

Mohanlal Vs. State of Rajasthan

Mohanlal Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/757631

Court : Rajasthan

Decided On : Apr-13-1970

Reported in : 1970WLN603

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

Appeal No. : D.B. Criminal Appeal No. 272 of 1967

Appellant : Mohanlal

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

L.S. Mehta, J.

1. The charge against the accused Mohanlal was that he murdered a woman named Mst. Goran and thereby committed an offence under Section 302, IPC. The other charge against him was that he committed trespass in order to the committing of an offence punishable with death and thereby committed an offence under Section 449 IPC. The third accusation against him was that he committed theft in the house of Mst. Goran and thereby committed crime falling under Section 380, IPC. The accused was tried by the learned Sessions Judge, Bikaner, and was found guilty of the indictments under the above sections of the Penal Code

and sentenced as follows:

- (1) for offence Under Section 302, IPC. Life imprisonment.
- (2) for offence Under Section 449, IPC. 8 years' rigorous imprisonment.
- (3) for offence Under Section 380, IPC. 7 years' rigorous imprisonment.

All the sentences so awarded were directed to run concurrently. The accused Mohanlal felt aggrieved by the above verdict and filed the present appeal.

2. The story placed for the prosecution is that Mst. Goran, a resident of Bikaner, had been married to Poonamchand. Her husband breathed his last when she was of tender age. She had adopted a son Gyan Chand, brother of PW 1 Dharam Chand, Gyan Chand lived in Calcutta, where he carried on some business. Mst. Goran resided in her own house in Bikaner. Mst. Siria was employed by Mst Goran to cook meals and do miscellaneous domestic work. The accused Mohanlal is the son of Mst. Siria who lived in Golechan line, Bikaner. Mohanlal got a job of a surveillance worker, Malaria Department, Ghadyala. Whenever he came to Bikaner, he had had the occasion to visit the house of Mst. Goran, as his mother was engaged there. Dharam Chand, younger brother of Gyan Chand, also called on Mst. Goran off and on. Lastly he met her on Baisakh Badi 7 (April 13, 1966), At that time Mst. Siria was also present there. On April 14, 1966, Dharam Chand again wanted to meet Mst. Goran, but he found her house locked from outside. On April, 15, 1966, Dharam Chand made further attempt to see Mst. Goran, but he found her house locked. He felt disgustingly filthy and stinking smell coming out of her house. Some neighbours advised Dharam Chand to inform the police officer concerned of the matter. Consequently he lodged first information report, as contained in Ex. P3, in the night of April 15, 1966. Next day, that is, on April 16, 1966. PW 22, Mukand Singh, Station House Officer, Bikaner, got the lock of Mst. Goran's house broken. On his entering the house along with some Motbirs, it was found that certain articles of Mst. Goran were lying strewn in the courtyard. On search having been effected, Mst. Goran was found dead in a water cistern. Her dead body was taken out from the water reservoir by Nenu Khan (PW 4). No ornament was found on the body of the deceased. The corpse contained only a

'Lengha' Ex. 7, 'Ordhna' Ex. 8 and blouse Ex. 9. The dead body was sent to PW 15 Dr. G. K. Bhatnagar, Medical Jurist, Associated Group of Hospitals, Bikaner, for autopsy. Following injuries were found on the person of the deceased:

1. Lower lip on the mucus surface shows much haemorrhage in the middle. No injury seen on upper lip as it was discoloured and decomposed.
2. Haemorrhage seen in the scalp in the middle on the occipital region 2' x 2'.
3. A reddish area (contusion) 6' x 4' on the antero medical side of left thigh upper 1/3 and on dissection haemorrhage was seen in this area.
4. A reddish area contusion 5' x 3' on the antero medical side of right thigh upper 1/3 and on dissection haemorrhage was seen in this area.
5. A reddish area (contusion) 4' x 3' on the posterior side of side of left thigh upper 1/3. Haimorrhage was seen on dissection.
6. A reddish area 3' x 3' on the left side chest upper part and haemorrhage was seen underneath on dissection.

