

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 254 of 2013

Roshan Yadav @ Krishna Yadav S/o Raajaram Yadav Aged About 20 Years R/o Village Khaira , Lagra , P.S. Seepat , Distt. Bilaspur C.G. , Chhattisgarh

---- Appellant

Versus

State Of Chhattisgarh Through - The P.S. City Kotwali, District. Bilaspur C.G., Chhattisgarh

---- Respondent

For Appellant	:	Shri Hemant Gupta, Advocate
For State	:	Shri K. K. Singh, Govt. Advocate

D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava & Hon'ble Mrs. Justice Rajani Dubey

Judgment On Board

11/02/2019

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 17th December 2012 passed by learned Third Additional Sessions Judge, Bilaspur (CG) in ST No.169 of 2011 whereby and whereunder the appellant/accused has been held guilty of commission of offence alleged against him and sentenced as described below:-

Conviction	Sentence
under Section 302 IPC	Imprisonment for life and fine Rs.100/-, in default of payment of fine, additional RI for 1 month
under Section 460 IPC	RI for 10 years and fine of Rs.100/-, in default of payment of fine, additional RI for 1 month

2. The prosecution story, as unfolded from the impugned judgment and

records of the case is that on the date of incident i.e. 7-8th August 2011, Jagdish Prasad Kedia (PW14) had gone out of station along with his family, leaving behind his old servant Dilharan along with keys and appellant Krishna @ Roshan Yadav, the other newly appointed servant. Next day, when Dilip Pandey (PW15) was going to the house of Jagdish Kedia, Gardner informed that he has seen the cot broken and blood stains and Dilharan & Krishna are not seen. Upon this information, when he went to the house along with other persons, he found that door and almirah were broken and locker was also broken, goods were lying scattered and then dead body of Dilharan was found in the backyard. The other person was not found. A report was then lodged in the police station, morgue intimation was taken, followed by inquest over dead body of Dilharan. Articles which the police found relevant for the purposes of investigation and found from the spot were seized. Broken handles were also seized. Whereabouts of the present appellant were not known and he was not traceable. As Jagdish Kedia, the owner of the house, had reported regarding theft of three mobile cell phones also, the cyber unit of police was also trying to track with reference to the IMEI number of those cell phones. Finger prints on the handle etc. were also collected. Postmortem report in Ex.P-20 was prepared by Dr. Dharmendra (PW11). The deceased was found having sustained number of injuries and the opinion was that the death was on account of those injuries, being homicidal in nature. In the meantime, it is said, wife and son of Jagdish Kedia received a phone call from the mobile of deceased- Dilharan in which there was demand of ransom of Rs.25 lakh failing which Krishna would be killed. Jagdish Kedia then informed the matter to the police on 11.8.2011. Calls made by using mobile no.94241-40542, said to be that of the deceased Dilharan as also calls made using cell phone in respect of which report of theft was given by Jagdish Kedia, were brought under surveillance through cyber cell. On the basis of call details and location of mobile cell phone of the appellant, stolen mobile cell phones including that of the deceased, appellant was trapped in a truck near Jamul Cement Factory on 12.8.2011 and according to the prosecution, from his possession stolen golden and silver items and diamonds ornaments, one mobile phone containing SIM No.94241-40452 and three other mobile cell phones, bunch of keys, watch and cash were seized. The appellant was taken into custody

and memorandum of the appellant was recorded and on the basis of such memorandum on 13.8.2011, from the courtyard of Amit Jaiswal, the shovel alleged to be used in giving assault, a long iron, key box, locks said to be containing blood stains were seized. Call details were also collected. The property which was seized was put up for identification and is said to have been identified. The finger prints taken at the spot were sent to expert and expert's report was also obtained. According to prosecution, the handle contained finger print of the appellant. The shovel and other articles seized on 13.8.2011, at the instance of the appellant on his disclosure statement, were found to be stained with blood. Upon completion of investigation, the police filed charge sheet and the appellant was subjected to trial on the allegation that he murdered Dilharan and had stolen gold, silver, diamond ornaments and mobile cell phones. When the appellant was examined under Section 313 Cr.P.C. in respect of incriminating circumstance and evidence led by the prosecution against him, he came with a defence that he had not committed any such offence and that on the date of incident, dacoits had come and he was kidnapped.

