

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

RESERVED ON : 27th SEPTEMBER, 2012

DECIDED ON : 29th November, 2012

+ CRL.A. 326/2011

BHAWGAN MAHALIK Appellant

Through : Mr.Sudhakar Mohan Mudgil,
Advocate.

versus

STATE (NCT OF DELHI) Respondent

Through : Ms.Richa Kapoor, APP.

+ CRL.A. 327/2011

BHASKER MAHALIK Appellant

Through : Mr.Joginder Tuli, Advocate with
Mr.Aekansh Shukla, Advocate.

versus

STATE Respondent

Through : Ms.Richa Kapoor, APP.

+ CRL.A. 328/2011

NIRANJAN MAHALIK Appellant

Through : Mr.Joginder Tuli, Advocate with
Mr.Aekansh Shukla, Advocate.

versus

STATE (NCT OF DELHI) Respondent

Through : Ms.Richa Kapoor, APP.

+ CRL.A. 329/2011

JAGBANDHU DASS Appellant

Through : Mr.Joginder Tuli, Advocate with
Mr.Aekansh Shukla, Advocate.

versus

STATE (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. Bhagwan Mahalik @ Rajesh @ Babu (A-1), Bhasker Mahalik (A-2), Niranjana Mahalik @ Jeda (A-3) and Jagbandhu Dass @ Tukku @ Tinku (A-4) impugn the judgment of learned Addl. Sessions Judge, New Delhi dated 01.12.2010 in Sessions Case No.122/2008 arising out of FIR No.111/2006 by which they were convicted for committing offences punishable under Sections 302/394/34 IPC and sentenced to undergo imprisonment for life with fine.

2. Swarana Mahajan and Anuradha Mahajan, Advocates by profession (since deceased) lived in House No.256, Sidharth Enclave, New Delhi. PW-2 (Geeta Chopra), their maid saw them hale and hearty on 11.03.2006 around 07.30 P.M. When she reached the house at about 08.00 A.M. next day on 12.03.2006 and rang the door bell, there was no response. Finally, both Swarana Mahajan and Anuradha Mahajan were found lying dead inside the house. The articles were lying scattered. The assailants had committed murder of both the ladies in the course of

committing robbery. DD No.8 (Ex.PW-25/A) was recorded at police post Sun Light Colony. SI Karamvir with Const.Sur Gyan and Const.Parveen reached there. Rukka (Ex.PW-26/A) was prepared and First Information Report was lodged. Scene of incident was photographed. Inquest proceedings were conducted and bodies were sent for post-mortem examination. PW-1 (Dr.B.L.Chaudhary) conducted examination on 14.03.2006. On 15.03.2006, PW-4 (Sanjiv Rai Mahajan), Swarana Mahajan's son submitted a detailed list of missing articles to the police. Efforts were made to find out the culprits and to recover the robbed articles but to no effect. PW-20 (SI Naresh Solanki) from Anti Extortion Cell, Crime Branch, R.K.Puram joined the investigation of this case on the instruction of DCP and got information that a servant working in the neighbourhood of the deceased was missing. A raiding party was organised and they all reached Soro, Orissa on 22.04.2006. A-1 to A-4 were arrested from railway station Soro after joining the local police in the investigation. Incriminating articles were recovered in the personal search of the accused. They were interrogated and their disclosure statements were recorded. In consequence to the disclosure statements A-1 to A-4 recovered various jewellery articles from their respective houses. The articles were seized vide seizure memos on 22.04.2006. When the

accused persons were present at the railway station after their transit remand, A-4 volunteered to recover more jewellery from his house. He led the police team and recovered jewellery articles from his house concealed in a chappar. At Delhi, the Investigating Officer of police station S.N.Puri was informed. They interrogated the accused and recorded their disclosure statements. During police remand, A-1 and A-4 offered to recover more jewellery articles. It was disclosed by A-1 that he had sold one gold chain to a jeweller at Soro. Again police of PS S.N.Puri with A-1 and A-4 reached Soro and recovered the articles with the assistance of the local police.

3. PW-4 and PW-5 (Pratima Mahajan) participated in the Test Identification Proceedings conducted by PW-30 (Sh.Sanjay Bansal, ACMM) and identified the articles. Statements of the witnesses conversant with the facts were recorded. After completion of the investigation, a charge-sheet was submitted against the accused for committing the aforesaid offences. The accused were duly charged and brought to trial.