These was no mark of ligature on her neck. In the opinion of the Doctor Mst. Goran did not die of drowning. In all probability the cause of her a death was asphyxia due to smothering.

3. Both Mst. Siria and her son Mohanlal were arrested by the police. Mohanlal, however, could not be found till May 1, 1966. That day he was found standing near the bus stand of Gangashahar. He had a leather bag with him. The bag was searched and 6 gold bangles Ex. 14, a pair of gold 'Choth' Ex. 33 and 3 currency notes of denomination of Rs. 100/- each were recovered therefrom Later on the accused Mohanlal gave information to the Station House Officer, Mukand Singh, that he had put Mst. Goran's jewellery and other articles somewhere near Raghunath Sagar Tank, Bikaner. That information was reduced to writing and is marked Ex. P-32. In pursuance of the information the police recovered certain ornaments, such as, 'Calpatia' of gold Ex. 17, 'Surlaipa' Ex. 16, gold 'Kara' Ex. 19, seven gold buttons with chain Ex. 10, gold chain Ex. 22, gold watch Ex. 20, gold

'Churis' Ex. 21, gold 'Patri' Ex. 11, pair of 'Lung' Ex. 12, gold teeth cleaner Ex. 14, ring Ex. 13, 'Challa' Ex. 16; ring Ex. 33 and necklace Ex. 34 near Raghunath Sagar tank under a 'Kumbhat' tree. Most of the ornaments identified by Dharam Chand, PW 1, in the identification proceedings conducted by the sub-Divisional Magistrate, Shri Radhey Shyam (PW 17). Mohanlal was also found in possession of a watch Ex. 32, purchased from Bhagirath PW 16 for a sum of Rs. 75/- under cash memo, dated April 25, 1966, (Ex. P-26). He was also having some clothes from Hotchand, a shop-keeper of Jodhpur, for a sum of Rs. 82.99 paise under cash memo No 823, dated April 15, 1966. Both these articles were seized by the police under memo Ex P 14. The police also recovered at the instance of accused Mohanlal a key Ex. 20 near Raghunath Sagar Tank. A memo in respect thereto was prepared and is marked Ex. P 12. Certain articles were also recovered at the instance of Mst. Siria with which we are not concerned here. Mohanlal remained absent from his duty at Ghadyala from March 30, 1966 to April 12, 1966 and again from April 14, 1966 onwards. After necessary investigation to police charge-sheeted the accused Mohanlal and Mst. Siria for offences under Sections 120B, 302, 380, 411, 460 and 201. IPC., and put up the relevant papers in the court of the Additional Munsiff Magistrate, Bikaner. The said Magistrate conducted preliminary inquiry in accordance with the provisions of Section 207A, Cr. P.C., and committed both the accused Mohanlal and Mst. Siria to the court of Sessions Judge, Bikaner, to face trial for offences under the said sections of the Indian Penal Code.

4. Both the accused denied to have committed any offence. The accused Mohanlal further stated that he had lived separately from his mother Mst. Siria. He left Ghadyala on April 7, 1966, and went away to Bikaner to attend a meeting and stayed there upto April 11, 1966. He further said that he left Ghadyala on April 15, 1966, by bus. He denied to have absent from his duty and asserted that he was at Ghadyala during the relevant period. He admitted that the leather bag seized by the police belonged to him, but it did not contain the gold bangles and the 'Choti'. He also denied to have got recovered articles as contained in Ex P 11. He further denied to have got the key of the lock of Mst. Goran's house recovered. He admitted to have purchased the watch from Bhagirath at Nagaur and some ready made clothes from the shop of Hotchand at Jodhpur. On behalf of the prosecution

22 witnesses were examined by the trial court. The accused Mohanlal in his defence of alibi examined one witness Jesha, his father-in-law. The trial court gave finding that the ornaments were recovered on the information and at the instance of the accused and that these ornaments Mst. Goran used to wear. They were taken away by the accused Mohanlal and that it was he who committed her murder. Consequently, it convicted and sentenced the accused Mohanlal, as stated above. Mst. Siria was, however, given benefit of the doubt and was acquitted of the indictments with which she stood charged. .

