

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No.925 of 2012

Anil Kumar S/o Chandrika Prasad Jangde Aged About 24 Years R/o Village Bakarkuda, Awas Mohalla, P.S. Masturi , Distt. Bilaspur C.G. ---- **Appellant**

Versus

State Of Chhattisgarh Through - P.S Masturi , Distt. Bilaspur C.G.

---- **Respondent**

CRA No. 969 of 2012

Prem Lal S/o Bisali Ram Suryawanshi Aged About 39 Years R/o Village Chakarbeda, PS Masturi, Distt. Bilaspur C.G. ---- **Appellant**

Versus

State Of Chhattisgarh Through PS - Masturi, Distt. - Bilaspur Chhattisgarh
.....**Respondent**

For respective Appellants	:	Ms. Seema Singh and Mr. Dheerendra Pandey, Advocates
For State	:	Mr. Mateen Siddiqui, Dy. A.G.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment on Board by Manindra Mohan Shrivastava, J.

03/08/2021

Heard.

1. These two appeals are being disposed off by this common order as they arise out of common judgment of conviction and order of sentence dated 21.09.2012 passed by Vth Additional Sessions Judge, Bilaspur (CG) in Sessions Trial No.99/2009, whereby and whereunder, the appellant Prem Lal has been convicted under Section 302, 201, 394, 404 of IPC and appellant Anil Kumar has been convicted under Section 411 & 414 of IPC which sentences as described below :

Appellant-Prem Lal	
Conviction	Sentence
Under Section 302 of IPC	R.I. for life imprisonment and fine of Rs.200/-

	in default of fine further RI for 2 months
Under Section 201 IPC	RI for 2 years and fine of Rs.200/- in default of fine further R.I. for 2 months
Under Section 394 of IPC	R.I. for 7 years and fine of Rs.200/- in default of fine further RI for 2 months
Under Section 404 of IPC	R.I. for 3 years and fine of Rs.200/- in default of fine further R.I. for 2 months All the sentences run concurrently

Appellant-Anil Kumar	
Conviction	Sentence
Under Section 411 of IPC	R.I. for 3 years and fine of Rs.200/- in default of payment of fine R.I. for two months
Under Section 414 of IPC	RI for 3 years and fine of Rs.200/- in default of payment of fine RI for two months. All sentences run concurrently.

2. The prosecution story, as is unfolded from the records of the case and impugned judgment of conviction and order of sentence passed by learned Trial Court is that a morgue intimation was recorded in the Police Outpost-Malhar, Police Station- Masturi on 15.01.2009 at the instance of the appellant Prem Lal which was recorded in Ex.P/44, Ex.P/45 & Ex.P/46 wherein a common story was stated that while the informant was sleeping in his house at about 8:00–9:00 p.m. after taking dinner, he heard noises coming out from the house of his brother Jitendra, whereafter, he got up and advised Jitendra as to why he was quarreling but his brother Jitendra asked him not to interfere and abused. His brother Jitendra, thereafter, threw away cot and bedding and openly threatened that if anyone interferes, he will be killed and then he went to sleep. In the morning when the informant went to the house of the brother and called out, there was no response and then he called Kotwar of the village and when they entered the house and found that Jeerabai his mother, Jitendra his brother and Jyoti sister-in-law were lying dead in different parts of the house.

After having received such intimation, the police proceeded to the scene of occurrence and inquest over dead body which were found lying in the house, was prepared and the dead bodies were sent for postmortem. Seizure of certain articles from the spot were made. The postmortem report prepared by the doctor, upon examination of the dead body along with his opinion on the dead body of Jeera Bai, Jyoti and Jitendra

revealed that each of them were strangled to death and it was homicidal in nature. The police also registered FIR against unknown person vide Ex.P/39 on 15.01.2009 itself. During investigation, the needle of suspicion pointed towards the appellant and he was taken into custody. According to the prosecution, his memorandum statement was recorded wherein it was disclosed that due to enmity he killed his brother, mother and sister-in-law and their ornaments as well as valuable documents like pass book, rin pustika, property documents were looted and were given by the appellant Prem Lal to his son Govinda for being handed over to co-accused Anil Kumar. Further case of the prosecution is that on the basis of the memorandum statement of Prem Lal, the police went to the house of co-accused Anil Kumar and it is said that from the house of Anil Kumar the looted ornaments of deceased Jeera Bai and Jyoti as also various property document and other valuable documents of the deceased were recovered and seized. According to the prosecution, the ornaments belonged to deceased Jeera Bai and Jyoti and there were number of documents which belonged to deceased Jeera Bai and Jitendra. After completion of usual investigation, charge-sheet was filed against the present appellants with the story that the appellants had started nurturing ill-will and enmity against his brother Jitendra over disputes concerning cutting and processing of crops and there were existing certain disputes and they had started living separately also. The appellant had taken serious exception to the act of his brother Jitendra in engaging himself in processing of paddy with involvement of his own brother-in-laws which was seriously objected to by the appellant and the appellant had posed threat whereafter, Jitendra had gone to his in-law's house along with his wife and when he came back after processing of paddy that very night, the appellant killed Jitendra, his wife as also his mother.

3. Learned Trial Court framed charges against the appellants. As far as other accused Govinda is concerned, he being a juvenile was dealt with under the Juvenile Laws and enquiry made against him by the Juvenile Justice Board. Both the appellants Prem Lal and Anil Kumar were charged of offences of murder and they abjured guilt and demanded trial.

4. In order to prove its case, learned Trial Court examined as many as 23 witnesses. In support of prosecution case, the postmortem report to prove homicidal death, seized articles and various other evidence of documentary nature were also led. Both the appellants were separately examined under Section 313 Cr.P.C. in respect of incriminating evidence and circumstances appearing against them in the evidence led by the prosecution. The appellants came out with denial and stated that they have been falsely implicated. Two defence witnesses namely Usha Bai and Leela Singh were also led the evidence to support the case of the defence.

