



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 11 February 2025**
Judgment pronounced on: 19 February 2025
+ **CRL.A. 797/2019, CRL.M.(BAIL) 1684/2023, CRL.M.(BAIL) 1823/2024 & CRL.M.(BAIL) 63/2025**

SAMEERAppellant
Through: Ms. Sushma Sharma, Mr. Girish K. Sharma, Mr. Dhruv K. Sharma, Mr. R Sahil, Ms. Aayushi Guar and Ms. Stuti Aggarwal, Advs.

versus

STATERespondent
Through: Mr. Ritesh Kumar Bahri, APP with Ms. Divya Yadav and Mr. Lalit Luthra, Advs. with ACP Jarnail Singh, IO and Insp. Om Prakash, PS Vivek Vihar. Mr. Sushil Bajaj, Mr. Vishal Gosain, Mr. Bhavook Chauhan, Mr. Harsh Bora and Mr. Chinmay Kanojia, Advs. for Complainant (M: 8800239826)

WITH
+ **CRL.A. 978/2019, CRL.M.A. 14600/2022, CRL.M.(BAIL) 1551/2024 & CRL.M.(BAIL) 75/2025**

IMRAN @ MURGI CHORAppellant
Through: Mr. Ranbir Singh Kundu and Mr. Prakhar Kumar, Advs.

Versus

STATERespondent



Through: Mr. Ritesh Kumar Bahri, APP
with Ms. Divya Yadav and Mr.
Lalit Luthra, Advs. with ACP
Jarnail Singh, IO and Insp. Om
Prakash, PS Vivek Vihar.
Mr. Sushil Bajaj, Mr. Vishal
Gosain, Mr. Bhavook Chauhan,
Mr. Harsh Bora and Mr.
Chinmay Kanojia, Advs. for
Complainant (M: 8800239826)

CORAM:

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G E M E N T

DHARMESH SHARMA, J.

1. This common judgment shall decide the above noted Criminal Appeals preferred by the appellants, namely Imran @ Murgi Chor (*hereinafter referred to as 'A-1'*) and Sameer (*hereinafter referred to as 'A-2'*) under Section 378 of the Code of Criminal Procedure, 1973 [**"Cr.P.C."**] assailing the impugned Judgment dated 08.05.2019 passed by the learned Additional Sessions Judge-05, East District, Karkardooma Courts, Delhi (*hereinafter referred to as the **Trial Court***). By the impugned judgment, both the appellants have been held guilty of committing offences of robbery and murder of Smt. Anna Mammen wife of late Mr. T. Mammen, pursuant to hatching a conspiracy and have been convicted under Section 120-B of the Indian Penal Code, 1860 [**"IPC"**] besides Section 302 IPC read with Section 120-B IPC and Section 392 IPC read with Section 120-B IPC. The appellants have also been held guilty of being found in possession of the stolen property which was derived from the robbery and have been convicted for



committing offences punishable under Section 411 IPC.

2. The appellants further assail the impugned order on sentence dated 15.05.2019 passed by the learned Trial Court, whereby both the appellants have been sentenced to undergo imprisonment for life with a fine of Rs. 4,000/- each for the offence punishable under Section 120-B IPC and in default of payment of fine, to undergo Simple Imprisonment for a period of one month; and to undergo imprisonment for life with fine of Rs. 10,000/- each for the offence punishable under Section 302 IPC read with Section 120-B IPC and in default of payment of fine, to undergo Simple Imprisonment for a period of two months; and further to undergo Rigorous Imprisonment for a period of five years with a fine of Rs.4,000/- each for the offence punishable under Section 392 IPC read with Section 120-B IPC and in default of payment of fine, to undergo Simple Imprisonment for a period of one month; and lastly to further undergo Rigorous Imprisonment for a period of three years with a fine of Rs.4,000/- each for the offence punishable under Section 411 IPC and in default of payment of fine, to undergo Simple Imprisonment for a period of one month. Both the convicts have been accorded benefit under Section 428 Cr.P.C. and all the sentences have been ordered to run concurrently.

FACTS OF THE CASE:

3. The prosecution case is that on 08.03.2011 a PCR¹ call was received, which was recorded *vide* DD² No. 20-A Ex.PW-5/A regarding murder of a lady at House No. C-12, Vivek Vihar, in front of

¹ Police Control Room

² Daily Diary



B-Block Market, Delhi, hereinafter described as the place of occurrence. The investigation was marked to SI Manu Kumar (PW-24) and Ct. Mahender Singh (PW-26) who reached at the spot, where they were joined by Inspector Jarnail Singh (PW-30) and they found the dead body of a lady aged around 78 years old, in her bedroom on the ground floor of the house as shown in the scaled site plan Ex.PW-15/A, whose name was revealed as Smt. Anna Mammen wife of late Shri T. Mammen. On further investigation, a white colour wire Ex.P-1 of a Juicer Mixer was found wrapped around the neck of the dead body and the almirahs and doors of all the rooms were found ajar. The jewellery boxes were found to be empty and all the articles in the house were found ransacked. While conducting on-the-spot investigation, the statement of one Mr. Vinay Lal @ Goldy (PW-7) Ex.PW-7/A, residing on the first floor of the same house was recorded, on the basis of which FIR³ No. 72/2011 Ex.PW-12/A was recorded at Police Station Vivek Vihar, Delhi at 20:15 Hours.

