Pooran Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : May-29-1978

Reported in : 1978(11)WLN413

Judge : M.L. Shrimal and; R.L. Gupta, JJ.

Appeal No. : D.B. Criminal (Jail) Appeal No. 720 of 1973

Appellant : Pooran

Respondent : The State of Rajasthan

Disposition : Appeal rejected

Judgement :

M.L. Shrimal, J.

1. This appeal is directed against the judgment of the learned Additional Sessions Judge, Dholpur, dated October 24, 1973, where by the accused-appellant Pooran was convicted under Section 302 I.P.C. and sentenced to imprisonment for life and to pay a fine of Rs. 200/-. He was also convicted under Section 404 I.P.C. and sentenced to one year rigorous imprisonment and to pay a fine of the Rs. 200/- in default or payment of fine accused was ordered to suffer further two months' rigorous imprisonment under each count. The substantive sentences of imprisonment were directed to run concurrently.

2. Tersely speaking, shorn of unnecessary details, the prosecution case is that Ranjan, cousin-brother of accused Pooran was suspected to have been murdered by Nawab Shiga alias Nabbe (since deceased). The members of the family of Ranjan in including Pooran, bore a grudge against Nawab Singh. On October 31, 1972, Nawab Singh (since deceased) went to one Chandra bhan's shop situated in Sitaram Bazar at about 3.30 p.m. While he was sitting on a Muddah, accused Pooran, armed with a country made 12 bore Kattr, arrived there and soonafte, fired shots towards Nawab Singh, hitting him on his back and other parts of his body. Nawab Singh succumbed to the fire-arm injuries on the spot sustained by him at the hands of the accused appellant. Before leaving the scene of the incident, Pooran pulled-out the golden chain from Nawab Singh's neck and took it way with him. He also threatened the persons who had assembled there and warned them not to inter fere in the matter and if they do so it would be at their own peril. A written report of this incident (Ex.P. 1) was lodged by Nahar Singh (P.W. 1) brother of the deceased, with the Police Station, Bari, on October 31, 1972, at 3.30 p.m. On the basis of this written report, a formal first information report (Ex.P. 13) was drawn. Soon after, the investigating officer reached the spot. He prepared site plan Ex.P/2. He seized' chaddar', 'gadda' and a 'chatai' in the presence of certain 'motbirs' and got it signed by them The seizure memo is marked as Ex.P/3. He also seized two empty cartridges of 12 bore bearing a mark 'GEBECOI', MX one rupee notes, ten pellets of 12 bore cartridges, six cork pieces, a piece of broken gold chain (Ex. 7), and four lead pieces. Their seizure memo is marked as Ex.P/5 Inquest report (Ex.P/6) was prepared wherein the gist of the first information report was also incorporated The same day, a special report Ex.P/14 relating to the incident was sent to the Superintendent of Police, Bharatpur. Autopsy on the dead body of Nawab Singh was performed by Dr. Narain Lal PW 13. The doctor noticed the following external injuries on the corpse.-

(1) Gun shot wound, entry wound 3/4' x 1/2' depth was oblique probe entered the thorasic cavity on right side of the crossing the mid-line in a slight downward direction. The wound was situated on the left-side of the back 1' outer to the tip of the 6th thorasic vertebrae. Margins of the wound were inverted scorched, brushed and blackened-smell of gun powder was present. The skin in an area measuring 2 1/2' x 1' in continuity with the outer margin of the wound and in the same direction

i.e. downward from right to left side. The overlaying clothes-Baniyan and the shirt, bear the corresponding lobe opposite the wound. On the shirt 3' long and on the Baniyan 1 1/2'--clothes were burnt.

(2) Lacerated wound, exit-wound, 1' x 1 1/2' vertical probe-entered the thorasic cavity-obliquely downward margins of the wound were found averted. It was situated on the right infra clavical fossa. Corresponding tear in the overlying Baniyan and shirt present.

(3) Lacerated wound exit wound 1/4' x 1/5' probe entered the thorasic cavity obliquely on the right pectoral region 3' above the nipple margins everted.

(4) Lacerated wound exit wound 1/4' x 1/4' on the right pectoral region probe entered the thorasic cavity obliquely.

(5) Lacerated wound exit wound 1/4' x 1/4' on the right side of the chest 1/5' outer to the right nipple probe-entered the thorasic cavity obliquely.