5. Learned Trial Court after appreciation of oral and documentary evidence on record recorded finding that the circumstantial evidence led by the prosecution were proved

beyond reasonable doubt. Learned Trial Court relied upon the evidence with regard to the existence of dispute and enmity between the appellants on one side and his brother Jitendra on the other as stated by many prosecution witnesses and recent episodes of quarrel and dispute just before the date of incident, the evidence that at the instance of appellant Prem Lal looted articles which belong to the deceased were found in possession of appellant Anil Kumar and that the ornaments were identified as those belonging to Jeera Bai and Jyoti Bai and further upon examination of large number of documents of property, rin pustika, pass book etc. proved to be seized from the house of Anil Kumar whereas these documents belonged to deceased Jeera Bai and Jitendra. Learned Trial Court recorded that thus proved incriminating circumstances against the appellants formed complete chain as against the appellant Prem Lal that he committed murder, looted the property dishonestly used it for himself and also that he caused disappearance of the evidence of commission of offence. As against accused Anil Kumar though he was acquitted of charges of commission of offence under Section 302 & 394 of IPC, the learned Trial Court convicted him for commission of offence under Sections 411 & 414 of IPC.

6. Learned counsel appearing for appellant Prem Lal would argue that there is no direct evidence to involve Prem Lal in the alleged commission of offence and the prosecution came out with circumstantial evidence, therefore, the law required prosecution to prove its case beyond reasonable doubt by proving each of incriminating circumstances by cogent and reliable evidence to form a chain so complete as to draw inference of appellant's involvement but none of the circumstantial evidence which otherwise only a few, could be established beyond reasonable doubt. The foremost submission of learned counsel for the appellants is that conduct of the appellant is incompatible with the hypothesis of guilt but on the other hand is more compatible with hypothesis of innocence because it is the appellant Prem Lal who lodged morgue intimation in the police station which led to initiation of enquiry, FIR and investigation into the case. According to learned counsel for the appellant Prem Lal, had the appellant committed offence, he would not have come to the police station himself and lodged morgue intimation regarding death of his mother, brother and sister-in-law.

It has been next argued that trivial incident of quarrel of the appellant with his brother and father have been exaggerated to somehow connect the incident of murder with the appellant. The evidence of Harishchandra (PW1), Bisali Ram (PW3), Ahilya Bai (PW5), Ramprakash (PW11), Basant Kumar Verma (PW17) & Ramgopal @ Sunil Tandon (PW18), either suffer from exaggeration and embellishment or whatever has been stated by them hardly advances the prosecution case of existence of strong motive on the part of the appellant Prem Lal to kill his own mother, brother and sister-in-law. The instances which have been stated by the witness are very trivial in nature and it is wholly improbable that for small things the appellant would go to the extent of killing his own mother, brother and sister-in-law.

7. As far as recovery of various ornaments and other articles on the memorandum statement of appellant Prem Lal is concerned, it has been strenuously urged before us that the evidence in this regard led by the prosecution does not inspire confidence because out of two witnesses of memorandum and seizure namely Rajesh Kumar (PW2) & Uttara Kumar (PW19), one of the witness Uttara Kumar (PW19) in his cross-examination has admitted that no proceedings were drawn in his presence nor any seizure was effected but it was only on the request of the police authority that he put his signature. The other witness Rajesh Kumar (PW2) has deposed in the manner which does not inspire confidence because in his cross examination the witness appears to be a contacted witness only to advance a case of the prosecution and he is also an interested witness. He is not sure whether the police had prepared documents and that though he signed the documents, there are some interpolation and he had not read the memorandum and seizure documents in Ex.P/8 & Ex.P/9 but signed the documents as requested by the police officer. It is submitted that this witness admits that he is resident of a village which is 15 km. away and why and under what circumstances, he was picked up as a witness from a village 15 km. away has not been explained by Investigating Officer B.S. Chouhan (PW21) in his evidence. Since in the present case, it is argued, the prosecution case rests on motive and recovery of memorandum statement, the prosecution evidence with regard to recording of memorandum and disclosure followed by recovery is required to be proved by cogent and reliable evidence and any doubt would render the story of the prosecution doubtful with regard to recording of memorandum and effecting seizure of articles. The evidence of Investigating Officer as well as Rajesh Kumar (PW2) suffer from material omission also in so far as recording of memorandum statement and consequent recovery of article is concerned.

8. Next submission of learned counsel for the appellant is that the articles which were alleged to have been seized from the possession of the accused Anil Kumar and said to be deposited with him by appellant Prem Lal after having looted those articles from the person of Jeera Bai and Jyoti and Almirah of Jitendra could not be identified by leading cogent and reliable evidence. The evidence with regard to identification is liable to be disbelieved because witnesses of identification panchnama Ex.P/12 have not been examined, there is difference in version of witnesses with regard to identification of articles, Investigating Officer B.S. Chouhan (PW21) admits that the sample seal was not affixed in the seizure memo, none of the witnesses say that the articles seized were properly sealed by the seizing authority, identification was carried out after about 3 months which is inordinate delay, discrepancy with regard to the place of identification as stated by the witnesses and as recorded in the identification panchnama, presence of police personnel and lack of evidence that before identification of the articles/ ornaments by identifying witnesses, such articles were mixed with other set of similar looking ornaments.

9. On the above submissions, learned counsel appearing for appellant Prem Lal

would submit that each of the circumstantial evidence relied upon against him are not proved by reliable evidence and it being a case of circumstantial evidence only, the accused is entitled to benefit of doubt. In support of his contention, learned counsel for the appellant Prem Lal relied upon the various judgments in the cases *Ashish Jain Vs. Makrand Singh & others*, 2019 (3) SCC 770, *Sonu @ Sunil Vs. State of MP*, 2020 Criminal Law Reporter 562, *Bharat Vs. State of M.P.*, 2003 (3) SCC 106, *Madan Lal and Others Vs. State*, 2019 (2) Criminal Law Reporter 72, *Ram Lal @ Rama Vs. State of Rajasthan*, 2015 (2) Rajasthan Criminal Cases 687, *Matru Alias Girish Chandra Vs. The State of Uttar Pradesh*, 1971 (2) SCC 75, *Mani Vs. State of Tamil Nadu*, 2009 (17) SCC 273, *Deli Ram Vs. State of C.G.*, 2017 (2) CGLJ 487 and *Ramesh and Another Vs. State of Rajasthan*, 2015 (2) Rajasthan Criminal Cases 626.

