

Uma Kishana and ors. Vs. State of Ajmer

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Court : Rajasthan

Decided On : Nov-03-1955

Reported in : 1956CriLJ1134

Judge : Nigam, J.C.

Appellant : Uma Kishana and ors.

Respondent : State of Ajmer

Judgement :

Nigam, J.C.

1. Loomb Raj and Uma have been found guilty of offences under Sections 457 and, 380, Penal Code. Under Section 457, Penal Code Loomb Raj has been sentenced to 7 years' rigorous imprisonment and a fine of Rs. 1,000/- with 6 months' further rigorous imprisonment in default. Under Section 380, Penal Code he has been sentenced to 4 years' rigorous imprisonment and a fine of Rs. 1,000/- with 6 months' rigorous imprisonment in default. The substantive sentences have been directed to run concurrently.

Uma has been sentenced to 5 years' rigorous imprisonment and a fine of Rs. 1,000/- with 6 months further rigorous imprisonment in default under Section 457, Penal Code. Under Section 380, Penal Code he has been sentenced to rigorous imprisonment for 3 years and a fine of Rs. 1,000/- with six months' further rigorous imprisonment in default.

Again the substantive sentences have been directed to run concurrently. Dhanna has been found guilty of offences under Sections 457 and 381, Penal Code. Under Section 457, Penal Code he has been sentenced to 7 years' rigorous imprisonment and a fine of Rs. 1,000/- With 6 months' further rigorous imprisonment in default.

Under Section 381, Penal Code he has been sentenced to 4 years' rigorous imprisonment and a fine of Rs. 1,000/- with 6 months' rigorous imprisonment in default. In his case also the substantive sentences have been directed to run concurrently. Against their conviction and sentence the three accused persons have come up in appeal. Uma has filed Cri. App, No. 6 of 1955. Loomb Raj has filed Cri. App. No. 8 of 1955 and Dhanna has filed Cri. App. No. 10 of 1955.

All the appeals arise out of the same case and have been argued together. I, therefore, give one judgment in all the three appeals. The original will be placed on the file of Cri. App. No. 8 of 1955 and copies thereof will be placed on the files of Cri. Appeals Nos. 6 and 10 of 1955. The judgment will govern all the three appeals.

2. In the appeals, I have heard the learned Counsel for the appellants and the learned Public Prosecutor.

3. The prosecution case is that Dhanna was employed in the local branch of the Imperial Bank of India (now State Bank of India) as a chowkidar. Loomb Raj was a head constable in the Ajmer State armed police and was occasionally posted to the bank incharge of the armed guard posted there. Uma is a locksmith by profession.

4. On 25-6-1954 the cash balance in the bank was checked by the Agent Mohan Teck Chand Mansukhani and the Head Cashier BhaWani Persad Jwala Parsad Harsolia. The balances were found correct. On 29-6-1954 which was a holiday, the bank was opened for the purpose of receiving some cash from the railway department and the occasion was used by the Agent for taking out cash to meet the anticipated requirement on 1-7-1954.

I may here state that 26-6-1954 being Saturday was a half day for the bank. 27-6-1954 was Sunday. On the 28th June, though the bank was opened, cage No. 2 from which the amount was later removed was not opened. 29th June was a bank holiday for the half yearly balancing of accounts and 30th June was a holiday on account of solar eclipse.

5. One of the trays should have contained 63 bundles of 1000 pieces of one rupee notes (each bundle containing ten packets of one hundred notes). From this 25 bundles were taken and when the remaining bundles were counted, as a routine check, it was discovered that there was a deficiency of one bundle. Then a detailed check was made. The missing bundle was not found.

Thereupon the whole stock in cage No. 2 was checked and further shortage of 10 rupee and 5 rupee notes was discovered. As the locks were intact, the whole cash balance contained in all the 5 separate cages was counted. An enquiry was made from the branch of the same bank at Jaipur to which a remittance had been made on 15-6-1954. This took sometime.