(6) Gun-shot wound exit wound 1/4' x 1/4' x 1' below injury No. 5 probe entered the thorasic cavity obliquely.

(7) Lacerated wound exit wound 1/4' x 1/4' on the right side of the chest 3' outer to the right nipple probe entered the thorasic cavity obliquely.

(8) Lacerated wound exit wound 1/4' x 1/3' on the right side of the Chest 1/2' outer to the midline and 3' and inner to the nipple probe entered the thorasic cavity obliquely.

(9) Lacerated wound exit wound 1/4' x 1/4' on the right coastal each, 5'below the right nipple probe entered the thorasic, cavity obliquely.

(10) Lacerated exit wound 1/3' x 1/4' on the midline of the external region 1' above the xiphoid process.

In the opinion of the doctor, the above mentioned injuries were ante-mortem. The doctor also noticed corresponding holes on the clothes of the deceased. The internal examination of the dead body of the deceased Nawab Singh brought to

light the following symptoms-

(1) Fracture of the right third rib anteriorly and right fifth, left sixth rib posteriorly and left fourth rib certilay.

(2) Pleurae on both the sides were found torn, though Haemotharay was found.

(3) Right lung contained multiple lacerated punctured wounds,

(4) Left lung contained two punctured wounds,

(5) Fracture of fifth and sixth thorasic vertibra stained bone multiple seibe like holes.

(6) Pellets and one cork were recovered from the body. One cork and 5 pellets were recovered from the entry wound i.e., external injury No. 1 and the surrounding subcutaneous tissues of the external region.

The doctor opined that the cause of death of Nawab Singh was gun-shot wounds to both the lungs, leading to severe internal haemorrhage.

3. On November 2, 1972, the accused, appellant was arrested. The arrest memo is marked as Ex.P/8 after his apprehension, the accused expressed desire to get the gold chain, owned by the deceased recovered from the place wherein he had concealed it. That information was reduced to writing. Its memo is marked as Ex.P/19. The relevant proption of the information is excerpted below-

eSus tathj lksuk tks---dks jatu ds vM~Mk ds ikl esjs [ksr es [kEck okys mRrj if'pe es dksuk Nqik j[kk gS] pydj cjken djk ldrk gWw A

In pursuance to this information, a piece of gold chain alleged to have been taken by the accused from the deceased's heck was recovered from the place of its concealment. The piece of chain (Ex. 5) was seized and sealed in the presence of Motbirs vide recovery memo Ex P/9. The Police after usual investigation submitted a challan against the accused appellant to the Court of the Additional Munsif-Magistrate Dholpur. The learned Magistrate, after committal proceedings, committed the accused for trial to the Court of the Additional Sessions Judge,

Dholpur. The accused pleaded not guilty to the charge. The prosecution examined 13 witnesses in support of its case. The Investigating Officer of the case (Shri Budhram) was examined as court witness No. 1. The accused denied his complicity in the crime. He did not produce any evidence or any witness in support of his defence.

4. Of the five eye: witnesses, namely Dayaram, Bhogiram, Ramdeen, Ummaid and Chandrabhan, produced by the prosecution the learned Judge held that three of them, namely Dayaram (P.W. 2), Ramdeen (P.W. 8), and Umrnaid (P.W. 10) were not the eyewitnesses of the occurrence. For Bhogiram (P.W. 3) the learned judge observed that be was equally related in degrees to both Nawab Singh (since deceased) and the accused-appellant Pooran. Learned Judge held that though there was some exaggeration in his statement, he was a witness of sterling worth. According to the learned Judge, the statement of this witness stood corroborated in material particulars by a port ion of the statement of Chandrabhan (P.W. 11), the testimony of Dr. Narainlal (P.W. 13), the first information report (Ex.P/13) and the evidence of the recovery of the piece of gold chain (Ex. 5) at the instance of the appellant in consequence of information given by him as also by the recovery of the piece of the same gold chain (Ex. 7) lying below the dead body of Nawab Singh. On the above findings, he found the accused guilty and convicted and sentenced him as aforesaid.

5. Aggrieved by the above verdict, the accused - appellant has challenged his conviction and sentence through this appeal.

6. It cannot be disputed and has not rightly been disputed that the shot was fired at Nawab Singh on the date, time and place alleged by the prosecution, as a result of which he met instantaneous death. The only question which has to be answered is whether appellant was the person who committed the crime.

