

**Keshav Tyagi Vs. State**

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**Court :** Delhi

**Decided On :** May-09-2007

**Reported in :** 2007CriLJ3633; 140(2007)DLT672

**Judge :** R.S. Sodhi and; P.K. Bhasin, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 120B, 302, 392, 411 and 452; Code of Criminal Procedure (CrPC) - Sections 313; Punjab Police Rules - Rule 26.20

**Appeal No. :** Criminal Appeal No. 665 of 1999

**Appellant :** Keshav Tyagi

**Respondent :** State

**Advocate for Def. :** Ravinder Chadha, APP and ; Jagdish Prasad, Adv.

**Advocate for Pet/Ap. :** S.P. Singh Chaudhary, Adv. in Criminal Appeal No. 665 of 1999 and; V.K. Raina, Adv. in Criminal Appeal

**Disposition :** Appeal dismissed

**Judgement :**

**P.K. Bhasin, J.**

1. These two appeals have been filed by the two appellants challenging their conviction under Sections 120-B IPC, 452/120-B, 392/120-B and 302/120-B IPC

by the Additional Sessions Judge, Delhi vide his judgment dated 07-09-1999 in Sessions Case No. 1/98 arising out of FIR NO. 168/95 registered at Preet Vihar police station. They have also challenged the order dated 21-01-99 whereby both of them had been awarded different sentences for each of the offences of which they were found guilty. Since both the appeals arose out of the same judgment of the trial Court and were heard also together we are disposing of the same by a common judgment.

2. The facts leading to the conviction of the two appellants are like this: On 06-07-95 a robbery took place at house No. B-97, Swasthya Vihar, Delhi during the day time and while committing the robbery the robbers killed an old couple who was present in the house. That couple was living in the house along with their son (PW-1 Kishan Lal Chawla, who is a businessman and the complainant of this case). On the fateful day the wife of the complainant (PW-6 Chanchal Chawla) had gone to her parents house in Pahar Ganj because of the death of her father some days back. The complainant's mother was also supposed to go to the house of the parents of her daughter-in-law at about 4 p.m. that day to offer condolence to the bereaved family. However, when she did not reach Pahar Ganj the complainant's wife telephoned him that his mother had not reached Pahar Ganj. Thereafter the complainant sent his driver (PW-3 Bishan Singh) to his house with the van for taking his mother to Pahar Ganj. The driver on reaching the house of the complainant telephoned him and informed him that some tragedy had taken place and he should reach there immediately. The complainant being busy with his customers he sent his son Ashish (PW-2), who was also with him at that time in his factory at Vishwas Nagar, to their house. Ashish on reaching the house found his grand parents lying dead with a piece of cloth tied on their mouths. He thereafter informed his father about the death of his grand parents and on getting that information the complainant also reached his house Along with his employee PW-5 Narain Singh and then informed the police. Inspector Gurcharan Singh (PW-32), who was the SHO of Preet Vihar police station those days, on getting the information regarding the murder reached the place of occurrence and recorded the statement of the complainant Krishan Lal Chawla (Ex. PW-1/A) wherein he narrated the afore-said facts. Since at that time complainant's wife was not at home he had told the investigating officer that he would submit the list of missing

articles after his wife would come and would check up the articles. On the basis of that statement of the complainant Inspector Gurcharan Singh got registered the FIR of this case under Section 302 IPC. He also conducted inquest proceedings at the spot and sent the two dead bodies to the mortuary for post-mortem examination. In the meantime on the arrival of the complainant's wife a list of missing articles was prepared and handed over to the investigating officer. From the place of occurrence the investigating officer seized some pieces of electric wire which were lying near the feet of the deceased Hari Chand Chawla. At that time the investigating officer had also noticed that a piece of dhoti cloth had been tied around the mouth of the deceased Hari Chand Chawla and another cloth piece had been gagged into his mouth.

3. As per the further prosecution case appellant - accused Keshav Tyagi was an employee of the complainant in his Company for more than five years prior to this incident. It appears that during the investigation the involvement of Keshav Tyagi in the incident was suspected and he was arrested on 13-07-95. He made a disclosure statement while in police custody and pursuant thereto he got recovered one piece of old dhoti(Ex. P-10) from the dickey of a scooter which was lying parked outside the complainant's office and which was provided to him by the complainant. As per the prosecution case that piece of dhoti was later on linked with the piece of dhoti which the investigating officer had removed from the mouth of the deceased Hari Chand Chawla. Keshav Tyagi then took the police party to a house in Durga Puri where he used to live in a rented room. That room was found bolted from inside and when Keshav Tyagi knocked at the door one Shaukeen @ Jugnu opened the door. He had also been named by Keshav Tyagi as his associate in the crimes. Keshav Tyagi picked up one attache case which was kept inside that room and it contained one piece of old dhoti (Ex. P-5) kept in a pant pocket. That was seized. Keshav Tyagi also produced a bag (Ex. P-2) containing 35 silver coins(Ex. P-3/1-22 and P-4/1-13) which bag and coins the complainant who was also present there at that time claimed to be belonging to him. The same were sealed and seized vide memo Ex. PW-1/J-2. At the time of personal search of Shaukeen one ladies wrist watch(Ex. P-6) of RENO make was recovered. The complainant identified that watch also to be belonging to his wife. Earlier in the night of incident he had mentioned about theft of silver coins and of this watch also

