

Kannan Vs. State

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Court : Chennai

Decided On : Apr-09-2009

Reported in : 2009CriLJ3365

Judge : C. Nagappan and ;T. Sudanthiram, JJ.

Acts : [Evidence Act, 1872](#) - Sections 114; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 120B, 302, 379, 380, 392, 394, 395, 397, 404, 411, 449 and 451; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 424 of 2007

Appellant : Kannan

Respondent : State

Advocate for Def. : V.R. Balasubramaniam, Addl. Public Prosecutor

Advocate for Pet/Ap. : R. Sankarasubbu, Adv.

Judgement :

T. Sudanthiram, J.

1. The appellant herein who is an accused in S.C. No. 386 of 2004, on the file of the VI Additional Sessions Judge, Chennai stands convicted for the offences under Sections 302, 449, 395 and 404, IPC and sentenced to undergo life

imprisonment and to pay a fine of Rs. 1000/- for each of the offences in default to undergo six months simple imprisonment under Sections 302, 449 and 395, IPC and sentenced to undergo imprisonment of 3 years rigorous imprisonment and to pay a fine of Rs. 500/- in default to undergo 3 months S.I. for the offences under Sections 404, IPC and the sentence of imprisonment to run concurrently. Aggrieved by the said conviction and sentence, the appellant had preferred this appeal.

2. The case of the prosecution in brief is that P.W. 2 is the husband of the deceased, P.W. 1 is the father-in-law of the deceased. P.W. 1 and P.W. 2 were living in separate flats in the same building. P.W. 2 was running a plastic industry. On 13-12-1995 he had gone from Korrukupet to Ponnery on receiving a message that his friend had expired. P.W. 3, servant of P.W. 2 was informed by P.W. 2 to go to the house and take food for children and also to bring the children to the house from the school. P.W. 3 gave a ring, but no one attended the phone call from the house of P.W. 2. Then he sent one Thangarasu to the house of P.W. 2. At about 12.45 p.m. the said Thangarasu went to the house and came back and informed that the deceased was found murdered in the bathroom. P.W. 1 and P.W. 2 were informed about this, P.Ws. 1 and 2 went inside the house and found the deceased lying with injuries in the bathroom. Except the ear stud, other jewels of the deceased were missing, bureau was kept opened, the jewel boxes were empty and the cash was missing. P.W. 1 gave complaint Ex. P.1 on 13-12-1995 at 1.15 p.m. P.W. 20, Sub Inspector of Police of Korrukupet on receiving the complaint registered the case in Crime No. 974 of 1995 under Sections 302 and 380, IPC and prepared the First Information Report, Ex. P.26.

3. P.W. 24, the Inspector of Police on receiving the telephonic message went to the police station and received the copy of the FIR and then went to the scene of occurrence and prepared the observation mahazar Ex. P. 2 and also prepared the rough sketch Ex. P.27. P.W. 18 took up photograph of the body of the deceased at the scene of occurrence. Ex. M.O. 49 series are the photographs. P.W. 19, the chemical analyst took up the sample blood in a filter paper from the scene of occurrence. P.W. 24 held inquest from 4.00 p.m. to 7.00 p.m. examined witnesses and prepared Ex. P.28 inquest report.

4. P.W. 17, the post-mortem Doctor on receiving the requisition, conducted autopsy and noted the following injuries:

Abrasions:

1) 2 x 1 cms. Rt. side of face; 2) 8 x 1 cms. front of left chest; 3) 4 x 1 cms. top of right shoulder. 4) 11 x 5 cms. back of left elbow; 5) 4 x 6 cms. front of left elbow. Patterned Linear abrasion: 6) 12 x 3 cms. middle of right arm (Patterned abrasion); 7) 5 x 3 cms. back of right elbow; 8) 8 x 3 cms. inner aspect of right forearm; 9) 4 x 1 cms. Right side of chest; 10) 1 x 1 cms. right side of chest.