10. Learned counsel appearing for the appellant Anil Kumar, while adopting all the arguments of learned counsel for the appellant Prem Lal with regard to doubts raised on recording of memorandum and consequent seizure followed by identification, would submit that the conviction of the appellant Anil Kumar for commission of offence under Section 411 & 414 of IPC is not well founded because Anil Kumar has been acquitted of charges of commission of offence under Section 302 and 394 of IPC. That means, the appellant had no knowledge of what happened in the house of appellant Prem Lal because he resided elsewhere in another village with his family and the prosecution story that all the looted articles were handed over to the appellant Anil Kumar is not enough unless there is cogent evidence led by the prosecution to prove that appellant Anil Kumar dishonestly received stolen property knowing or having reason to believe that it was stolen property. Mere possession without anything more would not lead to conviction. He would also submit that for the same reason, even 414 IPC would not be made out because there is no evidence of voluntary assistance in concealment of property known to be or believed to be stolen property. The appellant Anil Kumar was not a stranger but was son-in-law of Prem Lal and even assuming, though, not admitting that certain articles were sent for being kept to Anil Kumar from his father in law which according to the prosecution were brought to the house of appellant Anil Kumar by his brother in law Govinda, what is more probable is that the appellant bonafide kept those articles in his safe custody. It is not a case where a third party had come to the shop for selling stolen articles nor is the nature of articles such that its very possession would lead to presumption of appellant knowing or having reason to believe that the articles are stolen property. Therefore, even if it is held that the articles were seized from the possession of the appellant Anil Kumar, no conviction would entail only by that reason and the appellant Anil Kumar deserves to be acquitted of commission of offences under Sections 411 & 414 of IPC.

11. On the other hand, learned Deputy Advocate General, supporting the judgment of conviction and order of sentence would argue that even though present case of the prosecution is not based on any direct evidence in the form of ocular testimony of

eyewitness having seen the appellant assaulting his mother, brother and sister-in-law, the prosecution has led reliable evidence to prove existence of enmity and episodes of quarrel discontent followed by threat extended by the appellant to different person proving existence of a strong motive on the part of the appellant to eliminate his brother with whom he had dispute as also his own mother and sister-in-law, who were residing with deceased brother Jitendra.

12. Learned State counsel would further argue that the evidence of fresh episodes of quarrel and enmity have been stated by more than one witnesses and particularly by none other than the father of the appellant and the deceased Jitendra. His evidence proves that the appellant had serious grievance with regard to deceased Jitendra taking up paddy for processing along with his own brother-in-laws and the appellant had clearly expressed his anguish and was also aggrieved by the manner in which distribution of rice and pulses had taken place. There is no reason why the father of the appellant Bisali Ram (PW3) who lost his wife, his son and daughter-in-law would falsely implicate the other surviving son in the murder by coming out with a false story of dispute and existence of enmity.

13. Further submission of learned counsel for the State is that recording of memorandum statement of the appellant Prem Lal by Investigating Officer B.S. Chouhan (PW21) has been proved not only from the evidence of Investigating Officer but also from the evidence of Independent prosecution witnesses Rajesh Kumar (PW2) and Uttara Kumar (PW19) and even if there is some doubt with regard to Uttara Kumar (PW19) being witness to recording of memorandum in view of what has been stated by him in his cross-examination, the evidence of Investigating Officer, B.S. Chouhan (PW21) and another independent witness Rajesh Kumar (PW2) is beyond any dispute and is completely reliable.

14. Learned counsel for the State would further argue that the memorandum of the appellant Prem Lal disclosed that after having murdered his mother, brother and sister-in-law he had not only snatched away valuable ornaments belonging to two deceased women namely Jeera Bai and Jyoti but also laid his hands on large number of valuable documents in the form of stamp paper, agriculture credit card, pass book in respect of the property standing in the name of his mother Jeera Bai and Kisan Credit Card, pass book, rin pustika, cheque book of Jitendra. In his memorandum statement, he has also stated that cash amount was also looted by him and all these articles being cash, jewellery and various documents of property bank were handed over to his son Govinda, the juvenile accused, for being deposited with accused Anil Kumar, who happens to be his son-in-law.

15. It is further argued that after recording this memorandum of appellant in presence of independent witnesses, the Investigating Officer raided the house of appellant Anil Kumar and all these stated articles were seized from the house of Anil Kumar. Learned State counsel would argue that many doubts have been raised as to why witness from

different place was used by the police for witnessing and endorsing the memorandum and seizure proceedings, no such question has been put to the Investigating Officer and unless the Investigating Officer is given an opportunity to explain, if at all such questions were put to him, the evidentiary value of the evidence of seizure witness would not be diminished on such hypothetical basis. His further submission is that it is not a case where the looted articles were found in any open place but these articles have been seized from the house of accused Anil Kumar. The appellant Anil Kumar has failed to explain that any of the ornaments seized from his house belong to the lady members in his house much less stating in his 313 Cr.P.C. statement. Moreover, it is not a case that only ornaments and cash are recovered, the appellant Anil Kumar could not explain how he came in possession of the property papers, pass book, Kisan Credit Card, rin pustika and other valuable documents recorded in the name of Jeera Bai and Jitendra.

16. Learned State counsel would further advance his submission by arguing that the identification of ornaments have been proved by identifying witnesses and even if there are some discrepancies in the identification proceedings, there are not very material or of such nature that the evidence with regard to identification has to be rejected *to to*. He would submit that the evidence of identification of ornaments by identifying witnesses even if suffers from some exaggeration or embellishment, the part of the evidence which is reliable can be accepted and acted upon. It is lastly submitted that even if there is some doubt with regard to irregularities committed in the matter of identification, the memorandum statement having been found to be reliable, the recovery of ornaments being of the same description as stated in the memorandum and that these recoveries were not alone but were seized together with property papers, kisan credit card, rin pustika, pass book and stamp papers recorded in the name of Jeera Bai and Jitendra, lends credence to the prosecution story that these ornaments that the stolen ornaments belong to deceased Jeera Bai and Jyoti only more so when Anil Kumar failed to account the ownership of the articles himself or any other lady members of his family and has remained completely silent in this regard in his examination under Section 313 Cr.P.C. In support of his contention, learned counsel for the State has placed reliance upon the judgments in the cases of **Jagroop Singh Vs. State of Punjab, 2012 (11) SCC 768**, **Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi), 2010 (6) SCC 1**, **Padala Veera Reddy Vs. State of Andhra Pradesh and others, 1989 Supp(2) SCC 706**, **Harishchandra Ladaku Thange Vs. State of Maharashtra, 2007(11) SCC 436**, **Ram Singh Vs. Sonia and others, 2007(3) SCC1**, **Mohibur Rahman and another Vs. State of Assam, 2002 (6) SCC 715**, **Ramesh Harijan Vs. State of Uttar Pradesh, 2012 (5) SCC 777 & Kiriti Pal Vs. State of West Bengal and other connected cases, 2015(11) SCC 178**.

