

Pukhraj Vs. the State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/757230

Court : Rajasthan

Decided On : Apr-20-1970

Reported in : 1970WLN518

Judge : B.P. Beri and; L.S. Mehta, JJ.

Appeal No. : D.B. Criminal Appeal No. 392 of 1969

Appellant : Pukhraj

Respondent : The State of Rajasthan

Disposition : Appeal dismissed

Judgement :

L.S. Mehta, J.

1. The deceased Raghunath Darji, aged about 50 years, was incharge of a water-hut, opened by one Nanoolal Sukhwal, P.W. 16, In Merta city for offering free water to padestrians. He was drawing Rs. 35/- per month in lieu of his services. His wife Mst. Rampyari was doing some domestic work in three households. She was earning about Rs. 45/- permensum. They had three children, namely, Kalu, P.W. 17, (aged about 11 to 14 years), Bhagwati (nearly 7 years' old) and Navrat (aged approximately 5 years). Some two years prior to the date of the occurrence (i.e., April 2, 1968), Raghunath had sold his house, situate in the village of his

birth, Bhakri, for Rs. 600/- to Rs. 1000/-, to one Moolchand. Of the money received, he deposited Rs. 300/- with Amrit Raj alias Babulal Mahajan, P.W.1, a resident of Merta city, for safe custody NO receipt on account of the money was passed by the depository in favour of the depositor 'Later on P.W.15 Mst. Rampyari also deposited her three gold ornaments, namely, 'Tadda' Article 1, 'Tussi' Article 2 and 'Bor' Article 3 containing gold weighing about 6 tolas, with Amrit Raj somewhere in October, 1967 In February, 1968 (that is about two months before the occurrence) the ornaments were brought back by Mst. Rampyari from the depository. A few days before the incident the accused Pukhraj went to the water hut, which was in charge of Raghunath, to drink water, Pukhraj inter alia inquired of Raghunath as to how he was eking out his livelihood and supporting the members of his family. Raghunath's reply was that he was in financial straits. He had, however, entrusted Rs. 1000/--, and some ornaments to Amrit Raj for safe keeping. Having got this clue, Pukhraj suggested to him that the money and the ornaments should better be utilised elsewhere and be deposited with the Sub-Divisional Officer, Merta, so that they might carry interest and he too might get a job. Thereupon Raghunath and his wife withdrew Rs. 1000/--from Amrit Raj. The ornaments had already been pulled back, as stated above. Ten currency notes of the denomination of Rs. 100/--, each were shown by Raghunath to Pukhraj. Raghunath, an unsophisticated and simpleton Villager insisted that he would like to get back the same currency notes which he was to deposit Pukhraj with a view to create confidence in Raghunath, made tick-marking on each of the currency notes with his fountain pen on its left side. In the morning of April 2, 1968, at about 7 or 8, the accused Pukhraj again approached Raghunath and told him that first he would like to show his children to the clerk of the Sub-Divisional Officer, Merta, to enable to know that he was a man of substantial family. He, therefore, persuaded him to send his children with him. Credulous Raghunath readily believed in what Pukhraj had told him and sent his three minor children, Kalu, Bhagwati and Navrat, with the accused. Pukhraj took these children to a well known as 'Kundal', The accused asked Kalu to see young fowls in the well and when he did so, he wanted to push him into it. Good luck, however, averted the tragedy as Kalu caught hold of a parapet wall. In the meantime having seen cartsmen Pukhraj came back to Raghunath along with the children. Kalu told

Ragaunath that he would not like to be in the company of the accused in future. Despite this, confidence of Raghunath in Pukhraj did not receive any jolt and that very day at about 11a m the accused succeeded in taking away Raghunath's two children, Kalu and Bhagwati, under the pretext that they would be shown to the clerk of the Sub-Divisional Officer, Merta Road, which is at a distance of about 10 miles from Merta City. Bhagwati was seated in the train going towards Bikaner and Kalu was made to board the train proceeding to Jaipur. The accused Pukhraj came back to Merta City. Some persons seeing Bhagwati peeping managed to send her to her house that very day. Next morning Kalu also managed to return to his house. Prior to that, i.e. on April 2, 1968, at abouts 8 or 8.30 p. m., Pukhraj met Raghunath. He deceitfully told him and his wife that Kalu was sitting in the house of the Sub Divisional Officer. Pukhraj then prevailed on Raghunath to accompany him with Rs, 1000/-, and gold ornaments for depositing the same with the Sub-Divisional Officer. Half witted or sullible Raghunath set out with his money and jewellery. Both of them reached the volleyball field, which is at a distance of about 50 yards from the Station Master's room, A news-paper vendor, Ghouth Mal, P.W.8. wanted to go to the Dak bungalow to sell his pepers. He first passed through the volleyball ground. He enquired of Pukhraj as to whether he liked to buy a paper. Pukhraj's answer was in the negative. He than asked Pukhraj whether his companion would like to get one. To this enquiry also his answer was in negative. Thereafter Raghunath was killed near the volleyball field. His two eyes were mercilessly pierced with an iron 'Patti'. First information report of the occurrence was lodged with the Police Station, Merta City, at the instance of Kalu, son of the deceased Raghunath, by the Circle Officer Kanhaiyalal, P.W.18. The report is marked Ex P-15 and is dated April 3, 1968. On receipt of the formal statement of facts the Station House Officer, Kanhaiyalal, P.W. 18, registered a case and entered upon investigation. The Investigating Officer recovered ten currency notes of the denomination of Rs. 100/-, each on the information and at the instance of the accused Pukhraj. He also recovered gold ornaments 'Bor' 'Tassi' and 'Tadda', hidden underneath the floor of the shop of the accused. At the time of the arrest of the accused it was noticed that he was putting on a blood stained 'payjama' Article 23. The same was seized by the police under memo Ex.P. 10, on April 3, 1968, at 3 p.m. It was sent to the Chemical Examiner and

