

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

**RESERVED ON : 17th JULY, 2012
DECIDED ON : 3rd AUGUST, 2012**

+ Crl.A.227/2011

**BHARAT BHANDARI & ANR. Appellants
Through : Ms.Anu Narula, Advocate.**

versus

**STATE GOVT. OF NCT OF DELHI Respondent
Through : Ms.Richa Kapoor, APP.**

**CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The appellants Bharat Bhandari (A-1) and Pradeep Dutta @ Bappi Dutta @ Bengali (A-2) have preferred the present appeal against the judgment dated 28.01.2010 and order on sentence dated 02.02.2010 of learned Additional Sessions Judge in SC No.57/2009 by which they were convicted for committing the offences punishable under Sections 302/392/34 IPC and sentenced to undergo imprisonment for life with a fine of ₹10,000/- each under Section 302/34 IPC and rigorous imprisonment for ten years with a fine of ₹5,000/- each under Section

392/34 IPC. Both the sentences were to operate concurrently. Briefly, the facts of the prosecution case are as under :

2. Lt.General Harnam Singh Seth (retired) aged 85 years and his wife Smt.Roop Seth aged 82 years were resident of Flat No.272, Vasant Enclave, Vasant Vihar. On 20.06.2004 at about 11.10 A.M. on getting information of their murder, DD No.11A (Ex.PW-13/C) was recorded at police station Vasant Vihar. The investigation was assigned to ASI Ram Nath who with Const. Ram Kesh reached the spot and found two bodies of a male and female having head injuries in the bedroom on the first floor. The house-hold articles were found scattered. Insp.Narayan Singh reached the spot. No eye witness was available at the spot. He sent rukka (Ex.PW-36/B) for lodging First Information Report (FIR). He prepared the site plan; sent the bodies for post-mortem examination; seized two elephant tusks, blood stained clothes, brick, iron churi, iron pipe, iron angle, pair of chappal, one foot print and prepared necessary seizure memos.

3. On 21.06.2004, Insp.Beer Singh, SHO took over the investigation. During the investigation, Sohan Singh (brother-in-law of A-1) received A-1's telephone call on mobile from Gorakhpur. The IO faxed message along with photographs of the accused (A-1 and A-2) to SSP,

Gorakhpur to apprehend the suspects. The police from PS Purandar Pur (UP) succeeded to apprehend A-1. On search, a purse containing ₹1,600/-; other cash ₹4,500/-, Motorola mobile set, two medals (one of gold colour and the other of white colour), two cuff links (of gold colour) were recovered from his possession. On checking the attachee-case, it was found containing ₹2,500/- and ladies suits. The accused was also found wearing Rado watch. On interrogation, A-1 confessed committing the murder of Harnam Singh and his wife.

4. A-1 was brought to Delhi on 25.06.2004 and during his police custody remand, cash ₹6,000/-, a jeans pant and a shirt were recovered from house No.251A, Second floor, Munirka at his instance.

5. On 22.06.2004, PW-36 (Insp.Narayan Singh) went to Calcutta in search of A-2. On 24.06.2004, after coming to know his availability at Nagartalla, he reached local PS Canning and joined SI G.C.Mandal. A-2 was arrested and in his personal search, ₹409/- and some papers were recovered. A-2 got recovered cash ₹2,600/- from the '*jhuggi*' of his relative at Nagartalla. At Delhi, A-2 led the police to house No.146B, Basant Gaon and recovered one silver colour wrist watch and other articles. He also recovered his pant and T-shirt from the '*taand*' of the room.

6. Case property recovered was put to test identification proceedings and the concerned witnesses identified the same. The IO sent the exhibits to Forensic Science Laboratory (FSL) for examination and collected its reports. After completing the investigation, a charge-sheet was filed against the accused in the Court. The accused were duly charged and brought to trial. To substantiate the charges, the prosecution examined thirty eight witnesses in all, at the trial. The statements of the accused were recorded under Section 313 Cr.P.C. They denied the allegations and pleaded false implication.

7. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court by the impugned judgment convicted both the appellants under Sections 392/302/34 IPC. Aggrieved by the said orders, the appellants have come in appeal.