17. We have heard learned counsel for the parties, perused the records and impugned judgment.

18. The conviction of the appellants has been ordered by the learned Trial Court relying upon the circumstantial evidence as there is no direct evidence in the present case. The evidence of circumstantial evidence which have been relied upon by the learned Trial Court are that of motive, last seen and of recovery of looted ornaments of deceased Jeera Bai and Jyoti as also valuable documents, property papers, revenue documents, pass book, cheque books belonging to deceased Jeera Bai and Jitendra. On the basis of disclosure statement given by appellant Prem Lal which, according to learned Trial Court, has been proved by the prosecution and on which basis the aforesaid articles were seized from the house of the other accused/appellant Anil Kumar the son-in-law of appellant Prem Lal. Learned Trial Court relied upon the evidence led by the prosecution that before the date of incident the relationship between the appellant and his brother were strained, there were altercation, the appellant was nurturing ill-will and enmity against Jitendra. Learned Trial Court has also recorded finding that after the dispute the deceased Jitendra had gone along with his wife Jyoti to in-laws house wherefrom he had returned after processing of paddy and in the intervening night Jitendra, his wife and mother all were found dead, their ornaments looted and all document papers of property, revenue document, pass book, cheque book and property papers of Jitendra and Jeera Bai was also stolen from almirah and even according to the appellant he met the deceased in the night during certain quarrel amongst deceased.

19. Homicidal death of Jitendra, Jeera Bai and Jyoti is proved from the evidence led by the prosecution.

Dr. A.K. Sanyal (PW8), who conducted postmortem of dead body of Jitendra, Jyoti and Jeera Bai has deposed regarding he having conducted postmortem and prepared 3 different postmortem reports in respect of Jitendra, Jyoti and Jeera Bai. As far as Jitendra is concerned, the evidence of Dr. A.K. Sanyal (PW8) along with other doctors in the team who found pupils dilated, eyes closed, half open mouth, tongue protruded and caught between teeth as also cynosed. He has also deposed that liquid content was oozing out from nostrils. Trachea was found congested. He deposed that cause of death was asphyxia.

As regards Jyoti, he has deposed that pupils were dilated, eyes closed, mouth was half open and tongue was protruded and caught between teeth which was cynosed. Blood mixed liquid was oozing out from nostrils, face had turned blue. Eyelids and nails had also turned blue. There were scratches on left forearm and neck, larynx & trachea were compressed, hyoid bone broken. Cause of death was stated to be asphyxia.

As far as Jeera Bai is concerned, the doctor stated in his evidence that pupils were dilated, eyes closed, mouth was half open, tongue was protruded and caught between teeth which had turned blue, windpipe was compressed, cause of death was stated to be asphyxia. All that has been elicited in the cross-examination is that he had admitted

suggestion that he had not stated in the postmortem report whether it was suicide or murder.

20. From the aforesaid medical evidence cause of death the circumstances in the dead body was found in three different places, it is beyond doubt that all the deceased persons were strangled to death in identical manner which is reflected from the condition of the dead body and the observations of the doctor with regard to various injuries that all of them were murdered and the death was clearly homicidal in nature, there being nothing to indicate that each of them committed suicide.

21. The evidence of the prosecution witnesses also proves beyond doubt that the dead body of Jitendra, Jeera Bai and Jyoti was found inside the house lying in different rooms.

Harishchandra (PW1) has deposed that when he had gone to the house of the deceased, he saw the dead body of his daughter and son-in-law as also Jeera Bai lying inside the house.

Sarita Tandon (PW6) has stated that when she went inside the house, she saw the dead body of Jeera, her sister Jyoti inside the house.

Ravindra (PW10) has also stated that he having seen the dead body in the house when he had gone to the village of the appellant.

The aforesaid statement of the witnesses regarding place where the dead body was found has not been controverted in the testimony therefore it is proved beyond doubt that the dead bodies of Jitendra, Jeera Bai and Jyoti were found inside their house.

22. One of the circumstance led by the prosecution and found proved from the evidence of the prosecution witness is of motive on the part of the appellant. In this regard the evidence of Harishchandra (PW1), who is father of the deceased, Jyoti and father-in-law of Jitendra is that his son Arvind and Ravindra had gone to the house of Jitendra for processing of paddy whereafter Prem Lal and Govinda came to his house and threatened that he should call his son Arvind and Ravindra back otherwise they will be killed. He further states that they again came to repeat the threat whereafter he went to village Chakarbeda and advised Prem Lal and Jitendra not to enter into any quarrel and came back to his village Dagania along with his two sons. He further states that thereafter, Jitendra and Jyoti came to their house and they got engaged in work of processing of paddy and after about a week, they went back to Chakarbeda and that very night, they were murdered. In the cross-examination, attempt has been made to impeach the credibility of this witness by getting elicited that the witness does not know the exact date on which his sons had gone for processing of paddy, the date on which his son, daughter

and son-in-law came to the house on the date on which the appellant came to his house threatening that if he does not call his sons back, he will kill his daughter and son-in-law and further that he had not lodged any report in the police station regarding threat extended by the appellant for killing his daughter and son-in-law. This witness has stated in the cross-examination that appellant Prem Lal and Jitendra the deceased were having separate residence and dining.