thereafter to the Serologist. The former reported that stains on 'Payjama' were positive for blood and the latter opined that the article was stained with human blood. The police also seized fountain pen Article 33 lying near the dead body. A blood stained iron 'Patti' Article 21 was also recovered from the place of the occurrence memo Ex P.8. According to the Chemical Examiner the 'Patti' was positive for the blood and the Serologist reported that it was stained with human blood. The police also found in the course of the investigation that the accused Pukhraj, who was studying in the 9th Class, was absent from the school on April 2, 1968. The autopsy of the dead body of Raghunath was conducted by Dr S. C. Jain, Medical Officer, in charge, Government Hospital, Merta City, P.W.14, on April 3, 1968 at 3 p.m. Following injuries were seen on the person of the deceased:

1. Stabbed wound 1' X ' X ' over the middle of the upper eye-lid penetrating the eye-ball.
2. Stab wound 1' X' X ' over the middle of the left eye-lid penetrating the eye-ball.
3. Stab wound over the middle of the back of scalp 5' above the pinna of the left ear 1' X' X'.
4. Fracture of the middle parts of the right side, third, fourth, fifth, and sixth rib.
5. There was a clear cut mark 5' X 3' over the front of the neck below the thyroid cartilage encircling the neck horizontally. There was extra vegetation of the blood into the subcutaneous tissues under the ligature mark and the shyat of carodit cartige. The fracture of the thyroid bone and thyroid cartilages was detected.

In the opinion of the Doctor the cause of death was asphyxia, as a result of strangulation. All the injuries were ante-mortem. Injuries Nos. 1 and 2 in the eyes could have been caused by the iron 'Patti' Article 21. The Doctor further opined that the injury on the account of the strangulation was sufficient in the ordinary course of nature to cause death. The Doctor also opined that the eyes of the deceased were pierced. After the investigation was completed, the police put up a challan against the accused Pukhraj in the court of the Munsiff-Magistrate, Merta. The said Magistrate conducted preliminary inquiry according to the provisions of

Section 207-A Cr.PC, and committed the accused to the court of the Sessions Judge, Merta, to face trial under Section 302 and 394, I. P. C. The trial court read over and explained the charges to the accused under the aforesaid sections of the Indian Penal Code, to which he pleaded not guilty. In support of its case the prosecution examined 18 witnesses. In his statement, recorded under Section 342, Cr.C.P , the accused denied to have committed any offence. He, however, stated that the currency notes and the ornaments recovered at his instance belonged to his parents. He further admitted that P.W. 9 Gopal Singh was his teacher and as he was down with dysentery, he could not attend the school that day. When the police took him to his residence, he was wearing a nicker only. Then a new 'Payjama' was taken out and he wore it, It was not blood stained. Pukhraj further stated that the pan Article 22, recovered on the spot, did not belong to him. In the end he stated that a theft had been committed in his house and, therefore, his father placed the ornaments in a box and burned them underneath the floor of his shop. Rs. 1000/-, were also kept amongst the Bazra bags by his father and he was asked by him to be on their watch. In his defence pertaining to ownership of ornaments and cash, the accused examined two witnesses, Ram Swroop D.W. 1 and his father Gopikrishan, D.W.2. The trial court by its judgement, dated April 30, 1969, found the accused guilty under Sections 302 and 394 I. P. C, and sentenced him to imprisonment for life on the first count and to rigorous imprisonment for 10 years on the second one. Both the sentences were directed to run concurrently. The gold ornaments and the currency notes were ordered to be returned to Mst. Rampyari, wife of the deceased Raghunath.

2. Aggrieved by the above verdict, the accused Pukhraj has filed the present appeal. Learned Counsel for the appellant quarrels with the judgement of the trial court on several grounds, The deceased Raghunath and his wife Mst. Rampyari, he urged, were having hand to mouth existence and it was hardly possible for them to arrange for and to have deposited Rs. 1000/-and gold ornaments 'Tadda' Article 1, 'Tussi' Article 2 and 'Bor' Article 3 with Amrit Raj P.W.1. Amrit Raj, counsel adds, has made an untrue statement. These ornaments, on the other hand belonged to the appellant's mother, as is borne out from the testimony of Ram Swroop D.W.1 and Gopikrishna, D.W.2 Learned Counsel further submitted that the identification of the ornaments was not conducted in conformity with law

by Shri Daulal, P.W.7, Tehsildar and Second Class Magistrate, Merta City. Therefore, the identification of the ornaments is nothing short of farce. Counsel also challenged the testimony of the identifiers because of certain inconsistencies discernible in their statements and for not examining the goldsmith who had prepared the ornaments. Counsel tried to persuade us to rely on the statement of D W.1 Ram Swroop Sunar, who is alleged to have prepared the ornaments on behalf of the mother of the accused as also on the testimony of D.W. 2 Gopikrishan, father of the accused who has said that the ornaments were owned by his wife. Learned Counsel for the appellant also attacked the finding of the trial court regarding the tickmarking alleged to have been done by the accused on the 10 currency notes Exs 4 to 13 and asserted that such a marking could have possibly been made by the Investigating Officer. It was also argued on behalf of the appellant that the testimony of P.W.6 Shyamdas Bohra, Public Prosecutor, Sessions Court, Merta, is utterly false and the trial court went wrong in reposing confidence on it. Learned Deputy Government Advocate, on the other hand, subscribed to or agreed with the *raison detre* contained in the judgement of the court below.