Finally, on becoming certain that the shortage was there, a report was made by telephone to the Bank's head office at Bombay. The bank's head office deputed a senior officer who arrived on 2-7-1954 and with his concurrence a report was made to the police.

6. Investigation started. On 5-7-1954 Dhanna was called from Bhaisapa. On interrogation he is stated to have made certain statements which led to further arrests and recoveries from accused persons. Loomb Raj is stated to have delivered 39 packets of ten rupee notes of a value of Rs. 39,000/- and 95 separate notes of Rs. 10/-each. Dhanna is stated to have delivered 20 packets (not all of them complete) of Rs. 10/-notes and 20 packets of Rs. 5/- notes of a total value of Rs. 29,400/-.

On information given by him, Ratna also handed over to the police 354 notes of one rupee each. Thus the total recoveries from Dhanna Were of a sum of Rs. 29,754/-. Ram Karan an armed police constable delivered 5 rupee notes Worth Rs. 4,645/-. Uma took the police party to Delhi and from his father-in-law's house

10-rupee notes worth Rs. 8660/- were recovered from a locked trunk. He also delivered one packet of live rupee notes worth Rs. 500/- from a sack of wooden chips placed in an open Verandah.

At his instance Pukhraj gave 5 rupee notes worth Rs. 1,450/- and his wife Sm. Imarti handed over 300 notes of 5 rupee each from a manure heap near her house. After the necessary investigation, the three accused persons have been committed to Court, Ram Karan having been made an approver.

7. The prosecution story is that all strong room doors bear two locks. The key of one is kept With the Head Cashier and the other key is kept with the Agent. The Head Cashier is required to place all his keys in a drawer in a safe called Millner's safe. The key of the drawer is kept with the Head Cashier. The Agent locks this safe.

The Agent's set of keys and the key of the Millner's safe are kept by the Agent in a drawer with a flap in an other safe called Chubb's safe. The flap door should have been locked. The safe has two keys. One is called the male key and the other the female key.

The prosecution admit that the Agent was somewhat negligent and did not lock the flap; of the drawer. He did not use the male key of the Chubb's safe either. He only used the female key of the Chubb's safe. Somehow the accused persons managed to get hold of the female key of the Chubb's safe and the key of the door of the Millner's safe. The prosecution is unable to explain how this was done.

Probably the Agent was not as careful in respect of these keys as he ought to have been. In any case the prosecution alleged that the duplicates of these keys i.e. the female key of the Chubb's door and the key of the lock of the door in the Millner's safe were prepared.

8. On the night between 26th and 27th June 1954 some unauthorised persons gained access to the bank premises probably with the connivance of Dhanna. Then, it is stated, that the Millner's safe was opened and as the lock of the drawer containing the Head Cashier's set of keys could not be opened, the lever of the

lock was sawn through. In order to avoid an immediate discovery and to provide for a repetition of the offence, the whole drawer was taken out. Its lock was removed and the brass lever again got welded after a duplicate key had been made. The lock and the drawer were then replaced. Thus the accused persons had all the material Keys with them.

9. On the night between 27th and 28th June 1954 at about 4-15 a.m. Loomb Raj and Uma came to Dhanna. They were challenged by Ram Karan who was on sentry duty, but did not object as Loomb Raj was a police constable. Loomb Raj then asked Ram Karan how many years' service he had and tried to induce him to agree to their committing theft. When he did not agree, Loomb Raj threatened him with a pistol and compelled Ram Karan to agree.

Loomb Raj, Dhanna and Uma then entered the bank and on coming out they distributed the booty. Loomb Raj took 40,000/- Uma was given 15,000/-. Ram Karan was offered 5,000/- and when he did not take it, the money was left with Dhanna for being given to him. Dhanna got the balance of Rs. 31,000/-.