5. We have had the advantage of a full and complete argument on both the sides and the case for the accused has been placed before us with commendable zeal, care and skill by learned counsel Shri Bhimraj. It was argued on behalf of the appellant that the recovery of the articles from the possession or at the instance of the accused was a positive proof that he had participated in the crime of murder. It was contended that before an accused can be convicted on purely circumstantial evidence must be of such a character so as to exclude all possibility of the accused being innocent. It was then contended that the court below went wrong in holding that the production of the ornaments and the key of the lock of the deceased Mst. Goran's house was evidence that he had committed thereunder. That evidence would at the most raise presumption that the appellant committed theft of the ornaments or that he was the receiver of the stolen property. Mere recovery does not necessarily lead to the inference that it was he and he alone who committed the murder. Reliance in this respect was placed by learned counsel for the appellant on a decision of the Supreme Court reported as *Hanwat Khan v. State of Rajasthan* : AIR 1956 SC54 , *Bhikha Gobar v. Emperor* AIR 1943 Bom. 484 and *State v. Motia* AIR 1955 Raj. 82. Learned Deputy Government Advocate, on the other hand, supported the judgment of the trial court.

6. From the medical evidence given by Dr. G. K. Bhatnagar (PW 13) it is established beyond unerring certainty that Mst. Goran did not die of drowning in the water cistern which contained water hardly a feet deep. In view of the fractured sockets of the upper and lower central and lateral incisors and evidence of injuries to the lower lip and non-absorption of the bone of the above sockets and the injury to the occipital region, scalp, both thighs anteriorly and left thigh

posteriorly and left chest upper part (11 contusions) and congested, the Doctor opined that the cause of death in all probability was asphyxiation due to smothering. Besides, certain articles of Mst Goran, such as, spectacles Ex. 1, sweater Ex-3, socks Ex-4 etc, were found scattered in the courtyard of her house. The main gate of Mst. Goran's house was also found locked from outside. All these facts and circumstances persuaded the trying Judge to reach the conclusion that Mst. Goran died as a result of homicidal violence and there is no convincing reason why that finding should be discerned with an eye of suspicion by this Court.

7. Before we deal with the question of recovery we would like to deal with the other circumstance, constituting important links in the chain of circumstantial evidence. From the prosecution evidence it is plain that Mst. Siria, mother of the appellant Mohanlal, had been in the service of the deceased Mst. Goran for a number of years and till her death. This is borne out from the testimony of Dharamchand, PW 1, Bansilal PW 2, Kishan Chand PW 11, Shikhar Chand PW 13 and Shikar Chand s/o Maganmal P.W 14. Dharam Chand further states that he saw Mst. Siria at the house of Mst. Goran on April 12, 1966. Bansilal PW 2, says that he had seen accused Mst. Siria and Mohanlal at Mst, Goran's house. The trial court did not place complete reliance upon this portion of the statements of Bansilal on the ground that it is not supported by other witnesses, The court below, however, gave a definite finding that as Mst. Siria was employed by Mst. Goran, Mohanlal could have visited her house. We do not agree with the observation of the trying Judge that as on this specific point the testimony of Bansilal, PW 2, is not supported by other evidence, it should not be relied upon, It is not necessary under the law that every part of the statement of Bansilal must get corroboration from other independent evidence. Bansilal was examined at length on behalf of the defence. His testimony in the matter of his seeing Mohanlal at the house of Mst. Caran has not been shattered in the cross-examination in any way. We may, therefore, safely hold that the prosecution has succeeded in proving that Mst. Goran and that on account of this important link, Mohanlal, son of Mst. Siria, did visit the house of Mst. Goran.

