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Kammo Vs. the State

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Court : Rajasthan

Decided On : Oct-22-1982

Reported in : 1983CriLJ694

Judge : M.L. Shrimal and; G.M. Lodha, JJ.

Appellant : Kammo

Respondent : The State

Advocate for Pet/Ap. : Mr. V.S. Dave

Judgement :

1. Appellant Kammo alias Katnruddin has been convicted by the Sessions Judge, Bharatpur, for offence under Section 302, I.P.C., and has been sentenced to imprisonment for life.

2. The prosecution case found proved against the accused relates to the murder of one woman Mst. Kanchan Bai who was more precisely known as Dhola. In village Chokhanda in Sub-Division, Bayana of Bharatpur District, PW 4 Dharampal lives with his family. After the death of his first wife, Dharampal married Mst. Kanchan Bai. Dharampal was a widower and Kanchan Bai was a widow, and, therefore, a Nata was per-formed. Dhola had manly manner and she used to do money lending and looked after the agricultural land. For this, she used to visit nearby villages.

3. Accused Kammo is a resident of Bajoli village situated near Chokhanda village. Dhola used to treat Kammo as her son and accused Kammo used to call Dhola as aunti. On account, of affection, Dhola used to help the accused by giving loans etc. also.

4. On 23-9-1977 at about 9.10 A.M. Dharampal was siting in his hut and there exists a hut of PW 14 Nirasi nearby, who also was sitting in his hut. Natholi was also sitting nearby. Accused Kammo came to Dharampal and enquired about Dhola Aunti, on which Dharampal replied that she was in the house. Nirasi (PW 14) then enquired from Kammo as to what work he had from Dhola on which the accused replied that his wife is coming with money and, therefore, he wants to take Dhola, so that she can take back the money. The accused had one hockey and a 'Darant' with him at that time, and the accused took Dhola with him, and the same was witnessed by Nirasi (PW 14), Dharampal (PW 4) and Natholi. They observed that the accused took Dhola towards Bajoli.

5. Dhola used to wear silver Karas in the hands and the feet, and around her neck there was a golden Tabeej, and on the fore-arms there were silver ornaments, and she was wearing all on that day. While going, she took Loogri (Article 5) and Daranti (Article 4). She, however, never returned back. This naturally caused concern in Dhola's family and they started search for her. On that day they could not find out any thing.

6. On the next day, at 8 A.M., Dharampal went towards the field . of Kammo, and Kammo on enquiry; front Dharampal replied that Dhola had left him and went to Bansroli. Dharampal then returned to Bansroli, but. only to find that Dhola was not there. The search continued on 24-9-1977 but without any result.

7. On 25-9-1977 Nirasi (PW 14) and Shyamlal went for the search of Dhola and they saw that vultures were flying in the field of the accused and bad smell was coming, and, therefore, they went on the spot where vultures were flying. They found that Dhola was lying dead and her neck was cut, and so also her hands and feet and all the ornaments were missing, Nirasi (PW 14) then informed Dhola's husband Dharampal, and on this Dharampal and Natholi came to the field of the accused and saw the dead body of Dhola. PW 1 Natholi then rushed to Bayana

and lodged a report, in the police which is Ex. P. 1.

8. After the investigation, a challan was filed. After commitment proceedings, the case was tried by the Sessions Judge, Bharatpur, which resulted in conviction and sentence, as mentioned above.

9. During the investigation it was revealed that on 23-9-1977 the accused came to Bharatpur and sold one set of silver Karas (Article 3) for Rs. 470/- to PW 10 Jagdish Prasad on the shop of Mukirt Beharilal uncle of Jagdish Prasad. He wanted to sell these silver Karas first to Mukut Beharilal who refused to purchase them. The accused gave receipt Ex. P. 16 for the amount of Rs. 470/- which was attested by Mukut Beharilal. On the same day, the accused went to Haribabu (PW 15), and sold another set of silver Karas for Rs. 1,615/- under receipt Ex. P. 20. After this, he went to the Wholesale Sahkari Upbhokta Bhan-dar, Bharatpur and purchased one H.M.T. watch for Rs. 245.50 from PW 8 Mohansingh, and signed cash memo Ex. P. 13 having a carbon copy Ex. P. 14. The guarantee card of this wrist watch Ex. P. 5 was issued by Mohansingh to the accused.

10. On 26-9-1977 Radhey Shyam prepared the site inspection memo (Ex. P. 3) of the place where the dead body of Dhola was lying, and description of the site was given in Ex. P. 24. He also got the dead body photographed from Om prakash (PW 13), and the photographs are Ex. P. 4, Ex. P. 5 and Ex. P 6. Radhey Shyam, Investigating Officer took the blood smeared earth from the site vide Ex. P. 9 and took in possession Loogri (Article 5) and Darant (Article 4) and a piece of Dhoti (Article 14), and prepared the memos Ex. P.10 and Ex. P. 15 for the same. He got the post-mortem conducted from Dr. Dharampal Pooniya, Dr. Dharampal Pooniya (PW 20) has described the injuries on the person of Dhola as follows:

1. Lacerated wound irregular with multiple pieces of both the maxilae both orbits of eyes and upper jaw, and separation of multiple upper teeth from their sockets found full of clotted blackish blood and depression of the nose 4 1/2' x 2 1/2' deep oral cavity.