7. Learned Counsel appearing on behalf of the accused-appellant, argues that there are certain outstanding features of this case which, according to him, are sufficient to throw doubt on the entire prosecution case. The prosecution witnesses have concealed the true version of the occurrence. The statement of Bhogiram (P.W. 3) stands contradicted by the medical evidence. Bhogiram (P.W.

3) is a chance witness and on the solitary testimony of such a witness conviction of the accused under Section 302 I.P.C. could hardly be sustained. The evidence regarding the recovery of the pieces of gold chain (Ex.P. 5 and Ex.P. 7) is spurious. The investigation of the case was not fair. The first information report of this case was received by the Magistrate, competent to take cognizance of the offence on November 2, 1972 and it could legitimately be suggested that the first information report Ex.P/13 was recorded much later than the stated date and time. Learned Public Prosecutor, appearing on behalf of the State supports the judgment of the trial court.

8. The motive showing the cause for the crime has been disclosed in the first information report (Ex.P/13). Even if it is held that the prosecution case regarding the motive for the commission of the crime has not been proved, then also it cannot undo the effect of the evidence otherwise sufficient. It has been observed by their Lordships of the Supreme Court in Yashwant v. State of Maharashtra : [1973]1SCR291 , that the discovery of the true motive for a crime is not imperative in every case. Proof of motive satisfies the judicial mind about the likelihood of the authorship of the crime, but its absence only demands deeper search. The motives of men are often subjective, submerged and unamenable to easy proof. Keeping the above principle is view, we now proceed to evaluate other evidence on the record.

9. There is evidence of eye witness Bhogiram (P.W. 3). It is to be seen whether we can safely rely upon his testimony. No doubt, he is a relation of the deceased Nawab Singh, but it cannot be gain said that he is equally related to the accused-appellant Pooran. Nawab Singh's grand-father and Pooran's grand-father as also Bhogiram's father were real brothers. There is nothing on the record which may arouse suspicion that this witness was, in any manner, interested in Nawab Singh (since deceased) or was hostile to the accused Pooran. His name appears in the first information report (Ex P/13), which is alleged to have been recorded at 4.05 p.m. on the date of the occurrence i.e., within 35 minutes of the incident. He has categorically stated that while going to Sitaram Bazar, he met Gyarsi. When both of them reached near the shop of Chandrabhan (P.W. 11), he saw Nawab Singh sitting on a 'Muddah' there. The accused-appellant, armed with a country made 12

bore 'Katta' appeared on the scene. He Bred one shot at the back of Nawab Singh from close range. Nawab Singh fell down and asked Munna Modi to bandage his wound Soon after, Pooran fired another shot and the witness went towards the nearby lane. Later, the accused fired a third shot. Thereafter, he pulled out the chain from Nawab Singh's neck and took it away While leaving the scene of the incident, he threatened the persons standing there and told them in a tell tale manner not to come near him otherwise they would also meet the same fate. The shop-keepers in the market were terrified and they closed their shops A large number of persons gathered there. One Nahar Singh also arrived on the scene of the incident.

10. Learned Counsel for the accused argues that this witness had no reason to be on the scene. The witness, in his police statement Ex. D/1, had stated that at the relevant time he was going from Gyarsiram Sitaram Bazar towards his house. When he reached the shop of Chandrabhan situated in Sitaram Bazar, he found Nawab Singh alias Nabbe sitting on a 'muddah' on his shop. The witness in his statement before the trial court tried to give reason for his going to the market by saying that he desired to purchase some clothes This definite improvement in his statement was made by the witness to make his presence on the scene of the incident natural We do not find any marked difference in the two statements. Each and every omission in the police statement of a witness cannot be termed to be a contradiction. It cannot be broadly contended that a statement includes all omissions. Omission, unless by necessary implications, be deemed to be part of the statement, cannot be used to contradict the statement made in the witness box vide Tehsildarsingh v. State of Uttar Pradesh : 1959 CriLJ1231 .

11. The other infirmity pointed out by learned Counsel for the accused-appellant is that the witness stated in the Court that the accused fired two shots towards the deceased-one of which hit his chest, whereas according to the statement of P.W. 13 Dr. Narain Lal, the deceased sustained injuries by one shot, because he found only one entry wound and the rest were exit wounds. No doubt, no entry wound was found on the chest of the deceased, but on this count alone the statement of this witness cannot be this own out.