in the list of missing articles, Ex. PW-1/B, given by him to the investigating officer. Shoukeen was also then arrested. On 14/7/95 accused Keshab Tyagi and Shaukeen took the police team to the shop of PW-8 from whom they had purchased three meters of red and blue coloured electric wire on the day of the incident. PW-8 identified them to be the persons who Along with one more person had purchased wire from his shop. Since similar wire was still available in his shop PW-8 gave one meter of that wire from the same roll from which he had given to the accused to the investigating officer. As per the prosecution case when the wire pieces which were seized from the place of occurrence and the wire piece which PW-8 had given to the police on 14/7/95 were sent to CFSL and examined there all the three pieces were found to be of same diameter and physical characteristics etc. which confirmed the involvement of both these accused (the appellants herein) in the incident of robbery and murder. On 15-7-1995 the police team along with the two appellants went to the house of Keshav Tyagi in Kharkhoda village in Uttar Pradesh from where he got recovered Rs. 5,000/-, one ladies Rolex watch and one locker key. It is also the prosecution case that on the basis of the information given by Keshav Tyagi and Shaukeen one Sunil Sharma and his mother Prakasho Devi (both of whom were also tried with the two appellants but were convicted only under Section 411 IPC) were also arrested and from their possession also part of the stolen articles belonging to the complainant were recovered. Some stolen articles were also recovered from one Ashok Tyagi who has, however, been acquitted by the trial Court.

4. On the completion of usual investigation five accused persons were charge-sheeted by the police and on the committal of the case to Sessions Court accused Keshav Tyagi, Shaukeen and Sunil were charged under Section 120-B IPC as well as under Sections 452/392/302/120-B IPC. Accused Prakasho Devi and Ashok Tyagi were, however, charged only under Section 411 IPC. All the five accused persons had pleaded not guilty and then the prosecution was called upon to adduce evidence in support of its case, which it did.

5. When examined by the trial Court under Section 313 Cr.P.C. accused Keshav Tyagi admitted that he was employed with the complainant for more than five years prior to the present incident. He also admitted that the parents of the

complainant had been killed, as is the prosecution case. He, however, denied that he was arrested on 13-07-95 or that he had got recovered a piece of dhoti from the dickey of a scooter as well as any of the articles which the prosecution is claiming to be the stolen property of this case. His plea was that he was picked up by the police on 7-7-95 from his room in Durgapuri and kept in illegal detention till 13-7-95 during which period he was subjected to third degree treatment and his signatures were obtained on several blank papers.

6. Accused Shaukeen @ Jugnu in his statement under Section 313 Cr.P.C. denied the entire prosecution case and pleaded false implication. He claimed that on 11-7-95 in the morning when he was present at his dry-cleaning shop, three persons had come in a maruti van and had enquired from him about Keshav Tyagi, Sunil and Mohinder etc. and since he knew only Keshav Tyagi he had pointed out towards the house of Keshav Tyagi which was just in front of his shop and regarding other persons he said that they were not known to him. Thereupon he was slapped by one of those persons and brought to the police station and then he was implicated falsely in this case. Regarding the deposit of Rs. 5000/- in his bank account he pleaded that on 2-7-95 he had sold his buffalo to one Khajan Singh (DW-1) for Rs. 9700/- against receipt mark DX-1 and out of that amount he had deposited Rs. 5000/- in his account with Syndicate Bank in Kharkhoda on 8-7-95.

7. Accused Keshav Tyagi examined two witnesses DW-3 Nagender Kumar and DW-4 Rajeshwar Tyagi, both of whom claimed to be his neighbours, to show that the police had not come to his house along with Keshav Tyagi nor his house was searched in July, 1995 by the police.

8. Accused Shaukeen also examined one witness (DW-1) to show that on 2-7-95 he had sold a buffalo to DW-1 for Rs. 9,700/-.

9. After examining and analysing the evidence adduced by the prosecution and the accused the learned trial Court held accused Keshav Tyagi and Shaukeen guilty for the commission of the offences for which they were charged and tried. Accused Sunil Sharma and Prakasho Devi were, as noticed already, convicted only under Section 411 IPC while the fifth accused Ashok Tyagi was acquitted. Vide order dated 21-01-99 accused Keshav Tyagi and Shaukeen were sentenced to life

imprisonment and a fine of Rs. 5000/- with a default stipulation was also imposed on them for their conviction under Section 120-B IPC as well as under Section 302/120-B IPC. Under Section 392/120-B IPC both of them were sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 5000/- each with a default stipulation of three months' rigorous imprisonment. No separate sentence was imposed on anyone of them for their conviction under Section 452/120-B IPC. Accused Sunil Kumar Sharma and Prakasho Devi were awarded punishment of rigorous imprisonment for a period of three years and they were also imposed a fine of Rs. 5000/- each and in default of payment of fine they were to undergo further imprisonment for three months. The substantive sentences of imprisonment awarded to the four convicted accused were ordered to run concurrently.

10. Accused Sunil Kumar Sharma and his mother Prakasho Devi did not file any appeal while accused Keshav Tyagi and Shaukeen challenged their convictions by filing separate appeals which, as noticed already, are now being disposed of by us by this common judgment.

11. Appearing for the appellant Keshav Tyagi in Criminal Appeal No. 665 of 1999 Shri S.P.Singh Chaudhary, Advocate mainly attacked the recoveries of stolen articles and electric wire and dhoti pieces got effected by Keshav Tyagi relying on which the trial Court had convicted him. He did not dispute the occurrence as well as the fact that the parents of the complainant were murdered in that occurrence. Learned Counsel submitted that the recoveries are doubtful since the disclosure statement was made by this accused on 13-07-95 and some recoveries were made that day, some on 14/7/95 and some on 15/7/95 but no independent witness was joined at the time of those recoveries by the police. It was also contended that the recoveries allegedly made at his instance from his house in Kharkhoda on 15-07-95 should not be relied upon since there is no Explanation forthcoming as to why on 13-7-95 itself police did not go to Kharkhoda. The recoveries were also challenged on the ground that no search warrant was obtained from the competent Court by the police before searching the house of the accused and further that the recoveries from the house of the accused at Kharkhoda was in violation of Rule 26.20 of Punjab Police Rules since the police party did not obtain prior permission