8. Learned counsel for the appellants has assailed the findings of the Trial Court and urged that it did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of PW-6 (Kartar Singh), PW-7 (Sohan Singh), PW-8 (Michael Wilson) and PW-9 (Madhu Seth) without ascertaining their credibility and reliability. A-1 was erroneously suspected due to his previous conviction in a theft case. No substantial cash was robbed from the house of the

deceased. The so-called recoveries from the possession of the accused or at their instance are farcical and inconsequential as no independent public witness was associated at any stage of the investigation. It is unbelievable that A-1 would keep substantial amount of ₹6,000/- at the residence of his sister. The theory propounded by the prosecution about receiving a phone call from A-1 informing Sohan Singh (brother-in-law) his plan to go to Nepal cannot be believed at all. After alleged abscondance, it is highly strange that he would reveal his destination. It is improbable that just on the strength of a wireless message without proper description of suspects and prior acquaintance, UP police would be in a position to apprehend A-1 in a bus. The counsel urged that the assailants had no intention to commit murder. Apparently, their purpose (if any) was to commit robbery. The fact that house-hold articles were used as weapons of offence ruled out the possibility of intention of murder. The police did not investigate PW-7 (Sohan Singh)'s role in the occurrence. She pointed out that the quality of investigation was extremely poor and it was a pre-determined investigation. The testimonies of the witnesses are full of omissions, contradictions and improvements and cannot be the basis of conviction of the appellants.

9. Learned APP supported the judgment of the Trial Court and urged that it did not call for any interference. The prosecution has categorically established that the robbed articles belonging to the deceased were recovered from the possession of the accused and at their instance soon after the commission of the offence. The accused did not offer any explanation as to how and under what circumstances the deceased's articles came into their possession. The prosecution further established that the accused had visited the place of occurrence on the night intervening 19/20.06.2004 and absconded on 20.06.2004. PW-8 (Michael Wilson) proved that the chappals recovered from the spot were taken by the accused at the time of their visit to him and it belongs to him. The finger prints lifted from the spot matched with the finger prints of the accused.

10. We have considered the submissions of both the parties and have examined the Trial Court record. The case is based upon circumstantial evidence only. The circumstances are discussed as under :

(A) **Recoveries from the possession of A-1 and at his instance**

11. The prosecution examined PW-33 (SI Durga Dutt), PW-30 (Const.Janardhan Yadav) and PW-31 (Const.Ram Sarik Yadav), police personnel from Gorakhpur (U.P.) who categorically deposed that in the

personal search of A-1, a purse (Ex.P-1) containing ₹1,600/-; ₹4,500/- cash (Ex.P-26), Motorola mobile phone, two medals (one of gold colour and the other of silver colour) (Ex.P-28 and Ex.P-29), two cuff links (Ex.P-1), bichuas (Ex.P-2) were recovered. The attachee-case (Ex.P-30) contained currency notes amounting to ₹2,500/- (Ex.P-31) and other articles. He was also found wearing Rado watch (Ex.P-32). Case vide FIR No.04 under Section 41/411 IPC (Ex.PW-33/A) was registered. Despite lengthy cross-examination, no material contradiction emerged to discard their testimonies. They had no prior acquaintance with the accused to foist false recovery of the articles, which are not easily available in the market. They had no concern with the case registered at Delhi and even were not aware what articles were robbed by the culprits at the time of the incident. A-1 did not explain how and under what circumstances, he happened to be in Gorakhpur soon after the occurrence. He did not offer any explanation for his visit to that place. The police officer from UP could not plant articles, having distinctive features like medals having inscription of 'King George Medical College' and the name of the recipient Harnam Singh. There is nothing to suggest if UP police was in touch with Delhi police at the time of his apprehension or Delhi police had visited Gorakhpur with the articles to be planted. Registration of FIR No.0/4

under Section 41/411 IPC (Ex.PW-33/A) same day strengthens the version given by the witnesses.

12. PW-32 (HC Shyam Dev) Malkhana Mohir, PS Purandarpur deposed that on 21.06.2004 SI Durga Dutt deposited a sealed parcel sealed with the seal of SI KP Singh, UPP containing ₹8,600/-, a mobile phone make Motorola, a Rado watch, two shields and other articles recovered from A-1 along with sample seal as case property of FIR No.0/04 under Section 41 Cr.P.C./411 IPC and he made entry in the register at Sl.No.36 on 23.06.2004. He handed over the articles along with sample seal to SI Bahadur Singh from PS Vasant Vihar vide seizure memo (Ex.PW-16/A). The accused did not cross-examine the witness and his testimony remained unchallenged. It further corroborates the version given by the witnesses to the recovery that all these articles were seized on 21.06.2004.

13. On 25.06.2004, during police custody remand, A-1 led the police to house No. 251, Munirka village and pursuant to his disclosure statement, a polythene containing T-shirt (Ex.P-23) and jeans pant (Ex.P-22) containing ₹6,000/- were recovered from the *taand* in the room at the second floor. All these articles were seized vide seizure memo (Ex.PW-7/C).