23. Bisali Ram (PW3), who is father of the appellant and the husband of Jeera Bai, father of Jitendra has deposed that about 8 days before the date of incident, a dispute had arisen when his son Jitendra expressed that he wanted to process paddy which was objected to by appellant Prem Lal and thereafter Prem Lal called Harishchandra (PW1) father-in-law of Jitendra and alleged that Jitendra was attempting to commit theft and the matter was required to be reported in the police station. Thereafter, this witness and father-in-law of Jitendra both opposed Prem Lal stating that he should allow Jitendra to process paddy because he was burdened with loan and asked Anil Kumar to go along with Jitendra for processing of paddy as Prem Lal was not inclined, whereafter, paddy was processed by Jitendra and Anil Kumar. He has further deposed that old rice was apportioned and one out of three shares, each of 2½ bags, the sale proceeds of Rs.40,707/- was retained by Jitendra. One bag of rice was taken by Prem Lal and one bag of rice was shared by this witness Bisali Ram and Jitendra but that was also forcibly taken away by Prem Lal which was objected to by him whereafter, Prem Lal slept him and also twisted his hands. His wife Jeera Bai was present who called Sunil and Ram Prakash for distribution of rice and pulses. In his cross-examination, this witness has been confronted with his case diary statement Ex.D/2 to elicit omissions on many aspects including the evidence with regard to dispute regarding processing of paddy, sharing of rice etc. Ex.D/2 case diary statement of Bisali Ram (PW2) thus disclosed existence of dispute between Prem Lal and Jitendra and also distribution of paddy and rice. Though details thereof have not been stated in case diary statement but the evidence is made in details before the Court.

24. Thus, from the evidence of Bisali Ram (PW3), who is the father of the appellant-Prem Lal and deceased Jitendra, existence of inimical relation having developed between the appellant and deceased Jitendra are clearly spelt out and assumes more importance because this dispute arose only few days before the date of incident and not that it was a very old and stale dispute between the brothers. The other thing which is revealed is that the deceased, mother of the appellant had taken the side of the deceased Jitendra and when dispute arose with regard to apportionment of rice amongst Bisali Ram (PW3) and his two sons namely appellant Prem Lal and deceased son Jitendra when the appellant-Prem Lal had slept his father and twisted his arm whereafter Jeera Bai called one Sunil and Ramprakash to ensure apportionment of rice and pulses.

25. Ahilya Bai (PW5), mother of the deceased, Jyoti has also stated regarding

existence of dispute and a recent episode of quarrel between the appellant and deceased Jitendra concerning processing of paddy, as has been stated by Harishchandra (PW1) and Bisali Ram (PW3). She has deposed that her son-in-law Jitendra requested to send brother-in-law Ravindra with him for processing of paddy and having seen that the appellant-Prem Lal came along with son Govinda in the motorcycle and appellant threatened that she should call back her son Ravindra otherwise he will kill him and at that time, her husband had also arrived and later on, Ravindra was called back from Chakarbeda. 2-3 days thereafter, her daughter Jyoti and son-in-law Jitendra came to her house at Dagania and stayed there from about 7-8 days and went back to their village Chakarbeda stating that creditors are to come and processing of paddy has not been completed and as soon as work is completed, money would be returned and on this assurance, he asked for loan and she gave Rs.10,000/- to Jitendra. In the cross-examination, it has been elicited that 2-3 days before the incident Prem Lal and Jitendra had separated their kitchen. A suggestion that there used to be quarrel between her daughter and son-in-law has been denied and omission with regard to disclosure of incident of appellant coming to her house and threatening to kill her son Ravindra in the case diary statement Ex.D/3 has been elicited but we have gone through the case diary statement Ex.D/3 and find that statement was recorded under Section 161 Cr.P.C. in the case diary in which earlier also she stated to have disclosed that appellant Prem Lal had come to her house and threatened that she should call back her sons, otherwise they would be killed. Though suggestion of Jitendra and his wife Jyoti having quarrel couple of days before the incident have been made, every time, this witness has denied the suggestion. The other omissions have been elicited but there are not very material.

26. Ram Prakash (PW11) though states that he was not enquired by police whereafter he has been declared hostile and examined, he has admitted that Prem Lal had looted rice from his father Bisali (PW3) whereafter he had gone to their house for apportionment of rice and pulses amongst three and he had gone to their house along with Sunil for apportionment of rice and pulses.

27. Basant Kumar Verma (PW17) has deposed that the deceased Jitendra had come to sell paddy for which he had given advances. He then deposes that 3-4 days before his death, Jitendra had come to collect the balance amount which was paid to him and he left. He further deposes that later on another person came and claiming payment against sale of paddy, who was turned out. He has stated that he is not distinctly remembering that Jitendra had sold 42 quintal of paddy for Rs.40,707/- to him.

28. From the evidence of Harishchandra (PW1), Bisali Ram (PW3), Ahilya Bai (PW5), Ramprakash (PW11) & Basant Kumar Verma (PW17), it emerges that few days before the date of incident, a dispute had arisen between Prem Lal the appellant and deceased Jitendra regarding processing of paddy, apportionment of rice and pulses and the appellant had made allegation against Jitendra that he was engaged in committing theft

and the matter was required to be reported to the police. The dispute had strained relationship between the appellant and deceased Jitendra so much so that they had separated their kitchen few days before the date of incident. The appellant had taken the act of the deceased Jitendra in carrying out processing of paddy with the help of his brother-in-laws so much so that the appellant went to the house of father-in-law of Jitendra, namely Harishchandra (PW1) and threatened him that if he does not call back his son, he would be killed. This has clearly come in the evidence of Harishchandra (PW1), Bisali Ram (PW3) & Ahilya Bai (PW5).

29. The cause of dispute was with regard to apportionment of the paddy, sale proceeds thereof. The appellant had slapped his father Bisali Ram (PW3) and twisted his arm when rice was being removed. The evidence has also come that few days before the date of incident when the appellant Prem Lal and Jitendra had separated their kitchen. Bisali Ram (PW3) has stated that Jitendra had sold paddy and had collected Rs.40,707/- which he had kept with him. Thus strong inimical relation all of a sudden developed between the appellant Prem Lal and his brother Jitendra and that too, only few days before the date of incident. Therefore, there is enough reliable evidence on record to record a finding that there was strong motive for the appellant to kill Jitendra.