from the concerned Magistrate at Delhi for going to Kharkhoda village in Uttar Pradesh nor was any information given to local police there also before entering into the house of the accused despite the fact that there was sufficient time available with the police to seek permission from the Magistrate and also to inform the local police at Kharkhoda. Learned Counsel also contended that the recovery of locker key, Rolex wrist watch from the house at Kharkhoda cannot be relied upon also for the reason that the same were admittedly not sealed at the place of recovery. Another submission of the learned Counsel was that the prosecution is also relying upon the recovery of the key of a locker belonging to the complainant but that recovery on the face of it is highly improbable because that key was of no use to the culprits and so it can be safely said that it was planted by the police. In any case there was no test identification in respect of that watch and locker key. Scooter from the dicky of which dhoti piece was recovered was not seized by the police which fact also creates doubt about the genuineness of the said recovery. Learned Counsel also contended that as per the prosecution case the real culprit was accused Sunil Kumar Sharma but he has been convicted only under Section 411 IPC and, therefore, Keshav Tyagi could not have been convicted for any other offence except the one for which co-accused Sunil Kumar Sharma was convicted since against both of them the prosecution was relying upon the recoveries of stolen articles from their possession.

12. On behalf of appellant Shaukeen @ Jugnu Shri V.K.Raina, Advocate appointed by the Delhi Legal Services Authority, adopted most of the arguments advanced by Shri S.P.Singh Chaudhary. Additionally, it was contended by Shri Raina that the evidence against him is the recovery of one watch only which the prosecution claims to be belonging to the complainant and that as far as recovery of some cash amount from this accused is concerned he has led evidence in defense to show that he had sold his buffalo for Rs. 9700/- out of which he had deposited Rs. 5000/- in bank on 08-07-95 and, therefore, the deposit of Rs. 5000/- in the bank account of Shaukeen could not be used by the prosecution as a piece of incriminating circumstance. It was also contended by Mr. Raina that the trial Court had framed a charge of conspiracy to commit robbery and murder against three accused, namely, Keshav Tyagi, Shaukeen @ Jugnu and Sunil Sharma but finally held guilty of that charge only the two appellants while Sunil

Sharma was acquitted of that charge. The submission was that the incriminating material against Sunil Sharma and appellant Shaukeen was same, i.e. recovery of part of stolen articles from both of them and, in fact, from Sunil Sharma apart from the recovery of a watch Ex. P-14 and Rs. 5000/- in cash one gold chain had also been recovered and from appellant Shaukeen there is recovery of one wrist watch and Rs. 5000/- and in these circumstances appellant Shaukeen also could not have been held guilty for the offence of conspiracy as also for the substantive offences of robbery and murder pursuant to the conspiracy between him and Keshav Tyagi and at the most he could have also been held guilty only under Section 411 IPC for which offence his co-accused Sunil Sharma was convicted. It was further contended that against the other co-accused Prakasho Devi also the prosecution had claimed that she was found in possession of 12 silver coins and Rs. 5000/- in cash alleged to be a part of the stolen property of this case and the learned trial Court had accepted those recoveries but convicted her also only under Section 411 IPC but the same yardstick was not applied in case of appellant Shaukeen and despite there being no distinction in the cases of appellant Shaukeen, his co-accused Sunil Sharma and Prakasho Devi the appellant has been held guilty for the graver offences of robbery and murder and, therefore, the findings of the trial Court in respect of the appellant Shaukeen cannot be sustained.

13. Representing the State Shri Ravinder Chadha, learned additional public prosecutor while fully supporting the impugned judgment submitted that the appellants have not been able to make out a case for interference in appeal by this Court and that both the appellants have been rightly convicted by a well reasoned judgment of the trial Judge. It was also contended that the evidence of recoveries of the stolen articles was fully reliable and since the two appellants had failed to offer any Explanation for the possession of the articles recovered at their instance they were rightly held guilty for the offence of robbery as well as murder of complainant's parents. It was also contended that besides the recovery of stolen articles the two appellants had also got recovered electric wire from a electrical shop and that wire matched with the wire pieces found at the spot and appellant Keshav Tyagi had also got recovered two pieces of dhoti cloth which also matched with the cloth piece with which one of the deceased had been gagged.

14. We have examined the evidence adduced by the parties and have independently analysed the same in order to find out whether the conviction of the appellants is bad, as was contended by their counsel. As noticed already, as far as the prosecution case that the complainant's parents were murdered in their house on 6-7-95 is concerned none of the two appellants has disputed that fact. Even otherwise the fact that the parents of the complainant were murdered is amply proved from the evidence of the autopsy surgeon PW-22 Dr. L.T. Ramani who had noticed as many as eleven injuries on the body of Smt. Gulab Devi, mother of the complainant and eight injuries on the body of Shri Hari Chand Chawla, the father of the complainant. In his opinion death of both these persons was due to asphyxia resulting from manual strangulation. There was no cross-examination of this witness on behalf of any of the accused persons. Now we shall be proceeding further to deal with the submissions made from both the sides regarding the worth of the evidence adduced by the prosecution. However, before we deal with the afore-said contentions raised from both the sides it would be appropriate to have a glance at the evidence of the material prosecution witnesses. We start with the evidence of the complainant Krishan Lal Chawla(PW-1). He has deposed that on 6-7-95 at about 8.45 a.m. he had gone to his factory at 1/1, Gali No. 5, Pandav Road, Vishwas Nagar, Delhi leaving behind his parents, wife and son at home. He then deposed that since his wife had to go to her parents house at Pahar Ganj because of the death of his father-in-law 40 days back she asked him to send his driver Bishan along with the van to home at 4 p.m. so that his mother could go to Pahar Ganj but he forgot to send his driver to his house. He further deposed that at 5 p.m. he received a call from his wife from Pahar Ganj that his mother had not reached there on which he informed her that it was so because he could not send his driver and also that he was sending his driver along with van immediately to the house. He thereafter deposed that at about 5.20 p.m. he received a telephonic call from Bishan who told him that there was some 'garbar' at his house and requested him to rush immediately there. He also deposed that since he was attending to his customers he sent his son Ashish Chawla. He telephoned him at about 6 p.m. and told him to rush to his house immediately saying that everything was finished. Thereupon he along with one of his staff members Narain Singh reached home and as soon as he entered his house he found the dead body of his