4. In brief, PW-7 made a statement that the deceased, who was a retired school teacher, was residing on the ground floor of the house and had been imparting tuitions to students; and that on 08.03.2011 at about 3:30 p.m., Subhash (PW-4), the *Chowkidar* of the colony rang the doorbell of his house and apprised him that the rear gate of the garage, which always used to remain closed, was open. Upon receiving such information, he got alarmed and went downstairs to the ground floor where the deceased was residing and found that the door of her house was also lying open. Upon stepping inside, he saw her dead body

³ First Information Report



lying in the bedroom and the entire house ransacked; and thus he called at number 100 and also informed Ms. Rebecca John (PW-8), the daughter of the deceased.

5. During the ensuing investigation, the Mobile Crime Team reached at the spot and the In-charge PW-27 ASI Jai Singh prepared a Crime Scene Report Ex.PW-27/A and eight chance prints were lifted from the spot by PW-2 Constable Narender. The dead body was sent for *post mortem* and the *post mortem* report Ex.PW-11/A was obtained which opined that the cause of death was asphyxia as a result of ligature strangulation on the front and back of the neck of the deceased and sufficient in the ordinary course of nature to cause death. During investigation and upon recording of statements of the maid servant of the deceased, namely PW-6 Laxmi as well as the daughter of the deceased, namely, PW-8 Rebecca John, further information was developed raising suspicion of involvement of A-1 and A-2, however, upon visits to their respective houses, both the appellants were found to be absconding.

6. It is the prosecution case that on receiving secret information on 12.03.2011, A-1 was apprehended from Wireless Park, 36 Block, Trilokpuri and *vide* memo Ex.PW-16/B and personal search memo Ex.PW-16/C at 11.30 a.m., the information of which was sent to his father Mohd. Aslam on his mobile number 9810719211; and that on interrogation, A-1 made a disclosure statement Ex.PW-16/A and then he took the police to the first floor of his house No. 27/296, Trilokpuri and got recovered a ladies purse from the Almirah of a room in his house, which contained the articles robbed from the house of the



deceased i.e. a golden colour *Kara*, , a golden colour bangle, a gold chain, a gold ring , a gold biscuit and a gold coin, which were seized *vide* seizure memo Ex.PW-16/D, which are marked Ex.P-11 to P-16 respectively.

7. It is then the prosecution case that on 12.03.2011, information was received at PS Vivek Vihar *vide* DD No. 40B Ex.PW-13/A at 02.30 p.m., to the effect A-2 had been arrested under Section 41.1 of the Cr.P.C. by the Special Cell, NDR on 11.03.2011 at about 2.30 p.m. and he was to be produced before the concerned Metropolitan Magistrate at Karkardooma Courts, the same day. It is further the prosecution case that on taking permission from the concerned Metropolitan Magistrate, A-2 was arrested *vide* memo Ex.PW-16/F and personal search memo Ex.PW-16/G and on interrogation he made a disclosure statement Ex.PW-16/E pursuant to which cash of ₹81,000/- and six gold items were recovered, which are marked Ex.P-17 to P-23. It is further the prosecution case that on taking police remand for a motorcycle bearing registration No. DL7S-BF-3881 Honda Stunner, which was parked outside the house of A-1 was recovered and seized *vide* memo Ex.PW-16/H, which was allegedly used by the appellants to go to the place of occurrence; and the recovery of which was not questioned. During the course of further investigation, the place of occurrence was identified by the appellant *vide* pointing out memo Ex.PW-16/J.

8. On 12.03.2011 both the appellants were taken to the Dossier Cell East District , New Delhi and their specimen finger prints were obtained and same were sent along with chance prints developed at the scene of



crime to the FSL⁴ for examination on 29.03.2011. During the course of further investigation, the details of the gold articles and cash that were stolen/taken away after committing robbery and murder of the deceased, was supplied by PW-8, the daughter of the deceased on 18.03.2011 with photographs Ex.PW-8/ and the same were put for TIP⁵ on 26.03.2011 and 06.04.2011 Ex.PW-30/E and the recovered articles were correctly identified.

9. On completion of investigation, the final Police Report was filed against both the appellants. Both the appellants were charged for committing the aforementioned offences, to which they pleaded not guilty and claimed trial.

PROSECUTION WITNESSES

10. During the course of trial, the prosecution examined as many as 33 witnesses. In short, PW-3 was Mr. Anees, who informed the *Chowkidar* Mr. Subhash (PW-4) about the rear door of the house of the deceased lying open, which otherwise used to remain closed; PW-6 Laxmi, the maidservant working in the house of the deceased, who was the last person to see the deceased alive when she left her house around 1:30 pm and while leaving, saw A-1 and another boy described as fat with long hair, standing near the colony gate. PW-7 Mr. Vinay Lal was the complainant while PW-8 was Ms. Rebecca John, the daughter of the deceased; upon whose testimonies we shall delve into later on in this judgment. The other witnesses were as under:

10.1 PW-10 was Mr. Israr Babu, the Alternate Nodal Officer

⁴ Forensic Science Laboratory

⁵ Test Identification Parade



from Vodafone Mobile Services Limited, who produced the CDR⁶ in respect of mobile phone number 9711529219 for the period 01.03.2011 to 10.03.2011, copy of which is Ex.PW-10/A. The said mobile number was attributed to A-1 in terms of original CAF⁷ and ID proof Ex.PW-10/B and Ex.PW-10/C respectively.