30. It is the case of the prosecution that the appellant Prem Lal was taken into custody being suspect and his memorandum was recorded wherein disclosure was made regarding the incident of murder by him as also of looting cash, ornaments, property documents and getting it transferred in the custody of co-accused Anil Kumar, his son-in-law. Mr. B.S. Chouhan, Investigating Officer (PW21) has deposed in para 7 that he had recorded memorandum statement of appellant in Ex.P/8 in the presence of witnesses and has proved his signature. A suggestion in the cross-examination that memorandum statement of appellant Prem Lal in Ex.P/8, his signatures have been obtained by subjecting him to torture have been denied and it has also come that the memorandum statement was recorded in police station Masturi and the memorandum witnesses are Rajesh Kumar and Uttara Kumar, resident of Village Dagania and Pipparsatti. A suggestion that after taking memorandum statement, witnesses Rajesh Kumar and Uttara Kumar were signed has been denied and a suggestion that no statement of Prem Lal was taken in presence of witnesses nor they were present in the police station has also been denied.

31. Rajesh Kumar (PW2) has corroborated the statement of the Investigating Officer B.S. Chouhan (PW21) regarding recording of memorandum of the appellant Prem Lal. He stated that in his presence, memorandum in Ex.P/8 was prepared and also he has proved his signature. With regard to recording of memorandum in Ex.P/8 in presence of this witness, the same has not been seriously disputed in the cross-examination.

Uttara Kumar (PW19), the other independent witness of seizure has also stated

regarding memorandum statement in Ex.P/8 given by the appellant Prem Lal and he affixed his thumb impression. However, in his cross-examination, this witness has not remained firm and stated that no statement was made in his presence.

However, as evidence of Rajesh Kumar (PW2) supports what has been stated by Investigating Officer with regard to recording of memorandum, recording of memorandum of the appellant by Investigating Officer vide Ex.P/8 cannot be doubted.

32. In the memorandum statement Ex.P/8, apart from inculpatory statement regarding committing murder of Jeera Bai, Jitendra and Jyoti, in the house along with his son Govinda he has stated that after committing murder, he took out cash, a mangalsutra with gold locket, a pair of silver anklet, property papers and thereafter also removed a pair of silver bangles, two golden nose pins with red stone of his mother Jeera Bai and asked his son Govinda to hand over these articles to Anil Kumar co-accused in village Bakarkuda.

33. Investigating Officer (PW21) has deposed that after obtaining memorandum statement of the appellant wherein disclosed that the articles referred to in memorandum statement have been kept in the house of Anil Kumar, he went to the house of Anil Kumar in village Bakarkuda and seized cash in Ex.P/9, stamp paper relating to purchase of land, farmers book, credit card, rin pustika, ration card, pass book, cheque book vide Ex.P/9B and ornaments being silver anklet, silver bangles being a pair of silver anklet, a pair of silver bangles, one mangalsutra, two golden nose pins and a silver earring vide Ex.P/9A. He has proved his signature of seizure memorandum vide Ex.P/9, Ex.P/9A & Ex.P/9B.

Rajesh Kumar (PW2), the independent witness of seizure, has stated that in his presence, the police seized stamp paper, pass book, cheque book, two credit cards, one ration card of appellant Prem Lal, two nose pins, bangles, 2 anklets, mangalsutra, gold and cash of Rs.31851/- from the house of Anil Kumar as these articles were taken out by Anil Kumar from his house and given to the police which were seized by him. It is also admitted in the cross-examination that Anil Kumar was also enquired in the Police Station and statement was recorded and Anil Kumar was also asked regarding place where the articles have been kept but he does not know whether any document was prepared. He also admits that seizure was made at the instance of Prem Lal. He specifically denied suggestion that no seizure or enquiry was made in his presence. He has also stated that he was taken from Masturi Thana Police Station to Bakarkuda village in Police jeep. He further states that Investigating Officer come to know offence under Section 302 of IPC was registered, he went to the police station having come to know about the incident in the newspaper. He further states that except this case, he is not witness of the police in any other case.

34. Credibility of this witness is sought to be impeached on the submission that in the cross-examination, he has admitted that he is resident of village Dagania which is about

15 km. away from Police Station Masturi. Learned counsel for the appellant argued that the police instead of making witnesses at the local place around Masturi police Station, have made a person resident of another village as prosecution witness of memorandum and seizure and this witness having admitted that he came to the Court along with Harishchandra to depose and Harishchandra is uncle in village relation he is liable to be disbelieved. This argument cannot be accepted firstly for the reason that no question has been asked from the Investigating Officer as to why this particular person Rajesh Kumar (PW2) had been picked up as witness. Even otherwise this witness in his cross-examination has stated that having come to know about murder case under Section 302 of IPC, he had reached the police station. A suggestion given to him in the cross-examination has been denied by stating that he is not the police witness in any other case. Merely because this witness happened to be the resident of village about 15 km. Away, his evidence is not liable to be disbelieved. He is also not the relative of Harishchandra as such but only in village relationship which is clear from the statement of this witness. According to the records Harishchandra (PW1) and this witness Rajesh Kumar (PW2) both are resident of village Dagania and were examined by trial Court on the same day i.e. on 05.09.2009. Therefore, it is only coincidence that both these witnesses belong to village Dagania, reached the Court according to the trial programme for recording their evidence and therefore, they coming together was nature and from this, it cannot be inferred that the witness was not independent but was acting under the influence of Harishchandra (PW1), father of deceased Jyoti.

A suggestion made to the Investigating Officer (PW21) that no seizure was made from the house of Anil Kumar has been denied, it has been elicited from his cross-examination that in the seizure memo, in the allotted column no. 13 the sample of the seal has not been affixed but this witness has denied suggestion that the seized articles were not sealed. Argument has been advanced that as in the allotted column of the seizure memo in the proforma of seizure memo against the allotted column No.13, sample of seized has not been affixed, the entire seizure should be held doubtful. We are not inclined to accept this argument. The order-sheet of the Trial Court recorded on 16.12.2011 has been perused wherein, it is found that the property was produced in sealed condition before the trial Court. There is no other material on record to doubt that the property was not in sealed condition or in any manner there was any tampering with the safe custody of these articles. The Investigating Officer and independent witness both have stated regarding recovery of articles from the house of which were detailed by Prem Lal in his memorandum Ex.P/8 found in the house of Anil Kumar. Therefore, the evidence of Investigating Officer (PW21) and independent witness Rajesh Kumar (PW2) proves seizure of various articles which were disclosed by Prem Lal in his memorandum statement which included ornaments property papers, revenue documents, ration card, pass book, cheque book etc. These recoveries, importantly, were made on the disclosure statement of Appellant Prem Lal, from the house of his son-in-law Anil Kumar from village Bakarkuda.