father lying in the lobby having its mouth tied with cloth whereas the dead body of his mother was lying partially on the floor and partially on bed in the bedroom with open mouth while her artificial tooth had come out. He further deposed that he asked his son Ashish Chawla to inform the police, which arrived there after a while. He also sent Narain Singh to Pahar Ganj to bring his wife, who came back to the house at about 8.30 p.m. He further deposed that on return of his wife he disclosed to the police that two gold chains with lockets out of which on one locket 'A' was inscribed whereas the other locket had the inscription of 'D', one wrist watch of Britling, one ladies wrist watch of Rolex with small white nags all around, another ladies wrist watch make 'Rino', one camera of Pentax with black dori, gold ear rings of his mother, a white bag of rexine with the inscription of 'Hari Darshan Dhoop and Aggarbati' containing Rs. 25000/- in cash, 47 silver coins out of which 3/4 silver coins were having the inscription of Hans on one side while other silver coins had the pictures of Indian God and Goddesses. One small leather bag containing three gold bangles and a locker key were also missing from his house. He then deposed that on 13-07-95 SHO Gurcharan Singh of Preet Vihar police station came to his factory and interrogated Keshav Tyagi who made a disclosure statement pursuant to which he got recovered a piece of dhoti cloth from a scooter No.DL 2 SK - 1507 which his company had given to Keshav Tyagi for use. That cloth piece was Ex.P-10. PW-1 further deposed that Keshav Tyagi also got recovered some silver coins and another piece of dhoti kept in a pant pocket and one polythene bag of sky blue colour from his house in gali no. 5, Durga Puri where he had taken the police team. He further deposed that Keshav Tyagi had knocked at the door of office room and the same was opened by accused Shaukeen @ Jugnu whom he had earlier named as his associate. Shaukeen was also apprehended by the police and from his personal search a ladies wrist watch of 'Reno' make was recovered which he identified to be belonging to his wife. The complainant also deposed that the silver coins and the PVC bag in which those coins had been kept also belonged to him.

15. Next witness whose evidence was relied upon from the prosecution side is the wife of the complainant Smt. Chanchal Chawla who was examined as PW-6. She has corroborated the statement of her husband regarding her going to her paternal home in Paharganj on 6-7-95 and the happening of the incident in her absence

and also deposed about the missing of various from her house on 6/7/95 itself and about her having identified recovered articles in a TIP.

16. Now we come to the evidence of the police witnesses. PW-32 Inspector Gurcharan Singh is the investigating officer of this case. He deposed that on 06-07-95 when he was posted as SHO police station Preet Vihar at about 6.50 p.m. he received a wireless message that murder and dacoity have been committed in B-97, Swasthya Vihar, Delhi on which he along with SI Jata Shankar (PW-30), HC Mamood Khan, Ct. Ved Pal and some other police staff reached there and found HC Yashpal and Ct. Umesh already present. When he entered the house he found the dead body of an old man lying in the lobby and one dead body of an old lady lying on a bed in a room just adjacent to the lobby. He further deposed that the mouth of the male deceased was gagged with a piece of dhoti and the mouth of the female deceased was gagged with a dupatta. PW-32 then went on to depose about the proceedings conducted by him at the spot including inquest as well as seizure of some pieces of electric wire etc. He also deposed about the recording of statement of PW-1 Krishan Lal Chawla and his getting FIR registered on the basis of that statement. PW-32 further deposed that on 13-7-95 he along with SI Jata Shankar, SI Harbans and other police officials reached the factory of the complainant K.L.Chawla and there he interrogated accused Keshav Tyagi and after his interrogation he felt satisfied about the involvement of Keshav Tyagi and so he was arrested. Keshav Tyagi made disclosure statement pursuant to which he got recovered an old dhoti piece (Ex.P-10) from the front dickey of a scooter parked outside the factory. He also deposed that accused Keshav Tyagi then led the police team to his house in Durgapuri. The complainant was also with them. PW-32 further deposed that Keshav Tyagi got recovered 35 silver coins kept in a small polythene bag from the room where he was staying and also that room was opened by accused Shaukeen who was also arrested and from his personal search one ladies wrist watch make 'Rino' was recovered. The complainant identified the silver coins and the ladies watch to be belonging to him/his family. During his statement he was shown the recovered articles which he identified correctly.

17. PW-19 head constable Yashpal and PW-25 Sub-Inspector Madan Pal Bhatti are the police witnesses regarding the further recoveries of stolen articles made at the instance of the two appellants from village Kharkhoda in Meerut district where also accused Keshav Tyagi had a house. Both these witnesses have deposed that on 15-7-95 a police team along with the two appellants had gone to Kharkhoda village and Keshav Tyagi led the police team to his house from where he got recovered one locker key and a cash amount of Rs. 5,000/- and one ladies wrist watch of Rolex make. They also deposed that accused Shaukeen had then led the police team to Syndicate Bank in Kharkhoda and from there accused Shaukeen withdrew a sum of Rs. 5,000/- from his account. PW-25 further deposed that on their return to Delhi on the same day the complainant had come to the police station to inquire about the progress of the case and at that time he had identified the locker key and the wrist watch which had been got recovered by Keshav Tyagi. The wrist watch is Ex.PW-19/2 and the locker key is Ex.P-16.