10.2 PW-14 Mr. Rajeev Ranjan was the Nodal Officer from Tata Tele Services Limited, New Delhi, who produced the CAF Ex.PW-14/A in respect of mobile phone No. 9266657056 and CDR Ex.PW-14/C for the period 01.03.2011 to 10.03.2011 besides Cell ID Chart Ex.PW-14/D from 01.03.2011 to 10.03.2011 and also filed certificate Ex.PW-14/E under Section 65-B of the Indian Evidence Act, 1872. He also deposed that the said mobile phone number was in the name of Mohd. Javed Parvez and the ID proof i.e. the Driving License was proved as Ex.PW-14/B.

10.3 PW-11 was Dr. Akash Jhanjee, who conducted the autopsy on the body of the deceased and provided the *post mortem* report Ex.PW-11/A. PW-32 was Dr. Rajendra Kumar, the Deputy Director (Retired) from FSL, Rohini; PW-33 was Mr Amar Pal Singh, the Assistant Director from RFSL, Chanakyapuri, Delhi.

10.4 PW-18 was Smt. Lata Sarah Daniel, the Assistant General Manager, Indian Bank, Corporate Office, Chennai, Tamil Nadu and she produced certain records pertaining to the sale as well as purchase of gold bars by the deceased, and likewise, PW-21 was Mr. P. Vijay Kumar, the Branch Manager at Indian Bank, Pattam Branch,

⁶ Call Detail Record

⁷ Customer Application Form



Thiruvanthapuram, who also deposed about certain gold purchases made by the deceased.

10.5 PW-27 ASI Jai Singh, PW-2 Ct. Narender (Finger Print Expert) and PW-20 Ct. Sanjeev (photographer) were the members of the Mobile Crime Team.

10.6 Police witnesses who were involved in the investigation of the case at different stages were: PW-1 Ct. Abdul Rahim; PW-2 Ct. Narender; PW-5 HC Virender; PW-12 HC Brijender; PW-13 W/HC Sunita; PW-15 SI Mukesh Jain, PW-16 HC Surender Pal; PW-17 HC Devi Dayal; PW-19 SI Mohd. Ali; PW-20 Ct. Sanjeev; PW-22 Ct. Tarsem Singh; PW-23 Ct. Keshav Kumar; PW-24 SI Manu Kumar; PW-25 SI Renu Yadav; PW-26 Ct. Mahender; PW-27 ASI Jai Singh (Retired); PW-28 Ct. Virender Singh; PW-29 Bijender Singh; PW-30 Inspector Jarnail Singh (Investigating Officer); and PW-31 Inspector Ravinder Kumar (Retired).

STATEMENT OF A-1 & A-2 AND DEFENCE EVIDENCE

11. On the close of the prosecution evidence, both the appellants were separately examined under Section 313 Cr.P.C. and on putting incriminating facts and circumstances appearing in evidence brought by the prosecution on the record, both claimed that they are innocent and had been falsely implicated in the case. Both the appellants denied recovery of any stolen articles at their behest.

12. Insofar as A-1 is concerned, he stated that he had been arrested by the police on 08.03.2011 at about 11:00 a.m. and his signatures were obtained on blank papers, and thereafter, he was released in the morning of 10.03.2011 but was again arrested in between the night of



11/12.03.2011. A-1 examined only one witness, namely Ms. Munawar Jahan (DW-4), his mother, who deposed that her son was taken away by the police sometime in the night of 08.03.2011, and thereafter, he was released in the morning of 10.03.2011 but again police officials came in the night of 11.03.2011 and arrested her son and thereafter she stated that she came to know that her son has been falsely implicated in the present matter.

13. On the other hand, A-2 stated that he was picked up from his house by the police in the late hours of 10.03.2011 and his signatures were obtained on blank papers and the articles P-17 to P-23 were not recovered at his instance and he had been falsely implicated in the present case. He also stated that his chance prints were not connected in any manner with the case and the same have been fabricated at the instance of the police through the witnesses who were interested to frame him for committing the murder of the mother of a leading lawyer practising on the criminal side.

14. In defence evidence, A-2 elected to examine three witnesses viz. DW-1 Mohd. Sharif, his father, who testified that on 10.03.2011 at about 9/9.15 p.m. all his family members were having dinner when someone knocked the door and thereafter some police officials took his son away. DW-2 Nizamuddin, a neighbour of A-2, who also corroborated the version of father of A-2. DW-3 was Ct. Birendra Kumar, the Record Keeper at Motor Licensing Office, Raja Garden, New Delhi and produced the record of motorcycle bearing registration No. DL4SL 6531 make Bajaj Auto which was registered in the name of Mr. Ravinder Rai and produced evidence to the effect that motorcycle



was blacklisted in complaint number 72/11 dated 08.03.2011 PS Vivek Vihar, whose evidence has no relevance at all.

IMPUGNED JUDGMENT

15. The learned trial Court on appreciation of the evidence led by the prosecution and considering the broad facts and circumstances of the case found that the prosecution has been able to establish the guilt of the appellants beyond reasonable doubt, based on the following consideration:

“104. From the discussion above, it is held that the prosecution has established beyond all reasonable doubt the following circumstances:

- (a) Presence of accused persons within the vicinity of the house of the deceased shortly before the incident and the accused persons have failed to give any plausible explanation regarding their presence near the house of deceased Smt. Anna Mammen shortly before the incident.
- (b) Presence of accused Sameer in the house the house of the deceased Smt. Anna Mammen at the time of incident.
- (c) Motive of the accused persons to commit robbery in the house of deceased Smt. Anna Mammen
- (d) Recovery of robbed articles from the possession of the accused persons.
- (e) Homicidal death of the deceased as per Postmortem Report (Ex.PW11/A).
- (f) the accused persons have failed to prove their defence.”