35. Having considered the evidence with regard to motive recording of disclosure statement and recovery, seizure of ornaments, documents from the possession of appellant accused Anil Kumar, we shall now consider the submission and the evidence with regard to identification of the articles which were recovered from the possession of the appellant Anil Kumar. In the memorandum statement, appellant Prem Lal disclosed the articles which were stolen after committing murder of three persons. Those articles, as stated in the memorandum statement are cash, mangalsutra(golden chain) with golden locket, one pair of silver anklet, property papers said to be removed from the almirah; a pair of silver bangles, two golden nose pins with red stone removed from the dead body of deceased Jeerabai.

This Court has found proved recovery of one pair of silver bangles, one pair of silver anklets, two golden nose pins with red stone and various documents relying upon the evidence of the Investigating Officer and witnesses of the seizure. Apart from the ornaments, the evidence of the Investigating Officer B.S. Chouhan (PW21) proves seizure of stamp papers relating to purchase of land, kisan credit card, rin pustika, ration card, pass book of bank of Maharastra and two cheque books as per seizure memo Ex.P/9B. The memo shows that one kisan kitab is in the name of Jeerabai, wife of Bisali Ram i.e. one which belong to deceased Jeera Bai. One kisan credit card is in the name of Jitendra, S/o Bisali Ram i.e. one which belong to deceased Jitendra. One pass book in the name of Jitendra. One agriculture credit card in the name of Jeera Bai. One rin pustika in the name of Jitendra Kumar. One cheque book in the name of Jitendra Kumar. One ration card, one pass book of bank of Maharashtra and one cheque book in the name of appellant Prem Lal. Except the last three mentioned documents, all other documents are in the name of Jeera Bai or Jitendra. Therefore, from the very nature of the articles seized, no further identification is necessary that these documents are of deceased Jeera Bai and Jitendra. This is very strong incriminating evidence in the form of identification of documents because Jeera Bai and Jitendra were found murdered in their house and on the basis of memorandum/disclosure statement of the appellant Prem Lal, recovery of documents belonging to deceased Jitendra Kumar and Jeera Bai were recovered from the house of co-accused Anil Kumar.

36. As far as ornaments are concerned, the nature of ornaments as stated in the memorandum statement and which were seized from the possession of co-accused Anil Kumar on the disclosure statement of Prem Lal is also the same. The ornaments recovered are one mangalsutra (chain), with a golden locket, one pair of silver anklets, one pair of silver bangles and two golden nose pins with red stone. The description of the documents are exactly what has been stated in the memorandum statement.

37. However with regard to process of identification certain discrepancies have been pointed out that the witness of identification panchnama have not been examined to state

that identification was done in their presence and further that the identification panchnama showing the articles identified by a particular witness is different from the evidence of the witnesses who have identified the ornaments. In this regard if we look at the identification panchnama Ex.P/12 which is proved by Bisali Ram (PW3), father of the appellant and the deceased Jitendra contains the details of persons who identified and the articles identified. Bisali Ram (PW3) has deposed in his evidence that he was summoned in the police station and was shown two nose pins, bangles, anklet, locket, documents standing in the name of Jitendra, Jeera Bai and he had identified nose pins and bangles that it belonged by Jeera Bai. He has further stated that anklet also belonged to his wife. The locket was also identified by him stating that since it was given to daughter-in-law Jyoti at the time of marriage, he identified it and has proved identification panchnama and Ex.P/12 by proving his signature thereon. In the cross-examination, on this aspect, nothing material could be elicited. In the identification panchnama Ex.P/12 Bisali Ram is one of the person who identified the articles however panchnama shows that Bisali Ram identified the nose pins only whereas in the evidence before the Court, this witness also claims to have identified anklet, locket and bangles. Therefore, to the extent of identification of nose pins, the evidence of this witness is reliable.

38. Bisali Ram (PW3) is the husband of the deceased Jeera Bai and therefore, identification of nose pins by him cannot be doubted.

39. Harishchandra (PW1) is the father of the deceased Jyoti and as per identification panchnama Ex.P/12, he is said to have identified anklet and key ring but in his evidence, he has not stated regarding identification of any articles. On the other hand, Bisali Ram (PW3) deposed that he identified one anklet as that of Jeera Bai and he has also identified the locket stating that this was given by him during marriage to his daughter-in-law, Jyoti.

Another prosecution witness Manharan Tandon (PW9) has deposed that he identified the hand chain, anklet and the locket of deceased Jyoti as he had gifted these ornaments to Jyoti, his niece and has proved his signature in Ex.P/12 identification panchnama. In the cross-examination, it has been elicited that he had identified earring, necklace and anklet and denied that no identification proceedings were drawn in his presence.

40. From the evidence of the aforesaid witnesses, it is found that there are some discrepancies with regard to articles identified by Bisali Ram (PW3) and Manharan Tandon (PW9) and the articles which are said to have been identified by Harishchandra (PW1), as per identification memo Ex.P/12, is not supported from the evidence of Harishchandra (PW1) because he has not stated regarding identification of any of the articles.

These discrepancies are however not so material because as per the disclosure

statement, silver anklets, silver bangles, two golden nose pins with red stone and one chain and golden locket is said to have been stolen and these articles have been recovered from the possession of appellant Anil Kumar and two witnesses Bisali Ram (PW3), husband of Jeera Bai and father-in-law of Jyoti and Manharan Tandon (PW9) uncle of Jyoti claim to have identified these articles as belonging to Jeera Bai and Jyoti.

It is relevant at this juncture to note that in his examination under Section 313 Cr.P.C. Anil Kumar has not come out with any specific defence that seized ornaments belong to any of lady members in his house. Once the evidence of seizure of articles from possession of Anil Kumar found reliable and thus seizure of these articles proved from the possession of Anil Kumar, failure on the part of Anil Kumar to claim such these ornaments as belonging to lady members of his family, only supports and adds to reliability of prosecution witness with regard to identification of ornaments as belonging to deceased Jeera Bai and Jyoti even though the witnesses of identification panchnama have not been examined and there are some discrepancies with regard to the place of identification and presence of some of the police official at that time. The decisions relied upon by learned counsel for the appellants do not advance the case of the appellants.