12. It also cannot be said that the witness made a belated attempt to improve his testimony to bring the same in conformity with the Doctor's evidence with the a view to support an incorrect case. In his police statement (Ex. D/1) the witness had stated that he had seen the accused firing a shot, which had hit the back of Nabbe (Nawab Singh) and then the witness had run away into the side lane due to fear. While running away, he had further heard two more shots being fired. In the court, the witness, it appears, tried to embellish and exaggeiate by saying that the second shot fired by the accused hit the deceased in his chest. No doubt, this discrepancy has occurred in his statement but that does not mean that his entire evidence should be discarded. It is the duty of the Court, after exercising caution and ere, in sifting the evidence to separate the truth from the untrue exaggerations, embellishments and improvements to come to the conclusion as to the credibility of his testimony, and decide. It appears that the witness, after seeing one shot having been fired towards the deceased could not possibly notice whether the second shot fired, hit the deceased or missed the mark, because he must have been taken a back by the sudden use of a gun. In most cases, witnesses, when asked about details venture to give some answers not necessarily true or relevant for fear that his evidence may not be accepted in respect of the main part of the incident. It is for the Court, after careful scrutiny, to decide whether the witness had emerged with credit after cross examination The statement of this witness after excluding the portion that the second shot had hit the deceased in his chest stands amply corroborated in material particulars. The evidence, adduced by this witness regarding the firing of the shot by the accused hitting the deceased on his back, has been accepted by the trial court. Nothing cogent has been brought to our notice to justify interference with that finding. The appellate Court should not ordinarily interfere with the trial court's opinion as to the credibility of a witness; as the trial judge alone knows the demeanour of the witness, he alone 1 can appreciate the manner in which the questions were answered whether with honest condour or with doubtful plausibility and whether after careful thought or with reckless blingness; and he alone can form a reliable opinion as to whether the witness had emerged with credit from cross examination vide Varla Shak Seth Apcar v. Standard Coal Co. AIR 1943 PC 159 The witness has not been shown to be a partisan or, in any way, inimically disposed towards

the accused. The infirmity in the statement pointed out above is not such as would materially affect the veracity of his testimony. The above mentioned exaggeration should not be given undue importance. His is a trustworthy evidence, supporting the real substance and core of the prosecution case. In Shivaji Sahebrao Bobade and Anr. v. State of Maharashara : 1973 CriLJ1783 . where the conviction of the accused was based on the testimony of only one witness Vilas (PW-5), Hon'ble Krishnan Iyer J., speaking for the Court, laid down the law as under-

We must observe that even if a witness is not reliable, he need not be false and even if the police have trumped up one witness or two or has embroidered the story to give a credible look to their case that cannot defeat justice if there is clear and unimpeachable evidence making out the guilt of the accused.

It is manifest that witnesses have to weighed and not counted since quality matters more than quantity in human affairs.

13. Certain minor contradictions in the statements of Chandrabhan (P.W. 11) and Bhogiram (P.W. 3) were also brought to our notice; but they are of no avail to the defence, because little turns up on such contradictions. Effort to harmonise details betray police tutoring not rugged truthfulness. The trial court has found Bhogi Ram to be a witness of sterling worth. We agree with the trial court that the witness had seen the occurrence and he cannot be termed to be a chance witness. We are persuaded to hold that Bhogiram (P.W. 3) is a witness of truth. However, in view of the circumstance that he has exaggerated at one or two places, we would still want corroboration in this case to reassure ourselves and would like to see, by way of abundant caution, whether his testimony is corroborated by the other evidence on the record. We have the evidence of Chandrabhan (P.W. 11) He was declared hostile by the prosecution, as he resiled from his earlier statement Ex.P/11 made by him in the committing court, But the witness under cross-examination, admitted that in his committing court's statement Six P/11, he stated-

^ekjus okys dks EkSus Hkkxrs ns[kk A mldk uke iqj.k gS ;g c;ku eSus equlQh dks fn;s Fks A ;g c;ku eSus lgh fn;s Fks A