16. In the two separate appeals before us, which have been heard together, the appellants/convicts have assailed the impugned judgment dated 08.05.2019 on various factual and circumstantial issues *particularly* with regard to manner in which they have been identified as the offenders as also disputing the recovery of stolen goods for want of joining of public witnesses, besides casting doubt on the manner the chance prints were lifted, stored and examined by the experts, upon which submissions we shall delve into later on in this judgment.



ANALYSIS & DECISION:

17. We have given our thoughtful consideration to the submissions advanced by the learned counsels for the appellants as also by the learned APP for the State, supported by the learned counsel for the complainant. We have also gone through the oral as well as documentary evidence placed on the record besides the case law cited.

TESTIMONY OF PUBLIC WITNESSES

18. We find that the prosecution has proven on the record that PW-3-Anees was a person who used to bring a Baboon to cater to the monkey menace in the area. On 08.03.2011 at about 3.30 p.m. he informed PW-4-Subhash that the rear gate of the house of the deceased was lying open, which used to usually remain closed, and which is indicated at point 'F' in the scaled site plan Ex.PW-15/A. PW-3-Subhash testified that the daughter of the deceased had dropped her in the morning on that day which fact was corroborated by PW-8 to the effect that her mother had resided with her the previous night since her brother was visiting them and had left for abroad the previous evening from her house, and therefore, she had dropped her mother at her house at about 10.00 a.m. on the fateful day, which fact was also corroborated by PW-6-Laxmi.

19. It is pertinent to mention that PW-6 Laxmi was a maid servant with the deceased for about 20 years and on a meticulous perusal of her entire testimony, we have no hesitation in holding it to be most reliable and convincing to the fact that she used to remain in the house with the deceased overnight and used to leave early morning after cooking breakfast for the deceased and she used to return around lunch time to



prepare meals for her. Even on the fateful day, she came around 12.30 p.m. and left at about 1.30 p.m. after preparing meals for the deceased. It is also in the testimony of PW-6 and PW-8 that the deceased used to impart tuitions to students from around 3.30 pm to 8.30 pm.

20. It is pertinent to mention that PW-8 categorically stated that she knew one Mohd Aslam who was engaged for white washing and refurbishing of the house of her mother that was done sometime in the month of October the previous year and the work had been performed by his son A-1-Imran and his team. She testified that she had seen A-1 doing work in the house of her mother in October and November. She testified that there was some work remaining for which she had been complaining to the father of A-1 viz. Mohd. Aslam and she testified that sometime in February, she had reminded the father of A-1 to complete the pending work and he assured her that the work would be done in the first week of March, about which she had apprised her mother.

21. Therefore, what follows is that A-1 had access to the house as he was known to the deceased and it is in evidence that there was no forced entry into the house from the main gate. In addition, A-1 was also aware of the daily routine of the deceased, including the time when the deceased would be alone. It is also brought out by PW-6 that there used to be no Security Guard at the entry of the colony and the iron gate between House No. C-12 and C-13 used to remain closed but tied up with an iron chain through which people used to pass/cross-over besides cyclists. As regards the identity of A-1, there was no serious challenge to the testimony of PW-6 that she had any motive or grudge to wrongly identify A-1 standing near the colony gate on the main road when she



was leaving at 1.30 p.m. on the fateful day.

22. We find the testimony of PW-6 to be quite reliable as she vividly described the Juicer mixer in the photograph Ex.PW-6/DA, the white wire Ex. P-1 which was used to strangle the deceased. In fact, she had vivid memory of the items in the kitchen, the placement of the switch board and other kitchen tools. She also testified that the deceased was wearing gold bangles and a gold ring when she left her at around 1.30 p.m. on the fateful day but the deceased never wore ear rings.

23. As regards the identity of the appellants as the real offenders, while it is categorical in the testimony of PW-6 Laxmi that A-1 was engaged for white wash for a few months, she truthfully testified that the other offender was a fat person with long hair and her version was not challenged in her cross-examination with regard to the identity of A-2 but the same also stood corroborated by the testimony of PW-9 Rajender Kumar, who conducted the videography of the place of the occurrence when A-1 and A-2 were brought to the spot during the preparation of pointing out memo, who testified that A-2 had long hairs.

24. The plea by the learned counsel for A-1 was that PW-6 Laxmi was a planted witness as she did not reveal to the police or PW-8 that *she had seen A-1 with the other fat boy with long hairs outside the gate on the main road while leaving the house at about 1:30 pm* when she came back to the place of occurrence later in the evening at 7.30 p.m. on 08.03.2011 ; and that even such fact was not disclosed to the police when they visited her house on the same day at 11.30 p.m.. In the opinion of this Court, this argument is not sustainable and it also does



not cast any doubt on the prosecution case for the elementary reason that PW-6 was a maidservant with the deceased for more than 20 years. In the face of the fact that she was also residing with the victim during the night for her wellbeing and safety and in all human probabilities, she had developed a kind of emotional bond with her, which fact was corroborated by PW-8. It is in the said circumstances that when she came to the house in the evening at 7.30 p.m. and she came to know that the deceased had been murdered, she was in deep shock and she did testify that “मुझे चक्कर आने लग गए और मेरा दिल घबराने लग गया”, which cannot be said to be unnatural behaviour. Likewise, when the police visited her late at night, she told them that she was unwell and would come to them the next morning. It is but natural that she was shattered and didn't have the mindset to render any assistance to the police in those hours and her statement u/s 161 CrP.C was recording the following morning.