41. Learned counsel for the appellant has relied upon many judgments, as referred to hereinabove, which deal mostly with the identification and recovery of stolen articles.

In the case of **Ashish Jain (supra)**, on facts, it was found that identification was not found to be in accordance with due procedure as identification was conducted without mixing the recovered jewellery with similar or identical ornaments. Certain discrepancies with regard to entries made in the account books were also found. It was also found that recoveries were effected that the instance of accused sought to be proved from evidence and one independent witness was not examined.

In the case of **Sonu @ Sunil (supra)**, the identification was not done in accordance with due procedure particularly without mixing the recovered jewellery with similar or identical ornaments. In para 28 of this judgment, various tests to prove recovery of article in cases where accused has not only been charged of committing offence of theft but also other offence, was laid down and it was highlighted that in order to connect recovery of stolen articles with allegation of murder, it is required to be established that the theft and murder formed part of one prosecution. It was held as below :

“28. In the case of recovery of an article from an accused person when he stands accused of committing offences other than theft also, (in this instance murder), what are the tests:

- i. The first thing to be established is that the theft and murder forms part of one transaction. The circumstances may indicate that the theft and murder must have been committed at the same time. But it is not safe to draw the inference that the person in possession of the stolen property was the

murderer [See Sanwant Khan (supra)];
 ii. The nature of the stolen article;
 iii. The manner of its acquisition by the owner;
 iv. The nature of evidence about its identification;
 v. The manner in which it was dealt with by the accused;
 vi. The place and the circumstances of its recovery;
 vii. The length of the intervening period;
 viii. Ability or otherwise of the accused to explain its possession [See Baiju (supra)].”

In the case of **Matru Alias Girish Chandra (supra)** also doubt was raised on the basis that details of the article recovered were not given nor the witnesses clearly stated regarding search of the accused. It was further held that identification test is not substantive evidence and such tests are primarily meant for the purpose of helping the investigating agency towards progress of investigation in the right direction. There was delay in identification and that similar articles were found to have not been received. On facts, it was opined that the articles must have been shown to the person who identified.

In the case of **Bharat (supra)** identification of ornaments was doubted as the ornaments were not of any peculiar design and the ornaments identified were found with some paper stuck on it giving it a particular identification.

In the case of **Mani (supra)** it was highlighted that discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in serious matters cannot be based solely on discovery.

In the case of **Deli Ram (supra)**, recovery was effected from an open place and there was discrepancy in the evidence of the witnesses regarding the source wherefrom ornaments to be mixed were brought.

In the case of **Madan Lal and Others (supra)**, it being a case of blind murder, the written report did not contain the details of the ornaments allegedly looted from the house of the deceased after his murder and on facts, it was noticed that the evidence of recovery of the ornaments was based on list of stolen articles provided by the Investigating Officer. In that case, it was found that the accused neither claimed the ornaments to be his own nor did he offer any explanation for the possession thereof. In that background, relying upon Supreme Court decision in the case of **Sanwat Khan and Others Vs. State of Rajasthan reported in AIR 1956 SC 54**, the Court ultimately came to the conclusion that the accused were liable to be convicted for offence under Section 380 IPC though they were acquitted of charges of commission of offence under Sections 302 & 460 IPC.

In the case of **Ramesh and another (supra)**, highlighting that identity of property is important piece of evidence, the veracity and credibility of evidence with regard to identification was examined with reference to certain rules framed under Rajasthan Police Rules. Doubt was raised on the identification as such identification was not found to have

been made in accordance with the Rules relating to identification.

Lastly, in the case of **Ram Lal @ Rama (supra)**, on fact, it was found that though the ornaments were required to be identified before the Magistrate, it was not so done, resulting in violation of Rajasthan Police Rules, 1965.

42. We would thus find that in all the aforementioned cases, various discrepancies as found in the process identification, peculiar to the facts and circumstances of this case were made basis to disbelieve the evidence regarding identification.

However, the aforesaid cases, on facts, are completely distinguishable from the peculiar facts and circumstances of the present case. Present is a case where this Court has found seizure of not only ornaments from the house of co-accused Anil Kumar but apart from ornaments, various documents referred to hereinabove, which were recorded in the name of deceased Jeera Bai and Jitendra were also found in possession of accused Anil Kumar and they all were kept together by Anil Kumar at the time when seizure was made in the presence of independent prosecution witnesses. This combination of ornaments with various documents belonging to deceased remove cloud created on account of some irregularity in the process of identification. We are, therefore, of the opinion that the prosecution has succeeded in proving by leading credible evidence with regard to identification of the articles from the possession of co-accused Anil Kumar on the basis of disclosure statement given by the appellant- Prem Lal.

Furthermore, present is not a case where the conviction is founded only on discovery of ornaments. We have held that in the present case there was motive also. We cannot ignore that one of the star witnesses of the prosecution was none other than the father of the appellant and it is a case where the appellant is charged of committing murder of his own mother, younger brother and younger brother's wife. Nothing could be elicited in the cross-examination of Bisali Ram (PW-3), the father of the appellant as to why he would falsely implicate his own son Prem Lal.

Anil Kumar in his examination under Section 313 Cr.P.C. did not even claim that the ornaments recovered from his possession belong to him or any lady member of his family.

Present is not a case where process of identification is found to be in violation of any statutory rule regulating identification proceedings as was in some other cases referred to hereinabove.

43. In the ultimate conclusion, we are of the opinion that the prosecution has succeeded in proving its case beyond reasonable doubt i.e. the appellant Prem Lal, who committed murdered of his own mother, brother and brother's wife and appellant Anil

Kumar knowing fully well that these articles belonged to deceased and stolen after murder, dishonestly kept with him and thus liable for commission of offence under Sections 411 & 414 IPC.

44. In the result, appeal fails and hereby dismissed. Bail bonds of appellant- Anil Kumar are cancelled. As he is on bail, he shall be taken into custody to serve the remaining part of jail sentence as awarded to him under Sections 411 & 414 IPC.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Rekha/Ravi