2. Incised wound on the front of the neck at thyroid cartilage extending horizontally from half of the right stereo mastoid to the inter border left stereo mastoid and cut

of all the internal structures including tracea, oesophagus and both carotid arteries, wound was full of blackish soft clotted blood. Size was 4 3/4' x 1/2' in vertex, deep up to the vertebral column in the centre.

3. Peeling of skin and muscles and exposure of the lower mandible.

4. Peeling of the skin and anterior musculature of the joint and upper part of the thorax and exposure of the upper ribs including sternum.

5. Amputation of both the hands at the lower part of the forearms. Both the bones of both forearms at lower part are cut and cutting surrounding skin and musculature. Both hands were missing.

6. Amputation of both feet at one and half inch above the ankles and cut of bones and musculature and skin. Both the feet are missing.

7. Maceration of the calf muscles of both legs.

8. Perforation of abdominal wall in left iliac region, size 1' x 1/4' and prolapse of distended loop of intestine.

Injuries Nos. 1 and 2 were ante mortem. Injury No. 1 was caused by blunt object and No. 2 was caused by sharp object. Both the injuries were grievous. Injuries Nos. 3, 4, 5, 6, 7 and 8 were post-mortem and injuries Nos. 5 and 6 were caused by sharp object.

11. In the opinion of the doctor the cause of death was shock and haemorrhage due to the injuries inflicted on her body.

12. The Investigating Officer Radhey Shyam then interrogated accused Kammo on 25th and 26th and ultimately arrested him on 30-9-1977 vide arrest memo Ex. P. 25. After arrest, the accused gave information t0 Radhey Shyam that he has sold the ornaments of Kanchan Devi to Haribabu Sunar for Rs. 1,615/- and to Jagdish Prasad at the shop of Mukut-behari Lal for Rs. 470/-. He also gave information that he purchased a wrist watch HMT on the same day from Wholesale Upbhokta Bhandar, Bharatpur for Rs. 245.50. and he can point out the shop. He also informed the police that he has executed receipts for the sale of the ornaments.

The information was reduced into writing vide Ex. P. 26, and then the accused was taken to Bharatpur, where he pointed out the goldsmith shop of Haribabu. On this Haribabu produced one set of silver karas of the legs and Radhey Shyam took them into custody vide Ex. P. 19. Haribabu also produced the receipt Ex. P. 20, which was also taken by Radhey Shyam. The accused then took Radhey Shyam to the shop of Mukutbehari Lal, where Jagdish produced one set of silver karas of hand along with receipt Ex. P. 16, All these were duly sealed and recovery memos-were prepared by Radhey Shyam. Thereafter, the accused took Radhey Shyam to the Wholesale Upbhokta Bhandar, Bharatpur, where Mohansingh produced the receipt Ex. P. 14, which was seized by memo Ex, P. 18 by Radhey Shyam.

13. On 3-10-1977 the accused informed Radhey Shyam that he has concealed and hidden one hockey, one Darant, clothes, Kachha, baniyan and Tehmad by putting all of them in Tehmad and concealed them in the pator of his residential house, but he could point out them if he is taken there. Radhey Shyam recorded this information vide Ex. P. 27 and obtained signatures of the accused.

14. Radhey Shyam was informed by the accused that he has concealed the Tabeej of Dhola by putting it in a cloth and then in a box containing wheat in the pator. After recording this information in Ex. P. 28, and obtaining signatures of the accused, the accused further informed Radhey Shyam that the HMT watch with receipt and guarantee and the amount of Rs. 1.270/- was placed by him in a plastic black hand-bag which he had put in his pator wall. This was also recorded by Radhey Shyam as Ex. P. 20, and his signatures were obtained.

15. Thereafter Radhey Shyam took the accused to Bajoli village and his house, and there the accused took out all the above items, i.e., Tehmad (Article 10), Baniyan (Article 11), Kaccha (Article 9), Ka-mij (Article 12), Daranti (Article 8) and Hockey (Article 7). They were all recovered and a memo was prepared by Radhey Shyam. The accused then took out the Tabeej from a cloth kept in the box of wheat and a memo was prepared by the S.H.O. which is Ex. P. 22. The accused also took out one ban Article 6/1 and then produced Rs. 1,270/- from it which were taken possession of by the S.H.O. vide Ex. P. 23.

16. The accused then gave information on 3-10-1977 to Radhey Shyam that he has thrown the hands and legs of Dhola in the river near his field and took the S.H.O. to the river, but since the water was flowing and there were fishes, the portions of hands and legs were not found.