3. There is no manner of doubt that Raghunath Sarji died of homicidal violence during the night intervening April 2, and 3, 1969 Dr. S. C. Jain, Medical Officer, Incharge, Government Hospital Merta City, P.W.14, conducted the autopsy of Raghunath's corpse on April 3, 1968, at 3 p.m. The injuries noticed by the Doctor have already been delineated above. In the opinion of Doctor the cause of Raghunath's death was asphyxic, as a result of strangulation. All the injuries were ante-mortem. Stabbing of the two eyes of the deceased could have been caused by the iron 'Patti' Article 21. The strangulation was sufficient in the ordinary course of nature to have caused his death'. This aspect of the case has not been challenged on behalf of the appellant. The trial court, therefore, justly and correctly reached the conclusion that Raghunath died of homicidal injuries caused to him.

4. It is now to be considered whether it is Pukhraj Dakot who is responsible for the wrong doing. In this case there is no eye witness to the commission of the crime. The whole case hinges on circumstantial evidence. The most important evidence is that of Mst. Rampyari, P.W. 15, wife of the deceased Raghunath She states that

Pukhraj came to her husband at the water-hut of which Raghunath was incharge, to have a glass of water. He inter alia asked Raghunath as to how much salary he was getting. Raghunath replied that he was drawing Rs. 35/- per mensem, Pukhraj then told Raghunath that his pay was much too meagre and it was hardly possible for him to pull on therewith and that he should take to some other work. Thereupon Raghunath divulged that he had had with him Rs. 1000/- and some gold ornaments, weighing about 6 tolas. Pukhraj then suggested to Raghunath that the cash and the ornaments should be deposited with the Sub Divisional Officer, Merta, to enable him to get interest in lieu thereof. He was further tempted that by such a course of action he would also be able to secure a job for himself. The cash, which was lying deposited with Amrit Raj, P.W. 1, was withdrawn. The ornaments had already been taken back from Amrit Raj. The currency notes and the ornaments were shown to Pukhraj. Pukhraj tick marked all the ten currency notes of the denomination of rupees hundred each. After such marking Pukhraj returned the notes to Raghunath and told him that he should accompany him to the office of the Sub-Divisional Officer. Pukhraj told the witness that he tick-marked the notes so that these very notes would be returned to the depositor. On April 2, 1968, Pukhraj came to the water hut at about 6 or 7 p. m., and told Raghunath to send his children with him to be shown to the clerk of the Sub Divisional Officer. Thereupon the witness and Raghunath entrusted their three children, Kalu, Bhagwati and Navrat to Pukhraj. Pukhraj went away to a well, known 'Kundal', These three children came back after sometime. Pukhraj again took two children, Kalu and Bhagwati. to Merta Road. These children were seated in two different trains one going towards Jaipur and the other towards Bikaner. Bhagwati, however, returned home that very evening. Kalu could come back next morning at about 8 o'clock. In the evening of April 2, 1968, Pukhraj again came and started talking to her husband near the water-hut. Pukhraj told Raghunath that he should accompany him to the office of the Sub-Divisional Officer along with the cash and ornaments. The witness then gave Rs. 1000/- bearing the tickmarkings of the accused and the three gold ornaments 'Tadda', 'Tussi' and 'Bor' to Raghunath. Thereafter both Pukhraj and Raghunath went towards the bungalow of the Sub-Divisional Officer. After 10 o'clock in the night Pukhraj came to the witness and told her that Kalu was at the residence of the Sub-Divisional Officer and that

Raghunath had gone to Merta Road and that he had to proceed to Jodhpur. After saying so, Pukhraj left the place. This led the witness to get suspicious. She approached the Public Prosecutor, Shyamdas Bohra, P.W.6, and informed him of the whole happening. Shyamdas called his peon, Pukhraj son of Heeralal, P.W.11. Thereafter the witness and the peon went to the Station House Officer, Merta City. The police officer was found near the cinema house. He was informed of what had befallen. Next day morning the witness was informed that her husband had been murdered and that his dead body was lying on a bench near the volleyball field.

5. In so far as the two initial activities of the accused, one pertaining to taking the children to 'Kundal' and the other relating to taking them to Merta Road, are concerned, the statement of P.W.15 Smt. Rampyari is corroborated by her son Kalu, P.W.17. But the trial court refused to place implicit reliance upon this aspect of the case. But this does not mean that is so far as the substantial part of the prosecution case is concerned, her testimony deserves downright rejection. From the statement of P.W.15 Mst. Rampyari, which stands corroborated by the testimony of P.W.17 Kalu, in all its material aspects, it has been conclusively established by the prosecution that the accused Pukhraj developed acquaintance with the deceased Raghunath just prior to the occurrence. The accused first tried to create confidence in the mind of Raghunath that he was his well-wisher and that he would secure him a job and interest on his cash and ornaments. The accused left the water-hut along with the deceased Raghunath with the above-named three ornaments and the currency notes of Rs. 1000/-.