His earlier statement recorded in the committing Court was brought on the record under Section 288 Cr.P.C., 1898, which can be read as substantive evidence in this case. The witness under cross examination has admitted a portion of his previous statement, noted above to be correct and the prosecution is entitled to read that portion with a view to corroborate the other evidence on record. Reference, in this connection, may be made to Bhagwan Singh v. State of Punjab : 1952 CriLJ1131 . When a witness is allowed to be cross-examined by the party calling him to make the statement, the fact that such cross-examination was permitted does not imply that the witness who was cross-examined is for all purpose an untrustworthy witness, and no part of his statement can be regarded as representing the truth. The question before the Court in such a case would be to decide which part of his testimony is false, and which part of his evidence is true, provided there is the required degree of conviction in the mind of the Court that a particular part of the testimony of a witness whether it forms a part of the examination-in-chief is true. There is nothing which can impede the court in acting upon such evidence in support of its conclusion. Reference in this connection may also be made to Babu Lal v. State of Rajasthan 1976 Weekly Law Notes 338.

14. In Bhagwan Sahai v. The State of Haryana : AIR 1976 SC232 , their Lordship of the Supreme Court laid down the law as under-

But the fact that the Court gave permission to the Prosecutor to cross-examine his own witness thus characterising him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence.

The trial court was correct in seeking corroboration from the above portion of the statement of this witness appearing in cross-examination to support the statement of Bhogiram (P.W. 3). The statement of Bhogiram also finds corroboration from the recovery of the pellets found scattered on the shop of Chandrabhan. The presence of the burnt marks on the clothes of the deceased further corroborates the testimony of this witness regarding firing being made by the accused from a close range.

15. The first information report (Ex.P/13) was recorded within a short time of the occurrence. It is difficult to believe that Nahar Singh (P.W. 1) would so quickly and within 35 minutes of the occurrence, cook up a false story involving the appellant The report contains a detailed story of the entire incident. It gives the name of the accused, the nature of the weapon used and it clearly indicates the place of the occurrence. It further declares motive for the commission of the crime. All these details furnish intrinsic evidence detracting from the plea of the accused that the prosecution case is an overtone fartifinality or falsity special report (Ex.P/14) and inquest report (Ex.P/6) were also prepared the same day and in both these documents, the name of the accused finds place and it has been specifically mentioned therein that accused Pooran committed the murder of Nawab Singh by firing a shot by Deshi Katta (country-made small gun).

16. No doubt, the first information report (Ex P/13) reached the Magistrate on November 2, 1972. The occurrence is of October 31, 1972, After recording the first information report, the investigating Officer reached the scene of the occurrence immediately. Perusal of the first information report shows that it was despatched to the office of the Prosecuting Sub-Inspector, which must have reached him at the earliest on November, 1, 1972, or in the morning of November 2, 1972. In that context submission of the find information report by the Prosecuting Sub-Inspector to the Court on November 2, 1972, cannot be said to have been delayed. The first information report (Ex P/13) bears an endorsement to the effect that it was submitted in the Court by the Prosecuting Sub-Inspector. Thus, there is nothing to suspect that the first information report was recorded much later than the stated date and hour therein. As already held above, there was no time for Nahar Singh (P.W. 1) for embellishment or to set-up a distorted version of the occurrence in the first information report.

17. Besides, the statements of the above eye witnesses, there is the clinching evidence of recovery of the gold chain, part of which (Ex. 7) was found lying under the dead body and the rest (Ex. 5) was recovered in consequence of the information given by the accused-appellant. The information given by the accused is mentioned in Ex P/19 quoted supra. It has been proved by Budharam (C.W. 1), who ad verbatim repeated the above words in his statement recorded by the trial

court and also affirmed that Ex P. 19 bears his signature He also proved the recovery of the piece of gold chain Ex 5 from the place of its concealment. Simply because he failed to give the name of the scribe of Ex P/19, it cannot be said that the information given by the accused prior to the discovery of the piece of the gold chain was not proved. Ex P/19 could be used only for the purpose of corroboration or contradiction or for refereshing the memory. The substantive piece of evidence is the statement given by Budhram (C.W. 1) in Court. The statement of Budhram (C.W. 1) stands corroborated by the statement of Chhotey (P.W. 6), who stated on oath that the accused took the CO. Police and others to his field known as Khambewala. He dug out a portion of the land and brought out a piece of the gold chain (Ex. 5). The recovered piece of gold chain (Ex. 5) was identified by this witness as belonging to the deceased. The witness then states that prior to the death of Nabbe, he had seen the deceased wearing the gold chain for months. Nahar Singh (P.W. 1) also stated before the committing court that Ex 5 and Ex 7 were the pieces of the same gold chain which Nawab Singh used to wear in his neck prior to his death. Thus, from the statements of the above-named witnesses, it stands proved that the gold chain of which Ex 5 and Ex 7 formed parts, was habitually worn by the deceased prior to his death. It further stands proved that a part of the gold chain (Ex. 7) disappeared from the neck of the deceased and was recovered at the instance of the accused from a field where he had concealed it. The recovery was made within a short time of the occurrence i.e. within 2 days of the crime.