8. Mohanlal was employed as Surveillance Worker in the Malaria Office at Ghadyala, Dr. S. D. Joshi, PW 7, states that on receipt of a communication from

the police he made enquiry through the Senior Malaria Inspector. Shiv Ratan Sharma, and ascertained that Mohanlal was absent from duty from March 30, 66 till April 12, 66. He came back to Ghadyala on April 13, 66, Thereafter he left Ghadyala on April 14, 66. PW 8 Shiv Ratan, Senior Inspector Malaria, says that he submitted a repore Ex-P 19 to Dr. S. D. Joshi, PW 7. Mohanial remained absent from his duty from March 30, 66 to April 12, 66. He came to Ghadyala on April 13, 66, and left the place on April 16, 66. To the same effect is the statement of Vijay Singh PW 9, and Doongar, PW 12. From this evidence it can safely be concluded that Mohanial was absent from the Malaria Office, Ghadyala. on the date of the occurrence, that is on 12-4-66. The accused admits in his statement that he came from Ghadyala to Bikaner April 7, 66 to attend a meeting and he returned to Ghadyala on 11-4-66 He has conveniently avoided mentioning the crucial date falling on April 12, 66. In support of his defence he examined one witness, his father-in-law Jesha DW 1. He says that Mohanial came to his house on April 19, 66 and not before that. The statement of Jesha rendered false by the statement of the accused Mohanial himself who says that he was at Bikaner only from April 7, 66 to April 11, 66. Thus from the evidence available on record absence of Mohanial from March 30, 66 to April 13, 66, from the Malaria Office, Ghadyala is satisfactorily provided.

9. The murder is alleged to have taken place on April 12, 66, and the stolen property was taken away from the house of Mst Goran. The accused went to the shop of Bhagirath, PW 16, at Nagaur on April 23, 66, and purchased a wrist watch Ex-32 for Rs. 75/- under a cash memo No. 213 (Ex P-26. He also bought certain clothes from Hotchand at Jodhpur under a cash memo No. 822, dated April 13, 67, for Rs. 82.99 P. There is the testimony of PW 19 Hardas, who was a Cashier in the Malaria Office at Bikaner that for the month of March, 66, he disbursed salary among the staff. The witness says that Mohanial was employed in the Malaria Office and was posted at Ghadyala as Surveillance worker. On April 11, 66, he paid him his salary for the month of March. The salary bill is marked as Ex. P. 23. He paid a sum of Rs. 49.24 only to the accused, as there was an order of deduction of Rs. 31.10 on account of his having remained absent from his duty. Ex-P, 28 shows that in all Mohanial after the deduction of L.I.C. premium used to get Rs. 80.34 and in the month of March he was paid Rs 49.24 paise only.

Mohanlal admitted in his statement that he purchased the watch and the clothes. His leather bag further contained bank notes of the denomination of Rs. 300/-. This transition from the state of indigence to affluence unwanted expenditure was inconsistent with his position in life and this is also a circumstance which is unfavourable to the supposition of innocence. In this connection we would like to quote below a relevant passage occurring at page 105 of Wills on Circumstantial Evidence, Seventh Edition:

It is upon the same principle that a sudden and otherwise inexplicable transition from a state of indigence and a consequent change of habits, or a profuse or unwanted expenditure inconsistent with the position in life of the party, is sometimes a circumstance extremely unfavourable to the supposition of innocence.

10. Having dealt with the important links in the chain of circumstantial evidence, we may now take up the question of the various recoveries made at the instance of the accused Mohanlal. Mohanlal was arrested on May 1, 66, under memo Ex-P 14. He could not be traced out by the police upto May 1, 66. Ultimately he was found standing near the bus stand of Gangashahar. He was holding a leather bag Ex 30 in his hand. The bag contained, amongst other articles, 6 gold bangles Ex-13 and a pair of Gold 'Choth' Ex 23 besides currency notes of the value of Rs.300/-, A memo was prepared in respect thereof and is marked Ex-P 14. It stands proved by the statements of Station House Officer Mukand Singh, PW 22, Shikar Chand, PW 13 and Bhinya Ram, PW 6. Bhinya Ram is a carpenter and is perfectly an independent witness. His signatures are available on the memo referred to above. Though Shikar Chand is the distant relation of the deceased, yet that by itself would not be enough to discard his testimony, particularly when his signatures are found on the recovery memo. The ornaments found in the bag have been identified by PW 1 Dharamchand before PW 17 Shri Radhey Shyam, Sub-Divisional Magistrate, Bikaner, under memo Ex-P 6, dated 19-5-66. Nothing is made out in the cross-examination of Shri Radhey Shyam so as to suspect the identification proceedings. No explanation is forthcoming on behalf of the accused as to how and wherefrom he had obtained the gold bangles and the gold 'Choth', The most significant part in this recovery is the inscription of the name of Mst.