4. After appreciating the evidence and documents on record and considering the rival contentions of the parties, A-1 to A-4 were convicted

for the offences described previously. Being aggrieved, they have directed the appeals against the impugned judgment.

5. Learned counsel for the appellants while assailing the impugned judgment strenuously urged that the Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of PWs-17, 18, 19, 20 and 26 without ensuring their credibility and reliability. No independent public witness was associated at the time of alleged recovery of gold and other ornaments from the houses of the accused persons. The investigation carried out by SI Naresh Solanki was tainted as he was not the Investigating Officer and the police of police station S.N.Puri was not informed about the parallel investigation carried out by him without any authorization. It is highly unbelievable that after more than one and half months of the incident, all the accused would retain the huge valuable jewellery articles in their respective houses without proper security and would not disposed of the same. Only a gold chain was allegedly recovered from a jeweller Surender Kumar sold by A-1. The accused who had apparent motive to robe the victims were not expected to retain the substantial jewellery articles intact after one and half months of the incident. The jewellery articles were provided by PW-4 to the police to be

planted upon the accused. It was further contended that there was no complaint against the conduct and behaviour of the accused from the previous employers. Chance prints were planted subsequently, and no permission was taken from the concerned magistrate to obtain the specimen finger prints of the accused. The accused had no reason to remain present at the railway station, Soro and no railway ticket was recovered from their possession. They have been falsely shown arrested at the railway station Soro. He further argued that the police officials from different units were eager to get credit for the success of the case and with that motive, they visited village Soro twice to feign recovery of the jewellery articles in their investigation.

6. Learned APP for the State urged that the impugned judgment does not call for any interference. The accused did not offer any explanation for the huge valuable gold and diamond jewellery recovered at their instance from their houses. The chance prints matched with the specimen finger prints of A-1 and A-2. A-1 who worked in the neighbourhood flat was aware about the valuable articles in possession of the deceased. Minor discrepancies emerging in the testimonies of the prosecution witnesses are not fatal. Delhi police took assistance from the local police and joined them at the time of recovery. After arrest, A-1 to

A-4, were produced before the Court concerned and their transit remand was taken. PW-4 and PW-5 identified the recovered jewellery in the judicial Test Identification Proceedings.

7. We have considered the arguments and have examined the Trial Court records. At the outset, it may be mentioned that the case of the prosecution is based upon circumstantial evidence alone.

(A) **Homicidal death**

8. Homicidal death of Swarana Mahajan and Anuradha Mahajan is not under challenge. Both lived at 256, Sidharth Enclave, New Delhi. PW-2 (Geeta Chopra) their maid saw them hale and hearty on 11.03.2006 at around 07.30 P.M. On 12.03.2006, their lifeless bodies were found in the house. PW-1 (Dr.B.L.Chaudhary) conducted post-mortem examination of the bodies on 14.03.2006 vide reports Ex.PW-1/A and Ex.PW-1/B. Swarana Mahajan, aged 73 years suffered three ante-mortem injuries. The cause of death was asphyxia as a result of smothering along with gagging. Anuradha Mahajan also sustained ante mortem injuries and the cause of death was asphyxia as a result of smothering along with gagging. Undoubtedly, it was a case of culpable homicide.

9. The assailants committed lurking house trespass on the night intervening 11/12.03.2006 with an intention to commit robbery. The entry

to the house was not friendly. PW-26 (SI Karamvir) along with Const.Sur Gyan and Const.Parveen reached the spot on receipt of DD No.8 (Ex.PW-25/A). When they entered inside the house, they saw that the two almirahs in the bed room were open and the articles were scattered on the floor. The almirahs in the other bed rooms were also lying open and the articles scattered. The glass windowpane as well as its grill was broken and removed. One petal of exhaust fan was broken and broken wood-pieces with broken glass pieces were lying outside the bathroom near the water tank. Apparently, the assailants had entered after breaking open the window clandestinely with the motive to commit robbery. In the same transaction, inmates of the house Swarana Mahajan and Anuradha Mahajan were done to death. Their hands were tied with the pieces of clothes. Bunch of tissue papers were used to gag their mouths. They were no more alive. PW-1 (Dr.B.L.Chaudhary) conducted post-mortem examination on 14.03.2006 from 11.30 A.M. to 13.30 P.M. and ascertained that time since death was two and half days. The photographs demonstrate brutish manner in which the victims were eliminated by the robbers/assailants. Undoubtedly, it was a case robbery cum murder in one and the same transaction.