3. Learned trial Court, relying upon the prosecution evidence of the appellant being in company of deceased Dilharan on the date of incident, having eloped from the house, Dilharan found dead and ornaments and other articles stolen from the house and also having found proved seizure of stolen articles from possession of the appellant and that on his memorandum, shovel alleged to be used in commission of offence was recovered which was found blood stained, held the appellant guilty of commission of offence alleged against him.
4. Assailing legality and correctness of the judgment of conviction and order of sentence, learned counsel for the appellant would argue that the prosecution has failed to complete chain of circumstances so as to warrant inference that in all probability, the appellant alone must have killed Dilharan and committed theft in the house of Jagdish. Learned counsel for the appellant would argue that merely because the appellant was not found in the house, the needle of suspicion was pointed on him, as against which, a plausible defence has been raised that the appellant was kidnapped and it is the prosecution evidence that call of ransom was made stating that if Rs.25 lakh is not given, appellant would be killed. He would

next argue that there is no independent evidence that while deceased was in his company, he died homicidal death. In fact nobody has seen that in the night, the appellant was with Dilharan. Next submission is that as far as seizure of stolen property is concerned, the entire proceedings of so called seizure are concocted because while the time of seizure is said to be 20:00 hrs. on 12.8.2011, according to independent seizure witness, Shankar Das Manikpuri (PW3), the appellant was caught early in the morning at about 4:00 - 5:00 AM and thereafter, the appellant was brought to Bilaspur. Seizure document was not prepared in his presence and his signature were taken in the police station at Bilaspur. This serious discrepancy with regard to time when the appellant was taken into custody and the time when seizure is said to have been prepared by the Investigating Officer has not been explained by the Investigating Officer of the case. Next submission of learned counsel for the appellant is that though the prosecution collected finger print on the handle of the almirah in the house, no finger print on the shovel were collected. He would further argue that the medical evidence itself is not conclusive as the doctor has deposed in his cross-examination that the shovel is hard and blunt object and by shovel, incise wound could not be caused whereas, the deceased Dilharan is said to have been sustained cut injury. Moreover, it is submitted that the shovel and the other article alleged to be seized on the memorandum of the appellant are concocted because shovel and other article were seized from open place in the same area where the dead body was found and it is wholly improbable that nobody would have seen shovel and other articles found in the courtyard in which dead body was found, lying since five days before the alleged recovery on the basis of memorandum of the appellant. He would further argue that though, there are allegation that the appellant made two calls to some relative, those call details have not been collected nor any incriminating evidence has been collected in that regard. Similarly, vehicle (truck) in which the appellant is said to have been caught and from which articles said to be recovered, its owner has not been examined by the prosecution. Therefore, it is argued, none of the circumstantial evidence led by the prosecution are proved but it is all shrouded in mystery. As the chain of circumstance is not complete and the defence that the appellant himself was kidnapped is plausible and possible because call for ransom

was also received by Jagdish Kedia and his family members. Therefore, the appellant deserves to be acquitted by giving him benefit of doubt. In support of his submissions, learned counsel for the appellant relied upon judgments in the cases of **Reena Hazarika Vs. State of Assam** (Criminal Appeal No.1330 of 2018 decided on 31st October 2018), **Anjan Kumar Sarma & Ors. Vs. State of Assam** (Criminal Appeal No.560 of 2014 decided on 23rd May 2017) and **Gordhan Ram @ Goda Ram Vs. State of Rajasthan** (Criminal Jail Appeal No.491 of 1989 decided on 23rd October 1991).