14. PW-7 (Sohan Singh), A-1's brother-in-law residing in the said house categorically deposed about recovery of articles at the instance of the accused from his house. In the absence of prior enmity or ill-will, this close relative is not expected to falsely implicate the accused. The accused used to reside with his sister. He had stayed with PW-7 (Sohan Singh) for last about two months in the absence of his wife who had gone to Nepal. There were no strained relations with PW-7 to force him to put his signatures on the seizure memo (Ex.PW-7/C).

15. PW-11 (Praveen Tokas), an independent public witness from the locality supported the prosecution on material aspects and deposed about the recovery of the articles seized vide seizure memo (Ex.PW-10/C). In the cross-examination, he elaborated that the police had come at about 06.30/06.45 P.M. and seized the clothes and money in his presence. He fairly admitted that he did not put initials on the currency notes. He denied that he was a stock witness of the police. The testimony of this independent public witness inspires implicit confidence as no ill-will or enmity was alleged against him. Nothing was suggested how this witness running his STD booth near the residence of PW-7 (Sohan Singh) was a stock witness of the police or he ever appeared as a witness on behalf of the prosecution in any other case. Other prosecution witnesses PW-38

(Insp.Beer Singh), PW-14 (SI Raj Kumar) and PW-21 (Const.Anil Kumar) have all made similar depositions. We have no reasons to discard their evidence in the absence of any infirmities.

(B) **Recoveries from A-2 and at his instance**

16. PW-36 (Insp.Narayan Singh) received information about the presence of A-2 with his relatives at Nagartalla. He along with staff reached local Police Station Canning, joined PW-27 (SI Gopal Chandra Mandal) and reached village Nagartalla. From Bahadur's Jhuggi, A-2 was arrested vide arrest memo (Ex.PW-26/A). In his personal search conducted vide memo (Ex.PW-26/B), a brown wallet (Ex.P-7) containing ₹409/-, two railway tickets (one from Delhi to Hawrah and other from Hawrah to Taldi), slips dated 20.06.2004 and 22.06.2004 was recovered. A-2 also got recovered cash ₹2600/- from the Jhuggi seized vide seizure memo Ex.PW-26/A. He was brought to the Police Station Vasant Vihar, Delhi after seeking transit remand at Alipur, Calcutta. On 25.06.2004, he was interrogated and his disclosure statement (Ex.PW-29/B) was recorded. The accused did not deny his presence and arrest from the *jhuggi* at Nagartalla. No suggestion was put to the witnesses when and for what purpose he (A-2) had visited that remote area. A-2 did not claim that the place of arrest i.e.*jhuggi* belonged to him or he used to carry on any

business or job there to justify his presence. PW-27 (SI Gopal Chandra Mandal) posted at PS Canning, Distt. 24 Pargana, South-West Bangal had no connection with the case registered in Delhi. He narrated the circumstance in which A-2 was apprehended and the currency notes with some papers were recovered from his possession. In the cross-examination, he disclosed that they had reached Nagartalla at about 04.30 A.M. Sister of the accused had taken them to the *jhuggi* where the accused was sleeping. No motive was assigned to this independent police witness, who assisted Delhi police in the discharge of official duties to apprehend the accused. The accused did not offer any explanation as to how all these articles including the railway tickets happened to be in his possession.

17. PW-26 (Alok Chaudhary), Sub Inspector posted at PS Ultudenga, Calcutta, was also present at the time of apprehension and recovery of the articles referred above. In the cross-examination, he stated that they reached at PS Canning at about 03.35 A.M. Insp.Narayan Singh had requested police assistance from the duty officer at PS Canning. Chobi, A-2's sister and her husband Vikas Pal accompanied them and they reached Nagartalla at about 04.20 A.M. Nothing was suggested to him if all these articles were planted. PW-36 (Insp.Narayan Singh) and PW-29 (SI Balram) have made similar depositions.

18. On 26.06.2004, A-2 led the police to his room No.146B, Vasant gaon, Delhi and pursuant to his disclosure statement, one hundred rupee note (Ex.P-14), pair of rings (Ex.P-15), silver coin (Ex.P-16), idol of goddess (Ex.P-17) and wrist watches (Ex.P-3, P-4, P-5, P-6 and P-18) were recovered. He also produced blood stained pant (Ex.PW-35/D), T-shirt (Ex.PW-35/F) and baniyan (Ex.PW-35/E) after taking out of plastic dustbin. The articles were seized vide seizure memos (Ex.PW-6/A and Ex.PW-6/B). PW-38 and PW-35 in the cross-examination, disclosed that the accused used to reside in the said house with his mother.