17. The recovered articles including the ornaments were got identified before a Munsif & Judicial Magistrate Shri Prahlad Das Bairwa (PW 12) on 24-10-1977 and Natholi, Ramsarup and Dharampal identified them.

18. The articles were then sent to the laboratory at Jaipur and a report was received as Ex. P. 37. The Director of the Laboratory of Jaipur sent bloodstained earth, loogri, darant, tabeej, hockey, darant big, shirt, undershirt, jangiya and pettycoat to the Serologist of the Government of India, who sent his report vide Ex. P. 36, wherein he found that loogri had human blood, and the blood on other things was disintegrated, and, therefore, no opinion could be given.

19. During the trial, the prosecution examined 20 witnesses, namely, PW 1 Natholi. PW 2 Jailal, PW 3 Bhondu, PW 4 Dharampal, PW 5 Shyamlal, PW 6 Natholi, PW 7 Ramsarup, PW 8 Mohan-singh, PW 9 Vijaykumar, PW 10 Jagdish Prasad. PW 11 Murlidhar, PW 12 Prah laddas Bairwa, PW 13 Omprakash, PW 14 Nirasi, PW 15 Haribabu, PW 16 Devi-singh, PW 17 Udaibhan Singh, PW 18 Roopsingh, PW 19 Radhey shyam and PW 20 Dr. Dharampal Poonia.

20. The accused denied the charge. In his statement he submitted that Dhola used to treat him as her son and he frequently used to visit Dhola and Dhola used to visit him, but it was wrong that on 23-9-1977 he had taken Dhola and that he had murdered her. He denied all the recoveries at his instance. He admitted that the bag was recovered from his house having some money, but that money was of his father. He alleged that the underwear and the shirt which he was wearing were taken possession of by Radhey Shyam.

21. The accused stated that Dhola used to treat him as her son and he has got one daughter of Dhola engaged and married. Dharampal, Ramsarup arid Shyamlal used to beat Dhola saying that she was going to the house of a Muslim, on which Dhola used to say that the accused is her son. According to the accused,

all the ornaments were given by Dhola to her daughter and she never used to wear any ornaments. She used to state that she would give her land to the accused, and, therefore, Dharampal, Ramsarup and Nirasi were annoyed with him.

22. The accused produced DW 1 Arjun-singh in his defence.

23. The trial Court after hearing arguments came to the conclusion that the following facts and circumstances are proved in this case as narrated in. para 64 of the judgment:

1. That on 23-9-1977 at about 8-9 A.M. the accused came to the house of Dhola and in the presence of Dharampal and Nirasi, he took Dhola with him and went away.

2. Smt. Dhola used to wear Tabeej (Art, 1) and big silver karas (Article 2 and 3).

3. Dhola was not found alive after 23-9-1977.

4. On 25-9-1977 Dhola's dead body was found in the field of the accused, but the ornaments which she used to wear normally were missing.

5. The accused on 23-9-1977 sold the silver karas (one set) Article 3 for Rs. 470/- to PW 10 Jagdish Prasad in the presence of Mukutbehari Lal under receipt Ex. P. 16,

6. On 23-9-1977 the accused sold another set of silver kara (Article 2) to one Haribabu (PW 15) for Rs. 1,615/- vide receipt Ex. P. 20.

7. On 23-9-1977 the accused in Bharatpur purchased a wrist watch HMT from Wholesale Upbhokta Bhandar, and signed the cash memo (Exs. P. 13 and P. 14).

8. On 30-9-1977 the accused informed the Investigating Officer, Radhey Shyam and took him to the shop of Haribabu, Mukutbeharilal and Mohan Singh and got recovered Article 2 from Haribabu, Article 3 from Jagdish and receipt Ex. P. 14 from Mohansingh.

9. On 3-10-1977 at the instance of the accused one hockey, one 'darant' and the clothes of Smt. Kanchan Bai and a Tehmad were recovered and they were smeared with blood.

10. On 3-10-1977 the accused got recovered a golden Tabeej (Article 1) from his house.

11. On 3-10-1977 the accused got recovered HMT watch with receipt and guarantee card, and an amount of Rupees 1,270/-.

12. The post-mortem report of Dhola deceased showed that she died on account of injuries on her face and neck, and after her death her hands and legs were cut.

13. Article 16 Jangiya and Article 17 Petty-Coat were found on the dead body of Dhola and nearby one 'Darant and Loogri' were also found. According to the statement of Dr. Dharampal, Dhola died on account of the injuries between a period from 2 to 4 days,

14. In a detailed well written and well considered judgment, the learned Sessions Judge found that on account of the proof of the above facts and circumstances if, is proved beyond all reasonable doubt that it was the accused Kammo alias Kamruddin who murdered Dhola alias Kanchan Bai, and this murder was done for obtaining the ornaments which she was wearing on her body from the time she was taken away by Kammo from her house.