(B) Recoveries of robbed articles

10. PW-4 (Sanjiv Rai Mahajan), Swarana Mahajan's son reached India from USA on 13.03.2006. On 15.03.2006, he submitted a detailed list of fifty articles worth approximately ₹20,58,000/- (Ex.PW-4/J) robbed from the house with receipts of some articles to prove ownership. Photographs of the deceased Ex.PW-4/K1 to Ex.PW-4/K13 wearing the jewellery were also given to the police.

11. PW-20 (SI Naresh Solanki) is a crucial witness as he with his team was successful to apprehend the culprits and recover substantial quantity of robbed articles. He deposed that on 21.04.2006, a raiding party was organised after secret information was received in their office Anti Extortion Cell, Crime Branch, R.K.Puram that the accused persons wanted in the case were residing in Orissa. They reached railway station Soro, Orissa on 22.04.2006. They informed local police and joined four police officials i.e. one ASI and three constables in the investigation of the case. On 23.04.2006 at around 04.40 A.M. the raiding team arrested A-1 to A-4 from the railway station Soro. They were interrogated and arrested vide arrest memos Ex.PW-17/A to Ex.PW-17/D. Their personal searches were conducted vide memos Ex.PW-17/E to Ex.PW-17/H. They made disclosure statements (Ex.PW-17/G1 to Ex.PW-17/G4). At around 08.00

A.M. A-3 took the police team to his house at village Dahipur and recovered a polythene packet from a quilt which contained seventeen jewellery articles seized vide seizure memo Ex.PW-17/H1. Thereafter, A-1 recovered a polythene packet from an iron box in his house in the same village and it contained ten jewellery articles seized vide seizure memo Ex.PW-17/H2. A-2 pursuant to his disclosure statement recovered a green colour briefcase from his house and took out a polythene packet containing seventeen jewellery articles seized vide seizure memo Ex.PW-17/H3. Thereafter, A-4 took the police to his house in village Mangalpur and produced one sweet-box which contained twelve jewellery articles and seized vide seizure memo Ex.PW-17/H4. After effecting the recoveries, A-1 to A-4 were produced before the Court concerned in Orissa and three days' transit remand was taken. A-4 again made supplementary disclosure statement on interrogation and offered to recover more jewellery kept by him inside the '*chhappar*' of his house. Around 10.00 P.M., he took the police team from the railway station, Soro to his house and recovered thirty jewellery articles from a polythene packet concealed in the '*chhappar*' of the house seized vide seizure memo Ex.PW-17/H5. The jewellery articles were deposited in the malkhana in intact condition on reaching Delhi.

12. PW-19 (ASI Shashadhar Sethi) was posted in PS Soro, District Baleshwar, Orissa. He joined the investigation with Delhi police. He testified that after arrest of A-1 to A-4 from the railway station Soro, they recovered various gold ornaments from their respective houses. A-3 recovered seventeen items from a polythene bag from his house concealed in a quilt vide seizure memo Ex.PW-17/H1. A-1 pursuant to the disclosure statement recovered ten ornaments from his house and were seized vide seizure memo Ex.PW-17/H. Thereafter, A-2 and A-4 took the police team to their houses in village Manatri and Mangalpur and recovered seventeen and twelve ornaments seized vide seizure memo Ex.PW-17/H3 and Ex.PW-17/H4, respectively. He further deposed that all the memos prepared at the place of recovery were signed by him. He identified the articles recovered at the instance of the accused persons. PW-17 (HC Virender Singh), member of the raiding team, also testified about the recovery of the various ornaments at the instance of the accused persons from their respective houses. He corroborated the testimony of PW-19 and PW-20 in toto without variation. The memos prepared at the spot were signed by him. He also identified the ornaments recovered at the pointing out of the accused. They all returned to Delhi on 25.04.2006 and the accused were produced before the Court on 26.04.2006.