5. Per contra, learned counsel for the State, supporting the judgment of conviction and order of sentence, would argue that even though, there is no direct evidence to prove that the appellant assaulted Dilharan and murdered him, all proven circumstances of the case only point towards the guilt of the appellant and the appellant alone. He would argue that not only murder of Dilharan but also theft of cash and silver ornaments and the mobile phones have been proved by the prosecution by reliable and creditworthy evidence. Learned counsel for the State would argue that the appellant having admitted that he was with Dilharan in the night of the incident, has sought to take defence that he was kidnapped which is wholly improbable because of appellant's own conduct. He has not come out as to where he was taken, kept and who were so called kidnappers, whether he was freed by them or he himself escaped has also not been disclosed. Moreover, his conduct in running away rather coming back and informing the house owner and his master Jagdish and not approaching police or anyone else renders the defence an afterthought. Learned counsel for the State further argues that the appellant was newly appointed servant and on the date of incident, he alone was there with the other servant Dilharan in the house of Jagdish and, later on, Dilharan was found dead. Almirah and locker were found broken, golden, silver, diamonds jewelery and mobile phones were found stolen. Mobile call records proved by the prosecution followed by seizure proved that the mobile cell phones along with SIM number used by Dilharan was found in possession of the appellant which was used for giving false ransom calls and further that independent prosecution witness Satyanarayan Dewangan (PW4) has deposed that one of stolen mobile cell phone was given to him by the appellant for making a

call using his own SIM which was, later on, returned to him. Learned counsel for the State further argued that the seizure of gold, silver, mobile phones from the possession of the appellant, proved by the Investigating Officer and supported with evidence of independent witness of seizure and the identification of the ornaments and mobile cell phone by the victim, call details, seizure of mobile phone along with SIM of deceased Dilharan, recovery of weapon at the instance of appellant, appellant's finger print found in the handle of the almirah in the room where theft had taken place, all taken together form a complete chain of circumstances, compatible only with the hypothesis of guilt and inconsistent with hypothesis of innocence. In support of his submissions, learned counsel for the State relied upon decision in the case of **Satpal Vs. State of Haryana** (2018) 6 SCC 610.

6. We have given our anxious consideration to the detailed submissions made by learned counsel for the respective parties and carefully perused the material on record along with judgment of learned trial Court.
7. The entire case of the prosecution is based only on circumstantial evidence. Therefore, the material on record is required to be scrutinized with reference to submission made by learned counsel for the parties before us, to find out whether a complete chain of circumstance is made out to reach to an inference that in all probability, it is the appellant and the appellant alone who must have killed Dilharan and stolen golden, silver, diamond ornaments and mobile cell phones of the complainant, the master of the appellant.
8. There is overwhelming evidence on record that the appellant was employed and working as servant of Jagdish Prasad Kedia (PW14), who has deposed that he had kept two servants, an old one namely Dilharan and new servant Krishna, the appellant, to look after his house. He has deposed that his son and daughter-in-law had gone to Delhi on 4th August 2011 whereas he and his wife gone to Puri on 5th August 2011 leaving behind Dilharan and new staff Krishna. He has stated that Krishna was employed only 10-15 days before. This evidence is not controverted and even in his statement under Section 313 Cr.P.C., the appellant has admitted this factual position that he was employed and working as servant of Jagdish Prasad

Kedia.

In the house, Dilharan and appellant were looking after the house, being the servant of Jagdish Kedia. When Jagdish Kedia and his family was out of station has not only been stated by Jagdish, as stated above, but other prosecution witness also, namely Ramesh Thakur (PW2), the Driver employed since 6-7 years, Shani Nirmalkar (PW9) the washer-man, Dilip Pandey (PW15), the Manager, Sheela Bai Dewangan (PW16), the maid servant. Sandeep Kedia (PW17), the son of Jagdish Kedia has also deposed that the appellant was employed as servant and when Jagdish had gone out of station with his family, Dilharan was found dead.

This is also proved from appellant's own statement given under Section 313 Cr.P.C. because the defence of the appellant is that he was in the house until he was kidnapped on 7th August 2011.