15. Mr. V.S. Dave, learned Counsel for the appellant has challenged the findings of the lower court on a number of grounds and Mr. G. G. Sharma, P. P., has controverted them. We have heard the arguments at length and examined the entire record of the case. We have also examined the ornaments recovered from the accused or at his instance. Since, great emphasis was laid by Mr., Dave that they are all newly prepared ornaments and not the old one, which are alleged to be on the body of the deceased in view of the elaborate submissions made by the learned Counsel for the parties, we have also given a very serious and thoughtful consideration to all the different, facets of the case and the contentions made before us.

16. The first point which was pressed by Mr. Dave that there could not. have been any motive for murder because Dhola was having very good terms with the accused and the accused could take all benefits in terms of money or ornaments without killing her. Contrary to it, the complainant Dharampal, husband of Dhola, must have committed the murder of Dhola, because he was not relishing the intimacy between Dhola and Kammo accused. Our attention was invited to the statement of the accused in which he has mentioned that Dhola had promised to give her land to him and that it was he who conducted marriage of one of the daughters of Dhola. The accused has said that Dharampal and his family members were not happy at the intimacy which Dhola developed, as Dhola used to treat the accused just like her son (Dharamputra).

17. Mr. Dave pointed out that there was no love between Dharampal and Dhola because there was no regular marriage and both of them have had their original issues from the earlier spouse. The learned P. P. on the contrary pointed out. that the statement of the accused who has denied all proved facts about recoveries and the fact that he took Dhola from her house after which she was found only dead cannot be believed, more so when it is not supported by any evidence. There is nothing on the record to show that Dhola wanted to give the land to the accused and that the accused made all expenditure for the marriage of Dhola's daughter.

18. Mr. Sharma's contention is that the accused on account of the greed t0 take all ornaments on the person of the deceased murdered her by betraying the confidence which Dhola had imposed in him.

19. On a close scrutiny of the entire record, we are of the view that theory developed by Mr, Dave for the first time during arguments in this Court that it was Dharampal husband of the deceased Dhola who committed the murder and has falsely roped in the accused is too tall and unworthy of credit to be accepted. Except the bald statement of the accused, we do not find any evidence to hold his explanation as even plausible that it was the accused who spent all the amount in the marriage of the daughter of Dhola, and that Dhola had promised to give the agricultural land t0 the accused. Neither the accused has produced any defence evidence to prove this nor it has been got established from the cross-examination

of any of the prosecution witnesses. The accused had produced DW 1 Amarsingh who is a self condemned witness as he himself states that he is a habitual thief and a previous convict, and that evidence also is not on the above point, but it is limited to an effort to prove that the receipts were prepared by the S.H.O. and got signed by the accused after beating him, which would be discussed a little later. Thus, the explanation or the statement of the accused regarding the absence of his motive and the motive of Dharampal to falsely implicate is neither plausible nor it inspires confidence. It is true that in criminal law it is not the accused who is required to give any plausible explanation or prove his defence, but the duty is squarely cast on the prosecution to prove all ingredients of the offence beyond all manner of reasonable doubt. Here, we find that once it is proved, a question on which we would refer to a little later, that the accused has got all the ornaments recovered either from the shops of the goldsmiths-cum-sarrafs, or from his own house, then if, is abundanily clear that there was an obvious motive for the accused to murder Dhola for getting all these ornaments; karas of hands and legs and bajus being of silver and the Tabeej in the neck being of gold. It is true that the deceased was already kind to the accused, as she used to give loans to him frequently and, therefore, the accused could have obtained the recurring benefit by keeping Dhola alive rather than Committing her murder, but it appears that he had no patience and he wanted to get the gold and silver ornaments immediately. It all depends upon the impulse which one gets at a particular occasion and human nature in this respect cannot be generalised as different persons in similar circumstances behave in a different manner and ways. We are convinced that there was a strong motive for the accused to commit the murder, though it will have yet to be seen whether the murder was committed by Kammo and Kammo alone and none else. We are mentioning it, because motive in itself, if proved, may provide corroborative evidence but it can neither be substantive evidence for the proof of a murder nor absence of it can completely rule out the offence, if it is established otherwise by positive evidence.

20. It is not without significance that in the FIR Ex. P. 1 which was lodged immediately after the occurrence and as soon as the dead body of Dhola was found, it has been mentioned that the silver ornaments are missing from the dead body, and the hands and feet of the deceased have been cut, and, therefore,

these ornaments have been taken after cutting the hands and feet and this appears to be done by Kammo accused. This Ex. P. 1 which was filed on 25-9-1977 at 7.1.5 P.M. was received in the Magistrate's Court on 26-9-1977, as is obvious from the endorsement on it.