18. These are the only material witnesses whose evidence was referred to before us during the course of arguments from both the sides in respect of the recoveries of stolen articles at the instance of the two appellants. The plea taken by accused Keshav Tyagi that he was falsely implicated cannot be accepted for the reason that the complainant never expressed any suspicion regarding his involvement in the crime till 13-7-95 when he was arrested. Even at that time he was arrested by the investigating officer as he had suspected his involvement during investigation and not the complainant. This was elicited from the complainant in cross-examination. If the complainant wanted to falsely implicate Keshav Tyagi he could have very well named him in his first statement to the police which was recorded on the day of the incident itself. In fact, it was also suggested to the complainant in his cross-examination that he had been falsely implicated by one Gopal Tyagi who was the SHO of Chandni Chowk police station on the day of the occurrence. Another suggestion put to him was that he had at one time dismissed from service his employee Surya Kant because of which Surya Kant's brother had fought with him and that the police had interrogated Surya Kant Tyagi and his brother Neeraj Tyagi and further that SHO Gopal Tyagi had got released Neeraj Tyagi and Surya Kant Tyagi and in their place he had got Keshav Tyagi implicated in the present case. The complainant denied all these suggestions. Keshav Tyagi had not even

made an attempt to substantiate his false implication as suggested to the complainant and, in fact from this suggestion put to the complainant that Keshav Tyagi had been got implicated by SHO Gopal Tyagi it at least gets admitted by Keshav Tyagi that the complainant had not got him implicated in this case falsely.

19. The complainant has deposed that accused Keshav Tyagi had got recovered some silver coins from his house in Durga Puri and he had identified those silver coins to be belonging to him. Those silver coins were kept in a bag which also belonged to him. Those silver coins are Ex. P-3/1 to 22 and P-4/1 to 13 and the bag is Ex. P-2. The complainant had stated about theft of these silver coins and the bag in the list Ex. PW-1/B of stolen articles which he had given to the police on the night of the incident itself while the police was at his house. It was suggested to the complainant in cross-examination that he had vacated that house on 12-7-95 and that on 13-7-95 when the police had gone there the room was opened by landlord Tilak Dhari(PW-10). The complainant denied that suggestion. This suggestion appears to have been put to the complainant to belie his statement regarding the recovery of silver coins from the room in the house at Durga Puri. However, this accused has not adduced any evidence to substantiate this plea taken by him regarding surrender of the tenanted room on 12-7-95. In fact, when he was examined under Section 313 Cr.P.C. he did not take this plea at that time while answering the questions regarding recovery of silver coins from his room in Durga Puri house. That shows that earlier during the prosecution evidence he had taken a false plea that he had surrendered the tenanted room in Durga Puri house. This plea being false also becomes evident from the fact that he has also taken a plea that he had been apprehended by the police from his Durga Puri house on 7-7-95 and then kept in illegal confinement till 13-7-95. If he had been kept in illegal confinement from 7-7-95 till 13-7-95 then he could not have surrendered the room to his landlord as claimed by him. The prosecution had examined PW-10 Tilakdhari, the landlord of accused Keshav Tyagi in Durga Puri. In his chief-examination he claimed that Keshav Tyagi had lived in his house from 1994 to 1995. In cross-examination he claimed that father of Keshav Tyagi had come and surrendered the room and he had signed receipt Ex. PW-10/DA in token of having taken back the possession on 12-7-95. Before that day Keshav Tyagi had been taken away by the police. PW-10 had then to be cross-examined by the public

prosecutor and he denied the suggestion that Ex. PW-10/DA was a fabricated document and he had made a false statement. This witness clearly appears to have deposed falsely to help the accused. If actually Keshav Tyagi's father had surrendered the room on 12-7-95 he should have been examined by the accused who claims that he himself had surrendered the room and not that in his absence his father had vacated it. As noticed already, this accused had in any case abandoned this plea when examined under Section 313 Cr.P.C.

20. There is yet another reason for holding that this accused has taken a false plea that he had surrendered his room on 12-7-95. When he was put a question during his statement under Section 313 Cr.P.C. to the effect that he used to reside in house no. 1449/78, Gali No. 5, Durga Puri, Shahdara Keshav Tyagi denied that fact also. Regarding his being picked up by the police on 7-7-95 also Keshav Tyagi has taken contradictory pleas inasmuch as during the cross-examination of PW-32 Inspector Gurcharan Singh it was put to him that Keshav Tyagi was picked up from his house in Durga Puri on 7-7-95 while to the complainant it was put to him in cross-examination that Keshav Tyagi was picked up from his(complainant's) factory and then illegally detained by the police. It was also suggested to PW-32 that when he had visited the house of Keshav Tyagi in Durga Puri on 7-7-95 he had found one Mahender Singh also along with Keshav Tyagi in the room and he(PW-32) had allowed Mahender Singh to run away from there. PW-32 denied that suggestion. If actually Keshav Tyagi had been picked up from his house on 7-7-95 he could have substantiated that plea by examining that Mahender Singh who according to himself was with him in his room that day. He has not done that. All this shows that Keshav Tyagi has been taking false pleas one after another. This happens only when one is actually guilty. In these circumstances we find no justification in discarding the statement on oath made by the complainant regarding the recoveries of the stolen articles from the houses of Keshav Tyagi pursuant to his disclosure statement. The complainant had no reason to depose falsely against him and, as noticed already, if actually the complainant wanted to implicate him falsely in this case he would have implicated him on the day of occurrence itself by naming him in his first statement to the police.

21. As far as Shaukeen is concerned he has claimed that he was picked up from his shop. However, he could not substantiate that plea and that shows that he had also taken a false plea. And, therefore, we have no hesitation in accepting the evidence of the complainant and the police witnesses to the effect that one ladies wrist watch belonging to the complainant was recovered from him when he was arrested at the time of visit of the police team to the house of accused Keshav Tyagi in Durga Puri which the complainant had identified to be belonging to him.