The prosecution further allege that 10 rupee notes of the value of Rs. 50,000/- and 5 rupee notes of the value of Rs. 20,000/- were non-issue-able notes (i.e., notes which though legal tender were being withdrawn from circulation under orders of the Reserve Bank), 20,000 worth of ten rupee notes and all the 1000 one rupee notes were issueable currency. All the accused persons pleaded not guilty.

10. The learned Counsel for the appellants have not urged many of the points which were raised before the learned Sessions Judge and were considered by him in his judgment.

11. Against Ram Karan it has been urged that he was examined late. The learned Counsel for Loomb Raj urges that though Ram Karan was examined by the Investigating Officer on 5-7-1954, it was not till 23-8-1954 that a pardon was tendered to him and his statement recorded under Section 164, Criminal P.C. It is pointed out that by then Ram Karan had appeared several times in the Court.

The suggestion is that Ram Karan was examined late and therefore his testimony is not entitled to reliance. I am unable to see any force in this contention. The learned Public Prosecutor has referred me to--'Shera v. Emperor' AIR 1943 Lah 5 (A)' and '-Kesar Singh v. The State' .

In the latter case the approver had denied his complicity in the crimes during the earlier stages of investigation and it was held that in such cases prisoners make a full and true disclosure of the whole of the circumstances within their knowledge relating to the offence under investigation only when they are assured of pardon. The provisions of Section 337, Criminal P. C also make it clear that a pardon may be tendered at any stage of the enquiry or trial. In the circumstances, the examination of Ram Karan on 23-8-1954 cannot be considered to be belated. In any case his statement cannot be discredited on that ground.

12. The second contention of the learned Counsel is that the statement was made by Ram Karan under inducement of pardon. The learned Counsel has referred me to--'Ram Sahal v. Crown' 1935 AMLJ 32 (C). I am of opinion that there is no reason to think that the statement was made before the pardon was granted to him. The statement under Section 164 was recorded on oath and Ram Karan has also stated that he was examined after pardon had been given to him.

Of course it is possible that a person who has been granted a pardon may in order to avoid subsequent prosecution give a statement implicating all the other accused persons. But no accused persons should be convicted unless the statement of the approver is corroborated by independent evidence connecting the accused with the offence.

13. Another objection urged before me is that Ram Karan did not know the name of Uma on 5-7-1954 when he was examined by the investigation officer. I am unable to attach any weight to this contention as it is in evidence that Ram Karan mentioned Uma's name in that statement. It has also been urged that Uma was not got identified by Ram Karan. There is no substance in this contention either. Ram Karan had already named Uma even though he may have not known Uma before 28-6-1954. There was no point in having an identification parade after 23-8-1954 when admittedly Ram Karan and Uma had appeared in the Court of the

Magistrate several: times.

14. Another objection is as to the contradiction brought out in Ex. D/7 (a). In the Court, Ram Karan stated that Loomb Raj had come' alone and then asked Dhanna to call Uma who was sitting at a distance. Before the police his statement was that Loomb Raj and Uma had come together to Dhanna's cot. The contradiction is there. As a contradiction, it is not of a serious character.

As regards the opportunity of learning Uma,s name the contradiction is helpful to the accused, but is not of much importance as it is in evidence that Ram Karon had mentioned Uma's name in the statement before the police. Even if he did not learn the name of Uma before the police Uma came near, he may have learnt the name in the course of the theft.

15. No other objection has been urged against Ram Karan's testimony.

16. There is no corroboration of the threat given by Loomb Raj to Ram Karan. There is the statement that Uma had 8-9 keys. Only three keys were finally recovered. In view of what had already been done on the previous night, only three keys were necessary. It does not appear reasonable that Uma should have brought 8-9-keys.

It is, however, not impossible, as the learned Public Prosecutor suggests, that Uma may have brought other keys by way of abundant caution just in case some of the keys were not found in the drawer. Ram Karan has stated that a sum of Rs. 15,000/- and the keys were given to Uma for being given to the person who had made the keys. Yet we find that Uma had kept both the keys and the amount. There is also no corroboration of the statement that Rs. 5,000/- meant for Ram Karan were left with Dhanna.