Goran on one 'Choth' and that of her husband Poonamchand on the other. The engraving of the names of the two persons on the ornaments leaves no room for doubt that they belonged to the deceased Mst. Goran.

11. There is another set of recovery. Accused Mohanlal gave information to the Station House Officer Mukand Singh, PW 22, that he had placed certain ornaments of the deceased Mst. Goran at the Raghunath Sagar Tank in a pit one foot deep under the root of a tree. That information was recorded by the police and is marked Ex-P 32. This information is admissible in evidence under Section 27 of the Evidence Act. The condition necessary to bring Section 27 into operation is that the discovery of a fact must be deposited to and thereupon so much of the 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 information given, some guarantee is afforded thereby that the information was true and, therefore, such an information can be safely allowed to be given in evidence: vide *Palukuri Kottaya v. Emperor* AIR 1947 PC 67. The Privy Council decision was referred to and approved by their Lordships of the Supreme Court in *Pershad v. State of U.P.* AIR 1957 SC 311. In this case the appellant, as has been stated above, gave knowledge of the concealment of the articles of the deceased to the police and thereafter he, in the presence of witnesses, dug the pit and took them out and they were identified as those of the deceased and, therefore, that statement is admissible in evidence. This recovery memo (Ex-P11) was evidenced by S.H.O Mukand Singh PW22, Laxmi Narain, PW 21, Jaskaran, PW 3. and Kishan Chand, PW 11. Jaskaran is no doubt Goran's husband's brother in four degrees. Kishanchand admits that Mst. Goran was the elder mother-in law of his son. The fact that a certain witness was a relative of the deceased, does not detract from the value to be attached to his testimony, because naturally enough he might be interested in seeing that the real murderer should be convicted of the offence; but he cannot be expected to adopt a course by which some innocent person may take the place of the person really guilty of the murder and that too, when no enmity as such is established between the witness and the accused as would induce him to commit perjury and substitute him in place of the real guilty vide *Bhupendra Singh v. State of Punjab* : 1969 CriLJ6 . Consequently the evidence of the witnesses Jaskaran and Kishanchand with regard to the recovery

cannot be abandoned on the mere ground of their interest in the deceased. The accused has denied these recoveries and has furnished no explanation whatever as to how he had obtained these articles. The articles recovered contained gold teeth cleaner Ex-14, Galpatia of gold Ex-17. gold Surliya Ex-18, Kara Ex-19, 7 gold buttons with chain Ex-10, gold chain Ex-22, gold watch Ex- 20, gold 'Churries' Ex-21 Gold Patri Ex. 11 pair of 'Lung' Ex-12, gold rings Exs. 15 and 33, 'Challa' Ex-16 and necklace Ex-34. Most of these articles were identified by PW 1 Dharamchand in the identification proceedings conducted by the Sub-Divisional Magistrate, Bikaner, Shri Radhey Shyam, (PW-17). It is in the evidence of PW-1 Dharamchand that most of these ornaments were in the use of Mst. Goran. PW 2, Bansilal states that Mst.Goran put on these articles as she had become widow in tender age and that in his community such widows do wear ornaments. To the same effect is the deposition of Shikharchand, PW 13. Thus the second set of recovery of the ornaments of Mst. Goran made on the information and at the instance of the accused Mohanlal has also been satisfactorily authenticated and it has further been established that Mst. Goran used to wear these ornaments.