13. PW-17, PW-19 and PW-20 were cross-examined at length. However, no material discrepancies or inconsistencies have been elicited to disbelieve their version. Testimony of PW-17, on material facts i.e. apprehension of the accused and recoveries at their instance remained unchallenged in the cross-examination. PW-19 (ASI Shashadhar Sethi) elaborated that the distance between the place of arrest and house of A-3 was 3-4 kilometres. A-3's wife was present inside the house at the time of recovery of the gold ornaments. Memo Ex.PW-17/H1 was signed by A-3. It was a single room. He further disclosed the time of reaching the houses of accused persons and duration they remained present to effect recoveries and also which family member was present at that time. In the personal search of A-4, one mobile make Samsung and other articles were recovered. They returned to the police station at about 02.10 P.M. The deposition of this witness inspires implicit confidence as he had no connection with Delhi police to make false statement. He was not interested in the outcome of the case registered at Delhi. He assisted Delhi police in effecting recoveries in the discharge of his official duties. He had no animosity against the accused to rope them falsely in this case. PW-20 (SI Naresh Solanki) stood the test of cross-examination and explained that the accused were arrested on 23.04.2006 after ASI Shashadar and three

constables from the local police station in Soro were joined in the raiding team. The house of all the accused were raided and searched the same day i.e. 23.04.2006. House of A-3 was raided around 08.30 A.M., that of A-1, A-2 and A-4 at around 09.20 A.M., 10.50 A.M. and at 12.40 P.M., respectively. 5th raid/search at the house of A-4 was conducted at 11.20 P.M. (night) and no police official from local police had accompanied them. Supplementary disclosure statement was made at the railway station Soro by A-4 after the transit remand. He fairly admitted that no railway journey ticket was found in possession of the accused at the time of their arrest. He denied the suggestion that no article was recovered at the instance of the accused. No suggestion was put to any witness that the ornaments recovered were planted by the police in connivance with the family members of the deceased. The accused did not attribute any ill-will or motive to the witnesses to falsely show recovery at their instance. None of the accused claimed ownership of any gold or other ornament.

14. At Delhi, the accused were taken on police remand. A-1 and A-4 were interrogated by Insp.Mahender Singh. A-4 disclosed that he had concealed one gold bracelet (Kara) in his jhuggi at his native village. A-1 also made disclosure statement and informed that a stolen gold chain in three pieces was sold by him to a jeweller and volunteered to recover it.

The confession statements are Ex.PW-26/C1 and Ex.PW-26/C4 and supplementary disclosure statements are Ex.PW-26/D2 and Ex.PW-26/D1. On 28.04.2006, PW-26 (SI Karamvir) and his team reached police station Soro with A-1 and A-4. ASI Kamal Kant Dass from police station Soro joined the investigation. A-4 led the police team to his house and after digging some earth from the corner of his jhuggi recovered a gold 'kara' and a gold bracelet seized vide seizure memo Ex.PW-18/A. Thereafter, A-1 took the police team to the shop of a jeweller "Jagannath Jewellers" at Soro. Surender Pal (since acquitted) was present in the shop. On interrogation, he admitted that A-1 had sold him a gold chain in three pieces and produced the said gold chain in three pieces and seized vide seizure memo Ex.PW-18/B. A-1 and A-4 were brought to Delhi after seeking transit remand.

15. PW-18 (ASI Kamal Kant Dass) posted at PS Soro joined the investigation with Delhi police on 29.04.2006 and in his presence, A-4 recovered the gold kara and bracelet (Ex.PW-18/A) from his house from beneath the ground. A-1 then led the police team to the shop of Jagannath Jewellers and Surender Kumar present there produced a gold chain (broken in three pieces) sold by A-1 to him. Testimony of PW-29 (HC Harender Kumar), member of raiding team, on 28/29.04.2006 is in Crl.A.Nos.326/11, 327/11, 328/11 & 329/11

consonance with the testimonies of PW-18 and PW-26 on all material aspects. Despite searching cross-examination of PWs-18, 29 and 26 nothing material emerged to discard their version. PW-18 (ASI Kamal Kant Dass) from police station Soro had no axe to grind to make false statement. Surender Pal was arrayed an accused being receiver of the stolen/robbed jewellery. However, for the reasons detailed in the judgment, he was acquitted. In the statement recorded under Section 313 Cr.P.C., he admitted that the gold chain in three broken pieces was handed over by him to Delhi police and it was pledged by A-1 with him for ₹800/-. A-1 did not claim ownership of the gold chain Ex.PW-4/6 or that he had pledged it with Surender Pal to arrange ₹800/- for the treatment of his child.