6. This portion of the story is strengthened from the first information report Ex.P.15), filed in the morning of April 3, 1968. This report was based on what had been stated to the Circle Officer, Merta, Kanhaiyalal, P.W.18, by Kalu. Kalu could hardly get sufficient time to make any improvements or changes in or addition to the actual happening.

7. Apart from the first information report, the testimony of Mst. Rampyari that the accused had left with her husband Raghunath along with the currency notes and the ornaments get support from P.W.6 Shri Shyamdas Bohra. The witness told the court that the deceased Raghunath was living in his neighbourhood. At about

11.30 p.m. on April 2, 1966, Rampyari came to him and told him of the whole occurrence. She further told him that Pukhraj took away her husband at about 8.30 p.m. Her husband took with him her gold ornaments, weighing about 6 tolas and rupees one thousand in cash. The witness was further told by Rampyari that Pukhraj had tick marked the currency notes. Thereupon the witness called his peon Pukhraj, P.W.11. He asked the peon to take the lady to the police station. That very night at about 1a m. P.W. 11 Pukhraj and Mst. Rampyari came to him and told him that the police had already been informed of the happening. Next day morning at about 7. 30 or 8 he came to know that Raghunath had been murdered. Learned Counsel for the appellant attacked the statement of Shyamdas on the ground that he was not interrogated by the police till April 7, 1969. The witness has clarified this position in his statement that he had narrated the whole matter to the Circle Officer in a day or two after the incident. Besides, it was none of functions of Shyamdas to lodge in writing the first information report with the police station concerned. Shyamdas is perfectly an independent witness. He had no axe to grind or private interest to nerve. A suggestion was put during his cross-examination that Rampyari was his employee. To this query, his answer was in negative. Having considered all the answers given by the witness during the cross-examination, we do not see any reason why he should be treated as unreliable. It is hardly necessary to point out that it would be unsafe to discard the evidence of a witness which appears otherwise reasonable and probable, merely because some suggestion was made to him, without such a suggestion being proved to be true: vide *Ishwari Prasad v. Mohammad Isa* : [1963]3SCR722 . Shyamdas was neighbour of Mst. Rampyari. It was therefore, but natural for the woman to have sought his assistance at the time of crisis, danger or difficulty. His peon P. W. 11 Pukhraj was called by Shyamdas in the night. He was told by him that both he and Rampyari should go to the police station. Thereupon he and Rampyari went to the Station House Officer and met him near the cinema house. The Station House Officer assured Pukhraj and Rampyari that he would make out a search of Raghunath. It is true that the police officer Raghunath Singh, P.W.19, did not make any entry regarding this information in his 'Roznamcha', but this lapse on his part would not falsify the testimony of Pukhraj, P.W. 11, and Rampyari, P.W.15. The testimony of Pukhraj lends simple support to the statement of Shyamdas

P.W.6, on the point in issue.

8. Learned Counsel for the appellant attacked the testimony of Rampyari on the following 3 grounds:

1. that when the Government offices are opened during the day time how Raghunath accompanied the accused Pukhraj for going to the office of the Sub-Divisional Officer during the night time.

2. that it was not probable that Raghunath could have secured employment by deposit of cash and ornaments with the Sub-Divisional Officer and

3. that it was not likely that Raghunath could have believed in the version that he would get interest on depositing the ornaments with the Sub-Divisional Officer.

9. In this connection, suffice it to say that Raghunath and his wife Mst. Rampyari were illiterate & unlettered village-folks. They were duped by the accused. The accused told them that the Raghunath would be given a job in the Railway Office, which is also opened during the night time. The accused tried to create confidence in the mind of Raghunath by asking him to take the ornaments and the money with himself & he would only accompany him. All these facts are given in the first information report Ex.P 15 as also in the statement of Shyamdas, P.W.6. There is nothing strange, unexpected or incredible that the accused Pukhraj succeeded in creating an impression in the mind of deceased Raghunath that he could secure some employment and interest if he deposited cash and ornaments with the Sub-Divisional Officer. Unsophisticated, simple and ingenuous villagers lacking in hardly experience, can be duped in the manner in which they were deceived by the accused in this case.

10. There is another very important circumstantial evidence furnished by the prosecution in this case. Ten currency notes Exs. 4 to 13 of the denomination of Rs. 100/- each were deposited with P.W. 1 Amrit Raj Mehajan. Amrit Raj says that first Rs. 800/- were kept with him. Thereafter Rs. 200/- more were given to him. Mst. Rampyari also entrusted some gold ornaments. 'Bar', 'Tussi' and 'Tadda' to him a few months before the occurrence for safe custody. The ornaments were