Stab Injury

- 1) 4 x 2 cm. stab injury, 9 cms. depth above left collar bone;
- 2) 4 x 2 cms. stab injury 4 cms. depth left side of neck;
- 3) 3 x 2 cms. stab injury 7 cms. depth left side of neck above the previous injury;
- 4) 5 x 2 cms. Centre of Neck; This injury has pierced the Trachea in midline;
- 5) 4 x 2 cms. just over the sternal notch 13 cms. depth;
- 6) 2 x 1/2 cms. Right side of Neck 3 cms. depth;
- 7) 4 x 2 cms. Rt. side of neck, 3 cms. depth, Trachea found cut through this wound;
- 8) 5 x 2 cms. middle of lower aspect of right side of neck 5 cms. depth.
- 9) 1 x 1 cms. below the angle of right mandible, 1 cm. depth;
- 10) 1 x 1 cms. below the right ear. 4 cms. depth;
- 11) 4 x 1 cms. behind the right ear. 6 cms. depth;
- 12) 4 x 1 cms. stab injury back of right side of Head, over the right occipital region; bone deep;

- 13) 3 x 1 cms. bone deep below the previous injury;
- 14) 2 x 1 cms. bone deep incised wound over the centre of occipital region.
- 15) 2 x 1 cms. back of neck, below C.7 spine, in the mid liver, 4 cms depth;
- 16) 2 x 1 cms. Right side of back behind the right shoulder 4 cms. depth;
- 17) 5 x 1 cms. top of right shoulder 4 cms. depth;
- 18) 1 x 1 cm. behind the right axilla 6 cms. depth;
- 19) 2 x 1 cms. skin deep right side of chest;
- 20) 2 x 1 cm. front of right shoulder 4 cms. depth;
- 21) 4 x 2 cms. front of right axilla 3 cms. depth;
- 22) Incised wound 1 x 1 cms. skin deep right arm;
- 23) Incised wound 2 x 1 cms. middle of right arm; 1 cm depth;
- 24) Stab injury 2 x 1 cms. top of outer aspect of right arm 4 cms. depth;
- 25) 1 x 1 cm. stab injury outer aspect of the Right arm 4 cms. depth;
- 26) 1 x 1 cm. through and thorough injury 6 cms. long, lower aspect of right forearm;

Back:

- 27) 2 x 1 cm. stab injury 8 cms. depth right side of middle of back;
- 28) 2 x 1 cms middle of right side of back on the posterior axillary line 10 cms depth;
- 29) 6 x 1 cm., 9 cms. depth over the right side of lower aspect of back;
- 30) 2 x 1 cm. Right side, above hip, 8 cms. depth;

31) 4 x 1 cm. below the previous injury No. 30 9 cms. depth;

Left Forearms:

32) 2 x 1 cm. through and thorough injury 6 cms. depth over the middle of left arm;

33) Incised wound over the left Index finger; Bone cut at side over the phalanx, attached with loose skin:

On dissection:

Injury No. 15 at the middle of back of neck has pierced the C.6, C.7 spine.

Internal Examination:

Heart - All Chambers Empty.

Lungs:

Left Lung : Pale;

Right Lung : Stab injury No. 28 has pierced the right lower lobe;

Hyoid bone : Intact:

Stomach : Contained 100 gms. of semi digested food particles;

Mucosa : Normal.

Liver : 2 stab injuries seen over outer aspect of Liver;

1) 9 cms. depth & 2) 2 cms. depth; the above injuries corresponds to External Injury No. 30 and 31.

Spleen & Kidneys : Pale; Bladder; Empty;

Uterus : External labia and major and minor - Normal;

No injuries seen over the public region; No evidence of sexual assault made out.

Head : Corresponding to Ext. I No. 12, 18 and 14. Old fracture of vault of skull - middle occipital region;

Blood clots seen over right temporal region of skull under the scalp;

Brain : c/s. pale.

Ex. P.22 is the post-mortem certificate and the Doctor opined that the deceased would appear to have died of shock and haemorrhage due to multiple injuries.