19. The police associated PW-6 (Kartar Singh) resident of 156, Vasant Gaon, Delhi, landlord who deposed that on 26.06.2004, the police reached the tenanted room with the accused in custody. The room lying locked was opened. A-2 pointed out the place behind *taand* and took out one bundle of clothes containing pant and shirt, and seized vide seizure memo (Ex.PW-6/A). Thereafter, A-2 recovered a bundle lying under the bed. It contained wrist watches (five in number), hundred rupee note, silver idol of Goddess seized vide seizure memo (Ex.PW-6/B) bearing his signatures. In the cross-examination, he reasserted that the accused had taken the room on rent w.e.f. 01.06.2004 on a monthly rent of ₹1,000/- but no receipt was issued for the rent paid. Testimony of PW-6, an

independent public witness (the landlord of the accused) inspires confidence. A bald suggestion was put accusing him a stock witness without laying any foundation for it. No suggestion was put that the accused and his mother never resided in the premises in question or no such article was recovered at his instance. In the absence of any prior enmity, this independent public witness was not expected to favour the police.

(C) **Identification of articles**

20. PW-1 (Amrita Seth), daughter-in-law of the deceased had furnished the list of missing articles (Ex.PW-1/E) on 20.06.2004 itself to the police. It described the missing articles as 1) some medals, 2) cash about ₹20,000/-, 3) father-in-law's wallets, 4) three diamond rings, 5) gold chain, 6) some silver ornaments, 7) some gents wrist watches which included a Titan, Rado and an old Omega, and 8) two ladies wrist watches including watch make Titan. She participated in the TIP proceedings (Ex.PW34/C) conducted by PW-34 (Sh. AK Sarpal), the then Metropolitan Magistrate on 01.07.2004 and she identified pair of cuff links (Ex.P-1) and bichuas (Ex.P-2) belonging to her parents-in-law. In the cross-examination, she offered reasons for identification of the

articles. She had no ulterior purpose to falsely identify these articles of insignificant value.

21. PW-2 (Gaurav Seth), deceased's son also participated in the TIP proceedings and recognised the brown colour wallet (Ex.P-7), purse (Ex.P-8) and cuff links (Ex.P-1) recovered in this case. PW-9 (Madhu Seth) identified pair of jhumkas (Ex.P-20) in the TIP proceedings conducted on 01.07.2004. PW-10 (Nikhil Seth) identified four wrist watches and one purse. He deposed that the purse which he identified belonged to his father and the wrist watches (Ex.P-4, P-5 & P-6) were identified by him to be belonging to his parents. He elaborated that HMT watch (Ex.P-4) was the first watch given by him to his father in 1969, Omega watch (Ex.P-3) was brought by his father from USA in 1964, Swiss watch (Ex.P-6) was given by him to his father after purchase from Geneva, Titan watch (Ex.P-5) was also given by him to his father.

22. From the testimonies of all these witnesses, in the absence of any reasonable explanation under Section 313 Cr.P.C., it stands established that the articles referred above were recovered from the possession of the accused and at their instance. The articles were identified by family members who had occasion to observe these articles with the deceased and were found missing on the day of incident. The

accused did not explain how and under what circumstances, they happened to be in possession of robbed articles belonging to them. They did not claim ownership of any such article. Recovery of stolen/robbed articles, thus, is strong incriminating circumstance against the accused to connect them with the crime.

(D) Familiarity with the family

23. Indisputably, close family members of A-1 used to work as domestic servants at the residence of the deceased since long. PW-1 (Amrita Singh) revealed that initially parents and sister of A-1 and thereafter his wife were domestic servants in the house. A-1 himself never worked as a servant though as a child he used to accompany his mother in the house. A-1 used to come to pick her wife. The depositions of PW-2 (Gaurav Seth), PW-9 (Madhu Seth) and PW-7 (Sohan Singh), corroborate her version. A-1 in his statement recorded under Section 313 Cr.P.C. admitted that as a child he used to go to the residence of the deceased. Apparently, A-1 was aware about the status of the deceased, the persons residing at the relevant time in the house, its topography to have a soft target.