25. Mr. Ritesh Bahri, learned APP in his short submissions rightly urged that the testimony of PW-6 Laxmi that she had seen two persons viz. A-1 & another fat boy with long hair near the colony gate is unassailable and neither A-2 nor A-1 in their statements under Section 313 Cr.P.C. denies the presence of the other at the place of occurrence during the relevant time. It may be pointed out that A-1 and A-2 sought to take a defence that it was PW-7 Vinay Lal who was involved in the murder of the deceased lady and in the same breath, took another shot at PW-6 Laxmi that her husband was involved in the murder, but such suggestions are shots in the dark that lack substance.

RECOVERY OF ARTICLES



26. As regards the properties that were stolen/taken away after the deceased was murdered, PW-8 testified that her mother was having about ₹2,80,000/- in cash in her house, which she wanted to deposit in her bank account, besides having jewellery items in the house which have been identified in some detail in her testimony viz. the black colour Hidesign purse (Ex.P10), the plain gold bangle (Ex.P11), the bangle with the lines (Ex.P12), the gold chain with six figures (Ex.P-13), one gold wedding band (Ex.P-14), one gold biscuit of Indian Bank of 20 grams (Ex.P-15), one gold coin (Ex.P-16), recovered at the instance of A-1 from the almirah on the first floor of his house.

27. Likewise, during the testimony of PW-8, jewellery items recovered at the instance of A-2 were produced viz. a gold biscuit of Indian Bank of 20 grams, one gold coin, one gold pendent, one gold patterned ring, one plain gold bangle and other bangle with the line pattern and correctly identified as those belonging to her mother viz., the gold biscuit of Indian Bank of 20 grams Ex.P-17, one gold coin Ex.P18, one gold pendent Ex.P-19, one gold patterned ring is Ex.P-20. It is also pertinent to mention here that insofar as the identity of the stolen articles is concerned, the TIP proceedings involving PW-8 were not challenged by the appellants and same were admitted under Section 294 Cr.P.C.

RECOVERY OF STOLEN ARTICLES

28. We find that on a cumulative appreciation of the testimony of PW-16 HC Surender Pal as well as PW-24 SI Manu Kumar and IO PW-30 Inspector Jarnail Singh, the prosecution is able to bring home that A-1 was apprehended from Wireless Park, 36 Block, Trilok Puri, and



on interrogation, his disclosure statement Ex.PW-16/A was recorded. He was then arrested at 11:30 am on 12.03.2011 *vide* arrest memo Ex.PW-16/B and search memo Ex.PW-16/C. Pursuant to the disclosure statement, *inter alia*, recovery of mobile phone bearing calling No. 9711529219 was also effected. It was pursuant to the disclosure made by A-1 that the recoveries of gold items were effected from the almirah on the first floor of his house No.27/296, Trilokpuri *vide* seizure memo Ex.PW-16/D.

29. As regards A-2, he was arrested by the officials of the PS Vivek Vihar on 12.03.2011, upon which, his disclosure statement Ex.PW-16/E was recorded and he was arrested at 4:30 p.m. *vide* arrest memo Ex.PW-16/F in pursuance of search memo Ex.PW-16/G. It may be pointed out that insofar as the A-2 is concerned, he was arrested by the officials of the Special Cell, Delhi Police on 11.03.2011 while riding on a bullet motorcycle Delhi-4SL-6531 Ex.P-24 at about 6.30 p.m. *vide* kalandara Ex.PW-17/B, and his personal search memo Ex.PW-17/D points to the recovery of two mobile phones, one of which was having No.9266657056. It was pursuant to the disclosure statement Ex.PW-17/A that cash of ₹81,000/- (Ex. P-23) and gold items (Ex.P-17, P-18, P-19, P-20, P-21 & P-22) were recovered from the *tand* i.e., upper slab in the kitchen of his house. The plea by learned defence counsel for A-2 that neither PW-17 HC Devi Dayal nor PW-25 SI Renu Yadav of the Special Cell, Delhi Police produced and proved DD No.8 on 11.03.2011 about the secret information being received as to the whereabouts of the A-2, hardly cuts any ice in view of the recording of DD No. 16 Ex.PW-30/DA on 11.03.2011 at about 10 p.m, whereby it was recorded that



A-2 on arrest revealed his role in the commission of robbery and murder of the deceased in Vivek Vihar, Delhi.

30. Although much mileage was sought to be drawn from the fact that no public witnesses were joined during the recovery of the stolen items, PW-30 Inspector Jarnail Singh testified that although the place of recovery was located in a densely populated area but having regard to the antecedents of the A-1 and A-2, no public person was willing to join. The fact of the matter is that the testimony of PW-16, PW-24 and PW-30 corroborate the version of each other with regard to recovery of stolen/robbed items and the same remain undented and there are no grounds to brush them aside.

31. At this juncture, it may be noted that a plea was taken by the learned defence counsel for the A-1 that the disclosure statement of A-1 Ex.PW-16/A is inadmissible under Section 27 of Indian Evidence Act, 1872 since the recovery of stolen articles had already been effected at his behest. for which reliance was placed on decision in **Suresh Chandra Tiwari v. State of Uttarakhand**⁸. However, the said plea is hardly of any assistance to A-1 inasmuch as though the discovery of facts in the sense of leading to the recovery of stolen goods is not attributable to the aforesaid disclosure statement Ex.PW-16/A, at the same time it is pertinent to observe that the recovery of stolen articles was effected from the almirah on the first floor of the house of A-1, which by itself is a relevant fact under Section 8⁹ of the Indian

⁸ Criminal Appeal 1902 of 2013 dated 28.11.2024

⁹ **8. Motive, preparation and previous or subsequent conduct.**

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue or relevant thereto, and the conduct of any



Evidence Act, 1872.