24. Mr. Dave then pointed out that the evidence of last seen is not reliable in as much as out of the four witnesses examined, two have been disbelieved and the other two Dharampal and Nirasi are interested witnesses. Moreover, their evidence is neither trustworthy nor can it inspire confidence. We have carefully examined the statements of these witnesses. No doubt, the evidence of PW 5 Shyamlal and PW 1 Natholi has not been relied upon by the trial court, and for the reasons given by the trial court we are in agreement with the trial court on this particular issue. So far as Dharampal and Nirasi are concerned, we do not, find any reason to disbelieve them. Mr. Dave's contention that Dharampal and Nirasi are brothers is not borne out by the record, because neither they have admitted it, nor the names of their fathers given in the statements show that they are sons of the same person. Merely because some witnesses have made a stray statement, that they are brothers, it cannot be held to be proved because it all depends upon as to in what manner and to what extent they are related.

25. In our opinion, Dharampal and Nirasi (PW 14) are natural witnesses, because the accused enquired from Dharampal where Dhola was, and then the accused proceeded inside the house and took Dhola with him. Nirasi (PW 14) is the neighbour and he was sitting just nearby the Chappar or the hut. Both of them saw Dhola accompanying the accused. On a question from Dharampal, when the accused enquired about Dhola, Kammo stated that since his wife has come with money, he would like that Dhola should take money back and on this pretext he brisked away Dhola. Ex. P. 1 also corroborates it. PW 14 Nirasi corroborates Dharampal on this aspect of the case and also mentions that the accused was having a hockey and a Darant and he saw Dhola being taken away by the accused towards Bajoli.

26. The cross-examination of these two witnesses nowhere shows that either there is any glaring inconsistency or improbability in their conduct, or the

statement. Both these witnesses had a talk with the accused and enquired about the purpose of taking away Dhola, and the accused gave the said answer.

27. We are not impressed by the contention of Mr, Dave that because Shyamlal and Natholi have not been relied upon by the lower court, therefore the prosecution version should not be believed as the prosecution has come with four witnesses out of which two have been found to be unbelievable. It is well established law that the witnesses are to be believed or disbelieved on the basis of their own testimony and merely because the prosecution produced more than one witness to prove one point, all cannot be disbelieved if some are disbelieved. Even from the testimony of one witness, he can be believed for a part of the prosecution case and can be disbelieved for another part. The three categories of witnesses wholly reliable, wholly unreliable and partially reliable are well known. We are of the opinion that so far as the evidence of Dharampal and Nirasi (PW 14) is concerned, they fall in the category of witnesses who are wholly reliable, We are, therefore, in agreement with the finding of the trial Court that on 23-9-1977 at about 9-10 A.M. deceased Dhola was taken away by the accused from her house and both of them were last seen going towards Bajoli village.

28. The next circumstance found proved against the accused consists of the recovery of the dead body from the field of the deceased. On this point, there is evidence of PW 1 Natholi, PW 2 Jailal, PW 3 Bhondu, PW 4 Dharampal, PW5 Shyamlal. PW14 Nirasi and PW 15 Radhey Shyam, and the same is corroborated by Ex. P. 1 F.I.R. and the site plan (Ex. P. 3) and Panchayatnama (Ex. P. 8). It is proved that the dead body of deceased Dhola was found in the field of the accused on 25-9-1977.

29. Mr. Dave has not gone to the extent of arguing that the dead body was not at all found in the field of the deceased, but all that he has argued is that the possibility of the deceased having been killed at some other place before putting the dead body in the field of Kammo cannot be ruled out. This contention was sought, to be substantiated by the second submission that the earth below the dead body recovered from the field has not been proved to be smeared with human blood, though it has been proved that it was blood smeared. The

submission of Mr. Dave was that when Loogri has been proved to be smeared with human blood, and loogri of the deceased as well as the earth were recovered at the same time, and sent for chemical examination together, it could not be found whether the earth was smeared with human blood or not, because of the disintegration is not intelligible, because if the disintegration was to take place, if should have been the same in both the cases.

30. It was then argued that all the surroundings of the dead body should have been in a pool of blood, if murder has taken place on that very place. We find it difficult to appreciate both these contentions. Obviously, the dead body was recovered on 25th and the accused and deceased were last seen on the morning of 23rd September. It is also in evidence that vultures were flying and, therefore, vultures and other small insects must have utilised this time for sucking the blood and part of the flesh to some extent. In these circumstances, it is not necessary that the blood in its original condition must be found on all sides of the body of the deceased and also the bricks etc., if any at the site. Again, the disintegration of the blood can take place on account of variety of reasons. There can always be difference in blood smeared cloth and blood smeared earth, so far as age and process of disintegration is concerned. We are, therefore, not prepared to accept the contention of Mr, Dave that the report of the serologist about disintegration of blood on the earth is false, as there was no disintegration of the blood on the loogri. which has been found to be having human blood.

31. Mr. Dave then argued that since Dhola was of stout body, she must have put resistance when she was being killed, and, therefore, there should be some marks of resistance on the site. It is difficult to understand the requirement and insistence for marks of resistance on the site in this case. Firstly, it all depends upon in what circumstances the weapon was used and whether she was taken unawares and with the first blow of a sharp-edged weapon, she fell down or became helpless. Normally, when an old lady is attacked by a young man, and that too by a deadly sharp-edged weapon, it is difficult to appreciate and understand what resistance can be offer-ed even if in place of an old woman she would have been a man. We have got no hesitation in holding that this contention of Mr. Dave is devoid of any force and untenable.