12. There is the third set of recovery of the key Ex. 29 of the lock of the deceased Mst. Goran's house. On 9-5-66, Mohanlal led to the police to the Raghunath Sagar Tank He removed some sand underneath a 'Kumbhat' tree and took out the key and handed it over to the police under a memo Ex. P. 12. Laxmi Narain, PW21. says that this was the key of the lock put to the main gate of the house of the deceased. In the course of the arguments we also examined this key along with the lock and we are inclined to think that this is the key of that very lock. No explanation has been furnished by the accused as to how he got the key and how he got it recovered at the Raghunath Sagar Tank, an uninhabited place.

13. From the evidence discussed above the following conclusions emerge:

(1) That the ornaments recovered were of the habitual use of the deceased Mst. Goran.

(2) That Mst. Goran's dead body was bereft of ornaments. Her corpse had been only 'Lehnga' Ex-7, 'Ordhna' Ex-2 and blouse Ex. 9.

(3) That the murder and larceny formed part of the same transaction.

(4) That whosoever committed theft of the ornaments locked the house of the deceased Mst. Goran from outside and took away with him the key of that lock.

(5) That the accused left behind unless articles like worn out spectacles Ex. 1, sweater Ex 5, socks Ex, 4 etc., dispersed over court-yard.

14. Under Section 114 of the Evidence Act the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (a) to Section 114 reads as follows:

(a) That a man who is in possession of stolen goods soon after the theft is either the thief or received the goods knowing them to be stolen, unless he can account for his possession.

It has been authoritatively laid down that the presumption under illustration(a) to Section 114 can be extended to a more aggravated offence. The following passage, occurring at pages 104 and 105 in *Kills on Circumstantial Evidence* (17 Edition instructive:

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 forms also a material element of evidence in cases of murder; which special application of it has often been emphatically recognised.

It will also be useful to refer here a passage appearing in Article 142 of the *Law of Evidence* by Taylor (1931 Vol 1). It runs as follows:

Presumption under discussion is not confined to cases of theft, but applies to all crimes, even the most penal. A like reference has been raised in the case of murder accompanied by robbery, in the case of the possession of a quantity of

counterfeit money.

15. In the case of Emperor v. Sheikh Neamatulla 1913(14) Cr.L J, 536, Sir Lawrence Jenkins observed 'that the possession was a fact firm which the Court might presume not merely theft or receipt of stolen property but the mere aggravated offence connected with theft'.

16. In the case of Emperor v. Chintamani Shahu AIR 1930 Cal. 379(2) opinion was expressed that 'the possession was 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 case of murder. The presumption is particularly applicable where there is satisfactory proof in case of a murder of a woman that the stolen articles were habitually worn by the deceased and that she was actually seen wearing it on the evening before the murder'.

17. A similar view seems to have been taken in the case reported as Ramprashad Mukund Ram v. The Crown AIR 1949 Nag. 275. The pertinent passage runs as follows:

Under Section 114, the Court is entitled, if it appears reasonable in all the circumstances of the case, to draw an inference that an accused person committed a murder or took part in the commission from the fact that he is found in possession of proved to have been in the possession of the murdered person at the time of the murder or is able to point out the place where such property is concealed and admits having concealed it there and that he fails to give any explanation of his possession of the property which can reasonably be accepted.

18. Madras case reported as Queen Empress v. Sami and another ILR 13 Mad. 426 is another basic authority on the point in issue. In that case Muttusami Ayyar and Shephard JJ. observed:

Recent and unexplained possession of the stolen property which would be presumptive evidence against the prisoners on the charge of robbery was similarly

evidence against them on the charge of murder.

19: The decision in Kallam Narayana v. King Emperor ILR 1956 Mad. 231 has been treated as a leading case on the subject. In that authority Beasley, C. J., and Reilly, J., observed that Section 114, Evidence Act, entitles the Court to draw a reasonable inference or presumption of fact. It is a matter of common procedure to utilise evidence of this kind and the presumption such as this in connection not only with theft and the receipt of stolen goods but with more aggravated offences can also be drawn.