32. In essence, the conduct of A-1 in taking the police party to his house and getting recovered the stolen articles in a concealed position is a relevant fact that invites the inference that he was complicit in the commission of robbery after neutralizing the deceased. Reference in this regard can be had to decision in the case of **A.N. Venkatesh v. State of Karnataka**¹⁰ wherein it was held as under:

“9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in *Prakash Chand v. State (Delhi Admn.)* [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400]. Even if we hold that the disclosure statement made by the accused-appellants (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW 4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act.”

person an offence against whom is the subject of any proceeding is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. - The word "conduct" in this section does not include statements; unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. - When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations omitted

¹⁰ (2005) 7 SCC 714



33. Further, reference can also be invited to a decision by the Supreme Court in the case of **Geejaganda Somaiah v. State of Karnataka**¹¹ wherein it was held that:

“28. Besides Section 27 of the Evidence Act, the courts can draw presumptions under Section 114, Illustration (a) and Section 106 of the Evidence Act. In *Gulab Chand v. State of M.P.* [(1995) 3 SCC 574 : 1995 SCC (Cri) 552 : AIR 1995 SC 1598] where ornaments of the deceased were recovered from the possession of the accused immediately after the occurrence, this Court held :

“It is true that simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery. But culpability for the aforesaid offences will depend on the facts and circumstances of the case and the nature of evidence adduced. It has been indicated by this Court in *Sanwat Khan v. State of Rajasthan* [(1952) 2 SCC 641 : AIR 1956 SC 54 : 1956 Cri LJ 150] that no hard-and-fast rule can be laid down as to what inference should be drawn from certain circumstances. It has also been indicated that where only evidence against the accused is recovery of stolen properties, then although the circumstances may indicate that the theft and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of the stolen property had committed the murder. A note of caution has been given by this Court by indicating that suspicion should not take the place of proof. It appears that the High Court in passing the impugned judgment has taken note of the said decision of this Court. But as rightly indicated by the High Court, the said decision is not applicable in the facts and circumstances of the present case. The High Court has placed reliance on the other decision of this Court rendered in *Tulsiram Kanu v. State* [1951 SCC 92 : AIR 1954 SC 1 : 1954 Cri LJ 225] . In the said decision, this Court has indicated that the presumption permitted to be drawn under Section 114, Illustration (a) of the Evidence Act has to be read along with the ‘important time factor’. If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a presumption of guilt may be permitted. But if several months had expired in the interval, the presumption cannot be permitted to be drawn having regard to the circumstances of the case. In the instant case,

¹¹ (2007) 9 SCC 315



it has been established that immediately on the next day of the murder, the accused Gulab Chand had sold some of the ornaments belonging to the deceased and within 3-4 days, the recovery of the said stolen articles was made from his house at the instance of the accused. Such close proximity of the recovery, which has been indicated by this Court as an 'important time factor', should not be lost sight of in deciding the present case. It may be indicated here that in a later decision of this Court in *Earabhadrapa v. State of Karnataka* [(1983) 2 SCC 330 : 1983 SCC (Cri) 447 : AIR 1983 SC 446 : (1983) 2 SCR 552] this Court has held that the nature of the presumption and Illustration (a) under Section 114 of the Evidence Act must depend upon the nature of evidence adduced. No fixed time-limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not, calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. In our view, it has been rightly held by the High Court that the accused was not affluent enough to possess the said ornaments and from the nature of the evidence adduced in this case and from the recovery of the said articles from his possession and his dealing with the ornaments of the deceased immediately after the murder and robbery a reasonable inference of the commission of the said offence can be drawn against the appellant. Excepting an assertion that the ornaments belonged to the family of the accused which claim has been rightly discarded, no plausible explanation for lawful possession of the said ornaments immediately after the murder has been given by the accused. In the facts of this case, it appears to us that murder and robbery have been proved to have been integral parts of the same transaction and therefore the presumption arising under Illustration (a) of Section 114 Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her ornaments."

34. Incidentally, it is also pertinent to mention that the cited case of ***Suresh Chandra Tiwari (supra)*** is distinguishable on facts as it was a



case where though the disclosure statement was recorded at the police station, the recovery had been effected from the place enroute to the police station whereas in the instant case, the recovery of stolen goods which were kept in a concealed condition was effected from the house of A-1.

35. The plea raised by learned defence counsel for A-2 that the stolen articles which were allegedly recovered from A-2 were not deposited with the *malkhana* on the date of seizures but only after 12 days on 23.03.2011 in terms of *malkhana* register Ex.PW-29/A-4 is also not tenable. A bare perusal of the *malkhana* certificate Ex.PW-29/A-4 would show that insofar as stolen articles recovered at the instance of A-1 are concerned, the same were deposited with the *malkhana* on 12.03.2011 *vide* entry No. 2838/1 Ex.PW-29/A-2. It appears that insofar as stolen articles that were recovered from A-2 on 11.03.2011 by the police officials of the Special Cell, the same were kept in the *malkahna* of Special Cell but were deposited with PS Vivek Vihar *vide* entry No. 2878/11 Ex.PW-29/A-4 on 23.03.2011. It was only thereafter that the stolen articles were put for the TIP on 26.03.2011 and 06.04.2011 and identified by PW-8.