(E) Abscondance

24. On 19.06.2004 and 20.06.2004, both A-1 and A-2 were present in Delhi. PW-7 (Sohan Singh) with whom A-1 used to reside after altercation with his parents categorically deposed that on 20.06.2004, A-1 had come along with A-2 to his house in the morning and had taken meals. They left for Hawrah at about 02.00 or 02.30 P.M. In the cross-examination, he revealed that A-1 was living with him about two months prior to the occurrence. His wife had gone to Nepal in April, 2004 and was living there. A-1 did not dispute his residence with him in the house. No suggestion was put to him in the cross-examination that he had not visited him along with A-2 on 20.06.2004. About A-2, PW-7 (Sohan Singh) explained that he had visited him earlier also with A-1 and had requested to find a job for him. He handed over his ID card (Ex.PW-7/E) to secure job and he delivered it to the police who seized it vide seizure memo (Ex.PW-7/A). A-2 failed to explain how and under what circumstance, his ID card came in possession of the witness.

25. PW-8 (Michael Wilson) deposed that on 19.06.2004 both the accused visited him at night and consumed smack with him. He identified pair of chappal (Ex.P-9) taken away by the accused on 19.06.2004 while leaving his chappals there. In the cross-examination, the accused did not deny their visit to him on 19.06.2004. They did not deny their presence in

Delhi that day and did not claim their presence at any other specific place on both these days.

26. The police suspected involvement of both the accused in the incident and set out to apprehend them. However, they could not be found in Delhi. From PW-7 (Sohan Singh), they came to know that A-1 was going to Nepal in the evening. This vital clue alerted PW-38 (Insp. Beer Singh) and he traced the origin of the call from STD booth, Gorakhpur. He sent fax message along with photographs of A-1 and A-2. UP police succeeded in apprehending A-1 while he was travelling in bus No. UP-53-T-2187 at 10.00 P.M. A-1 did not explain what prompted him to leave Delhi all of a sudden and to go to Gorakhpur without any pre-planning. The sudden disappearance of A-1 along with A-2 from Delhi points an accusing finger against them.

27. A-2 was also apprehended at a distant place at Nagartalla, PS Canning, Distt. 24 Pargana, South-West Bangal on 24.06.2004. Again A-2 did not offer any explanation for absconding from Delhi soon after the incident without any specific purpose. Possession of the two railway tickets with him at the time of his apprehension confirms that he travelled out of Delhi. Their abscondance immediately after the occurrence and before any finger or acquisition was made, is a factor to be taken into

consideration along with the circumstantial evidence and aspect relied upon.

(F) Foot print

28. On 20.06.2004, the crime team visited the spot and found one foot print. With the help of pup, PW-23 prepared a mould of foot print. He prepared specimen foot moulds of the accused. As per FSL report (Ex.PW-38/B), Ex.3 (Foot mould specimen of A-2) was found 'similar' when compared with Ex.1 "Foot mould taken from place of occurrence". However, Ex.2 (Foot mould specimen of A-1) was found to be 'different'. The trial court considered it an incriminating circumstance against A-2. Apparently, similarity of the foot print established presence of A-2 at the spot at the time of occurrence.

29. The FSL report (Ex.PW-38/B) does not depict reasons for the opinion given therein. Section 45 of Evidence Act does not include 'foot prints' within its ambit. The science of identification of the foot prints or sole print has not yet reached the stage of an exact science. The fact that the foot marks tallied with those of the accused means no more than that these marks were made by shoes of a size corresponding to the size of the shoes of the accused. There may be a large number of shoes of the size of the shoes of the accused in the area.

30. In the case of ‘Mohd.Aman, Babu Khan and Anr. Vs. State of Rajasthan’ in CrI.A.No.1749 with CrI.A.No.1833/1996 decided by the Supreme Court on 08.05.1997, it has been observed :

“So far as the foot prints are concerned, another reason for which we feel it unsafe to accept the evidence led in this regard is that the sample foot prints were not taken before a Magistrate. This apart the science of identification of foot prints is not a fully developed science and therefore if in a given case – unlike the present one – evidence relating to the same is found satisfactory it may be used only to reinforce the conclusions as to the identity of a culprit already arrived at on the basis of other evidence. ”

31. The similarity of foot prints can be taken as an additional link to corroborate the other clinching evidence on record.

(G) Finger prints

32. PW-22 (ASI Sumit) (of crime team) developed six chance prints (Ex.Q1, Q2, Q3, Q4, Q8 and Q15) from the blood stained tusks; four chance prints (Ex.Q5, Q6, Q7 and Q12) from the outer door; two chance prints (Ex.Q9 and Q10) on the inner side of the door; Two chance print (Ex.Q11 and Q13) on shampoo bottles; chance prints (Ex.Q14) from netted door and Q16 from cello tap and prepared report (Ex.PW-22/A) requesting the IO to send them for lab photography.