20. In re Kaliaperumal AIR 1954 Mad. 1088 a Bench of the Madras High Court 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 all the facts proved in the case, be that the person to whom such possession was traced not only committed the theft of those jewels but also committed the murder which formed part of the same transaction at theft. But before any such presumption can be drawn, the primary thing to be proved is that the accused had no satisfactory explanation to offer for his possession of such jewels.

21. The question received consideration of their Lordships of the Supreme Court in Tulsiram v. State : AIR 1954 SC1 . A murder was committed on 26-5-49 and the accused was arrested on 29-10-49. On these circumstances their Lordships 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.

22. In Sunderlal v. State of Madhya Pradesh : AIR 1954 SC39 , the offence was committed on 23-7-1961, the accused was arrested on 27-7-1951 and the jewels were recovered that very day and it was proved that he had disposed of the things belonging to the deceased before that date. Their Lordships Mahajan and

Bhagwati, JJ. observed:

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 and even apart from the medical evidence in regard to strangulation there is not the slightest doubt that it was the accused and the accused alone who was responsible for bringing about the death of the deceased.

23. In a recent case reported as K.K. Jadav v. State of Gujarat AIR 1966 SC 321 it has been observed:

The discovery of the silver buttons belonging to the deceased with human blood stains at the instance of the prisoner is a circumstance which may raise the presumption of the participation of the prisoner in the murder.

24. The above decisions practically upheld the position taken by the Madras High Court quoted supra.

25. The dicta on which learned counsel for the appellants relied upon are incorporated in Sanwant Khan v. State of Rajasthan : AIR 1956 SC54 , Bhikha Cober v. Emperor AIR 1943 Bom. 484 and State v. Motia AIR 1955 Raj. 82. In Sanwant Khan v, State of Rajasthan : AIR 1956 SC54 one Mahant Ganeshdas, who was a wealthy person, was living in a temple of Shri Gopalji, situate at a hillock, near Panchota about a mile and a half away from the village. Ganpatia Daroga used to live with him at the temple On the morning of January 1, 1948, it was discovered that both of them were lying dead in the temple. Death took place on account of the injuries caused to them by means of an axe. On report of the police and as a result of the investigation the first appellant was arrested on January 13, 1948, and on the same day he produced a gold 'Kanthi' from his 'Bera', where it was lying buried in the ground. Sanwant Khan, the other appellant, was arrested on January 19, 1948, and on the 19th January, 1948, he produced a silver plate. His Lordship Mahajan, J. (as he then was), delivering the judgment of

the court observed:

In the absence of any direct or circumstantial evidence whatsoever, from the solitary circumstance 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, but it does not necessarily indicate that the theft and the murders took place at one and the same time.

Except the decision of the Supreme Court in *Sanwat Khan v. State of Rajasthan* (supra) all other decisions are practically uniform. The decision in *Sanwat Khan's* case lends support to the contention that only one circumstance namely, from the possession of the jewels soon after the murder a presumption of murder cannot be drawn. That statement of law was made on the peculiar circumstances of that case. There was evidence in that case also planned to murder the deceased and PW 7, a witness was also approached by somebody else for the purpose of murdering the deceased. There was evidence, therefore, in that case that there were other persons interested in murdering the deceased and a plan to that effect had been made. That case is, therefore, dissinguishaable from the facts and circumstances of the present case. *Sanwat Khan's* case cannot be considered to have modified the decisions of the Supreme Court in *Sunderlal v. State of Madhya Pradesh* : AIR 1954 SC39 and *Tulsi Ram v. State* : AIR 1954 SC1 .

26. In *Kasim Khan v. State of Uttar Pradesh* : 1956 CriLJ790 some further was circumstances were available besides mere possession by the accused of the articles which were of the person or in the custody of the murdered man and the conviction under Section 302, IPC, was upheld.