16. PW-30 (Sh.Sanjay Bansal), ACMM-02, North, Tis Hazari Courts, Delhi conducted Test Identification Proceedings (TIP for short) on 16.05.2006. PW-4 (Sanjiv Rai Mahajan) and PW-5 (Pratima Mahajan) participated in the TIP and identified the articles. The detailed TIP, Ex.PW-4/L, details the articles which were identified and also those which could not be identified. PW-4 (Sanjiv Rai Mahajan) testified that on 16.05.2006, he identified silver coins mentioned at Sl.No.1, 4 and 9 in the TIP and it belonged to his mother and sister. He identified watch at

Sl.No.2 and the items at Sl.No.4 in the TIP. In the Court, he identified the articles recovered by the police collectively exhibited as Ex.PW-4/1 to Ex.PW-4/8 taken out of eight parcels. He elaborated that he had seen his mother and sister wearing and using these articles. The articles also appeared in the photographs produced before the police. He further explained that one gold 'Mata' locket identified by him was visible in the photographs bearing Sl.No.20, 21, 22 and 24 of deceased Anuradha Mahajan and it was purchased vide bill No.1655 on 10.11.2004 from M/s. M.B.Jewellers and sons. The photocopy of the same is Ex.PW-4/A4. The photographs are Ex.PW-4/A5 to Ex.PW-4/A8. The Mata locket is Ex.PW-4/A9. The witness identified a pair of diamond tops Ex.PW-4/A10 and produced the photographs bearing Sl.Nos.1, 2, 3, 4, 5 and 11 where her mother is visible wearing the diamond tops and the photographs are Ex.PW-4/A11 to Ex.PW-4/A16. Photocopy of the bill of the diamond tops Ex.PW-4/A17 is dated 19.09.2001 issued in the name of Swarana Mahajan by M/s.M.B.Jewellers and Sons, Calcutta Wala. He identified 'three pieces of gold chain' collectively as Ex.PW-4/6 belonging to his sister and mother. He identified the smallest piece of gold chain as Ex.PW-4/A42. He also identified the full chain in the neck of his sister in photograph at Sl.Nos.18 and 19 as Ex.PW-4/A43 and Ex.PW-4/A44

respectively. He identified the biggest piece as Ex.PW-4/A45 and also identified the full chain in photographs at Sl.Nos.21, 22, 23 and 24 of his sister as Ex.PW-4/A6, Ex.PW-4/A7, Ex.PW-4/A46 and Ex.PW-4/A8. He further deposed that on 16.05.2006, he with his wife went to Patiala House Court and participated in the TIP in the chamber of Sh.Sanjay Bansal, Ld.Magistrate. Jewellery belonged to his mother and sister, and they used to wear it. Only main items were shown to them for the identification and were mixed with similar articles. He fairly admitted that all the articles were not shown to them as the Investigating Officer was unable to arrange similar articles like the case properties. On 25.05.2006, he identified Timex Quartz Vista gold frame wrist watch kept in the malkhana recovered in the personal search of A-3. Her mother Swarana Mahajan used to wear the watch regularly and it also appeared in the photos bearing Nos.6 and 8. He also identified one white dial Quartz New York and Company (NY&C), the strap of which was black and of leather and it belonged to his sister Anuradha. It was recovered in the personal search of A-4. This watch was purchased by him for his sister for 34.50 US dollars and he had presented it to her in January, 2006. On the same day, he also identified Anuradha's mobile make Samsung R-220 recovered from A-4 in his personal search. It was purchased for ₹9,000/-

in July 2002 and its IMEI number was 350624/08/54857918. PW-5 (Pratima Mahajan) also identified the articles in the TIP. She explained that her husband prepared list of missing articles Ex.PW-4/J at their residence and it was typed by him. He prepared the list with memory. Item No.22 i.e. several gold coins purity 0.999 purchased from MMTC were seen by her with her mother-in-law. She denied that the jewellery was provided by them to plant upon the accused after their arrest.

17. We have no reasons to discredit the testimonies of PW-4 and PW-5 who are close family members of the deceased. The assailants had committed lurking house trespass with an intention to rob the inmates and the articles in the almirah were found scattered. Detailed list of missing articles Ex.PW-4/J was handed over to the police soon after the occurrence when the accused were not suspects. PW-4 and PW-5 were not members of the raiding team when the robbed articles were recovered from far off places at the instance of the accused. PW-4 and PW-5 were even not residing in India and had no animosity with the accused to falsely plant the valuable jewellery upon them. The accused were completely strangers for them. They had no ulterior motive to falsely identify the articles recovered in the case. The fact that both the ladies

were smothered and gagged in the same transaction lends credence that the only object of the intruders was to rob and steal.