On the other hand, the distribution of the money mentioned by Ram Karan substantially tallies with the recoveries from the accused persons. The prosecution failed to adduce evidence of the deposit of Rs. 300/- in the local Post Office Sayings Bank. Therefore there is no corroboration on that point. The statement of Ram Karan is also corroborated by the recoveries from himself and other persons.

In particular the fact that many of these notes were non-issueable is very strong corroboration of his statement. I agree that all these notes are legal tender and could have been validly in possession of any person. But it would indeed be a strange coincidence if these notes were found in possession of any person who is not possessed of very considerable assets.

The statement of the approver is further-corroborated by the fact that persons named by him as co-accused are the persons from whom nearly the whole stolen amount has been recovered and also by the recovery of the keys which fit the locks in the door of the two safes and the drawer in the Millner's safe.

Lomb Raj's absence from his duty at Barakhera also corroborates the statement of Ram karan and there is the fact that no grudge is alleged or proved against Ram Karan. He has absolutely no reason for falsely implicating the other accused persons. In the circumstances and as already stated, many of the objections urged before the learned Sessions Judge have not been pressed before me, I see no reason for not accepting the statement of Ram Karan approver as correct and reliable.

17. It has next been urged before me that the shortage was detected on 24-6-1954. The suggestion appears to be that it was a case of embezzlement and not theft. The only support for the suggestion is Mansukhani's statement made to the police on 2-7-1954 that he had learnt from Nagla and Thatte that Patel had discovered a shortage on June 24, and then he had been silenced by Head Cashier Harsolia. This statement has been denied by Nagla and Thatte who have been examined as defence witnesses.

P. W. 78 R.M. Patel has stated that he made no such statement. It appears to me that on 2-7-1954 Mansukhani was suspecting Harsolia and while the statement certainly affects the reliance that can be placed on Mansukhani's evidence, there is no reason to hold that any such statement was ever made to him.

In any case the evidence about the repair of lock of the drawer and the recovery of the keys as also the recovery of the stolen property clearly show that it was a case of theft and not of embezzlement by the Head Cashier or any other employee of

the bank. In fact it appears to me that the Head Cashier was unnecessarily maligned.

18. Another aspect of the same question is about the date of the theft. Articles 65, 69, 72, 74, 76 and 77 are packets of notes which were checked on 21-6-1954. It therefore follows that the theft could have taken place only after 21-6-1954. Again stolen property has been handed over by Ram Karan. It is in evidence that Ram Karan came on duty only at 7-30 a.m. on 27-6-1954. As such the theft could not have taken place on any night previous to the night between 27th and 28th of June 1954.

It has also been urged before me that access having been gained to the bank premises on the earlier night and the keys having been got hold of, it is improbable that the theft would not be committed on that night. This has been urged as a ground for holding that no theft took place on the night between the 27th and 28th of June 1954.

The learned Public Prosecutor has urged that the accused persons wanted to conceal the theft for as long as possible so that they may have time to cover their traces and to dispose of the stolen property. They also wanted to direct suspicion against the bank employees by keeping the locks intact. It is not open to doubt that the lever of the lock has been welded. That evidence has not been challenged.

There is no reason why the lock should have been welded, if the theft was committed on the night between 26th and 27th of June 1954. After committing the theft the culprits would hardly stay to get the lock put back in order. Another reason suggested by the learned Public Prosecutor is that the accused persons wanted to repeat the offence and it was therefore necessary to put the drawer back, in the condition that would arouse no suspicion

Therefore on the first night they did not commit any theft, but contented themselves by obtaining the remaining key necessary for their design. On the evidence it, therefore, follows that the theft was not committed before the night between the 27th and 28th of June 1954 and there is no reason to discredit Ram Karan on that score.

19. The next point urged before me is that there was unreasonable delay in lodging the first information report. Delay there certainly was. I do not see any reason why a report of the loss was not made on 29-6-1954 to the police or at least to the Head Office at Bombay.