32. Obviously the dead body was recovered from the field of the accused, and the blood smeared clothes and the earth including the blood smeared loogri. which at least has been identified, as of human blood, were all recovered from the site and they all point out that the deceased was lying in the field of the deceased with her legs and hands cut and the ornaments having been removed. The trial Court was justified in relying upon this circumstance against the accused.

33. We now come to yet another important chain of circumstances of recovery of ornaments at the instance of the accused. The trial Court has held on the basis of the evidence of PW 10 Jagdish Prasad and Mukutbeharilal in addition to the evidence of the investigating officer, who recovered the silver ornaments from Jagdish Prasad. The accused had sold these silver ornaments vide receipt. Ex. P. 16 for Rs. 470/- to Jagdish Prasad and silver Karas (Article 3) were given and receipt Ex, P. 16 was executed by the accused, Jagdish Prasad is corroborated by Mukut Beharilal and both of them have testified that the accused came with these ornaments, and Jagdish purchased them for Rs. 470/-.

34. Similarly, the other set of silver karas (Art, 2) were purchased by PW 15 Haribabu from the accused for Rupees 1.615/- The accused executed receipt Ex. P. 20.

35. Mr. Dave submitted that Haribabu has not entered this, though he keeps accounts. We are of the opinion that merely because the purchase of karas was not entered in the bahi, the statement of Haribabu cannot be disbelieved. The accused has executed the receipt Ex. P. 20 and the karas have been recovered from Haribabu at the instance of the accused on the basis of information given by him. We are, therefore, of the opinion that recovery of Arts, 2 and 3 kara sets of silver from Jagdish and Haribabu is established, and it has been proved that these were the very silver ornaments which were sold by the accused to these persons on 23-9-1977. Both the receipts have also been proved to have been executed by the accused. We are not prepared to accept the contention of Mr. Dave that the receipts were executed on account of beating, All the documents are(sic) in the hand-writing of the accused and except making a bald statement as an accused and producing a thief in defence, who is a previous convict, to prove, there is

nothing to support this version of the accused. Contrary to it, the conduct of the accused in not making a grievance of the alleged beating either before the committing court or before any Magistrate, when he was taken for remand or before the Sessions Court before examination, goes to show that the theory of beating is an afterthought. These articles have been identified to be of the deceased, and we do not find any reason to disbelieve the evidence on the point of identification. Mr. Dave in this connection pointed out that there was some discrepancy on the point as to who brought the other ornaments of similar nature before the Magistrate, and therefore, the evidence of identification must be disbelieved. We have not been able to find any such discrepancy and even if there would have been some minor discrepancy on this aspect of the case, it is immaterial because the identification proceedings rightly believed, by the trial court on a detailed discussion suffer from no infirmity.

36. The golden tabeej was recovered from the house of the accused and at his instance. This recovery is very important, because it shows that the. accused after taking away the ornaments could not sell all of them at a time and, therefore, kept the tabeej in a concealed position. The recovery of tabeej after information and at the instance of the accused is an important circumstance against the accused, and the trial court was justified in treating it as one of the most incriminating circumstance against the accused.

37. Mr. Dave then argued that it has not been proved that these ornaments were on the body of the deceased when she left her house along with the accused as alleged and, therefore, the recovery of these ornaments is of no value.

38. We have carefully read the statements of two witnesses, PW 4 Dharam-pal and PW 14 Nirasi, to find out whether from their evidence it can be held that the deceased had the ornaments on her person. We find that Nirasi (PW 14) has positively said that the deceased Dhola had silver karas in the legs and hands and a tabeej and silver ornaments (Baju) on the forearms at the time she left with the accused on 23-9-1977 in the morning. The police statement of this witness is proved by PW 19 Radhey Shyam and Ex. D. 4 did not make a mention of this statement in so many words. In the police statement it has been mentioned that

Dhola always used to have the ornaments on her person and they were golden tabeej and karas in hands and feet, and silver ornaments on the forearms, and these ornaments were missing when, the dead body was found.

39. We are of the opinion that the statement of PW 14 Nirasi cannot be disbelieved on this point merely on the ground that narration of the ornaments is in a different form in the police and the court statements. Dharampal husband of Dhola has said that. Dhola always used to wear these ornaments. In view of this evidence, it is established that Dhola was having the ornaments on her body when she went with the accused. It may be remembered that it has come in evidence that the karas of silver were of such a type that they could not be removed easily without the help of a hammer. It is not without significance that the hands and legs of the deceased Dhola were chopped off and cut. All these circumstances go to show that the prosecution story that Dhola was wearing gold and silver ornaments at the time of going with the accused and the same were missing is correct.