18. The question thus arises as to how for the recent possession of the ornaments of the deceased in the proved circumstances of the case indicates that the possessor of the ornament was guilty of the more aggravated crime i.e. murder. The fact that part of the same chain Ex 5 was found lying below the dead body and the rest was recovered at the instance of the accused, when considered in conjunction with the evidence that both the parts formed one chain which was being worn by the deceased prior to his death, goes to prove that in the case in hand the murder and theft formed part of the same transaction. It is well settled that in a case where murder and theft form integral part of the transaction, recent and unexplained possession of the stolen property as in the case in hand, would be presumptive evidence on a charge of murder as well. The question, therefore,

is whether the evidence of the recovery of the gold chain in the case in hand is it self establishes that the appellant murdered Nawab Singh and robbed him of the gold chain. In the case of Queen Empress v. Sami I.L.R. 13 Madras 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 park in the murder. In the case in which murder & 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 his conduct indicating a consciousness of guilt, point, equally to the conclusion that he was guilty as well as of the murder as of the robbery.

19. In Emperor v. Chitamoni AIR 1945 Privy Council 400-

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.

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

20. Reference may also be made in this connection to two D.B. cases of this Court viz., State of Rajasthan v. Nenu Ram 1977 R.L.W. 241 and Hukma v. State of Raj. 1976 RLW 150. In a recent case viz., Baiju v. State of Madhya Pradesh : [1978]2SCR594 , Honb'le, Shinghal, J. speaking for the Court, observed that,

Recent and unexplained possession of stolen articles can be taken to be presumptive evidence of the charges of murder as well.

In Wills on Circumstantial Evidence, 7th edition, p. 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 forms also in material elements of evidence in case of murder; which special application of it has often been emphatically recognised.

Likewise in Taylore on Evidence Vol. I, 12th edition 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.

Tulsiram v. State : AIR 1954 SC1 his Lordship Kania C.J. speaking for court, laid down,-

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 so in after the murder, a presumption of guilt may be permitted.

21. We would like to point out, even at the cost of repetition, that the accused-appellant Pooran precisely knew the place where from a piece of gold chain (Ex. 7) was recovered. The accused got discovered this piece of gold chain which undoubtedly belonged to the deceased Nawab Singh. It has also been proved by unimpeachable evidence., as discussed above., that Nawab Singh (since deceased) was seen wearing gold chain prior to his murder The gold chain was found missing on the dead body of Nawab Singh and the same was recovered at the instance of the accused from the place of its concealment. The prosecution has thus succeeded in proving, beyond any reasonable doubt, that the commission of the murder and theft formed part of one transaction and the recent and unexplained possession of the gold chain (Ex. 7) by the appellant justifies the presumption that it was he and no one else who had committed the murder and the other crake, proved facts in our opinion, are sufficient in law and fact to lead us to the conclusion that the accused was not only guilty of the or having received the

stolen property but of murder as well. In the proved facts of case, the recovery of a piece of gold chain Ex. 7 at the instance of the accused appellant is not compatible with any other reasonable hypothesis other than the guilt of the accused appellant.

22. Before we part with the case, it may be stated 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 these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it maybe that any one or more of those facts by itself is or themselves are not decisive. In this connection, a reference be made with advantage to R. v. Cooper (1969) I All. E.R. 32 wherein it has been observed that-

The court must in the end ask itself a subjective question whether it is correct to let the conviction which may not be based strictly on evidence as such but can be produced by the general fact of the case as the court experiences it.

In the case in hand, in the light of the above discussion we have no doubt that it is the accused appellant and no one else who had committed the murder of Nawab Singh.

23. In the result, the appeal of the accused-appellant fails and stands rejected. The conviction and sentences awarded to him by the trial court are maintained.