33. PW-12 (Chetram), Finger Prints Expert examined the chance prints lifted from the scene of the crime and compared with the specimen

finger prints of suspects i.e. Chanda wife of Bablu Mandal, Samool Mandal, Babloo Mandal, Ms.Renu, Smt.Rani, Dukhi Ram, Suresh Kukmar, Sanku Saddar, Juvel Selkh, Rintu Selkh, Savitri, A-1 and A-2 and submitted report (Ex.PW-12/A). He testified that as per scientific examination conducted by him, chance print mark Q14 was found identical with specimen right little finger marked (S1) on specimen finger slip of Bharat Bhandari (A-1). He further deposed that chance prints marked Q9 and Q10 were found identical with specimen right middle and right ring finger marked S2 and S3 respectively of finger specimen slip of A-2 (Ex.PW-14/F). Chance print mark Q6 and Q7 were found identical to specimen left index and left middle finger mark S4 and S5 respectively pertaining to Chanda w/o Babloo Mandal. The specimen prints of other suspects were not found tallying.

34. In the cross-examination, he clarified that the prints are compared on the basis of eight characters. He did not find any points of difference between specimen and chance prints. He denied the suggestion that no finger prints of the accused matched with chance prints lifted from the spot.

35. We have no reasons to disbelieve the testimony of this expert witness who was fair enough to opine that the chance prints of the other

suspects except Chanda did not match with the chance prints lifted from the spot. It has come in evidence that Chanda was maid at the house of the deceased.

36. Section 45 Evidence Act also talks about finger impression. Under Section 4 of Identification Act, the police is competent to take finger prints of the accused. The science of identification of finger prints is an exact science (HP Administration vs. Om Prakash, AIR 1972 SC 975) and it does not admit of any mistake or doubt (Jaspal Singh vs. State, AIR 1979 S.C.1708).

37. In the absence of infirmity in comparison, the matching of the finger prints of the accused with the finger prints collected from the different articles and the scene of crime is vital incriminating circumstance against them to prove their presence in the house at the time of occurrence.

(H) Recovery of Michael Wilson's chappals

38. The Trial Court found that the 'chappals' recovered at the spot belonged to PW-8 (Michael Wilson) to whom the accused had met on 19.06.2004 and this recovery was taken an incriminating circumstance against the accused.

39. PW-4 (Inder Dutt Salwan) an uninterested witness testified about the seizure of pair of chappal (Ex.P-9) vide seizure memo Ex.PW-4/E in his presence. The police was not aware to whom the said chappals belonged. Apparently, the assailants had left the chappals while fleeing after the occurrence (as the family members of the deceased did not own it). PW-8 (Michael Wilson) disclosed the police that at the time of visit by the accused to him on 19.06.2004, they had taken his chappals (Ex.P-9). No suggestion was put to this witness having friendship with the accused that the chappal (Ex.P-9) did not belong to him or that the accused never visited him on 19.06.2004 or took his chappal. No motive was imputed to this witness for falsely claiming ownership of the chappals of insignificant value and its possession with the accused. The accused did not deny their acquaintance with PW-8 (Michael Wilson). In the TIP proceedings conducted by PW-34 (Sh.A.K. Sarpal), PW-8 identified the chappals. It lends credence to the version given by the witness. Recovery of chappals (Ex.P-9) establishes accused's presence and visit to the place of occurrence. The accused persons did not explain the purpose of borrowing the chappals from PW-8 (Michael Wilson).

(I) Conduct

40. The incident occurred in the night intervening 19/20.06.2004 but was not witnessed by anyone. The police was not aware about the exact time of death. The post-mortem examination (Ex.PW-37/A) gave the approximate time since death as 12 hours. The Autopsy Surgeon started conducting autopsy on 20.06.2004 at about 02.35 P.M. The approximate time of death thus was at about 02.00 A.M. in the night intervening 19/20.06.2004. PW-8 (Michael Wilson) proved the visit of accused to him on 19.06.2004 in the night. PW-7 (Sohan Singh) testified that A-1 along with A-2 visited him on 20.06.2004. He did not claim that the A-1 had stayed as usual in the house in the night intervening 19/20.06.2004. In the cross-examination also, the accused did not put any suggestion that he was at the residence on the said fateful night. Similarly, A-2 who used to reside with his mother at house No.146B, Basant Gaon did not claim that on the said night he had visited his house and remained there. A-2 did not examine his mother to prove his stay on the said night in the house. In their statements recorded under Section 313 Cr.P.C., they did not take any specific defence about their presence at any particular place in the said night. In the absence of any specific purpose, or compulsion, the accused were not expected to remain missing from their ordinary place of residence during night. Their absence from respective

houses and silence to explain whereabouts in that night point an accusing finger against them.