9. One of the most clinching circumstance to involve the appellant in alleged commission of offence is that the appellant was found in a truck near Jamul Cement Factory, Durg on 12.8.2011 i.e. four days after the date of incident on 8th August 2011. As deposed by prosecution witnesses, Dilharan was found dead in the house, having died homicidal death and door, almirah were found broken and jewelery, mobile phones were stolen. The Investigating Officer L.P. Dwivedi (PW19) has deposed that by tracking call details and location from the stolen mobile cell phone as also mobile cell phone of the deceased Dilharan, the appellant was taken into custody on 12.8.2011 in a truck found on the road near Jamul Cement Factory, Durg and from his possession, not only golden, silver and diamond ornaments were seized, mobile cell phone containing SIM no.94241-40452 which belonged to deceased and three other Nokia Cell phones and bunch of key as also one watch along with cash were seized from his possession. He has proved memorandum of seizure in Ex.P-5. The seizure of aforesaid articles from the possession of the appellant on 12.8.2011 is proved from the evidence of independent witness Shankar Das Manikpuri (PW3) who has stated that police had seized golden, silver ornaments and mobile from the appellant when the appellant was sleeping in the truck. He has stated that seizure was made and has proved his signature in seizure memo (Ex.P-5). In his cross-examination, he states that he is a truck Driver but earlier, he

never met the appellant nor does he know him. He denied suggestion that appellant was taken into custody at Bilha and taken to Jamul along with him.

10. A doubt has been raised on the issue of seizure of golden items along with mobile phone mainly on the submission that according to this witness, the appellant was taken into custody earlier in the morning at 4:00 – 5:00 AM and that he was brought to Bilaspur and that he had put his signature in the police station and he cannot say whether articles recovered were kept in the truck and who took them out. We have carefully gone through the said statement, the memorandum of seizure (Ex.P-5) as also evidence of Investigating Officer (PW19). In the seizure memorandum Ex.P-5, it has been recorded that seizure was effected on 12.8.2011. In the column of time, "20:00 hrs" has been written. But then on this aspect nothing has been asked in the cross-examination of Investigating Officer L.P. Dwivedi (PW19). The Investigating Officer has not even been given any suggestion that no seizure of ornament was made from the appellant on 12.8.2011. Suggestion has been given, which has been denied that mobile phone was not seized. According to evidence of Investigating Officer L.P. Dwivedi (PW19) and independent witness Shankar Das Manikpuri (PW3), the appellant was taken into custody and seizure of articles were made from his possession. Therefore, such a discrepancy of word "20:00 hrs" written in the seizure memo may only indicate that appellant was brought to the police station at Bilaspur along with seized articles which were found in his possession and formal document prepared. The substantive evidence of appellant having been taken into custody and stolen articles found in his possession while the appellant was sleeping in a truck near Jamul Cement Factory have remained uncontroverted. According to him, he had borrowed one mobile cell phone from appellant. In this regard, it is noticed that Shankar Das Manikpuri (PW3) stated in his cross-examination that appellant was taken into custody and stolen articles were recovered from his possession. He was taken to Bilaspur and seizure was prepared in the night.

11. There is yet another aspect of the case which corroborates story of the seizure of ornaments of mobile cell phone from the possession of the appellant. Shankar Das Manikpuri (PW3) appears to be an independent

witnesses because he is also a Driver and he is not known to the appellant though met him in the evening and met him at Bilha. He has deposed that he had used his SIM card in the mobile cell phone taken from the appellant and that SIM was also seized vide Ex.P-6. Hemant Aditya (PW20) has deposed that he is working in Crime Branch Bilaspur and receives various e-mails from mobile company through computer Internet using e-mail ID -Cyber Cell BSP @ NIC.in as per the instructions of Superintendent of Police. He had received application in Ex.P-35 from City Kotwali Police Station in connection with the present crime number for carrying out search in respect of call details using mobile cell phone of Jagdish which were stolen. He obtained the call details in Ex.P-46 and referring to those call details, he has deposed that mobile phone No.97707-62049 used in mobile cell phone with IMEI No.355952042402740 on 10th August 2011 was found used by Shankar Das Manikpuri who stated that the handset was given to him by appellant for a day. Thereafter, it was returned to him and this call detail was used to reach Shankar Das and his SIM was seized and then upon his information appellant was searched and caught near Jamul Cement Factory. He has proved seizure of SIM used by Shankar vide Ex.P-6. Thus, he corroborates the statement of Shankar (PW3) that he used his Sim in the stolen mobile handset kept by the appellant which was ultimately seized vide Ex.P-6. The SIM was found to be registered in the name of Premdas resident of Chilpi. Shankar Das Manikpuri (PW3) has stated that he had used this SIM in the handset given to him by the appellant Roshan which was returned later on. He has also admitted seizure of his SIM by the police. All these evidence taken together, lends support and corroborates the prosecution evidence of seizure of mobile cell phone and the ornaments which were seized vide Ex.P-5 from possession of the appellant and we did not find any reason to disbelieve the evidence with regard to seizure of aforesaid articles from possession of the appellant.