THE CHANCE PRINTS

36. Insofar as the lifting of chance prints of A-1 and A-2 from the place of occurrence is concerned, it is in the testimony of PW-2 Ct. Narender that he had lifted eight finger prints from the juicer mixer, wooden almirah and the bed which fact was corroborated by PW-27 ASI Jai Singh, In-charge of the mobile crime team and the statements of the aforesaid two witnesses under Section 161 Cr.P.C were recorded



on 11.03.2011. It is pertinent to mention that PW-2 Ct. Narender gave a very vivid description of the place of occurrence. The plea that PW-31 Inspector Ravinder Kumar testified that the chance prints were made available to him on 09.03.2011 is misconceived since PW-27 ASI Jai Singh in his Scene of Crime Report Ex.PW-27/A has not indicated as such. Furthermore, IO PW-30 Jarnail Singh was categorical that after collecting the chance prints from the office in charge of the Mobile Crime Team, he had sent the same to the Finger Print Bureau for examination only on 29.03.2011.

37. Having regard to the testimony of IO PW-30, we find it significant to observe that the identity of the A-2 Sameer had not been established till late night of 10.03.2011, and therefore, the plea that his chance prints were available with the specimen finger prints on 09.03.2011 is not fathomable. The submission of the learned defence counsel for A-2 that due to the mismatching of dates, the chance prints ought not to be relied upon is without basis as there is sufficient evidence on record to establish the veracity of the chance prints, finger prints and the respective reports.

38. The plea that *no questionnaire* was forwarded by PW-31 Inspector Ravinder Kumar in Ex.PW-31/D1 dated 29.03.2011 which was addressed to the Director, Finger Print Bureau, Kamla Market, New Delhi, and thus, the result of the comparison of chance prints *vide* report Ex.PW-31/E is flawed, is also not sustainable in law. Although, no specific questionnaire was framed as to whether chance prints Q-1 to Q-8 were identical with finger/palm prints of the persons mentioned in the reference letter, a bare perusal of request made by the IO *vide* letter



Ex.PW-31/D-1 would show that the letter dated 29.03.2011 Ex.PW-31/D-1 did specify that the chance prints were lifted from the site on 08.03.2011 and preserved as also specimen of the finger prints of both A-1 and A-2, which were then examined at the end of PW-31 Inspector Ravinder Kumar.

39. The said aspect is to be read in conjunction with the testimony of PW-2 Ct. Narender, who categorically stated that he had lifted 8 chance finger prints from the place of occurrence i.e. juicer motor/mixer , wooden almirah, bed and iron almirah and specifically saying that no chance prints were lifted from the jewellery boxes Ex.P-5 to P-9. Although, he was confronted with his previous statement under Section 161 Cr.P.C. to the effect that it did not specifically mention eight chance prints, the version of PW-31 Inspector Ravinder Kumar that 08 chance prints were developed at the spot, was not challenged in his cross-examination. The plea raised by the learned counsel for A-2 that chance prints were not handed over to the IO at the spot hardly cuts any ice inasmuch as the Mobile Crime Team is an expert body, which arrived at the place of occurrence and inspected the crime scene and in the ordinary course of the matter kept the chance prints in its possession and later on forwarded the same to the FSL through the IO.

40. The prosecution story is consistent to the effect that it was first A-2 who was arrested on 11.03.2011 at 2.30 p.m. by the police officials of Special Cell *vide* DD No. 40-B Ex.PW-13/A and on the subsequent day i.e. 12.03.2011 A-1 was arrested and the police custody of A-2 came to be taken on 12.03.2011. Therefore, at the cost of repetition, the plea that chance prints of A-1 and/or for that matter A-2, were planted



at the spot on 08.03.2011 itself belies common sense.

41. Much was sought to be gained by the learned defence counsels for the A-1 and A-2 urged that there is no explanation as to how specimen finger prints of 7 other suspects came to be taken as reflected in the report Ex.PW-31/E. We find the response by the learned APP for the State to be well made out that in a complicated case of robbery and murder it cannot be ruled that the IO, in order to evaluate all the chance prints from the spot, acquired specimen fingerprints of seven other suspects during the course of investigation as they too were probably working with A-1 and A-2 in the whitewashing business eventually ruling out the involvement of those seven suspects.

42. The foregoing discussion also falsifies the defence plea of DW-1 Mohd. Sharif as well as DW-2 Nizamuddin, who testified that A-2 was taken away from the house on 10.03.2011 at 9./9.15 p.m.. In fact, no such suggestion was ever given to the IO PW-30 Inspector Jarnail Singh. As a matter of fact, the testimony of DW-1 that even after his son was taken away by the police, he did not prefer any complaint to any quarters, belies common sense and is not the natural conduct expected of a parent inasmuch as he failed to ascertain the whereabouts of his son.

CALL DETAILS RECORD:

43. We also find that the prosecution has brought on the record that A-2 was arrested by the police officials of the Special Cell with two mobile phones, which are indicated in the personal search memo Ex.PW-17/D and one of such mobile No.9266657056 belonging to Tata Mobile Services was in the name of Mohd. Javed Parvez as per the CAF



Ex.PW-14/A. Although IO PW-30 testified that such person was interrogated, it can be safely assumed that since A-2 was possessing the same, he had also been using such mobile connection.

