

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Hearing: 18th July, 2011
Date of Decision: 8th August, 2011

+ **CRL.A No.883/2001**

SOBRAN @ SOHAN PAL

..... APPELLANT

Through: Mr. Sumeet Verma, Amicus Curiae.
Versus

STATE (NCT OF DELHI)

..... RESPONDENT

Through: Mr. Lovkesh Sawhney, APP for the State.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G. P. MITTAL

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| 1. Whether reporters of local papers may be allowed to see the Order? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Order should be reported in the Digest? | Yes |

J U D G M E N T

G.P. MITTAL, J.

1. The Appellant Sobran @ Sohanpal stands convicted for the offence punishable under Section 302/394/397 of the Indian Penal Code (IPC). He was sentenced to undergo life imprisonment and to pay fine of ₹ 100/- for the offence under Section 302 IPC; he was sentenced to undergo life imprisonment and to pay fine of ₹ 100/- under Section 394 IPC and was further sentenced to undergo Rigorous Imprisonment for seven years for the offence punishable under Section 397 IPC.
2. An old couple Sohan Lal Khanna and Smt. Sarla Khanna were residents of House No.E-53, Kalkaji. On 10.05.1996 at about 5:30 P.M. a wireless message was received by Inspector Sobhan Singh, SHO Police Station Mehrauli (IO) that an incident had taken place in House No.E-53, Kalkaji. He rushed to the scene of occurrence and found that SI Dhiraj Singh along with other police officials was already there. Inspector Sobhan Singh was informed that injured Sarla Khanna had been taken to AIIMS in a PCR van. He noticed Sohan Lal Khanna lying dead, on a double bed, with a deep head injury.
3. PW-1 Malliyya who used to work as a maid servant in the house was present at the spot. She made a statement Ex.PW-30/A to the IO. She informed that on that day at about 5:00 P.M. she went to the Khannas' house and as usual knocked the door and

- pressed the door bell. Since nobody responded, she peeped inside the house, through the wire mesh and saw the couple lying in an injured condition. PW-1 panicked and immediately approached Smt. Vimla deceased Sohan Lal Khanna's sister, informing her of the incident. Smt. Vimla along with her daughter-in-law, reached the spot. PW-1 informed the IO that the person who was whitewashing, and doing the paint work in the deceased couple's house for the last several days was also missing. The IO made endorsement on the statement of PW-1 Malliyya and sent the same to the Police Station for registration of a case.
4. On inspection of the house, two bloodstained knives, a spade, a *dibba* (a small drum) used for white washing, a pair of *Kurta Pajama* and bed sheets were taken into possession from the house. The Almirahs were found open and the articles ransacked.
 5. The IO held the inquest proceedings on the dead body of the deceased Sohan Lal Khanna and forwarded it to AIIMS for conducting postmortem examination. Smt. Sarla Khanna battled for her life and finally succumbed to her injuries after a period of about two months on 12.07.1996.
 6. The police made a search for the two persons who had been engaged for doing the whitewash and painting the house. The IO came in contact with one Brij Nandan who disclosed that the description / sketch provided; pointed towards the Appellant Sobran and co-accused Ram Sewak (who was acquitted after trial). The IO (PW-30) along with PW-5 Rajan Khanna, son of the deceased went to Sobran's house, as per the address disclosed by Brij Nandan. The house was locked. The landlord of the house (PW-4 Ram Lal) was summoned and the lock was forced open. . Two black plastic *Kadas*, a plastic teether, one Kurta (grey colour) were recovered from Sobran's room. These articles were identified by PW-5 Rajan Khanna (who reached Delhi from Madras to be possessions of his mother, deceased Smt. Sarla Khanna.
 7. During investigation, the IO came to know that co-accused Ram Sewak was in jail in some other case. He was arrested in this case on 29.06.1996. A judicial Test Identification Parade (TIP) arranged during investigation was refused by him (Ram Sewak). On the basis of the disclosure statement Ex.PW-25/A made by Ram Sewak a bed sheet and an *Omega* wrist watch was recovered from an open place at the backside of Sobran's house at Sangam Vihar.
 8. The Appellant was arrested on 12.07.1996. He too refused to join the TIP proceedings. He made a disclosure statement Ex.PW-22/B. In pursuance of the disclosure statement, he led the police party to the house of his cousin Somwati (PW-