18. Huge valuable jewellery articles having specific features and mark of identification were recovered at the instance of the accused persons from their respective houses. The accused did not claim ownership of any article. They did not offer explanation how and under what circumstances they received or retained the jewellery articles belonging to the deceased and robbed from their house. Looking at the quantum and nature of articles recovered, manner and place/location of recovery, the possibility and probability of planting the articles is safely ruled out. The Delhi Police was able to recover a gold chain in three broken pieces from Surender Pal (since acquitted) and he admitted in statement under Section 313 Cr.P.C. that A-1 had handed over the said gold chain for ₹800/- on the pretext to get treatment for his son. Surender Pal is resident of Soro and Delhi police was not aware about his name and address prior to the arrest of the accused. Only in the disclosure statement of A-1, the police discovered that Surender Pal was running a jewellery shop at Soro and A-1 had sold the robbed gold chain to him. A-1 thereafter, led the police to his shop and recovered the gold chain identified by PW-4 and PW-5 to be that of the deceased. All these facts

were not in the knowledge of the police prior to the arrest and disclosure statements of the accused. Their disclosure statements leading to the recovery of the gold and other ornaments substantial in number and value is vital piece of evidence under Section 27 of the Evidence Act against them.

19. The incident occurred in the night intervening 11/12.03.2006. The robbed articles were recovered from the possession of the accused on 23.04.2006 and 29.04.2006 from their respective villages in Orissa. PW-20 (SI Naresh Solanki) joined the investigation on the instructions of DCP Crime Branch as it was a sensational case of the murder of two lady lawyers of the Delhi High Court. He visited the place of occurrence and interrogated servants employed in different houses in the locality. On 07.04.2006, he came to know that the servant who was earlier employed in the flat above the premises in question, was missing since 12.03.2006 from Panchsheel Enclave where he used to work in the house of Mr.Arjun. After completing the investigation by interrogation of servants working in the locality, PW-20 (SI Naresh Solanki) with his team was able to apprehend the culprits and effect recovery of robbed articles on 23.04.2006. There was no substantial time gap between the occurrence and the recovery of robbed articles from the possession of the accused.

Sale and disposal of large number of valuable and expensive jewellery would have been a cause of grave suspicion. The appellants after the occurrence had moved to their villages. They were cautious and careful not to raise suspicion. Recoveries cannot be discounted and disregarded in the present case. Under Section 114 A of Evidence Act, it can reasonably be presumed that A-1 to A-4 not only robbed the articles but in the course of robbery committed murder of the two ladies.

(C) **Finger Prints**

20. On 12.03.2006, PW-10 (Narender Singh), Finger Prints Expert lifted/developed twenty seven chance prints (Q-1 to Q-27) from various articles from the place of occurrence. The detailed report Ex.PW-10/A was handed over to the Investigating Officer. PW-20 (SI Naresh Solanki) obtained specimen finger prints of all the accused. PW-3 (Const.Sovir Singh) deposited the prints on 01.05.2006 with Finger Prints Bureau. PW-9 (Sanjay Kumar) examined the specimen prints with the chance prints. Twelve chance prints were unfit for comparison. Fifteen chance prints were compared with the specimen prints of inmates/deceased and suspects. On comparison, it was found that eight chance prints were identical with the specimen prints of A-2 (Bhaskar Mahalik) and one chance print was identical with specimen prints of A-1

(Bhagwan Mahalik). Six chance prints were identical with the chance prints of inmates/deceased. PW-9 (Sanjay Kumar) proved the detailed comparison report Ex.PW-9/A. He denied that the chance prints were planted upon the accused. Nothing was suggested when the chance prints were planted and by whom. No such suggestion was put in the cross-examination of the Investigating Officer.

21. It is true that specimen finger prints of the accused were not obtained with the prior permission of the Court and were not taken in the presence of the Magistrate. It was desirable but not mandatory to obtain the specimen prints after seeking permission of the Court to dispel any suspicion as to its bonafide or to eliminate the possibility of fabrication of evidence. Under Section 4 of Identification of Prisoners Act, the police is competent to take finger prints of the accused and no such prior permission of the concerned Magistrate is compulsory. Lifting of the chance prints in the present case was several days before the arrest of the appellants.