44. An analysis of the Call Detail Record Ex.PW-14/C indicates that on 08.03.2011, the location of the mobile device, when read in conjunction with the location ID chart marked as Ex.PW-14/D, reflects the following -:

<u>TIMING</u>	<u>LOCATION</u>
13:16	21089
15:39	37344
15:41	37344
15:49	21089
15:49	37344
15:51	37344
16:06	21348
16:07	36930

45. It is pertinent to mention that the location ID 21089 is traceable to the cell tower at Jhilmil Colony and the place of occurrence i.e., the house of the deceased falls in Vivek Vihar, which are adjacent colonies or rather comprised in the whole. The location of the aforementioned mobile device, which is attributable to A-2, is distinctly recorded at 15:49 hours through the Jhilmil tower. Additionally, Location ID 37344 corresponds to Himmatpuri, New Delhi, which also encompasses the surrounding areas. Insofar as A-1 is concerned, CAF Ex.PW-10/B shows that it was in the name of A-1 with SIM No.899111001 80016280191 which was a Vodafone number certified to be existing in the name of A-1 bearing 9711529219 Ex.PW-10/E, which too was recovered from him at the time of his arrest. The location ID of both the



mobiles through location ID chart Ex.PW-14/D would show that the finding of the learned Trial Court that both the accused were in the vicinity of the place of occurrence cannot be faulted on any grounds.

46. It is also pertinent to mention that on a conjoint reading of the CDRs of mobile number 9711529219 attributed to A-1 Ex.PW-10/A with respect to mobile No. 9266657056 EX. PW14/C, which is attributed to A-2, would show that they had not exchanged any calls with anyone during the crucial time from 13:16 Hours to 15:39 Hours, during which time the crime had probably been committed.

CONCLUSIONS:

47. In view of the foregoing discussion, on appreciation of cumulative effect of the facts and circumstances brought on the record, the prosecution is able to bring home the guilt of the appellant beyond reasonable doubt. In summary, we draw the following conclusions:

- i) that the deceased was living alone on the ground floor portion of the house and as per testimony of PW-6 Laxmi, the deceased was alive at 1.30 p.m. when PW-6 left the house after preparing meals for her;
- ii) that the testimony of PW-3 Mr. Anees and PW-4 Mr. Subhash, the *Chowkidar* besides PW-7 Mr. Vinay Lal @ Goldy establish that the dead body of the deceased was found on the ground floor of her house at 3.30 p.m.;
- iii) that the testimony of PW-6 Laxmi, a maidservant with the deceased for more than 20 years was categorical to the effect that while leaving the house of the deceased at 1.30 p.m. she had noticed A-1 standing near the gate of



the colony on the main road along with another fat boy with long hair , and who was identified by PW-9 Rajender Kumar as well;

iv) that the testimony of PW-6 Laxmi regarding identification of A-1 is unblemished and of sterling quality as also the identification of A-2 *albeit* partly, which appears to be truthful and reliable;

v) that the CDRs analysis brings out that although the appellants were possessing their mobile phones and using the same before and after the incident, however, they had not received or called anyone during 13:16 hours to 15:39 hours during which time the crime was probably committed and the analysis of CDR brings out that both A-1 & A-2 were in the vicinity of the place of occurrence;

vi) that the timing of the commission of the crime is also corroborated by the fact that in the *post mortem* report Ex.PW-1/A, undigested food in the stomach of the deceased was found;

vii) that the recovery of the stolen jewellery articles respectively from the house of A-1 and A-2 has been duly proven on the record;

viii) that the appellants have not been able to afford any explanation as to where they were located on the date and time of the incident;

ix) that the appellants also could not afford any explanation as to how they had come into possession of



various gold items and cash belonging to the deceased;

x) that the identity of the stolen goods taken away after committing robbery and murder of the deceased has been proved by PW-8, the daughter of the deceased without any challenge;

xi) that the chance prints of A-2 were lifted from the place of occurrence by PW-2 Ct. Narender on 08.03.2011 itself and the same along with the specimen palm prints that were taken during police custody, were sent for examination on 29.03.2011 to FSL and the report Ex.PW-31/E which is admissible under Section 293 of the Cr.P.C, clearly brings out that the chance prints of A-2 marked Q-1 were found at the place of occurrence and matched with the specimen of his left palm marked S-1, which is marked Ex. PW31/D.

xii) that there is no challenge to the testimony of IO PW-30 Inspector Jarnail Singh that both A-1 and A-2 were absconding from their respective houses from 08.03.2011 till the time of their arrest on 11.03.2011 & 12.03.2011.

DECISION

48. In the light of the above discussion, the prosecution has successfully proven that the offence of robbery and murder was committed in one and the same transaction and soon thereafter, A-1 and A-2 were not only absconding but after their respective arrests, they got recovered the stolen goods from places only known to them, and therefore, a legitimate presumption is invited that the appellants were



the offenders, who not only committed robbery but also committed murder of the deceased. We, therefore, find no illegality, perversity or irregularity in the reasoning accorded by the learned trial Court in passing the impugned judgment dated 08.05.2019, thereby convicting both the appellants under various counts of offences. Both the appeals are, therefore, held to be without any merits and are hereby dismissed.

49. The impugned judgment dated 08.05.2019 passed by the learned trial Court is hereby upheld. The conviction of both the appellants under Section 120-B of the IPC as well as Sections 302 & 394 read with Section 120-B of the IPC as well as Section 411 IPC and the order on sentence dated 15.05.2019 are hereby maintained.

50. The pending application(s) stands disposed of.

51. The Trial Court record be sent back forthwith and the same be weeded out in accordance with the rule.

DHARMESH SHARMA, J.

PRATHIBA M. SINGH, J.

FEBRUARY 19, 2025

Ch/Sadiq