An explanation has been offered and whether it is satisfactory or not the fact of the delay does not throw suspicion on the prosecution story as there can be no doubt that the theft did take place. The first information report does not mention the names of the accused persons. Thus there can be no suggestion of any false implicating resulting from the delay.

20. I now come to the individual cases of the accused persons. Loomb Raj is said to have made a statement to the police and then to have taken them to a compound at Palra, 7-8 miles from Ajmer. He there dug the ground and was later assisted by the police party. He took out a China-clay jar and from it delivered the notes in question to the police. The contention of the learned Counsel for the accused is that this statement should have been recorded in the first person.

The learned Counsel has referred me to--'Public Prosecutor v. Pasala Venkata Reddi' AIR 1945 Mad 202 (D) and--'Mangal Singh Sonelal v. Emperor' AIR 1948 Nag 78. The latter ruling does not lay down the proposition urged by the learned Counsel. The Court was then considering the question of admissibility of the evidence and held that the investigating officer must record the information given by the accused. It held that only such portion of the accused's statement as relates distinctly to some fact discovered as a result of the statement is to be admissible. In discussing that question it was also stated:

'It is for the investigating officer to record the words of the accused persons and it is for the Court to see what portion or portions should be allowed to be proved'.

21. In AIR 1945 Mad 202 (D) it was held on the authority of--'Athappa Goundan v. Emperor' AIR 1937 Mad 618 (PB) (F) that the statement made by the accused should be in the first person and that the words should not be paraphrased. The law as laid down in Section 161, Criminal P.C. does not require the police officer to record the statement of an accused person verbatim, as is done in the Court, and

it does not appear to me that it was the intention of their Lordships to lay down that the statement of the accused should be recorded verbatim.

Their Lordships had before them the statement 'I questioned accused 1. He confessed and I recorded his confession and it was attested'. They stated that that was all they knew and held that the confessional statement was never proved. It appears to me that the intention was that a clear record should be made of the statement made by the accused and not merely of the fact that he had confessed, which merely records the opinion of the investigating officer.

Of course there can be no denying the fact that a verbatim record of the confession made by the accused would be the best thing. I have however to keep in mind that the record is to be used for the purpose of refreshing the memory and so long as on the basis of the record the police statement was made by the accused person, the officer is able definitely to state that a certain purpose of the record would be served.

I would therefore, with all due respect, come to the conclusion that it is not necessary that a verbatim record of the statement of the accused should be made and that it is sufficient compliance if a sufficiently detailed record is prepared on the basis of which the police officer can give not what his impression of the statement of the accused was, but what in fact the accused had stated. In that view, I am of opinion that it was not necessary for the police officer to have recorded the statement of Lombaraj or the other accused persons, in the first person.

22. The next contention of the learned Counsel is that the recovery of the alleged stolen properties alone is not sufficient to bring home the charge against the accused. The learned Counsel has relied on--'Beoparia v. State of Ajmer' AIR 1955 Ajmer 10 (G) and--'Trimbak v. State of Madhya Pradesh' : AIR 1954 SC39 . It does not appear that any of these rulings dealt with property which had been concealed. The learned Public Prosecutor has referred to 1927 AMLJ (Supp) 9 (I),--'State v. Mohindar Singh' AIR 1953 Punj 31 (J) and--'Chhotey Lal v. State of U.P. : AIR1954 All687 .

The law appears clear. In the case of property which is concealed, the property is in the same position as if it were kept under lock and key. Being concealed it is not accessible to other persons. It is true that as it is concealed in an open place it is possible that the accused person who pointed it out or delivered it may be only knowing that it was there while somebody else may have concealed it.

It would therefore be necessary for the prosecution to prove that the accused not only knew where the property was and pointed it out or delivered it but had also concealed the property. The learned Public Prosecutor has referred to--'Sadashiva Daulat v. State' AIR 1950 Madh-B 104 (L) , State v. Lehna Singh' and--'Mohd Ilyas v. The State' : AIR1950 All615 In support of his contention that even when the property is delivered by the accused the statement made to the police that he had concealed it is admissible under Section 27, Evidence Act. That there is such evidence has not been challenged.