12. Jagdish Prasad Kedia (PW14), the master, has deposed that when he came back and found the house broken and Dilharan dead, he talked to his son who informed that there were kept in the room, three golden chains, three golden rings, two golden bangles fixed with diamonds, artificial bangles, a silver glass and cash of Rs.30,000/-. He has also deposed that later on, he had given written information with regard to stolen articles in writing vide

Ex.P-24 and police has also seized receipt in respect of jewelery vide Ex.P-25. Ex. P-24 contains the details of stolen jewelery.

His son Sandeep Kedia (PW17) has also stated regarding theft of three chains, three rings and cash of Rs.30,000/-. Jagdish Kedia (PW14) has also deposed that he had also reported regarding theft of key in the house. Ex. P-24, information in writing, contains that keys of the house were also stolen.

The articles seized from the possession of the appellant, as enlisted in seizure memo Ex.P-5 are diamond fixed bangles, golden chain, gold polish silver items, silver glass, bunch of key and four Nokia mobile. In addition, there were other articles also seized from the possession of the appellant.

13.The prosecution has also proved identification of seized articles by Sandeep (PW17), son of Jagdish Kedia, conducted in the presence of Mahesh (PW13) the Executive Magistrate. No serious challenge has been thrown to identification conducted in the presence of Executive Magistrate and identification of the articles by Sandeep Kedia. It is relevant to mention here that vide Ex.P-19, the bills of the jewelery and empty box of three Nokia mobile phone with their IMEI number were seized by the Investigating Officer L.P. Dwivedi (PW19) from Sandeep (PW17). Sandeep has stated in his evidence regarding seizure of these articles from his possession which is supported from the evidence of Raju Singh (PW8) and Dilip Pandey (PW15).

The Nokia mobile seized from the possession of the appellant contains the same IMEI number as printed in the empty mobile box seized from the possession of Sandeep Kedia.

14.Jagdish Kedia (PW14) has deposed that after the incident, on 11.8.2011, he had received a mobile phone call from the mobile number of the deceased employee Dilharan which, was received by him in his phone No.94252-20459 in which, ransom call was made. He deposes that this call was received firstly by his wife and thereafter, by his son, in respect of which immediately an oral information was given followed by written information in Ex.P-23. In Ex.P-23, proved by Jagdish Kedia and Investigating Officer L.P. Dwivedi (PW19) and receipt of the same by the investigating officer, there is

mention of mobile number of deceased Dilharan as 94241-40542. He has also disclosed his own mobile phone No.94255-20459.

Investigating Officer L.P. Dwivedi (PW19) has deposed that vide letter (Ex.P-33), opinion regarding IMEI number, check location and call detail of the mobile were sought from cyber cell of Crime Branch, Bilaspur and he received a report along with call details in Ex.P-34 with covering letter dated 12.8.2011.

Hemant Aditya (PW20) A.S.I. who, on 9.8.2011, was posted as Head Constable in crime branch Bilaspur ,has deposed that upon instructions, he used to receive e-mails using ID cyber cell BSP@NIC.in. He deposed that he had received application (Ex.P-35) from Police Station- Citi Kotwali seeking call details of mobile No.94241-40542 said to be belonging to the deceased Dilharan as also in respect of IMEI number of three mobile phones alleged to be stolen from the house of Jagdish Kedia. On the basis of the said request, he obtained mobile call details in Ex.P-46 and upon scrutiny of the same, it was found that call details disclosed use of SIM card seized from possession of Shankar Das Manikpuri in mobile phone seized from the possession of the appellant, which fact has also been stated by Shankardas (PW3). Call details of calls made from mobile No.94241-40542 which belong to Dilharan were also collected.