22. As far as the recovery of 35 silver coins at the instance of Keshav Tyagi is concerned, we also have the evidence of investigating officer PW-32 Inspector Gurcharan Singh and PW-30 Sub-Inspector Jata Shankar Mishra who also had gone to the house of accused Keshav Tyagi in Durga Puri on 13-7-95. As far as the submission of the learned Counsel for the appellant Keshav Tyagi that the recovery of silver coins from the Durga Puri house should be disbelieved for the reason that it was not supported by any independent person is concerned, we do not find any force in the same and for this reason the recovery cannot be doubted. As noticed already, the case of the prosecution is that the investigating officer had gone to the complainant's factory on 13-7-95 to interrogate Keshav Tyagi and it was during that interrogating of Keshav Tyagi that he had disclosed that he had kept the stolen articles at his house in Durga Puri. After getting that information the police party had gone to Durga Puri and since the stolen articles were expected to be recovered the complainant was also taken there by the police as he could be the best person to identify the stolen articles. Since the complainant had no animus against Keshav Tyagi it cannot be said that he was not an independent witness. At this stage we may make a useful reference to a judgment of the Hon'ble Supreme Court in Sanjay @ Kaka etc. v. the State : 2001 CriLJ1231 wherein also the recovery of stolen articles at the instance of the accused was effected in the presence of the complainant of that case and the accused had raised an objection that the recovery should be doubted since no independent witnesses were associated for the recoveries. That objection was rejected by the Supreme Court observing that the complainant being the most natural witness, being brother of the deceased, to be present during the investigation when the accused made disclosure statements. Hon'ble Supreme Court had also observed that besides the complainant there was evidence of the investigating officer also

regarding the recoveries and his testimony also could not be disbelieved. In the present case also besides the evidence of the complainant there is evidence of the investigating officer and other police witnesses and their evidence cannot be viewed with suspicion because they are police officials. In any case, the complainant had stated in his cross-examination that the investigating officer had asked some persons to join the investigation but none had agreed. We, therefore, are not inclined to reject the evidence of recoveries of stolen articles on the ground that the same were not witnessed by any independent person.

23. As far as appellant - accused Shaukeen is concerned the prosecution case against him is also that when the police team had gone to the house of his co-accused Keshav Tyagi in Durga Puri on 13-7-95 he was found present in that room and when his personal search was conducted ladies wrist watch was recovered which also the complainant had identified at that time to be belonging to his wife and accordingly that watch was taken into possession by the police vide memo Ex. PW-1/K and the same is Ex. P-6. The complainant had claimed in his chief-examination that on the day of the occurrence one ladies wrist watch of 'Rino' make was also found to be missing from his house. The watch which was recovered from the possession of Shaukeen was also of 'Rino' make. The witnesses to that recovery are also the complainant and the investigating officer PW-32 Inspector Gurcharan Singh. Learned Counsel for the appellant Shaukeen had challenged that recovery only on the ground that no independent witness was associated when the police team had gone to Durga Puri house and the complainant could not be said to be an independent witness. We have already rejected similar argument advanced by the learned Counsel for Keshav Tyagi and for the same reasons we are not inclined to disbelieve the prosecution case regarding this recovery also of the stolen watch from the possession of appellant - accused Shaukeen. Shaukeen has also not claimed the watch Ex. P-6 to be belonging to him. We have thus no hesitation in concluding that both appellants were found in possession of stolen articles soon after the incident of robbery and, therefore, the learned trial court rightly held them guilty of the offence of robbery. Since accused Shaukeen was present in the house of Keshav Tyagi in Durga Puri and from that house part of the stolen property was recovered and one stolen wrist watch was recovered from Shaukeen also at that time. It also becomes clear that

both these accused had committed the robbery by hatching a well planned conspiracy. As noticed already, Keshav Tyagi was working with the complainant. He, therefore, must be knowing the complainant's parents and he also must be knowing that on the day of incident only they would be present in the house and if he would go there to commit the robbery they would not suspect anything foul from his going there on some pretext. In view of the facts which we have found to be fully established we feel that both the appellants have been rightly convicted for the offence of hatching conspiracy punishable under Section 120-B IPC and also for committing robbery in pursuance of the conspiracy hatched by them.

24. It is also the prosecution case that appellant Keshav Tyagi had during the interrogation by the police disclosed that some stolen articles had been kept in his house in Kharkhoda village also which he could get recovered. He had then led the police team to Kharkhoda village and from his house there he got recovered one bag which contained Rs. 5000/- and one ladies wrist watch of 'Rolex' make and one locker key. The same were taken into police possession by PW-25 Sub-Inspector Madan Pal. The seizure memo in that regard is Ex. PW-19/A. The witnesses who have deposed about the recovery of 'Rolex' watch, locker key and Rs. 5000/- at the instance of Keshav Tyagi from his house in Kharkhoda are PW-25 SI Madan Pal and PW-19 HC Yashpal. Keshav Tyagi has denied these recoveries at his instance but in our view we have no reason to disbelieve the police witnesses of these recoveries. It was contended by learned Counsel for the appellant Keshav Tyagi that these recoveries should not be accepted since PW-25 Sub-Inspector Madan Pal, who had gone to Kharkhoda village along with the accused to effect recoveries pursuant to the disclosure made by Keshav Tyagi, himself had stated in his chief-examination itself that he had not sealed these items at the time of their seizure. He had further claimed that when he came back to the police station that day the complainant came there to enquire about the progress of this case and at that time he had identified the wrist watch and the locker key. Learned Counsel contended that that cannot be said to be a genuine identification and considering the fact that the articles were not sealed at the place of recovery and they were not even got identified from the complainant in a formal test identification parade by a Magistrate it can be safely inferred that these two items were planted ones and cannot be used as incriminating piece of evidence