taken back from him two months before the occurrence and three or four days prior to the murder of Raghunath Rs. 1000/-, too were withdrawn from him. The witness has identified these ornaments in the identification proceedings, conducted by Shri Daulal, P.W. 7, Tehsildar and Second Class Magistrate, Merta City. Learned Counsel for the appellant has attacked the testimony of Amrit Raj on the ground that Raghunath and Rampyari would not keep the ornaments with the witness without obtaining receipt thereof from him. He further assailed the statement of Amrit Raj on the basis that no body would be foolish enough to deposit his or her money without getting interest thereon. His statement has further been challenged on the point that according to him Rs. 800/- were deposited with him bit by bit. Some times Rs. 80/-, per month were deposited and at others at the rate of Rs. 30/- p. m. Contrary to this, Mst. Rampyari has said that Rs.100/- were paid by her to Amrit Raj in two instalments of Rs. 100/- each. Amrit Raj is a respectable businessman of Merta City. He has dealings in 'Kirana' business in which he has invested Rs. 25000/-. Nothing is made out during the cross-examination as to why he should tell lies and give a false evidence in favour of the prosecution. He bears no ill-will or grudge against the accused. It is not a matter of surprise that in rural areas people do deposit their valuables and money without obtaining receipt or without recovering interest with businessmen for safe custody. The statement of Amrit Raj cannot be condemned merely on the ground that it is not in conformity with that of Mst. Rampyari in the matter of instalments. It appears that Mst. Rampyari, a simple village woman is not conscious of instalments. At any rate the alleged discrepancy in the matter of instalments is of a minor character and the statement of Amrit Raj cannot be thrown overboard because of this.

11. There is another very important link in the chain of circumstantial evidence. The currency notes which Raghunath and Rampyari, P.W. 15 had obtained from Amrit Raj, were shown to the accused Pukhraj. To assure Raghunath and Mst. Rampyari of his sincerity the accused tick-marked the currency notes telling them that those very notes would be returned to them. With a view to create further confidence, the accused did not like to take the currency notes with him. He, on the other hand, asked Raghunath to accompany him with the currency notes so that he might not harbour any suspicion that his notes might be taken away by

him. the tick-marking of the currency notes is mentioned in the first information report Ex.P 15. Shri Shyamdas Bohra, P.W. 6, also testified that Mst. Rampyari had told him during the night of the occurrence that the note had been tick-marked by the accused. The notes were recovered on the information and at the instance of the accused vide information memo Ex.P.17 and the recovery memo Ex P. 1. The Motbirs P.W.3 Shankerlal and P.W. 10 Ganesh Naranayan have deposed that the currency notes bore tick-marks. To the same effect is the statement of Circle Officer, Kanhaiyalal, P.W.18. The accused did not specifically deny the tickmarking of the notes. He simply pleaded ignorance on this score.

12. Learned Counsel for the appellant submitted that the finances of Raghunath and Mst. Rampyari were strained. Raghunath was getting Rs. 35/-per month as a waterman and Mst. Rampyari was drawing Rs. 45/- as a parttime domestic servant of 2 or 3 families. It was hardly possible for Rampyari to have collected Rs. 200/- or to get ornaments prepared for herself with this meagre income. In this connection he read out certain portions of her statement and made endeavour to persuade us to reject her evidence. We have carefully looked into her statement. It is no doubt true that Raghunath and Mst. Rampayri were not in affluent condition. It is, however, plain from the testimony of Mst, Rampyari that her house had been sold to one Moolchand for a sum of Rs. 800/- to Rs. 1000/-, and a major portion of the amount had been deposited with Amrit Raj, P.W. 1 Though Mst. Rampyari said that sometimes she would save Rs. 3/- and sometimes Rs. 4/- per mensem, yet from this version it cannot be concluded that the meagre amount of Rs. 200/-, could not have possibly been collected by the joint efforts of the husband and the wife, in the course of about ten months. Mst. Rampyari being a rustic lady, it was not expected of her that she would give the exact idea of the amount deposited by her with Amrit Raj during the specific period. Her testimony regarding depositing the ornaments also cannot be discarded on the ground that she was not in a sound financial position to get them prepared. She was married to Raghunath some 20 years back. During the span of this long period, there is no wonder that she could got gold ornaments, weighing only about 6 tolas. We are not convinced with the reasons of learned Counsel for the appellant that it was beyond the means of Raghunath and Rampyari to have collected of Rs. 1000/-(including Rs. 800/--received on account of the sale of their house) and three ordinary gold

ornaments of a Hindu woman, weighing hardly six tolas.

13. The testimony of Mst. Rampyari, P. W. 15, gets further support from P.W. 9. Gopal Singh Charan, a teacher in the secondary school at Merta City. He says that he was a school teacher of the 9th class. On April 1, 1969, the accused Pukhraj, a student of the 9th standard, was present in the class. But on April 2, 1968, he remained absent from the school. He has produced a register in the register in support of his statement. Relevant entry is marked Ex. P. 5. The accused also admits in his statement that he was absent from the school on April 2, 1968. He says that as he was down with dysentery, he could not attend the school that day. No medical certificate has been produced by the accused in support of his sickness. The absence of the accused from the school on the relevant date also provides a useful link in the chain of the circumstantial evidence.

14. In the light of the above discussion, we are convinced beyond reasonable doubt that the testimony of Mst. Rampyari is convincing and credible and is amply corroborated by over-whelming circumstantial evidence discussed above. It evinces how Raghunath was approached by Pukhraj and how he was taken into confidence. It further shows how Raghunath was told by the accused that he could secure him a job in the Railway Office through the Sub Divisional Officer, provided he was ready to deposit the currency notes of Rs. 1000/-, and the three ornaments 'Tadda', and 'Bor' with the said Officer. The accused then tick-marked the currency notes of the denomination of Rs. 100/- each with a view to create confidence in the mind of the deceased. He then took with him Raghunath near the volleyball field. Raghunath was holding his cash and the ornaments. Thereafter he was done to death. Pukhraj again came to Mst. Rampyari and deceitfully told her that her husband had gone to Merta Road. This he did obviously with the object that no search of the deceased Raghunath might be undertaken soon after his murder. Had Raghunath been murdered by someone else, Pukhraj ought to have reported the matter to the police then and there, but he instead of doing so came forward to beguile and deceive the woman by saying that he had gone away to Merta Road.