- 26) in Village Manakpur Rauli, District Badaun, U.P. and got recovered a box. The box was found to contain one Monex VCP, one two-in-one, one BPL remote control, five watches, four bed sheets, four ladies *Kadas*, three *Salwars* and two *Chunni*, (Ex.P-5 to P-26), all belonging to the deceased couple.
9. On Appellant's pleading not guilty to the charge, the prosecution examined 30 witnesses. PW-1 Malliyya and PW-20 Shanti were maid servants, working at the deceased's house. Both of them deposed that the Appellant and the co-accused were doing the job of whitewash at the deceased's house. PW-17 SI Arvind Kumar, PW-22 Constable Dinesh, PW-25 SI Virender Jain and PW-28 Constable Vijaypal Singh deposed about the recovery of the box containing the articles as mentioned earlier at the Appellant's instance from his cousin PW-26's house. PW-5 Rajan Khanna, PW-4 Ram Lal (Appellant's landlord) and PW-30 Inspector Sobhan Singh testified about the recovery of one Kurta, one *teether* and two plastic *Kadas*. PW-3 Vipin Khanna and PW-25 SI Virender Jain are witnesses to the recovery from co-accused Ram Sewak. The same, however, is not relevant as the co-accused was acquitted by impugned judgment – a finding which has become final.
10. The Appellant Sobran was examined under Section 313 Cr.P.C. In the first statement, he denied that having been engaged to whitewash at house No.E-53 by the deceased or that any recovery of stolen articles was effected from his cousin Somwati's (PW-26's) house. He later moved an application that his statement under Section 313 Cr.P.C. was recorded without his instructions. In the subsequent written statement (filed by him), the Appellant admitted that he was engaged to whitewash house No.E-53, Kalkaji. He also admitted the recovery of the articles from the house of his cousin PW-26 in Village Manakpur Rauli, District Badaun, U.P. The Appellant took the plea that the articles had been given to him by deceased Sohan Lal Khanna. He came up with the plea that on the day of incident he went out for lunch, when he returned he found that the murder had already taken place. He got scared and ran away. He denied the prosecution allegation and pleaded false implication.
11. By the impugned judgment, the Trial Court disbelieved the recovery of bed sheet and *Omega* wrist watch at Ram Sewak's instance. He was accordingly acquitted giving him benefit of doubt. With regard to the Appellant, the Trial Court believed that the he was engaged to white wash the deceased's house but disbelieved the recovery of the plastic *Kadas*, teether, a *Kurta* from his room in Sangam Vihar. The recovery of the articles Ex.P-5 to P-26 was held to be proved. The Trial court rejected the

Appellant's contention that these articles were delivered (gifted) by the deceased to him. Thus, believing the prosecution allegation regarding recovery in pursuance of the disclosure statement coupled with the refusal to participate in the TIP proceedings and his identification by PW-1 and PW-20, the Trial Court concluded that the charge for the offence punishable under Section 302/394/397 IPC was established against the Appellant. The Appellant was convicted and sentenced as stated earlier.

12. There is no direct evidence of the commission of offence of murder and robbery against the Appellant. The prosecution relies on the following circumstances to connect the Appellant with the commission of the offence:-

- (A) Evidence of last seen.
- (B) Recovery of the articles Ex.P-5 to P-26 at Appellant's instance in pursuance of the disclosure statement Ex.PW-22/B.
- (C) Refusal to participate in TIP.
- (D) Appellant's abscondence from deceased house after the offence.

13. We shall deal with the circumstances one by one.

(A) **LAST SEEN**

14. To prove this circumstance, the prosecution examined PW-1 Malliyya and PW-20 Shanti. PW-1 deposed that she used to work as a maid servant at the house of the deceased couple. As usual she went to deceased's house in the afternoon to clean the utensils and rang the door bell. When nobody responded, she peeped through the wire mesh door and found deceased Sarla Khanna lying in an injured condition. She immediately informed Smt. Vimla, Sarla Khanna's sister-in-law who used to reside in the neighbourhood. Since the witness did not depose about certain essentials in regard to the prosecution version, she was permitted to be cross-examined by the learned APP. She deposed that Sobran was engaged to whitewash the deceased's house and he went missing since the time of the incident. She identified the Appellant in the Court as one of the workers engaged to do the job. She added that she saw the Appellant in the morning on 10.05.1996. The Appellant was still in the house when she left the deceased's house after finishing her work in the morning.
15. To the same effect is PW-20 Shanti's testimony. She deposed to working as a cook at the house of the deceased couple. She identified the Appellant and the co-accused (already acquitted) as the persons who had been engaged to do the whitewashing job.
16. PW-2 Kavita Khanna niece of deceased Sohan Lal Khanna also corroborated PW 1 and PW-20's testimony to the extent that the two labourers were employed to