41. On 20.06.2004, the accused without any purpose suddenly opted to go out of Delhi after visiting PW-7 (Sohan Singh). They actually left Delhi on 20.06.2004. The accused did not offer any reason or compulsion to move out of Delhi all of a sudden. Sudden departure from Delhi without any apparent reason shows unnatural conduct of the accused. There was no purpose to flee to such remote areas. Only inference can be drawn that the accused wanted to move out of the reach of the police at the earliest to avoid apprehension.

(J) Recovery of blood stained clothes

42. The blood stained clothes recovered pursuant to the disclosure statements of accused were sent to Forensic Science Laboratory for examination. Their clothes contained human blood of 'A' and 'AB' groups of the deceased. As per FSL report (Ex.PW-38/D) human blood of 'A' group was detected on jeans pant (of A-1) and human blood of 'AB' was detected on A-2's pant. The accused did not deny that the clothes did not belong to them and were not recovered at their instance. They failed to explain how and under what circumstances they got blood on their clothes, particularly when they had not suffered any injury. Presence of

the blood group of the deceased on the clothes of the accused is another incriminating circumstance to establish their presence and participation in the crime.

(K) Homicidal death

43. Homicidal death of the deceased Harnam Singh Seth and his wife Smt.Roop Seth is not under challenge. However, counsel urged that the assailants had no intention to commit murder and their only motive was to commit robbery. The use of household articles in causing injuries to the victims rules out intention of the assailants to commit murder. We are not impressed with these submissions. The intruders had committed lurking house-tress during the intervening night of 19/20.06.2004. Due to their old age, the deceased were not in physical condition to offer stiff resistance to the young assailants. As per post-mortem examination (Ex.PW-37/A) Harnam Singh sustained six external ante-mortem injuries on various body parts with blunt object. Injury No.3 was opined individually sufficient to cause death in the ordinary course of nature.

44. The post-mortem examination (Ex.PW-37/B) of Smt.Roop Seth reveals that the assailants inflicted eight external injuries with blunt object. The autopsy doctor was of the opinion that injury No.7 individually was sufficient to cause death in the ordinary course of nature.

The death was instant. Photographs (Ex.PW-24/B1 to B8) reveal that the assailants had tied hands and feet of the deceased with nylon rope and shut their mouths and noses with cello tape. House-hold articles were lying scattered. Two elephant tusks (having blood-stains) were apparently used to inflict injuries on the deceased. Besides this, from the spot, the police recovered iron rod, iron angle, knife and brick. These show that the assailants had come prepared to inflict fatal injuries.

45. Both the deceased were killed by the assailants during robbery. They committed the murder for their avarice with preplanned mind and in cold-blood. The number and the nature of the injuries, the parts of the body where the injuries were inflicted and the nature of weapons used in inflicting the injuries leave no room for doubt that the injuries were inflicted with the intention of causing death. The evidence leaves no doubt that both the robbery and the murder were committed in the course of the same transaction. The victims were known to the accused and they could not take risk of their identification, if left alive. Their acquaintance with the victims probably forced them to eliminate the couple. In our view, it is a case of homicide.

(L) Conclusion

46. The robbery and the murder have been proved beyond any reasonable doubt. The circumstantial evidence discussed above categorically establishes involvement of both the accused for the commission of robbery and murder. The robbed articles were recovered by the police from the possession of the accused and at their instant from their places of residence. A legitimate presumption can safely be drawn under Section 114 (a) of the Evidence Act that the appellants not only took part in the robbery but also in the murder of the deceased.

47. In the case of Earabhadrappe v. State of Karnataka, AIR 1983 SC 446 : the accused was charged for murder and robbery. He could be arrested after the lapse of a period of one year and some stolen articles were recovered pursuant to his statement under S.27, Evidence Act. Before the Supreme Court the argument was advanced that since a period of one year elapsed between the murder and the discovery of the stolen articles the only reasonable inference that could be drawn under S.114(a), Evidence Act was that the accused was merely the receiver of stolen property and had not committed the murder. Overruling the argument, their Lordships held that since the accused was absconding, the presumption of both murder and robbery could legitimately be drawn

against him even though the stolen properties were recovered after the lapse of one year.