15. Having taken into consideration the above evidence and the circumstances, we may now take up the question of the recovery of the currency notes and the ornaments alleged to have been seized by the accused from the deceased Raghunath. While in the police custody the accused Pukhraj conveyed information to the Circle Officer Kanhaiyalal, P.W. 18, that he had concealed 'Tadda', Article 1, 'Tussi' Article 3 and 'Bor' Article 3 in a pit dug under the floor of his shop. He further informed the police that he had secreted ten currency notes of the denominations of Rs. 100/- each in between Bazara bags in his house. That information was reduced to writing and is marked Ex. P 17, dated April 3, 1963. Sections 25 and 26 of the Evidence Act impose a ban upon the admissibility of a confession before a police officer. Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the two preceding sections. The condition necessary to bring this section into operation is that the discovery of a fact in consequence of information as relates distinctly to the fact thereby discovered may be proved. The section is based on the view that if a fact is actually discovered in consequence of an information given, some guarantee is afforded thereby that the information was true and can be usefully allowed to be given in evidence. On the question of admissibility of the statement of the accused to the police Sir John Beaumont in *Pulukuri Motteya v. Emperor* AIR 1947 PC 67 set out the entire statement made by the accused No. 6 to the police except the passage 'I hid it (a spear) and my stickpin the rick of Venkatannarasu in the village, I will show if you come' was inadmissible in evidence. In other words, the statement, 'I hid it (a spear) and my stick in the rick of Venkatanarasu in the village, I will show, if you come' was admissible. We can see no good reason for disbelieving the police officer regarding the statement made by the accused Pukh Raj. An examination of the evidence of Circle Officer Kanhaiyalal. P. W. 18, does not disclose any circumstance which would justify us in holding that he was not speaking the truth. In view of the appellant's statement that he had concealed the currency notes and the valuables, it is impossible to accept the suggestion put forward on behalf of the appellant that such information hardly connects the accused with the crime. The fact that the appellant hid the above articles clearly indicates his guilty knowledge.

16. In pursuance of the above information the police recovered ten currency notes of the denomination of Rs. 100/- each from the midst of the Bazra bags in the presence of two Motbirs P. W. 2 Shankerlal and P. W. 10 Ganesh Narain. At the time of the recovery the accused never stated that the money belonged to his father. The most significant part of the recovery of the currency notes is that each one of these notes bore a tick mark. This is evident not only from the recovery memo Ex. P. 1 but also from the statements of Motbirs Shankerlal and Ganesh Narain also from the testimony of Circle Officer Kanhaiyalal. P. W. 12. In the course of the trial the accused stated the money belonged to his father. He has not furnished any satisfactory explanation as to how the currency notes bore tickmarks. The father of the accused, Gopikishan, has been examined by him as D. W. 2. He has not explained how and wherefrom he had obtained the money and how exactly a sum of Rs. 1000/-, neither less, nor more, was found in the midst of the bazra bags, which is normally not the place for keeping money.

17. Similarly in respect of the three ornaments the accused, while in police custody, furnished information Ex.P.17 and led the police to his shop and got recovered 'Tadda' Article 1,'Tussi' Article 2 & 'Bor' Article 3 after digging the earth to the depth of about 9 inches According to the Motbirs PW2 Shankerlal & PW 10 Ganesh Narain the pit appeared to have been recently dug & plastered afresh. The explanation of the accused is that these ornaments belonged to his mother. It is hardly conceivable that such ordinary ornaments of daily use like 'Bar', 'Tussi' and 'Tadda', weighing six tolas, would be put by the mother of the accused in the pit dug underneath the floor of the shop. Another most significant aspect in the recovery of the ornaments is that only three ornaments mentioned above were found buried, neither more, nor less.

18. The currency notes and ornaments were identified by the prosecution witness before the Tehsildar-cum-Second Class Magistrate, Merta City, Shri Daulal, P.W.7. He states that his peon Govind Singh brought one more 'Tadda', two 'Tussi' and one more 'Bor' and five currency notes of Rs. 100/-, each. They were mixed with the articles recovered. Then Mst. Rampyari was asked to identify the articles & she correctly did so. There after Amrit Raj P.W.1, with whom the gold ornaments had been placed for safe custody, was called upon to identify them and

he also did so free from error. Learned Counsel for the appellant has challenged the validity of this identification on the ground that the ratio between the ornaments recovered and the ornaments mixed was much too low and, therefore, such an identification according to him, was farcical or ludicrous. In this connection it may be pointed out that the present case is one of those cases in which even an identification is not needed to satisfy the court that the property had been taken away by the accused, Identification of a person means recognising the face of a stranger who was seen momentarily only at the time of commission of the crime. Identification of property is usually the recognition of the property by its owner. The owner knows his/her own article and when he/she sees them, he/she picks them out. He/she is well acquainted with all the peculiarities of the articles. Even though ostensibly there may be no distinctive marks, no owner can very frequently be trusted to pick out his/her own articles. There is some peculiarity in the article which is present in the sub-conscious mind of its owner and which he/she may not be able to describe. It is, therefore, idle to place the identification of the property on the same footing as the identification of an accused person: vide *State v. Rambilas* : AIR1961 All614 . Apart from what has been stated above, we, in this case, find that the description of the property, more especially the currency notes bearing tick-marks, was more than sufficient to prove that the stolen property belonged to Mst. Rampyari.