whitewash deceased's house. PWs 1 and 20's testimony on the engagement of the Appellant and his presence before lunch when PW-1 left after finishing her work could not be discredited in their cross-examinations. In the first examination under Section 313 Cr.P.C., the Appellant had denied that he was engaged for the earlier stated work by the deceased. However, in his subsequent written statement recorded (under Section 313 Cr.P.C.), the Appellant admitted that indeed he was engaged to do the whitewash job. He explained that the earlier statement recorded under Section 313 Cr.P.C. was given in the Court without his instructions to the defence counsel. In view of the evidence produced, coupled with the Appellant's admission in his statement under Section 313 Cr.P.C. recorded on 14.09.2001 we agree with the Trial Court that the deceased was last seen alive in the premises when the Appellant was there to whitewash the house. Of course, the Appellant has given an explanation regarding his presence and how he parted with the company, to which we shall advert a little later.

(B) RECOVERY OF THE STOLEN ARTICLES.

17. Two recoveries were made from the house/at the instance of the Appellant Sobran. The first was made from the rented room in Sangam Vihar where the Appellant used to stay; and the second recovery was made from the house of PW-26 Smt. Somwati at Village Manakpur Rauli, District Badaun, U.P. Somwati is alleged to be Appellant's cousin (sister). PW-4 Ram Lal, PW-5 Rajan Khanna and PW-30 Inspector Sobhan Singh (IO) are the witnesses in respect of the first recovery.
18. PW-4 deposed that he was the owner of house No.A-901, Sangam Vihar. In the year 1996, he (Appellant Sobran @ Sohan Lal) used to stay in the room along with his wife. After few days they left his house. The police broke open the lock of the room and recovered certain articles including one *Kurta*. He denied that two plastic *Kadas*, one teether and one grey colour *Kurta* was recovered in his presence by memo Ex.PW-4/A. He stated that he was outside the room when the articles listed in the memo Ex.PW-4/A were recovered. He denied the suggestion that he had deposed falsely. PW-5 Rajan Khanna deposed that on 03.06.1996 two plastic *Kadas*, one teether and one *Kurta* were recovered in his presence from the Appellant's room in house No.A-901, Sangam Vihar. PW-30 Inspector Sobhan Singh corroborated PW-5's testimony regarding recovery of these articles.
19. The Trial Court did not believe the recovery of the *Kadas* Ex.P-1 and P-2 and teether Ex.P-3 on the ground that PW-4, the landlord of the house did not support the

- prosecution version and also due to the fact that the Appellant's explanation that the articles were given to him by the deceased could not be rejected outright. Since these articles were not of any value, they could have been given to the Appellant by the deceased. We are not inclined to attach much importance to the recovery of the articles Ex.P-1 to P-3 from the rented room belonging to the Appellant.
20. With regard to the recovery of articles Ex.P-5 to P-26 contained in the box Ex.P-27, the prosecution examined PW-11 HC Richpal Singh, PW-17 SI Arvind Kumar, PW-25 SI Virender Jain, PW-26 Somwati, PW-28 Constable Vijaypal Singh, of U.P. police.
 21. PW-11 HC Richpal Singh deposed that he along with SI Arvind, SI Virender Jain and the Appellant went to Village Manakpur Shaili at the house of the Appellant's sister. The Appellant's statement led to recovery of a VCP, a two-in-one, one remote, five watches, four ladies suits, three *salwars* and two *chunni* (Ex. P-5 to P-26) which were seized by the IO by memo Ex.PW-11/A. The witness identified the articles recovered. Similarly, PW-17 SI Arvind Kumar, PW-25 SI Virender Jain and PW-28 Constable Vijaypal Singh from UP police corroborated PW-11 HC Richpal Singh's testimony. They also identified the articles (Ex.P-5 to P-26) got recovered by the Appellant in pursuance of his disclosure statement Ex.PW-22/B.
 22. PW-26 Somwati is the Appellant's cousin. She deposed that the Appellant was a distantly related cousin. She testified that the Appellant did not visit her. She was permitted to be cross-examined by the learned APP and stated that the Appellant had left certain goods with her and that the said articles were placed by her in a box and locked. She stated that in the year 1996, the Appellant, accompanied by the police party, visited her house and took away the articles concealed in her house by the Appellant. Thus, though Somwati was initially not inclined to support the prosecution version but when she was cross-examined, she admitted that the Appellant had concealed certain goods in her house. PW-26 Somwati's initial reluctance to support the recovery can be understood. Perhaps she wanted to save her cousin. However, from her cross-examination by the APP, it was established that the articles Ex.P-5 to P-26 were indeed left by the Appellant with her at a distance place so as to escape the recovery and implication. PW-26 Somwati, however, did not come to his rescue because of the predicament in which she was placed.
 23. The articles Ex.P-5 to P-26 were kept in a judicial TIP and were identified by PW-5 Rajan Khanna, son of the deceased couple. Nothing was elicited in cross-

examination of any of these witnesses either to discredit the recovery of the articles Ex.P-5 to P-26 or its identification in the TIP by PW-5 or in the Court by the witnesses i.e. PWs-11, 17, 25 and 28.