5. P.W. 24 on suspecting the accused Marriappan went in search of him. On 19-2-1996 at 6.45 a.m. in Tenkasi Taluk near Sankarankovil road near Anna Statue, he arrested the absconding accused Marriappan and recorded his confession in the presence of witnesses and Ex. P.46 is the admissible portion. At the time of arresting the accused Marriappan, he recovered one western quartz watch and two folding knives from the accused under mahazar Ex. P.35, and on the same day at 10.15 a.m., the gold chain which was buried in the back side of the house of one Pakiasamy, was recovered under Ex. P. 36. At about 11.00 a.m., one pair of ear stud, one nose stud, one gold ring were recovered which were buried near the plantain grove of one Madasamy and at 11.30 a.m. the silver waist chain, one pair of Bombay model gold bangles, one pair of Singapore cutting gold bangles, one pearl gold bangle, one pair of white stone ear stud, another pair of gold stud, one gold ring, another ring with red stone which were buried at 200 feet distance from one Chinnamani Nadar's flat were recovered under Ex. P.38. At 12.30 p.m. properties of one gold ring, in which the name 'A. Usha' was written and in one gold ring the name 'A. Hema' was written and another gold ring in T.V. Model were recovered which was buried 35 feet near the road of Ramachandran land. The properties were recovered under Ex. P.39. On 21-2-1996 at about 8.00 a.m. two inland letters Ex. P.33 was recovered from Mala, wife of Marriappan. At about 8.45 a.m., on 21-2-1996 Rs. 8000/- was recovered from one Venkatesan under Ex. 41. On 21-2-1996 at about 8.45 p.m. one gold bracelet was recovered from Thamichand under Ex. P.43. On 21-2-1996, at about 9.30 a.m. one gold chain with dollar and one gold ring and a sum of Rs. 10,000/- of 100-denomination were recovered from one Srinivasan under Ex. P.44. On 22-2-1996 at about 1.00 p.m. one gold dollar and one knife was recovered. On 22-2-1996 at 5.30 a.m. near

Vimco Nagar Railway gate, P.W. 24 arrested the accused Kannan alias Muniyandi/appellant, Lakshmanan and Muthu and recorded their confession statements. Ex. P.29 is the confession given by the accused Kannan. Ex. P. 30 is the confession given by Lakshmanan. The confession Ex. P. 30 was recorded in the presence of P.W. 7 and another witness. The accused Kannan was taken to his house at Vimco Nagar. The accused Kannan produced three silver kolusu, M.O. 39 series and one lady watch M.O. 40, one pair of gold ear studs M.O. 24. One gold nose stud M.O. 25 and another nose stud M.O. 26, one pawn broker shop receipt in the name of Kannan and Saroja, another pawn broker shop receipt in the name of Kannan and two folding knives M.Os. 47 and 48 and those properties were recovered under mahazar Ex. P. 10. On 22-2-1996 at 1.30 p.m. the accused Lakshmanan produced one Pawn ticket in the name of Lakshmanan.

6. P.W. 24 went along with the accused Kannan to the shop of P.W. 16 Ramlal Choudary who also stated the Saroja came to his shop and pledged her jewels and Ex. P.5 is the receipt. On 24-2-1996 at about 9.30 a.m., P.W. 24 went to the shop of P.W. 9 along with mahazar witness P.W. 7 and recovered gold necklace under Ex.P. 30 mahazar. P.W. 9, Megaram Amarram stated that on 14-2-1996, P.W. 6 Dhanasekar, pledged the gold necklace and he gave him Rs. 1500/- and the receipt issued by him is Ex. P.21. P.W. 6 also stated in his evidence that in the month of January 1996, the accused Kannan came and informed him that his mother is not well and wanted to pledge his jewels and sought his help. P.W. 11 stated that on 3-1-1996 P.W. 6 came to the shop and pledged the gold bangles and got a sum of Rs. 5000/-. Again on 24-1-1996, he pledged a gold ring and got a sum of Rs. 520/-. Ex. P.6 and P.9 are the receipts issued for pledging the jewels. P.W. 24, went to the house of P.W. 13 Amutha recovered one gold thali, gold balls and one pair of gold ear stud. Two pawn brokers receipts one for purchase of jewels and one for sale of gold chain also were recovered under mahazar Ex. P. 16. P.W. 13 Amutha stated in her evidence that the first accused approached her and gave a gold chain and she sold the jewels in a shop at Vannarapet for Rs. 16,000/- and out of that, she purchased one pair of gold stud and one Thali, two gold balls and also received the balance cash of Rupees 4,200/-. Her husband handed over the cash and gold ring to the accused Kannan. After 10 days, P.W. 13 pledged the gold stud for a sum of Rs. 520/- and also after some time pledged