22. Chance prints Q9, Q10, Q11, Q14, Q15 and Q16 matched with the specimen finger prints of Bhaskar Mahalik. Chance prints Q22 matched with the specimen palm impression slip of Bhagwan Mahalik. Other chance prints matched with the finger print impression of Anuradha

Mahajan and her maid Geeta. This shows that the chance prints were not planted. The expert witness fairly opined that chance prints lifted did not match with the finger prints of other suspects Niranjan Mahalik and accused Jagbandhu Dass. This also shows that the report was truthful, genuine and free from prejudice. A-1 and A-2 were not employed in the deceased's house and had no obvious purpose to visit the house. It was in their special knowledge how and why they visited the house and to offer explanation how their finger prints appeared on various articles in the house. The accused did not offer justification for their presence in the house on the day of occurrence.

23. 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).

24. In the absence of infirmity in comparison, the matching of the finger prints of the two accused with the finger prints collected from the different articles at the scene of crime is a vital incriminating

circumstance against them to prove their presence in the house at the time of occurrence.

(D) Conduct

25. A-1 to A-4 worked in Delhi prior to the incident. A-3 left the job on 03.03.2006 after working as a domestic servant with PW-6 (Rinki Bhasin) since 28.10.2005. He requested PW-6 not to employ any other permanent servant as he would return from his village after Holi. A-1 was domestic servant with PW-7 (Rajinder Singh) for about two and a half months and left the job on 28.02.2006 on the pretext to go to his village in Orissa. A-1 worked as domestic servant for about two and a half years in the absence of regular servant with PW-12 (Arjun Dev) at Flat No.257, Sidharth Enclave till November, 2004. When PW-12 vacated the said flat in 2004, A-1 went to his native village to attend some marriage. PW-12 further deposed that when A-1 was brought in police custody at his flat, he confessed the crime of murder. A-4 worked for four years as domestic servant with PW-13 (Ms.Annu Puri) and his services were terminated. On 07.03.2006 after settling dispute over accounts, A-4 left on 10.03.2006 with assurance to join after Holi on return from the village and requested her not to employ other servant. A-2 worked with PW-14 (Siri Kant Mahalik) at a juice shop.

26. A-1 to A-4 were found present at Soro, Orissa on 22.04.2006. In their statements under Section 313 Cr.P.C. they did not clarify when they all had gone to their respective villages in Orissa from Delhi. Their leaving Delhi at or about the same time is indicative of their involvement. They did not offer any explanation why they did not return to Delhi where they were gainfully employed. There was no plausible reason for the accused to stay in their respective villages without any gainful employment for so long. It is apparent that after the incident on 11.03.2006 they absconded with the robbed articles.

(E) Other criminating facts and contentions of the Accused

27. Testimony of PW-21 (Shambhu Pandey) points an accusing figure against A-2. Shambhu Pandey was a security guard in Sidharth Enclave in 2006. He deposed that he was on duty from 08:00 P.M. onwards on the night intervening 11th and 12th March 2006 and it was raining that day. A-2 worked in House No.257, Sidharth Enclave on the first floor. The occupant of Flat No.257 had shifted residence about a year and the flat was used as a store. At about 9:00 or 09:30 P.M., he saw A-2 with his associate entering the colony through gate No.1. He identified A-2 to whom he had seen entering inside the colony on 11.03.2006. In the absence of any material discrepancy, we have no

reason to discard the statement of this independent witness. A-2 did not explain the purpose of his visit to the said colony soon prior to the incident. The accused persons did not adduce any evidence to establish their presence on the night intervening 11/12th March, 2006 at any other specific place in Delhi or in Orissa.

28. Learned defence counsel vehemently criticized the investigation conducted by PW-20 (SI Naresh Solanki) who was not the investigating officer. It is true that the case was registered at police station S.N.Puri and initial investigation from 12.03.2006 onwards was conducted by Investigating Officer PW-26 (SI Karamvir) but PW-20 (SI Naresh Solanki) of Crime Branch R.K.Puram has testified that he joined the investigation on the instruction of DCP, Crime Branch. We find no illegality or irregularity in the investigation carried out by him under directions from DCP, Crime Branch. Delhi police is one unit. Even if there was any irregularity, it will not bar or prohibit the prosecution from relying upon the evidence/material collected. In '*Pooran Mal Vs. Director of Inspection (Investigation), New Delhi and Ors.*' AIR 1974 SC 348, it was held that:-

“It would thus be seen that in India, as in England, where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the

Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out.”

After apprehending the culprits with the robbed articles, SI Naresh Solanki, Crime Branch, informed Inspector Mahender Singh, SHO, S.N.Puri on 26.04.2006 and further investigation was carried out by them. No prejudice was caused to the accused due to the investigation carried out by SI Naresh Solanki. In a serious case, assistance is often taken from different units and police stations. SI Naresh Solanki with his team worked under the directions of DCP, Crime Branch and duly recorded their presence at the concerned police station, Soro. There was no question of parallel investigation. The Trial Court has dealt with this contention in detail in paras Nos. 22 and 23 of the impugned judgment and we have no reasons to deviate from it.