24. When the Appellant was given an opportunity to explain the incriminating circumstance of recovery of the above said articles, he initially denied the same. As stated earlier, he filed a written statement wherein he admitted the recovery of all these articles stating that the articles were given (gifted) to him by the Babuji i.e. the deceased Sohan Lal Khanna.
25. Thus, it is apparent that the Appellant took vacillating stands to explain the incriminating evidence appearing against him, which becomes an additional circumstance against him if the case is otherwise proved. Even if, we ignore the first statement, it is established that the possession of the articles Ex.P-5 to P-26 is not only proved by the prosecution but also stand admitted by the Appellant.
26. The Appellant's plea that the articles Ex.P-5 to P-26 were handed over to him by the deceased Sohan Lal Khanna is unbelievable and is an afterthought because no such suggestion was given to any of the witnesses to the recovery or to PW-5 Rajan Khanna, son of the deceased Sohan Lal Khanna in their cross-examination. The same is, therefore, liable to be rejected. Otherwise also, it is not believable that costly articles like VCP (in the year 1996), five wrist watches would be delivered by deceased Sohan Lal Khanna to the Appellant. Thus, we have no manner of doubt that the articles Ex.P-5 to P-26 i.e. the looted property was recovered at Appellant's instance which were concealed by him at a far off place in Uttar Pradesh in her cousin's house.

(C) REFUSAL TO PARTICIPATE IN TIP

27. The Appellant was identified as the person who was engaged for whitewashing deceased's house by PW-1 and PW-20. Since the Appellant was working there for the last few days, truly speaking, there was no need for arranging a TIP. The purpose of holding a prior TIP is to test and strengthen the trustworthiness of the evidence given in the Court. This rule of prudence is subject to certain exceptions when the Court is impressed that the witness had sufficient opportunity to closely observe the culprits. Moreover, the Appellant in his statement recorded under Section 313 Cr.P.C. admitted that he was engaged to do the white wash job at the deceased's house. Thus, the refusal by the Appellant to join in TIP becomes only academic.

28. As observed by us earlier, the circumstance of the Appellant being last seen alive in the company of the deceased couple and recovery of articles Ex.P-5 to P-26 stand established. It is urged by the learned counsel for the Appellant that from mere recovery of the articles belonging to the deceased an inference cannot be drawn that the Appellant was also involved in committing deceased murder. It is urged that at the most the Appellant could be convicted for an offence under Section 411 IPC for being found in possession of the stolen property as an inference under Section 114 (a) of the Evidence Act to the extent of his being a receiver of stolen property can only be drawn against the Appellant, particularly, when there was a gap of about two months and six days between the death and recovery of the stolen property.
29. It is important to note that it is not only that the recovery of the stolen property has been established from the Appellant, the explanation regarding recovery of the stolen property i.e. that the articles were gifted to him by deceased Sohan Lal Khanna has also been found to be false. Thus, the recovery of stolen articles P-5 to P-26 being part of the same transaction i.e. the deceased murder, an inference that it was the Appellant who committed the murder, has to be drawn in the facts and circumstances of this case.
30. In *Tulsiram Kanu v. The State*, AIR 1954 SC 1, the Supreme Court held that the presumption under Section 114 illustration (a) of the Evidence Act has to be read along with the “important time factor”. If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a presumption of guilt may be permitted. But, if several months had expired in the interval, the presumption cannot be permitted to be drawn having regard to the circumstances of the case.
31. In *Earabhadrapa @ Krishnappa v. State of Karnataka*, 1983 (2) SCC 330, the Supreme Court held that the nature of presumption under illustration (a) of Section 114 of the Evidence Act must depend upon the nature of evidence adduced. It was observed that no fixed time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts.
32. The law with regard to the presumption which may be drawn where the theft and murder are part of the same transaction was analyzed and summed up by the Supreme Court in its latest report in *State of Rajasthan v. Talevar & Anr.* 2011 (6) SCALE, 575, relied upon by the learned counsel for the Appellant. The learned counsel referred to Para 7.7 of the report which is extracted hereunder:-

“ 7.7. Thus, the law on this issue can be summarized to the effect that where only evidence against the accused is recovery of stolen properties, then although the circumstances may indicate that the theft and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of the stolen property had committed the murder. It also depends on the nature of the property so recovered, whether it was likely to pass readily from hand to hand. Suspicion should not take the place of proof.”