23. It is next urged that the ownership of the notes and their identity with the property stolen from the bank have not been established. I am unable to attach any serious weight to this Contention. It is in evidence that notes worth Rs. 29,950/- recovered from Loomb Raj were non-issueable.

As I have already stated such a large quantity of non-issueable notes are not likely to be in possession of any one person and in any case not in the possession of a person of the status of the accused. The fact that no other heavy loss has been reported and despite the amount being large no other claimant has come forward coupled with the fact that all the notes bear either bank slips or are signed by the employees of the Imperial Bank at Ajmer, is in my opinion sufficient to prove the ownership of the notes and their identity with the stolen property.

24. The question whether the 'bara' belongs to Hazari is really not relevant. But even on that point there is the evidence of P.W. 13 Sita Ram Patwari that the compound is jointly owned by Loomb Raj and his brother Hazari and that they had taken a joint takavi loan two years ago.

Even defence witnesses suggest that Loomb Raj was believed by them to be coming to the village 'as usual'. Apparently it shows that Loomb Raj is visiting the

village frequently. Sita Ram is the Patwari and I see no reason why his statement be not accepted.

25. It has also been urged before me that the evidence of recovery is not satisfactory. There were three witnesses of the recovery. Two of these Moti D. W. 2 and Hazari D. W. 6 are stated to have turned hostile. They have not been examined by the prosecution. Their statements show that though Loomb Raj did not know where to dig and was told the spot, he and the police party dug till a burni was found. This contained the sum of Rs. 39,950/-. A list was prepared. Hazari signed it and Moti thumb-impressed it. Another person also signed it.

The list bears only the signature of Bhaiya. Lal. Bhaiya Lal's name has also been mentioned in the body of the recovery list. As such it follows that Bhaiya Lal P.W. 6 was definitely present. No grudge has been alleged against him. The learned Counsel for the accused has drawn my attention to certain contradictions. It is pointed out that before the police he stated that he was called by the police outside village Palra, but in the Court he denied this statement.

In my opinion there is no sufficient reason for rejecting the testimony of Bhaiya Lai. As pointed out in AIR 1943 Lah 5 (A), there are four possibilities which have to be guarded against in the case of any recovery.

(1) The complainant might have been persuaded by the police to state in the first information report that property which in fact was not stolen had been stolen and to hand over such property to the police to be used in fabricating recoveries from the accused persons.... (2) The police might have obtained property similar to the stolen property from the complainant or some one else and used it for the purpose of fabricating the recoveries. In considering this hypothesis regard must necessarily be had to the nature and value of the property recovered. (3) The police might have suppressed some of the stolen property recovered from an accused person and utilized it in inventing a recovery from another accused person. (4) The property might have been recovered from a third party and used by the police in one of the impugned recoveries.

Out of a total alleged theft of Rs. 91,000/- the total amount recovered is 84,605/- from three accused persons excluding the property delivered by Ratna & Pukhraj as also property handed over by the creditors of Uma. It is not possible to suspect that the amount of the property stolen was exaggerated by as much as 40,000/- or that this amount was recovered from some other person and foisted, on this accused. The circumstances definitely support the statement of Bhaiya Lal that the notes were delivered by Loomb Raj. I, therefore, see no force in the arguments of the learned Counsel.

26. No other objection has been raised on behalf of Loomb Raj. The evidence that he was absent from Barakhera has not been challenged. It has not been urged that the evidence indicating that he was present at Ajmer on 26th, 27th and 28th of June 1954 is not worthy of reliance.

As already stated there is no reason why Ram Karan P. W. 29 should be deposing against him. There is no reason why any of the police officers should have sought to falsely implicate him. I am therefore of opinion that the prosecution has successfully proved its case against Loomb Raj and that he has been rightly found guilty.