27. The Bombay case cited by learned counsel for the appellant is reported as *Bhikha Cobar v. Emperor* AIR 1943 Bom. 484. It has been observed by Besumont C J., that in the absence of any witnesses there was no evidence whatsoever to to connect the accused with the murder. It was further pointed out in that case that somebody else might have committed the murder and the accused might have acquired the ornaments from the person: or he might have robbed the deceased and momebody also might have subsequently murdered the victim. The mero fact

that ornaments which were on the murdered woman were produced by the accused is not enough to justify an inference that the accused must have committed the murder. This case has been referred to in Sanwat Khan's case by their Lordships of the Supreme Court and in that case it has been specifically pointed out that no hard and fast rule can be laid down as to what inference has to be drawn from a certain circumstance. Similarly, in Motis's case AIR 1955 Raj. 82 a Division Bench of this Court laid down that the mere possession of articles belonging to the murdered person should not be sufficient to prove a case of murder against the accused beyond reasonable doubt particularly when it is not proved that the articles were in possession of the deceased or that they were not missing before the date of the offence. That case is also distinguishable from the facts of the present case. In that case the accused Motin, who alleged to have murdered Brks, his wife Chakru and his daughter Jamuna and took away their cash and ornaments of gold and lived in the same village in which the deceased resided. His presence in the village on that night was not of any particular significance, In that context, Wanchoo C.J., observed in para 10 of the judgment that the matter would have been different if Motia belonged to some other village. The mere possession of articles belonging to the deceased would not be sufficient to prove a case of murder against Motia In that case the prosecution also failed to show that the particular ornaments which were recovered from the possession of Motia were with Harka deceased and his deceased wife Mst.Chakho upto 7th Dec and were stolen during the night of the occurrence. There was also no evidence to show that Harka's wife was wearing any of the ornaments on the relevant date. In the present case, there is satisfactory proof that the stolen articles were habitually worn by the deceased and that the ornaments belonged to Mst. Goran. In the face of such an evidence the trial court rightly drew inference that it was the accused who committed larceny of the ornaments of the deceased and took part in his murder. Motia's case is thus clearly distinguishable.

28. Here it has been satisfactorily established that Mst. Goran habitually put on the ornaments recovered on the information and at the instance of the accused Mohanlal. It has also been proved that Mohanlal absented himself from duty on the relevant date. There is also no manner of doubt that Mohanlal's mother Mst. Siria served the deceased Mst. Goran. It has further been established that

Mohanlal soon after the occurrence purchased certain articles and was in possession of currency notes beyond his means. It has also been proved that no ornament was found on the body of the deceased Mst. Goran when her dead body was taken out of the water cistern. It is further clear from the record that the house of the deceased Mst. Goran was locked from outside and its key was recovered at the instance of the accused Mohanlal. From all these facts and circumstances of the case it can safely be presumed that the murder and theft formed the integral part of the same transaction. The legitimate presumption that can be drawn from the possession of the property which was on the deceased's person is that the person to whom such possession was traced not only committed the theft of these articles but also committed the murder forming part of the same transaction. The accused had had no satisfactory explanation to offer for his possession of the valuables recovered from him at the time of his arrest and at a subsequent stage. On such a finding, even if the co-accused of the appellant Mst. Siria was acquitted, the appellant Mohanlal could have well been convicted under the aforesaid sections of the IPC. We are conscious of the fact that in this case the conviction of the accused is based upon evidence of a circumstantial nature. But the circumstances from which the conclusion of the guilt has to be drawn are fully established and the circumstances so established are consistent only with the hypothesis of the guilt of appellant. Taking the entire evidence against the appellant into account we find it safe to come to the unhesitating conclusion that Mohanlal must have taken part in the murder and that this is the only way in which he could come into possession of the wearing ornaments of the deceased Mst. Goran. In other words, the circumstances proved here are of such a nature as to reasonably exclude every hypothesis, but the one proposed to be proved.

29. Having regard to what is established in the case and the principles deducible from the cases cited, we are satisfied that the appellant has been rightly convicted of the offences under Section 302, 449 and 380, IPC. The appeal is accordingly dismissed.