33. In this case the facts were:-

“A. Santosh Jagwayan (PW.13) lodged an FIR on 17.12.1996 at 8.30 A.M., that in the intervening night between 16th and 17th December, 1996 on hearing the noise, he sent his Chowkidar Gopal Nepali (deceased) to the roof of his house. Gopal Nepali went upstairs and opened the gate of the roof and found that 8 to 10 accused persons were trying to enter into the house by breaking upon the door of the roof. They immediately fired shot at Gopal Nepali (deceased) and entered into the house. The accused persons locked Shashi Devi (PW.12) wife of complainant, Preeti (PW.14) and Sandhya (PW.15), his daughters, in the bathroom and started looting the moveable properties. In the meanwhile, his neighbours raised their voice. Thus, the accused immediately fired a shot at Mrs. Anita Yadav, as a result of which, she died on the spot. Kripa Dayal Yadav (PW.2), husband of Anita Yadav (deceased) caught hold of one of the accused but he was beaten with the butt of the gun by the other accused persons and they got the accused released from his clutches. The accused decamped with cash, jewellery and silver wares etc.

B. On the basis of the said complaint, an FIR No. 240 of 1996 (Ex.P-30) was registered under Sections 395, 396, 397 and 398 IPC and investigation ensued. The dead bodies of Gopal Nepali and Anita Yadav were recovered and sent for post-mortem examination. Kuniya - accused/Respondent was arrested on 24.12.1996. He made a disclosure statement (Ex.P-76) on 29.12.1996 on the basis of which a silver glass and one thousand rupees were recovered vide recovery memo (Ex.P-53). Further, on his disclosure statement, a scooter bearing No. RJ-05-0678 was recovered vide recovery memo (Ex.P-52) on 2.1.1997.....”

34. The distinguishing feature in the present case is that in *State of Rajasthan* (supra), there was only evidence of recovery of stolen property, whereas in this case the Appellant gave an explanation that he had been given the said stolen property by the deceased Sohan Lal Khanna himself, which has been disbelieved by this Court. Apart from this, the Appellant was last seen doing the whitewashing in the deceased's house on the fateful day till lunch time and dead body of Sohan Lal Khanna and badly battered body of deceased Sarla Khanna were discovered by PW-1 Malliyya at about 5:00 P.M.

35. The law with regard to appreciation of circumstantial evidence is well settled. The cases, which are based on circumstantial evidence such evidence must satisfy the following tests: -

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

(b) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

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

(d) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. [*Hanumanth Govind Nargundkar and Anr. v. State of M.P.*, AIR 1952 SC 343 and *G. Parshwanath v. State of Karnataka*, (2010) 8 SCC 593].

36. The circumstances of last seen, recovery of the looted property, Appellant's identification in the court coupled with his refusal to participation in the TIP form a complete chain to draw a conclusion that within all human probability the offence was committed by the Appellant and the circumstances established are incompatible with his innocence. From the circumstances, it is proved beyond shadow of all reasonable doubts that the Appellant had committed the murder of Sohan Lal Khanna and Smt. Sarla Khanna.

(D) APPELLANT'S ABSCONDANCE

37. Apart from this, there is an additional circumstance i.e. the Appellant's abscondence after the deceased murder. The Appellant has explained that when he returned to the deceased's house after having his lunch in Govindpuri, he found a large crowd and the couple had been inflicted with serious injuries. People suspected that those engaged in whitewashing the house were responsible for the crime. He, therefore, absconded. It is true that even innocent persons may when suspected of committing serious offence be tempted to evade arrest in fear of being falsely implicated. The Appellant's explanation of his abscondence is also false. PW-1 did not come to the deceased's house at lunch time. The murder was discovered only at about 5:00 P.M.

when PW-1 reached there. It was only subsequently i.e. at about 5:30 P.M. a wireless message was received by Inspector Sobhan Singh, SHO Police Station Mehrauli and the police reached the spot. Thus, in the circumstances of the case, the Appellant's abscondence is an additional circumstance in the chain of circumstances which unerringly point to the guilt of the Appellant.

CONCLUSION

38. In view of the foregoing discussions, we are of the opinion that no fault can be found in the conclusion arrived at by the Trial Court. The Appeal is devoid of any merit. It is bound to fail and is accordingly dismissed. The Appellant shall surrender before the Trial Court on 16th August, 2011 to serve the remainder of his sentence. The Registry shall transmit the Trial Court records and this judgment, forthwith, to ensure compliance.

(G.P. MITTAL)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

AUGUST 8, 2011
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