29. It was further pointed out that there were certain discrepancies in identification of the articles allegedly recovered at the instance of the accused. Our attention was drawn to the deposition of PW-17 (HC Virender Singh), where the description of the case property given by him did not tally with the case property produced in the Court. We do not think any major contradiction in this regard. PW-4 and PW-5, close relatives of the deceased were not cross-examined regarding the

description of the articles recovered and identified. Discrepancy in the description of one or two articles in the testimony of a witness does not affect the prosecution case as a whole. Other contentions assailing recoveries pursuant to the disclosure statements of the accused were suitably dealt with by the Trial Court in the impugned judgment. We do not find major lapse in the investigation to discredit the testimonies of the material witnesses. Huge quantity of various valuable gold and diamond ornaments was recovered from the respective houses of the accused at their instance. Some of these ornaments were having specific mark of identification/features and were not easily available commodities in the market. PW-4 and PW-5 identified the articles in the TIP. They also produced bills of purchase of the articles. Photographs of the deceased wearing some of the jewelry articles were also recognized. The accused, it is apparent had no means to procure or own costly gold and diamond ornaments. In the personal search of A-3, 73 US dollars were recovered. PW-4 in the list Ex.PW-4/J informed the police about the loss of some foreign currency. A-3 had no reason to be in possession of the foreign currency. The prosecution witnesses were having no animosity with the accused. PW-4 and PW-5 did not nurse grudge against the accused and were not acquainted with them. A-2 who used to work as a domestic

servant in the neighbourhood of the deceased had familiarity with the deceased and was aware that they were a soft target. He was aware about the status of the deceased. The deceased used to wear valuable gold ornaments/jewelry. They used to live alone in the flat. The entry inside the house was not friendly.

30. The circumstances discussed above establish beyond doubt that A-1 to A-4 in further of common intention committed the crime and were the perpetrators. They did not examine any witness in defence to demolish the prosecution case. No plausible explanation to the incriminating circumstances appearing against them was given in their statements under Section 313 Cr.P.C.

(F) Conclusion

31. The robbery and the murder have been proved beyond any reasonable doubt. The circumstantial evidence discussed above categorically establishes involvement of all 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 instance 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.

32. In the case of '*Earabhadrappa 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 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.

33. In another case of '*Mukund vs. State of M.P*' (1997) 2 SCC 130, the prosecution case was that in the night intervening 17.01.1994 and 18.01.1994, the appellants trespassed into the residential house of one Anuj Prasad Dubey, committed murder of his wife and their two children and looted their ornaments and other valuable articles. On the next night, the appellants were arrested and interrogated. Pursuant to the statement made by one of the accused, gold and silver ornaments and other articles

were recovered. This Court, relying on an earlier decision reported in

‘*Gulab Chand vs. State of M.P.*’ (1995) 3 SCR 27, observed :

“If in a given case—as the present one—the prosecution can successfully prove that the offences of robbery and murder were committed in one and the same transaction and soon thereafter the stolen properties were recovered, a Court may legitimately draw a presumption not only of the fact that the person in whose possession the stolen articles were found committed the robbery but also that he committed the murder.”

34. In the said case, the appellant could not give an explanation as to how he came into possession of various gold ornaments and other articles belonging to deceased and the members of his family. The appellant also could not give any reasonable explanation how he sustained injuries on his body and how his shirt became blood-stained. Thus the presumption under illustration (a) to Section 114 of the Evidence Act was drawn that the appellant therein had committed the murders and the robbery.

35. In ‘*Shri Bhagwan vs. State of Rajasthan*’ (2001) 6 SCC 296, the following observations of the Supreme Court are relevant:-

“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. ”

36. 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. ”

37. 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 Earabhadrapa 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. ”

38. In the light of above discussion, we find no illegality or material irregularity in the impugned judgment. The appeals filed by the

appellants are without merits and are dismissed. The impugned judgment of the Trial Court is upheld. The conviction under Sections 394/302/34 IPC and order on sentence are maintained.

39. Trial court record be sent back forthwith.

(S.P.GARG)
JUDGE

(SANJIV KHANNA)
JUDGE

NOVEMBER 29, 2012

tr/sa