27. The learned Counsel for Uma has argued that no stolen property is alleged to have been recovered from his house. This is correct. The next contention that the identity of, the notes with the property stolen has not been established, i.e. it has not been proved that the bank was at any time owner of the notes recovered from Delhi or Hardeo's verandah or delivered by Sm. Imarti or Fukh Raj.

I have already considered this question when discussing the case of Loomb Raj. The notes recovered at Delhi were all issueable notes. The packets did not have any slips on them. But the first and the last notes of each packet were signed by a bank official. The notes delivered from the sack of wooden chips were non-issueable and also the notes handed over by Pukhraj and Sm. Imarti. For reasons already stated by me, I am of opinion that it is satisfactorily established that the notes recovered were the property of the bank.

28. As regards the recovery at Delhi, two witnesses have been examined on behalf of the prosecution. They are P.W. 3 Dolat Ram and P.W. 4 Mangal Singh. It is urged that Daulat Ram bears enmity against the accused. In this connection D.W. 3 Akaram was also examined. The learned Public Prosecutor criticises his evidence as exaggerated and unreliable and the learned Counsel for the accused has suggested that Akharam's testimony be excluded.

On the evidence of Dolat Ram, I do not find. any serious enmity and a mere exchange of hot words, in my opinion, is not sufficient to lead me to reject his evidence. The fact that the lock was just pulled and not broken and that the key of the lock was not taken is in my opinion not entitled to any weight as the lock is a very cheap lock. The total amount recovered was Rs. 8660/-and there is no allegation of grudge against the police or against Mangal Singh. In the circumstances, I see no reason to discredit the story.

29. As regards the delivery of Rs. 1,500/-by Sm. Imarti and Rs. 1,450/- delivered by Pukhraj, it is conceded that the prosecution have no statement to rely on under Section 27, Evidence Act. In the circumstances this evidence can be taken only as evidence of the accused becoming suddenly rich and paying off his debts as stated by P.W. 35 Puran Chand and giving money for materials as stated by P.W. 8 Moda.

The recovery by itself cannot be evidence against the accused as there is no corresponding statement proved under Section 27, Evidence Act. The same applies to the recovery from Hardeo's verandah and the recovery of the keys which fit locks of the bank, keys which should ordinarily be not available in the market or be of any honest use to the accused.

30. I have already dealt with the contention that knowledge of the place where stolen property is kept is not sufficient to establish possession. Hero in Uma's case the stolen property was found in the house of his father-in-law and the statement that he had put it there is admissible under Section 27, Evidence Act.

The learned Counsel has suggested that the police attempted to substitute notes which were Handed over by P.W. 28 Vishindas and P.W. 35 Puran Chand and

asked them to bring 5-rupee notes. On the basis of this it is suggested that the police attempted to implicate the accused falsely. I am unable to come to that conclusion.

Apparently the witnesses had stated that Uma had paid the money to them in 5 rupee notes and the police asked them to produce the 5 rupee notes without suggesting that they should produce other 5 rupee notes. In fact ordinary 5 rupee notes would not be of any use to the police. The notes had to be non-issueable and they could not be easily collected as not being very common.

31. I have not discussed the objections to Jagram's evidence as I do not accept his statement as reliable. I have held that in the absence of evidence under Section 27 indicating that the accused had concealed those items, the evidence of the recovery of the keys, the notes from the sack containing wooden chips from Hardeo's verandah, and the deliveries by Sm. Imarti and Pukhraj lead to no positive conclusion against the accused.

32. No other point has been pressed before me.

33. In addition, the evidence shows that the accused who was indebted and had not been able to pay off Puran Chand's decree, suddenly behaved as if he had become rich and paid off not only his debts but also paid to Moda the sum of Rs. 1500/- for materials. There is also the statement of Ram Karan and no grudge has been alleged against him. No allegation was made; against the police either. On a consideration of the evidence I am of opinion that the prosecution have successfully proved their case against Uma.