15.From the seizure of mobile phone SIM card and the evidence of Jagdish Kedia, Investigating Officer L.P. Dwivedi (PW19) and cyber cell in charge Hemant Aditya (PW20), it is proved that the mobile phone with SIM of Dilharan, the deceased, was found from the possession of appellant which was used in giving calls to different members during the period the appellant was absconding and it also included a call given to Jagdish Kedia also, which corroborates the evidence of Jagdish regarding receipt of ransom call .

The aforesaid set of evidence also proves that three mobile cell phones, stolen from house of Jagdish Kedia were not only found from the possession of appellant but they were used with different SIM including SIM of Shankar Das Manikpuri (PW3). Shankar Das Manikpuri (PW3) has stated that he had used his SIM in the mobile phone given to him by the

appellant. The IMEI number of the Nokia cell phone tallies with the IMEI number of the mobile cell phone seized from the possession of the appellant.

16. The submission of learned counsel for the appellant that no enquiry was made from all those persons with whom, the appellant talked using his SIM in the stolen mobile phone, which renders the prosecution story doubtful, is liable to be rejected. True it is, that further enquiry with regard to all the calls made have not been made but that by itself, cannot be made a basis to disbelieve the evidence discussed above.

17. There is yet another strong incriminating evidence found against the appellant and that is the presence of finger prints in the handle of the wardrobe of almirah in the house of Jagdish Kedia. The evidence is that the almirah was broken and valuable were stolen. Jagdish has clearly stated that Dilharan was his old staff working with him since long and the appellant had joined services as servant only 10-15 days before.

The Investigating Officer L.P. Dwivedi (PW19) has stated that he had sent application in Ex.P-32 to the Handwriting expert for collecting and matching fingers prints, palm prints and chance print. Smt. Vidya Johar (PW5), Finger Print Expert has stated regarding collection of palm print, chance print, forwarding of finger prints and palm prints of the appellant and her report Ex.P-42 that chance print and sample finger prints are of the right thumb of the same person. This witness has been subjected to cross-examination and nothing could be elicited to doubt the collection of finger print and the report regarding matching of finger print.

The evidence of L.P. Dwivedi (PW19), the Investigating Officer, regarding collection of finger prints of the appellant and sending the same along with Ex.P-37, could not be impeached in his cross-examination. It is thus proved that the finger prints of the appellant were found in the handle of the almirah which was found broken in the house of Jagdish Kedia, which constitutes a very strong incriminating evidence against the appellant. When the appellant was confronted with this incriminating evidence in his examination under Section 313 Cr.P.C., he has not explained the same.

18. Recovery of shovel allegedly used to assault Dilharan and some other

articles which are said to have been hided in the courtyard, on the memorandum of the appellant, have also been proved from convincing evidence. The Investigating Officer L.P. Dwivedi (PW19) has deposed that after arrest of the appellant, his memorandum was recorded on 13.8.2011 in Ex.P-28 in the presence of witnesses which led to recovery of shovel, key box, broken lock and a long Iron Nut. He has deposed that all these articles recovered on the said memorandum of the appellant were seized vide Ex.P-29. Sandeep Kedia (PW17) has proved recording of memorandum in Ex.P-28 and also recovery of those articles in Ex.P-29 by proving his signatures. He deposed that the articles were hided and at the instance of the appellant those articles were recovered. He has also admitted in his cross-examination that when the police had come to carry out search in the house and back courtyard on 9th, shovel etc. was not found. There is no suggestion given to this witness that shovel and other articles recovered from the back courtyard on the discovery of the appellant were found in the open and not hided. The other independent witness Dilip Pandey (PW15) has also proved recovery of memorandum in Ex.P-28 and recovery of shovel and other articles vide Ex.P-29. He has categorically stated that the appellant himself went behind the house in the courtyard and then had taken out the hided articles like shovel etc. FSL report in Ex.P-41 proves presence of blood in the shovel and keys.