48. In ‘*Shri Bhagwan vs. State of Rajasthan*’ (2001) 6 SCC 296, observation of the Supreme Court are relevant to appreciate the evidence in this case.

“The possession of the fruits of the crime, soon after it has been committed, affords a strong and reasonable ground for the presumption that the party in whose possession they are found is the real offender, unless he can account for such possession in some way consistent with his innocence. It is founded on the obvious principle that if such possession had been lawfully acquired, that party would be able to give an account of the manner in which it was obtained. His unwillingness or inability to afford any reasonable explanation is regarded as amounting to strong, self-inculpatory evidence. If the party gives a reasonable explanation as to how he obtained it, the courts will be justified in not drawing the presumption of guilt. The force of this rule of presumption depends upon the recency of the possession as related to the crime and that if the interval of time be considerable, the presumption is weakened and more especially if the goods are of such kind as in the ordinary course of such things frequently change hands. It is not possible to fix any precise period in this regard. The Supreme Court has drawn similar presumption of murder and robbery in a series of decisions especially when the accused was found in possession of these incriminating articles and was not in a position to give any reasonable explanation.”

49. The Supreme Court further held :

“In the present case the accused-appellant could not give an explanation as to how he came into possession of various

gold ornaments and other articles belonging to the members of the deceased family. The appellant also could not give any reasonable explanation how he sustained injuries on his body and how his shirt became bloodstained. In the facts and circumstances, it is a fit case where the presumption under Illustration (a) to Section 114 of the Evidence Act could be drawn that the appellant committed the murders and the robbery.”

50. In the recent case of ‘Geejaganda Somaiah vs. State of Karnataka’ (2007) 9 SCC 315, the Supreme Court held :

“28. Besides Section 27 of the Evidence Act, the courts can draw presumptions under Section 114, Illustration (a) and Section 106 of the Evidence Act. In Gulab Chand vs. State of M.P. where ornaments of the deceased were recovered from the possession of the accused immediately after the occurrence, this Court held : (SCC pp.577-78, para 4)

“It is true that simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery. But culpability for the aforesaid offences will depend on the facts and circumstances of the case and the nature of evidence adduced. It has been indicated by this Court in Sanwat Khan vs. State of Rajasthan that no hard-and-fast rule can be laid down as to what inference should be drawn from certain circumstances. It has also been indicated 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. A note of caution has been given by this Court by indicating that suspicion should not take the place of proof. It appears that the High Court in passing the impugned judgment has taken note of the said decision of this Court. But as rightly indicated by the High Court, the said decision is not applicable in the facts and

circumstances of the present case. The High Court has placed reliance on the other decision of this Court rendered in Tulsiram Kanu vs. State. In the said decision, this Court has indicated that the presumption permitted to be drawn 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. In the instant case, it has been established that immediately on the next day of the murder, the accused Gulab Chand had sold some of the ornaments belonging to the deceased and within 3-4 days, the recovery of the said stolen articles was made from his house at the instance of the accused. Such closed proximity of the recovery, which has been indicated by this Court as an 'important time factor', should not be lost sight of in deciding the present case. It may be indicated here that in a later decision of this Court in Earabhadrappe Vs. State of Karnataka this Court has held that the nature of the presumption and Illustration (a) under Section 114 of the Evidence Act must depend upon the nature of evidence adduced. 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. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not, calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. In our view, it has been rightly held by the High Court that the accused was not affluent enough to possess the said ornaments and from nature of the evidence adduced in this case and from the recovery of the said articles from his possession and his dealing with the ornaments of the deceased immediately after the murder and robbery a reasonable inference of the

commission of the said offence can be drawn against the appellant. Excepting an assertion that the ornaments belonged to the family of the accused which claim has been rightly discarded, no plausible explanation for lawful possession of the said ornaments immediately after the murder has been given by the accused. In the facts of this case, it appears to us that murder and robbery have been proved to have been integral parts of the same transaction and therefore the presumption arising under Illustration (a) of Section 114 Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her ornaments. ”

51. The Trial Court had discussed each and every factual and legal aspect elaborately. Omissions/contradictions pointed out by the appellants are trivial in nature, which do not go to the root of the case.

52. In the light of above discussion, we find no illegality or material irregularity in the impugned judgment. The appeal filed by the appellants is without merits and is dismissed. The order of sentence is also upheld.

(S.P.GARG)
JUDGE

(SANJIV KHANNA)
JUDGE

AUGUST 03, 2012

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