40. Mr, Dave then pointed out that some of the witnesses have said that silver ornaments recovered were appearing to be new and since the deceased was using them for quite a long time these ornaments are not the same which were of the deceased. It is not unusual that if an offender takes the ornaments from the dead body after killing a woman, he would certainly wash those ornaments and keep them in such a manner that no blood smears or anything remains on them creating suspicion to the purchaser. It is, therefore, not without significance and the reasoning given by the trial Court that the accused must have got them thoroughly cleaned before selling appears to be reasonable. Again, it has come into evidence that there were some old marks on the ornaments and although the son of Dharampal has said that they appeared to be new, but the other evidence of Dharampal and others clearly proves that they were old ornaments of the deceased.

41. Moreover, it must be noticed that the tabeej which has been found from the house of the accused has not been said to be new in appearance, and the criticism which has been made for silver ornaments is not applicable to the golden tabeej, which we have ourselves seen.

42. Mr. Dave then submitted that these ornaments should be blood smeared, and it must he proved. But We do not find any such reason for accepting the contention of Mr, Dave. Contrary to it, it would be a foolish act On the part of the accused to take the ornaments having blood smears for sale and expose himself to the possibility of arrest and detection of the crime. Such a conduct cannot be expected in a normal course and. therefore, Mr. Dave's submission on this count is untenable.

43. The purchase of the wrist watch HMT by the accused on that very day at Bharatpur is fully proved by the signatures on the cash memo in addition to the evidence of the witnesses. In fact;, Mr. Dave during his arguments submitted that it was on account of the purchase of this wrist watch that the prosecution found it convenient to rope in the accused as his presence at Bharatpur was established. We do not think that this submission of Mr. Dave has any force. It must be noticed that the F.I.R. was lodged on 25-9-1977 and the name of the accused finds place in the F.I.R. itself and the information about the wrist watch and its recovery was given on 30-9-1977. PW Mohansingh has proved that the wrist watch was purchased by the accused from his shop and that the accused signed the cash memo. The recovery of the wrist watch from the house of the accused was made on 3-10-1977 along with the guarantee card and an amount of Rs. 1.270/-. In view of this, it is too much to say that the accused has been falsely implicated on account of purchase of the wrist watch from Mohan Singh on 23-9-1977.

44. In D. B. Criminal Appeal No. 382 of 1974, Dewansingh v. State of Rajasthan, a Bench of this Court upheld the conviction of Dewansingh for an offence under Section 302 read with Section 34, I.P.C. and held that the evidence of last seen along with the evidence of recovery of ornaments worn by the deceased on his body prior to his murder are sufficient to hold that it was the accused who committed the murder. In that case, apart from the evidence of last seen, there is further evidence that the wrist watch of the deceased and a pair of shoes were found in possession of Dewansingh and were recovered at his instance. In that case, the recovery was made quite late and yet the Court held that a presumption can be drawn Under Section 114(a) of the Evidence Act against the accused.

45. In the instant, case, the circumstantial evidence is much more strong and reliable and has got a chain of truth and inter-connection for establishing the guilt of the accused. We have believed the evidence of last seen and we have also believed that the dead body of the deceased was found in the field of the deceased. We have also believed that the accused gave information and then led the investigating officer for recovery of the golden tabeej, which has been identified to be of the deceased and was on the person of the deceased before she was murdered. We have also held that the accused sold the silver ornaments and then got them recovered after giving information and leading the police party to the shops where he had sold them. We have also held that at that very day on 23-9-1977 he purchased a wrist watch of HMT, and then from his house at his instance recovery was made of this wrist watch, a guarantee card and an amount of Rs. 1,270/-. These informations were given and recoveries were made within a very short time of his arrest and, therefore, the presumption can be raised against the accused on account of these recoveries also under Section 114(a) of the Evidence Act

46. Thus from the statements of the above named witnesses it stands proved that the ornaments were habitually worn by the deceased. It further stands proved from the statements of the prosecution witnesses that these ornaments were worn by the deceased on the date of the incident. It further stands proved that the ornaments disappeared from the person of the deceased and were recovered at the instance of the accused. It has also come in the evidence that 'he accused was last seen with the deceased. The recovery was made within a short time. The question thus arises as to how far the recent possession of the ornaments of the deceased in the proved circumstances of the case indicates that the possessor of the ornaments was guilty of the more aggravated crime i.e. murder. It is well settled that in a case where murder and robbery form integral part of a transaction recent and unexplained possession of the stolen property as in the case on hand would be presumptive evidence on a charge of theft or robbery with murder.

47. The real question, therefore, is whether the evidence in the case on hand establishes that the appellant murdered Mst. Dhola and robbed her of the ornaments? In the case of Queen Empress v. Sami ILR 13 Mad 426 the learned

Judges of the High Court observed:

Under these circumstances, and in the absence of any explanation the presumption arises that any one who took part in the robbery also took part in the murder. In the cases in which murder and robbery have been shown to form parts of one transaction, it has been held that recent and unexplained possession of the stolen property while it would be presumptive evidence against a prisoner on the charge of robbery would similarly be evidence against him on the charge of murder. All the facts which tell against the appellant, especially has conduct indicating a consciousness of guilt, point equally to the conclusion that he was guilty as well of the mudder as of the robbery.