against the accused. In our view, for these reasons put forth by the learned Counsel the recoveries of the watch and the locker key cannot be discarded. Since the evidence of the recovery witnesses is reliable non-sealing of these two recovered articles from the house of Keshav Tyagi in Kharkhoda village has no adverse consequence for the prosecution. We are not inclined to accept the submission that these two items have simply been introduced in the prosecution story as stolen articles and shown to have been recovered at the instance of Keshav Tyagi. The complainant had informed the police regarding the theft of 'Rolex' watch studded with white stones as well as the locker key no. 8983 vide his letter Ex. PW-1/B. The seizure memo in respect of these two items Ex. PW-19/A clearly records the recovery of a 'Rolex' watch studded with white stones and locker key no. 8983. In a case of robbery and murder decided by the Hon'ble Supreme Court which is reported as 203 8 Ape Dec 231, Rajinder Kumar v. State of Rajasthan also a similar objection regarding non-sealing of the recovered stolen articles from the accused was raised but was rejected on the ground that the evidence of the recovery witnesses having been found to be fully reliable the recovery could not be doubted for the reason that the recovered articles were not sealed at the time of recovery. In any case, even if we exclude from consideration these recoveries from the house of accused Keshav Tyagi in Kharkhoda the prosecution having proved other recoveries of stolen articles from the two appellants its case does not suffer any set back.

25. It is also the prosecution case that in the incident of robbery Rs. 25,000/- in cash were also removed from the house of the complainant out of which a sum of Rs. 5000/- accused Shaukeen deposited in his bank account on 8-7-95. He had sought to explain that deposit by claiming that he had sold one buffalo on 2-7-95 to one Khazan Singh(DW-1) for Rs. 9700/- which amount he had received from Khazan Singh and for that he had issued a receipt also. To support this plea Shaukeen examined that Khazan Singh who has supported him. Regarding this part of the prosecution case in respect of accused Shaukeen his counsel submitted that the deposit of Rs. 5000/- by Shaukeen in his bank account of 8-7-95 cannot be said to be an incriminating piece of evidence against him in view of the Explanation offered by him and which is fully substantiated by the evidence of DW-1 Khazan Singh whose testimony could not be got demolished in his cross-

examination by the prosecutor and nothing has been brought out in his cross-examination which could show that Khazan Singh had deposed simply to help accused Shaukeen. In our view, this plea taken by accused Shaukeen does not inspire confidence and we are also not inclined to accept the testimony of DW-1 Khazan Singh for the reason that to none of the witnesses it was put in cross-examination that the amount of Rs. 5000/- which was deposited by Shaukeen in his bank account on 8-7-95 was a part of the sale price of his buffalo which he had sold to Khazan Singh. Thus, the learned trial court had rightly held that this amount of Rs. 5,000/- was also a part of the money stolen from the house of the complainant.

26. The complainant had categorically claimed in his evidence that the articles which were found to have been stolen from his house had actually been stolen on the day of the incident itself. It is, thus, clear that the robbery and murder of the parents of the complainant took place at the same time and both the crimes were committed at the same time.

27. It was submitted by learned Counsel for the appellant that even if these recoveries from these two appellants are accepted even by this Court still their conviction for the murder of the parents of the complainant in any case cannot be sustained and at the most they can be held guilty for the commission of offence punishable under Section 411 IPC. We, however, do not subscribe to this argument also. It is now well settled that if robbery and murder take place at the same time and soon thereafter someone is found in possession of the looted property for which no Explanation is offered by that person then it can be said that that person had not only committed the offence of robbery but he was the murderer also of the victim in whose house he had entered to commit robbery. We are, therefore, of the view that on the basis of afore-said recoveries alone the prosecution case to the effect that these two appellants had not only committed the offence of robbery but had also murdered an old couple while committing robbery in their house pursuant to a pre-planned conspiracy stood established beyond reasonable doubt and consequently their appeals deserve to be dismissed.

28. In order to strengthen its case regarding the conspiracy between the two appellants and the commission of the offences of robbery and murder pursuant thereto prosecution had also relied upon the circumstance of the dhoti piece which the investigating officer had found tied around the face of the deceased Hari Chand Chawla matching by the experts at the CFSL with the piece of dhoti which appellant Keshav Tyagi had got recovered on 13-7-95 after his arrest from the dickey of a scooter which was lying parked outside the complainants' factory and the dhoti piece which was recovered from the house of Keshav Tyagi in Durga Puri. CFSL report is Ex. PA-1 which shows that three cloth pieces were sent to CFSL for examination and according to which on laboratory examination all these three pink coloured cloth pieces having purple coloured borders were found to be a part of single piece of cloth. The piece of cloth which was got recovered by Keshav Tyagi from the dickey of the scooter is Ex. P-10 and the piece of cloth which was recovered from his house in Durga Puri is Ex. P-5, as deposed to by the complainant(PW-1) and the investigating officer(PW-32) and another police witness PW-30 SI Jata Shankar. In this regard the submission of learned Counsel for Keshav Tyagi was that this piece of circumstantial evidence relied upon by the prosecution cannot be said to be of any worth for the prosecution since the cloth piece which the investigating officer had noticed tied around the mouth of the deceased Hari Chand Chawla was not even seized and that is evident from the fact that neither the investigating officer PW-32 Inspector Gurcharan Singh nor PW-30 SI Jata Shankar, who was also accompanying him at the time of their first visit to the place of occurrence on getting the information about the incident, claim to have taken into possession that piece of cloth nor has it been claimed by anyone of them that that piece of cloth was also sent to CFSL for examination along with the other two cloth pieces which Keshav Tyagi had allegedly got recovered and therefore, it is a mystery as to with which piece of cloth the experts had matched the cloth pieces Ex. P-5 and P-10. Learned Counsel also submitted that even during evidence only these two cloth pieces were produced and the third piece allegedly found tied around the mouth of the deceased Hari Chand Chawla was not produced in the trial Court. Learned prosecutor did not dispute this assertion of the counsel for the appellant. He also did not point out to us any document to show that the cloth piece with which the mouth of the

deceased Hari Chand Chawla was gagged was actually seized by the investigating officer nor any statement to that effect of any witness was referred to. Learned Counsel also submitted that in the absence of the third cloth piece the learned trial Judge was not justified in observing in the concluding paragraphs of his judgment that the matching of the three cloth pieces as mentioned in the CFSL report was also an incriminating circumstance which could be utilised by the prosecution to prove its case against the appellants for the offences of robbery and murder pursuant to the conspiracy hatched by them.