19. We may also mention here that in so far as the identification of the person is concerned, it is always admissible that five or more persons should be mixed before the identification is held to be reliable. In the identification of property 2 or 3 similarly articles are mixed & although it is desirable that a large number of similar articles should be mixed, still the identification of the property cannot be discarded if the witnesses are trust-worthy and they have been subjected to a fair test. This is just to illustrate that the identification of property stands on a different footing than the identification of the person. In this connection a reference may also usefully be made to *Sadasiv Das v. State* : AIR1958 Ori51 , wherein a Division Bench of the Orissa High Court has laid down:

Women may identify their necklaces even without marks of identification if they are whole and unbroken, but they can never identify a piece of a neckless of ordinary

type if it is made into several pieces, each piece about 2 inches in length.

We may also quote a passage occurring in *Gundla Narayana and Ors.* (5) which runs as under:

In this connection, the learned Counsel also relied on Section 9 Evidence Act and contended that this section governs both the identification of person and property. We do not agree with the contention of the learned Counsel that the identification of articles in court cannot be believed because they were not put forth for identification, for in our opinion, the identification in court assumes more importance.

At this stage we may advantageously reproduce what *Wills on Circumstantial Evidence* at page 240 (7th Edn) says;

It is not, however, necessary that the identity of stolen property should be invariably established by positive evidence. In many such cases identification is impracticable; and yet the circumstances may render it impossible to doubt the identity of the property.

The property taken away by the accused has been mentioned in the first information report. The motbirs regarding recovery of this property Shankerlal, P. W. 2, and Ganesh Narain, P. W. 10, are respectable people and have no motive to implicate the accused falsely. The articles were found secreted in places which were legitimately leading to the inference that it was the accused who had secreted them there. Normally nobody would secret the currency notes in the midst of Bazra bags or ordinary ornaments of daily use weighing hardly six tolas, under the floor of a shop. People would not secret such properties in such places unless they are not in a position to claim them as their own. Unless they have been dishonestly got, they would not hide the traces of the same. The other point of criticism by the learned Counsel for the appellant is that the ornaments were the articles of common use and they had no particular identifying marks and consequently no reliance can be placed on their identification. In advancing this criticism counsel forgets that small and even more nice points of difference distinguishing one thing from others of the same kind may merely by the frequent

sight of them and without any special attention make an impression on the mind. In this case the impression is the general appearance of the things, though one may not be able to formulate any cogent or intelligent reason for their identification

20. From what has been discussed above, it is manifest that there is no wonder that Mst. Rampyari identified her articles satisfactorily though she might not have been able to formulate her reason for so doing. Her identification was based upon her general Untranslated impression of the mind in so far as the ornaments were concerned. The currency notes could be easily identified as the accused had put tick marks on each one of them prior to the occurrence. It would, therefore, be fatuous to discredit the identification on the ground that many more articles were not mixed with the articles recovered or that prior reasons were not formulated by the identifier.

21. The question now remains to be answered is how for the recovery of the articles will connect the accused with the crimes of voluntarily causing hurt in committing robbery & of committing murder of Raghunath.

22. Under illustration (a) to Section 114, Evidence Act, the presumption can be extended to aggravated offences such as murder, e. g. where the possession of the stolen property could not have been transferred from the deceased to the accused except by murder (vide *Sukhi Devi v. State* : AIR1965 Ori33). The illustration does not limit the scope of the section. The provision under illustration (a) to Section 114, Evidence Act, is no more than an example and the presumption arising thereunder extends to all charges, however, penal, including murder or causing hurt while committing robbery. In cases in which murder and robbery are shown to form part of the one transaction, recent and unexplained possession of the stolen property, in the absence of circumstances tending to show that the accused was only the receiver of the property, would not only be the presumptive evidence against him on the charge of robbery, but also on the charge of murder. No hard and fast rule can be laid down as to what inference can be drawn from a certain circumstance.

23. Green Leaf writes in volume 3 para 31:

On this subject no certain rule can be laid down of universal application the presumption being not conclusive, but disputable and, therefore, to be dealt with by the jury alone as a mere inference of fact. Its force and value will depend upon several considerations.

This question has been' dealt within several decision of the Madras High Court and the Supreme Court. The earliest decision of the Madras High Court is the one reported in *Queen Empress v. Sami* ILR 13 Mad. 90. Muttusami Ayyar and Shephard, JJ , held that recent and unexplained possession of the stolen property which would be presumptive evidence against the prisoners on the charge of robbery is similarly evidence against them on the charge of murder. A decision of the same High Court reported as *Narayana v. King Emperor* ILR 18 Mad 1 is treated as a leading case on the subject and it also took the same view Subsequently in *Kaliaperumal* AIR 1954 Mad. 1088 Rajagopalan and Ramaswami Gounder JJ. observed as follows:

Where murder and robbery of the jewels on the deceased person are proved to have been integral parts of the same transaction, the presumption that can be drawn from the possession of property which was on the deceased person may, consistent with the circumstances, in the case, be the person to whom such possession was traced not only committed theft of these jewels but also committed the murder which formed part of the same transaction as theft.