In Emperor v. Chitamony AIR 1930 Cal 379 (2) : 31 Cri LJ 1229, it was observed:

the possession of stolen goods recently after the loss of them may be indicative not merely of the offence of larceny or of receiving with guilty knowledge but of any other more aggravated crime which has been connected with the theft; this particular fact of presumption forms also a material element of evidence in the case of murder.

48. Both these cases were approved by their Lordships of the Supreme Court in Wasim Khan v. State of Uttar Pradesh : 1956 CriLJ790 .

49. In Wills on Circumstantial Evidence, 7th Edition, page 104, it is given:

The possession of stolen goods recently after the loss of them, may be indicative not merely of the offence of larceny or of receiving with guilty knowledge, but of any other more aggravated crime which has been connected with theft....This particular fact of presumption commonly form also a material element of evidence in case of murder which special application of it has often been emphatically recognised.

Likewise in Taylor on Evidence Vol. I, 12th Edn, p. 135 it is given:

The presumption under discussion is not confined to cases of theft but applies to all crimes, even the most penal.... A like inference has been raised in the case of

murder accompanied by robbery.

50. In Tulsiram v. State AIR 1954 SC : 1954 Crl LJ 225 his Lordship Kania, C. J., speaking for the Court laid down (at p. 227 of Cri LJ):

The presumption permitted to be drawn under Section 114, Illustration (a) Evidence Act, has to be read along with the important time factor. If ornaments or things of the deceased are found in the possession of a person soon after the murder, a presumption of guilt may be permitted.

51. We would like to point out, even if we have to repeat ourselves, that the accused-appellant precisely knew the place from where the ornaments were recovered, the accused got discovered these gold and silver ornaments which undoubtedly belonged to Mst. Dhola. It has also been proved by unimpeachable evidence that Mst. Dhola was seen wearing these ornaments just prior to her murder. These ornaments were found missing on the dead body of Mst. Dhola and the same were recovered at the instance of the accused. These facts, in our opinion, are sufficient in law and fact to lead us to the conclusion that the accused was not only guilty of theft or having received the stolen property but of murder as well. A Division Bench of this Court in Hukma v. State of Rajasthan 1976 Raj LW 150 : 1976 Cri LJ 1480 where the accused was arrested on Mar. 5, 1971 and the pair of 'murkies' was recovered from the concealment at the instance of the accused on Mar. 7, 1971 took the view that the recovery of the pair of 'murkies', Ex. 4 from the possession of accused Hukma leads to the inference that the person who removed the 'murkies', from the person of Logariya (deceased) was the person, who committed the murder. In the proved facts of this case the recovery of the ornaments at the instance of the accused-appellant is not compatible with any other hypothesis except the guilt of the accused-appellant.

52. In regard to the question of the effect and sufficiency of circumstantial evidence for the purpose of conviction, it is now settled law that before conviction based solely on such evidence can be sustained, it must be such as to be conclusive of the guilt of the accused and must be incapable of explanation on any hypothesis consistent with the innocence of the accused. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial

evidence alone, it must meet any and every hypothesis suggested by the accused, however, extravagant and fanciful it might be. Before an accused can contend that a particular hypothesis pointing to his innocence has remained unexplained by the facts proved against him, the Court must be satisfied that the suggested hypothesis is reasonable and not farfetched. Further, it is not necessary that every one of the proved facts must in itself be decisive of the complicity of the accused or point voluntarily to his guilt. It may be that a particular fact relied upon by the prosecution may not be decisive in itself, and yet if that fact, along with other facts which have been proved, tends to strengthen the conclusion of his guilt, it is relevant and has to be considered. In other words, when deciding the question of sufficiency, what the Court has to consider is the total cumulative effect of all the proved facts such of which reinforces the conclusion of guilt, and if the combined effect of all those facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that any one or more of those facts by itself is not decisive.

53. The circumstances established on the evidence, in the case on hand, give rise to only one inference and one consistent with the guilt of the accused-appellant. Individual circumstances considered in isolation and divorced from the context of over all picture emerging from a consideration of the diverse circumstances and their conjoint effect may by themselves appear to be innocuous. Each of the circumstances proved in this case when considered individually can be explained by citing a variety of acceptable answers but such circumstances cannot be considered in watertight compartments. The totality of the circumstances proved in the case are sufficient to hold that the accused-appellant was not only a thief or a receiver of stolen property but he was also the murderer. In the circumstances it is not possible to hold that the learned Sessions Judge committed any error in convicting the accused-appellant of the offence punishable under Section 302, I. P.C.

54. In view of the above, we are convinced that the accused has been rightly convicted by the trial court under Section 302, I.P.C. and sentenced to imprisonment for life.

55. The appeal, therefore, fails and is hereby dismissed.

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