34. So far as Dhanna is concerned, the only point pressed before me is that the kitchen from which the recovery is alleged to have been made is an open place. This statement is not correct. P.W. 87 Mangat Ram stated 'The kitchen door was closed and the chain was on the hook'. It therefore appears that the kitchen from which the incriminating notes were recovered, though outside the house as stated by the same witness in his cross-examination on 25-3-1955, is a room, which has shutters and can be locked.

Nothing has been urged against the evidence that Dhanna was seen with Loomb Raj on 26th, 27th and 28th June and that both of them were together at a dinner party on 26th night. It has not been denied that he was in charge of the key of the main door and if a theft was to take place it could take place only either with his complicity or after breaking the main-door lock. The incident between the night of 28th and 27th June 1954 could have taken place only with his connivance.

I do not think that any outsider could have access to the bank premises without the connivance of Dhanna. His conduct in taking leave on 28th and 29th June and again going on leave on 1st July also goes against him particularly as his statement that his brother was ill on 28th and 29th June is falsified by the evidence of P.W. 10 Paras Mal at whose shop Dhanna purchased some cloth and P.W. 12 Kasim whose taxi was hired by Dhanna.

Again though the story that his brother's wife was ill is supported by D.W. 7 Ghisa, it does not appeal to me. It is strange that first Dhanna's brother and then his brother's wife should oblige him by falling ill at the most convenient time. There is also no evidence that his brother's wife was treated by any one though she was stated to have been seriously ill. As such I am unable to hold that he had any good reason for taking leave on either occasion.

There is also the evidence of the purchase of a jar from P.W. 49 Champa Lal. He has stated that Dhanna purchased a jar of the largest size available in the shop similar to the jar in which notes were found. Like Uma, Dhanna also behaved as if he was rich. P.W. 10 Paras Mal has stated that he purchased cloth worth Rs. 37/6/9.

P.W. 12 Kasim does and other witnesses have stated that Dhanna took a taxi for Barakhera, Beawar and Bhaisapa.

P.W. 11 Ratna has stated that Dhanna repaid Rs. 40/- he had borrowed, and also gave him Rs. 354/- for purchasing land. P.W. 47 Moti Singh has stated that he was repaid Rs. 207/- which Dhanna had borrowed in April. As regards recovery there is the evidence of P.W. 7 Gamira, P.W. 9 Pahar Singh, P.W. 82 S.I. Surendra Singh and P.W. 87 Circle Inspector Mangat Ram. D.W. 5 Zora alleged a quarrel 10-12

years ago.

D.W. 3 Moti Singh & D.W. 4 Malla gave evidence of a search on 4-7-1954, The statement of D.W. 1 Banker Puri, D.W. 2 Debi Singh & D.W. 6 Kartar Singh does not take the accused's case any further. There is no explanation why the approver Ram Karan should be deposing falsely against him. No allegation has been made against the police either. In the circumstances, I am of opinion that the prosecution has satisfactorily proved their case against the accused.

35. In the end the learned Counsel has urged a reduction of the sentence. I am unable to make any substantial reduction. The offence is of a serious character and was committed in a manner as to throw doubt on innocent persons. Dhanna and Loomb Ram also committed breach of trust placed in them. Uma has already been awarded a lesser sentence.

I am therefore of, opinion that no substantial reduction is possible. I, however set aside the fine under Sections 380 and 381 while maintaining the sentence of fine under Section 457. With that amendment, I dismiss the appeals. I am informed that Loomb Ram and Dhanna are in jail custody. Uma is present. He will be taken into custody to undergo the sentences imposed on him by the learned Sessions Judge except the sentence in default of the payment of fine under Section 380, Penal Code.

36. Before I take leave of the case, I would like to point out that the person through whom the keys were got hold of by the accused has not been traced. It will be for the bank and the police to decide what precautions have to be taken since the person who was the agency through whom the keys were made available remains untraced.