24. This question also went up to the Supreme Court in *Tulsiram v. State* AIR 1934 SC 1. His Lordship Kania, C.J., speaking for the Court, observed:

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.

In *Sunderlal v. State of Madhya Pradesh* AIR 1954 SC 38, his Lordship Bhagwati, J., who delivered the judgment, held:

These ornaments were therefore, established to be the ornaments worn by the deceased and the accused was not in a position to give any satisfactory explanation as to how he came to be in possession of the same on the very same

day on which the alleged murder was committed. The circumstantial evidence, therefore, was sufficient to hold the accused responsible for the murder of the deceased.

25. It is true that in *Sanwat Khan v. State of Rajasthan* : AIR 1956 SC54 it was laid down by his Lordship Mahajan, J.:

In the absence of any direct or circumstantial evidence whatsoever, from the solitary circumstance of the explained recovery of the two articles from the houses of the two appellants, the only inference that can be raised in view of illustration (a) to Section 114 of the Evidence Act is that they are either receivers of stolen property or were the persons who committed the theft.

26. The decision in *Sanwat Khan's* case is distinguishable from the facts of the present case inasmuch as in the Supreme Court case there were other persons interested in murdering the deceased and planning for the same. One of them admittedly was the father of the appellant. The decision in *Sanwat Khan's* cannot be said to have modified the decisions in the cases of *Sunderlal v. State of Madhya Pradesh* and *Tulsiram v. State* (Supra). In *Nasim Khan v. State of U. P.* : 1956 CriLJ790 some further circumstances were available besides mere possession by the accused of the articles which were on the person or in the custody of the murdered man and the conviction of the accused Under Section 302, I.P.C., was upheld.

27. Thus, it is plain that in a given circumstance, presumption under illustration (a) to Section 114 of the Evidence Act is not confined to cases of theft or receiving of stolen property, but it extends to other crimes, even the most penal. As has been observed by Taylor on Evidence (Article 142) an inference of murder can be drawn if the property of the murdered man is taken away in the course of the robbery or burglary. In this case, the only explanation which the accused has furnished in the matter of recoveries is that the ornaments and the currency notes belonged to his parents. He has examined Ram Swroop. D.W.I, who has stated that the 'Tadda' and the 'Tussi' were prepared by him at the request of Gopikrishan some 14 or 15 years back. In the cross-examination the witness has said that he does not remember in which month or year he prepared these articles. The witness saw the

articles for first time after their preparation. No reliance can be placed on the vague testimony of such a witness. Gopikrishan, D.W.2, is the father of the accused. He says that his mother gave 'Bor' Article 3 to him. Article 1'Tada' and Article 2'Tussi' were got prepared by him 14 or 15 years before. He further says that the currency notes of the value of Rs. 1000/- also belonged to him. He admits that he too was arrested by the police. The witness is naturally interested in saving the skin of his son. The evidence of this witness has not been relied upon by the trial court in the face of the overwhelming prosecution evidence discussed above. An evidence of this type cannot possibly be accounted for in any other way than that the appellant deliberately tried to manufacture it. The explanation of the accused in regard to the ownership of the ornaments and the currency notes cannot, therefore, be said to be satisfactory and we hereby refuse to accept it. In this case we are of opinion that there is evidence on which the trial court could infer that Raghunath met his death, that he was dead: and if he was dead, the circumstances point to the fact that his death was not a natural death. Then, if that is established as it would, the evidence is such that the Court is entitled to find that the appellant murdered Raghunath.

28. There is the convincing and credible evidence that it was the accused who got himself introduced to the deceased Raghunath prior to the occurrence. Having come to know the secret of Raghunath's wealth, he induced him to accompany him to the office of the Sub-Divisional Officer so that his property might be deposited there and he might be able to get a job and interest on his property. The accused tick-marked the currency notes which the deceased had obtained from Amrit Raj, P.W.1, with whom he had kept them as also ornaments for safe-custody. The accused then proceeded towards the office of the Sub-Divisional Officer. He was accompanied by the deceased, who was having his cash and ornaments with him. The deceased with a view to create confidence in the mind of the accused did not prefer to take with himself the currency notes and the ornaments. He allowed the deceased to take them with himself. Soon after the accused and the deceased Raghunath reached somewhere near the volley-ball field, where the latter was done to take death. His eyes were stabbed and pierced with an iron 'Patti', which, when recovered, was found to have been stained with human blood by the Chemical Examiner and Serologist. The ornaments and the money, which

the deceased took with him, were recovered by the Police the very next day on the information and at the instance of the accused in his house and his shop. These articles were duly identified in the identification proceedings conducted by the Second Class Magistrate, Merta. Thus, the murder and the theft formed an integral part of the same transaction. Having regard to all these facts and the circumstances of the case, the trial court was justified in holding that the offences of murder and of voluntarily causing hurt for committing robbery stood fully established. The above circumstances are so cogent as they convince the court that the facts could not be accounted for on any other rational hypothesis than murder and the court below was entitled to find that Raghunath was murdered and that the appellant was his murderer. Accordingly the appeal is dismissed.

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