29. The prosecution had also sought to establish the existence of conspiracy between the two appellants for the offences of robbery and murder on the basis of evidence of the investigating officer PW-32 Inspector Gurcharan Singh to the effect both these appellants had on 14-7-95 taken the police team to a shop of electrical goods owned by PW-8 in Baldev Park, Parwana Road, Delhi and at that time PW-8 had identified both the appellants to be the persons who had visited his shop along with one other person on 6-7-95 at about 12 noon and they had purchased three meters long electric wire from his shop. PW-8 had also given a piece of one meter electric wire to the investigating officer from the same roll from which the appellants had been given three meters of wire on 6-7-95. As noticed already, when the investigating officer had visited the place of occurrence on 6-7-95 he had found some electric wire pieces lying there near the dead body and when during the investigation those wire pieces and the one which PW-8 had given to the investigating officer were sent to CFSL for examination those wire pieces were found to be similar in respect of their colour of insulation, diameter, the number of strands and other general physical characteristics. In this regard the submission of learned Counsel for both the appellants was that this piece of circumstantial evidence is also of no value for the prosecution since PW-8 has claimed that he had handed over a piece of one meter long wire to the investigating officer. Learned Counsel for the appellants pointed out to us that in the CFSL report besides reference to two pieces of electric wire of the lengths of three meters and about 1.25 meters, which the prosecution claims to have been seized from the place of occurrence, there is a reference to a third piece of wire of seven meters length. Learned Counsel submitted that PW-8 had handed over a piece of wire which was one meter long only and there is no reference in the CFSL

report about the wire of one meter length which shows that the electric wire of seven meters length is a planted wire. In this regard learned Counsel also drew our attention to the findings of the learned trial Court regarding this argument which was raised there also. We find that the learned trial Court in para no. 105 of the judgment has observed that since the piece of wire which as per the CFSL report was seven meters long had been kept in a parcel number of which was seven inadvertently the CFSL official might have given the length of wire as seven meters by some confusion and there was no chance of tampering of the case property which had been received in the CFSL in sealed parcels with seals intact. Learned Counsel submitted that this finding of the trial Court is totally conjectural and could not have been arrived at in the absence of any evidence of someone from CFSL to clarify the exact position.

30. We have carefully examined the evidence in respect of the recoveries of cloth pieces at the instance of accused Keshav Tyagi and the recovery of electric wire at the instance of both the appellants jointly. For the reasons put forth by the learned Counsel for the appellants in respect of these recoveries we also do feel that there is some element of doubt regarding these recoveries. There is no Explanationn forthcoming for non-seizure of the cloth piece which the prosecution claims to have been found tied around the mouth of the deceased Hari Chand Chawla and its non-production during the prosecution evidence before the trial Court. In the absence of evidence about the seizure of the cloth piece from the place of occurrence it cannot be accepted that the third piece of cloth which was examined by the expert at CFSL was the one with which the mouth of the deceased Hari Chand Chawla was found gagged. We also agree with the submission of learned Counsel for the appellants that the finding of the trial Court to the effect that in the CFSL report the CFSL official might have inadvertently mentioned the length of one electric wire as seven meters because of it being kept in a parcel which was marked as number seven, is conjectural. It was for the prosecution to have come out with proper Explanationns for these apparent deficiencies in its evidence regarding the recoveries of cloth pieces and electric wire at the instance of the appellants which were sought to be used as incriminating pieces of evidence against them. In these circumstances, we are inclined to exclude both these pieces of evidence from consideration. We are,

however, of the view that even after excluding this part of circumstantial evidence from consideration the prosecution case against the two appellants would still succeed in view of our acceptance of the evidence regarding the recovery of 35 silver coins belonging to the complainant and the bag in which those coins had been kept which also belonged to the complainant and the recovery of one ladies wrist watch from accused Shaukeen at the time of his arrest from the house of Keshav Tyagi in Durgapuri and also the recovery of one ladies wrist watch and a locker key belonging to complainant from the house of accused Keshav Tyagi in Kharkhoda village as well as the recovery of Rs. 5,000/- from there and deposit of Rs. 5,000/- by accused Shaukeen in his bank account on 8-7-95 the Explanation for which given by Shaukeen has not been found by us to be acceptable.

31. As far as the submission of the learned Counsel for the appellants that since two accused from whom also part of the stolen articles had been recovered had been convicted only under Section 411 IPC the two appellants based on similar kind of evidence of recovery of part of stolen articles from them could not be convicted for the graver offences of conspiracy and robbery with murder is concerned, we can only say that as far as these two appellants are concerned they cannot escape from the consequences of having been found in possession of stolen articles despite the fact that the learned trial Judge has not found the other two accused guilty of robbery and murder even though from them also stolen articles were recovered soon after the incident of robbery and murder. Since the State has not challenged the decision of the trial Court in not finding those two accused guilty of the offences of robbery and murder we are not saying anything further in this regard.

32. No other point was urged from both the sides nor evidence of any witness except of those which we have already examined was referred to during the course of arguments.

33. In the result, we dismiss Criminal Appeal No. 665 of 1999 of appellant-accused Keshav Tyagi as well as Criminal Appeal No. 667 of 1999 filed by appellant-accused Shaukeen @ Jugnu and consequently their convictions and the sentences awarded to them stand affirmed.