19. Argument of learned counsel for the appellant that in view of the evidence of Dr. Dharmenda Kumar (PW11) recovery of shovel does not constitutes incriminating evidence, upon close scrutiny, deserves rejection. The argument of learned counsel for the appellant has been that homicidal death of Dilharan, according to prosecution, could be caused by a sharp object because Dilharan sustained cut injury, but the doctor has stated otherwise that shovel is hard and blunt object.

Dr. Dharmendra Kumar (PW11) has found a cut injury on the occipital part below left ear, cut ear, cut injury in the left tempo parietal region, crush of right thumb, fracture of cervical bone and its dislocation amongst other injury on scapular part. The evidence of doctor that death was caused due to head injury proves homicidal death. Doctor has also proved his own query report (Ex.P-21) in which he stated that those injuries could be caused by the weapon shovel produced before him for examination. He

has proved his report in Ex.P-21. In his cross-examination, he admitted that there is no mention of the said weapon being hard and blunt object. A perusal of Ex.P-21 the query report of the weapon reveals that the doctor himself has prepared the map of the same and he has recorded that the injury could be caused by the said shovel. This evidence of the doctor that injury could be caused by said shovel has remained un-controverted though, a general kind of question has been put in his cross-examination that shovel is a part of blunt object. This general opinion of the doctor does not raise any doubt with regard to his own query report in which he, upon examining the particular weapon, opined that the cut injury found on the body of the deceased could be caused by the said weapon. Weapons is also found to have been stained with blood. Therefore, no doubt can be raised on this incriminating circumstantial evidence of recovery of blood stained shovel from the appellant connecting it with nature of injury found on the body of the deceased.

20. The appellant has taken a defence, as stated in his statement recorded under Section 313 Cr.P.C. that in the night, 4-5 unknown masked person had come, his hands and legs were tied and he was kidnapped and taken in a Scorpio vehicle under misconception that he is the son of Jagdish Kedia and they demanded ransom from Jagdish Kedia.

Learned counsel for the appellant vehemently argued on this aspect to submit that this defence is quite plausible and raises serious doubt on the prosecution story and that this defence breaks the chain of circumstance as it is compatible with the hypotheses of innocence of the appellant. We have given our anxious consideration to this defence. To us, it appears to be a completely concocted story, bereft of any iota of truth, much less probabilities. The appellant has admitted that he was in the house with Dilharan on 7th August 2011. He seeks to wriggle out the allegation of murder and theft by raising such a defence that he himself was kidnapped. The appellant, however, has not come out with any other details as to where he was taken and kept from 8th August 2011 till he was caught by the police on 12th August 2011. He does not even say in what manner, he was kept in confinement, if any, which place, which city and in what kind of building or whehter he was kept confined in any other place. He does not even say nor has led any evidence of himself or any other defence witness

as to how he escaped from clutches of so called kidnapper and if so, when. The natural conduct would have been to immediately approach owner/his master, police or any other person in the near vicinity to disclose immediately that he was the victim of kidnapping. The proved circumstances of the case are that the appellant was caught by the police while he was in a truck, along with the stolen articles including mobile cell phone with SIM of deceased Dilharan. The defence of the appellant, if we may say so, is a cock and bull story and only deserves rejection.

21. Various decisions on settled legal principles with regard to requirement of proof of circumstantial evidence and formation of chain of circumstances before conviction is founded on circumstantial evidence has been cited before us. In view of analysis of evidence on record, we are satisfied that the prosecution has succeeded in establishing the chain of incriminating circumstances which are very strong to impel us to reach to the conclusion that it is the appellant and the appellant alone who must have killed Dilharan and stolen golden, silver jewelery and mobile cell phones.

22. In the result, the conviction of the appellant based on strong incriminating proved circumstantial evidence does not warrant any interference.

23. The appeal is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge