle of a steel almirah to which the persons from outside had no access, held as under:-

> "75. The aforesaid position is further strengthened by the forensic report and that of the fingerprint expert to establish that the fingerprints which had been lifted by PW 13 from the handle of the steel almirah in the room, matched the fingerprint of the appellant which clearly established his presence inside the house of the deceased. The explanation attempted to be given for the presence of the fingerprints on the handle of the almirah situated inside the room of the deceased does not inspire any confidence whatsoever. In a way, it is the said evidence which scientifically establishes beyond doubt that the appellant was present in the room in which the [pic]deceased was found after her death and had been identified as such not only by PW 2, who actually saw him in the house immediately after Jayashri was murdered, but also by PWs 10 and 11, who saw him coming out of the house at the relevant point of time with the bag in his hand. The fingerprint of the appellant found on the handle of the almirah in the room of the deceased proves his presence in the house of the deceased and that he and no other caused Jayashri's death after having violent sexual intercourse with her against her will."

28. In light of the above, we have no hesitation in rejecting this contention of the appellant. The prosecution has by other evidence, clearly been able to establish the physical contact between the accused and the articles within the almirah, and therefore, the almirah door also.

29. In the present case, as far as the deceased persons are concerned, because of the burnt condition of bodies, there could be no other evidence of cause of death except identification of the deceased persons, which has already been established by the prosecution. The accused persons, particularly, accused Nos. 1, 2 and 3 have suffered physical injury. Accused No. 3 had even suffered bullet injury which has been proved on record by the statement of PW-46, the doctor, as also PW-33 and PW-43, all doctors. PW-18, who was running a clinic in the name of "Baba Clinic" NFC Main Road, stated that he knew the accused and on 17th March, 2003, the accused persons had come to his residence and informed him that accused No.3 had suffered injury on account of a fall due to drunken stage. After examining accused No.3, he found two bullet gun shots on the left leg of accused No.3, who was also in intoxicated condition. They were sent to hospital for treatment and they paid money for treatment. Thereafter, leaving Accused No. 3 in the hospital, the rest of the accused went missing. These are the circumstances which connect the accused persons with the crime.

30. The High Court has declined to rely upon any of the extra judicial confessions made by the accused persons to various other persons. It is stated by the prosecution that the Panch witnesses P. Chiranjeevi, PW-41 and Sudarshan Rao, PW-34 were called to the bungalow by the investigating

officer PW-49, and it was this mediator Shri P. Chiranjeevi, PW-41 who made inquiries. When the inquiry was made from Accused No. 1, Accused No. 1 is voluntarily stated to have confessed to opening the almirah and taking out the cash and jewellery. He also confessed that he had murdered the deceased and had hid the knife and cell phone in the MCH dustbin near Mettuguda. In furtherance to his statement Ext. P-37, recoveries were also effected.

31. Accused No. 2 had also made a confessional statement to Panchas. From the statements of accused No. 2, they had got recovered the cartridges and pistol, etc. also.

32. PW33, Dr. D. Sudha Rani who had treated the accused for their injuries, stated in her statement that the accused persons had told her that they had suffered injuries on 17th March, 2003 while committing the murder and at different times, when they killed each of the deceased.

33. The High Court was right in not relying upon such confessions, but it ought to have rejected only the part which is inadmissible in accordance with the provisions of Section 27 of the Indian Evidence Act, 1872.

34. The statements in so far as they concern the use of various articles in commission of crime and recovery of such articles and stolen items, would form a valid and admissible piece of evidence for the consideration of the court. The history given to the doctor at the time of treatment would not be strictly an extra judicial confession, but would be a relevant piece of evidence, as these documents had been prepared by PW33 in the normal course of her business. Even the accused do not dispute that they were given treatment by the doctor in relation to these injuries. Thus, it was for the accused to explain this aspect. This Court has had the occasion to discuss the effect of extra-judicial confessions in a number of decisions.

35. In Balwinder Singh v. State of Punjab [1995 Supp. (4) SCC 259], this Court stated the principle that an extra-judicial confession, by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.

36. In Pakkirisamy v. State of T.N. [(1997) 8 SCC 158], the Court held that it is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.

37. Again, in Kavita v. State of T.N. [(1998) 6 SCC 108], the Court stated the dictum that there is no doubt that conviction can be based on extrajudicial confession, but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon veracity of the witnesses to whom it is made.

38. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in the case of State of Rajasthan v. Raja Ram [(2003) 8 SCC 180] stated the principle that an extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved

like any other fact. The value of evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The Court further expressed the view that such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused.

39. In the case of Aloke Nath Dutta v. State of W.B. [(2007) 12 SCC 230], the Court, while holding that reliance on extra-judicial confession by the lower courts in absence of other corroborating material, was unjustified, observed:

> "87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.
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> 89. A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof."

40. Accepting the admissibility of the extra-judicial confession, the Court in the case of Sansar Chand v. State of Rajasthan [(2010) 10 SCC 604] held that :-

> "29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide Thimma and Thimma Raju v. State of Mysore, Mulk Raj v. State of U.P., Sivakumar v. State (SCC paras 40 and 41 : AIR paras 41 & 42), Shiva Karam Payaswami Tewari v. State of Maharashtra and Mohd. Azad v. State of W.B.]
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> 30. In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872."

41. Dealing with the situation of retraction from the extra judicial confession made by an accused, the Court in the case of Rameshbhai Chandubhai Rathod v. State of Gujarat [(2009) 5 SCC 740], held as under :

> "It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless, the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true."

42. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. [Ref. Sk. Yusuf v. State of W.B. [(2011) 11 SCC 754] and Pancho v. State of Haryana [(2011) 10 SCC 165].

43. Thus, all the above circumstances have to be examined in light of the above principles. We have discussed in some detail the evidence led by the prosecution and the above cases would squarely apply to the present case.

44. Another contention of the accused is in relation to the identification of the accused being conducted in a manner contrary to law. The counsel, while relying upon the case of Rajesh Govind Jagesha Vs. State of Maharashtra [(1999) 8 SCC 428], submitted that the identification parade of the accused was conducted much after their arrest. They were arrested on 19th March, 2003 and the identification parade of the accused was conducted on 20th June, 2003. Furthermore, the photograph of the accused had been published in the newspaper on 19th March, 2003. In the case relied upon by the appellant, the accused who was stated to be having a beard and long hair and was so described in the First Information Report was required to be clean-shaven by the police. The fact that no person similar to the person whose description was given in FIR was included in the Test Identification Parade, the Court expressed dissatisfaction and held that it was required for the prosecution to show how and under what circumstances the complainant and the witnesses came to recognise the accused. This case on facts, therefore, is of no assistance to the accused.

45. There was some delay in holding the identification parade. But the delay per se cannot be fatal to the validity of holding an identification parade, in all cases, without exception. The purpose of the identification parade is to provide corroborative evidence and is more confirmatory in its nature. No other infirmity has been pointed out by the learned counsel appearing for the appellant, in the holding of the identification parade. The identification parade was held in accordance with law and the witnesses had identified the accused from amongst a number of persons who had joined the identification parade. There is nothing on record before us to say that the photographs of the accused were actually printed in the newspaper. Even if that be so, they were printed months prior to the identification parade and would have lost their effect on the minds of the witnesses who were called upon to identify an accused.

46. However, we hasten to clarify that it is always appropriate for the investigating agency to hold identification parade at the earliest, in accordance with law, so that the accused does not face

prejudice on that count. We may refer to the judgment of this Court in a more recent judgment in the case of Sidhartha Vashisht alias Manu Sharma Vs. State (NCT of Delhi) [(2010) 6 SCC 1], where law in relation to purpose of holding an identification parade, the effect of delay and its evidentiary value were discussed. The Court held as under:-

> "256. The law as it stands today is set out in the following decisions of this Court which are reproduced as hereinunder:
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> Munshi Singh Gautam v. State of M.P.: (SCC pp. 642-45, paras 16-17 & 19) "16. As was observed by this Court in Matru v. State of U.P. identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See Santokh Singh v. Izhar Hussain.) The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to [pic]enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.
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> 17. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without

such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See Kanta Prashad v. Delhi Admn., Vaikuntam Chandrappa v. State of A.P., Budhsen v. State of U.P. and Rameshwar Singh v. State of J&K.)

19. In Harbajan Singh v. State of J&K, though a test identification parade was not held, this Court upheld the conviction on the basis of the [pic]identification in court corroborated by other circumstantial evidence. In that case it was found that the appellant and one Gurmukh Singh were absent at the time of roll call and when they were arrested on the night of 16-12-1971 their rifles smelt of fresh gunpowder and that the empty cartridge case which was found at the scene of offence bore distinctive markings showing that the bullet which killed the deceased was fired from the rifle of the appellant. Noticing these circumstances this Court held: (SCC p. 481, para 4) '4. In view of this corroborative evidence we find no substance in the argument urged on behalf of the appellant that the investigating officer ought to have held an identification parade and that the failure of Munshi Ram to mention the names of the two accused to the neighbours who came to the scene immediately after the occurrence shows that his story cannot be true. As observed by this Court in Jadunath Singh v. State of U.P. absence of test identification is not necessarily fatal. The fact that Munshi Ram did not disclose the names of the two accused to the villagers only shows that the accused were not previously known to him and the story that the accused referred to each other by their respective names during the course of the incident contains an element of exaggeration. The case does not rest on the evidence of Munshi Ram alone and the corroborative circumstances to which we have referred to above lend enough assurance to the implication of the appellant.' Malkhansingh v. State of M.P.: (SCC pp. 751-52, para 7) "7. It is trite to say that the substantive evidence is the evidence of identification in court.

Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely

rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration."

259. In Mullagiri Vajram v. State of A.P.62 it was held that though the accused was seen by the witness in custody, any infirmity in TIP will not affect the outcome of the case, since the depositions of the witnesses in court were reliable and could sustain a conviction. The photo identification and TIP are only aides in the investigation and does not form substantive evidence. The substantive evidence is the evidence in the court on oath."

47. In the facts and circumstances of the present case, we are unable to accept the plea that merely because of delay, the Court should reject the entire evidence of identification of the accused in the present case. More so, the accused persons were duly identified by these very witnesses in the upon court, while they were deposing.

48. From the above discussion, it is clear that the prosecution had been able to comprehensively and reliably establish the chain of circumstances. The evidence produced on record does not leave any major loopholes in the case of the prosecution. With the help of the prosecution witnesses, the presence of the accused in the bungalow, their intention of committing such heinous crime, the manner in which the accused persons had destroyed the evidence, i.e., the car, dead bodies and blood stained cloths of the deceased and the accused themselves, from where and how they had procured the incriminating articles which they used in the crime, like knife, petrol etc. and finally the conduct of the accused prior to and after commission of the crime have been established by the prosecution.

49. Most importantly, the recovery of incriminating articles, cash and jewellery belonging to the deceased, the finger prints of the accused and the false stories given by the accused to different persons who came to the bungalow of the deceased during 17th/18th March, 2003, to ensure that none of them enter the house of the deceased stand unequivocally established. Besides all this circumstantial evidence, another very significant aspect of the case is that none of the accused, particularly accused No.2, offered any explanation during the recording of their statements under Section 313 CrPC. It is not even disputed before us that the material incriminating evidence was put to accused No. 2 while his statement under Section 313 CrPC was recorded. Except for a vague denial, he stated nothing more. In fact, even in response to a question relating to the injuries that he had suffered, he opted to make a denial, which fact had duly been established by the statements of the investigating officers, doctors and even the witnesses who had seen him immediately after the crime. It is a settled law that the statement of Section 313 CrPC is to serve a dual purpose, firstly, to afford to the accused an opportunity to explain his conduct and secondly to use denials of established facts as incriminating evidence against him. In this regard, we may refer to some recent

judgements of this Court.

This Court in the case of Asraf Ali v. State of Assam [(2008) 16 SCC 328] has observed as follows :

> "21. Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.
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> 22. The object of Section 313 of the Code is to establish a direct dialogue between the court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed a similar view in S. Harnam Singh v. State (Delhi Admn.) while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-

indication of inculpatory material in its relevant facts by the trial court to the accused adds to the vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise." Again, in its recent judgment in Manu Sao v. State of Bihar [(2010) 12 SCC 310], a Bench of this Court to which one of us, Swatanter Kumar, J., was a member, has reiterated the above-stated view as under :

> "12. Let us examine the essential features of this Section 313 CrPC and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Code.

13. As already noticed, the object of recording the statement of the accused under Section 313 of the Code is to put all incriminating evidence against the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also to permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and besides ensuring the compliance therewith the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or in the alternative to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes

without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put to the accused every important incriminating piece of evidence and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.

14. The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence against the accused in any other enquiry or trial for any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution."

50. In view of the above principles, it was expected of the accused to render proper explanation for his injuries and his conduct. However, he opted to deny the same and in fact even gave false replies to the questions posed to him.

51. If the accused gave incorrect or false answers during the course of his statement under Section 313 CrPC, the Court can draw an adverse inference against him.

52. In the present case, we are of the considered opinion that the accused has not only failed to explain his conduct, in the manner in which every person of normal prudence would be expected to explain but had even given incorrect and false answers. In the present case, the Court not only draws an adverse inference, but such conduct of the accused would also tilt the case in favour of the prosecution.

53. For the above reasons, we see no infirmity in the judgments under appeal. There is no merit in the submissions raised on behalf of the accused. Resultantly, the appeal is dismissed.

.....,J.

[A.K. Patnaik] .....,J.

[Swatanter Kumar] New Delhi;

May 8, 2012