the gold chain for a sum of Rs. 1000/-. She also admitted that her signatures in the pawn broker receipt Ex. P. 14 and Ex. P. 15. P.W. 12 Rajendran, jewellery shop owner stated that on 25-12-1995 one Pappathi Ammal came to his shop along with two other persons. She sold a gold chain and purchased a gold ring, two pair of gold ear stud and one thalli and two gold balls and he also gave cash of Rs. 4000/-. Ex. P.22 is the receipt for the sale of new jewel. Ex.P.23 is the receipt for the purchase of old jewel. Then P.W. 24 and 25 along with the accused went to P.W. 8, Gandhibabu. P.W. 8 took them to the house of one Kumar and from Kumar house one Camera was recovered under Ex. P.20. P.W. 8 Gandhibabu stated that in December, 1995, the accused came and handed over a Camera to him and his friend Kumar wanted to go to Mahabalipuram and therefore, he handed over it to Kumar and he did not return the Camera. When Police Officer came and approached him, he went to the house of Kumar along with police officer and received the camera M.O. 20 from Kumar and handed over to the Inspector. On 26-2-1996 P.W. 24 produced the accused Kannan, Marriappan, Lakshmanan and Muthu before the Court for judicial custody on completion of the Police custody. P.W. 24 gave a requisition on 5-3-1996 for sending the knives for chemical analysis.

7. P.W. 25 Inspector of Police who took up further investigation laid the final report against seven accused, in which he had shown A.5 to A.7, Arumugam, Raja and Raji as absconding accused. During the pendency of the case, P.W. 26 Inspector of Police arrested the absconding accused 5 to 7 on 3-2-2003.

8. Out of seven accused, pending trial the accused Marriappan and Muthu were absconding and the case was split up and proceeded only against the available five accused.

9. In order to establish the case, the prosecution has examined 22 witnesses, marked 53 exhibits and produced 50 material objects. When the accused were questioned under Section 313, Cr.P.C. they have denied their complicity.

10. After considering the evidence, the trial Court acquitted the accused 3 to 5, Arumugam, Raja and Raji and convicted the accused 1 and 2, Kannan and Lakshmanan. The present appeal is preferred by the first accused Kannan.

11. Mr. Sankarasubbu learned Counsel appearing for the appellant submitted that only on the solitary circumstance of recovery of jewels, the appellant has been convicted for the offence of murder and other offences. In a case of circumstantial evidence, there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused. In this case, the evidence let in by the prosecution against the accused is only recovery of the ornaments which do not connect the accused to the offence of murder and robbery, even if an inference is drawn under Section 114 of the Indian Evidence Act. The learned Counsel drew the attention of this Court to the illustration (a) of Section 114 of the Indian Evidence Act which is as follows:

114. The Court may presume:(a) that a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession....

The learned Counsel for the appellant submitted that possession of stolen articles ipso facto does not warrant a conclusion that such stolen articles were received only by committing robbery and murder and therefore at the most the appellant could be convicted either under Section 411, IPC or under Section 379, IPC.

12. Per contra, the learned Additional Public Prosecutor submitted that totally there are seven accused in this case and two of them are already absconding. Out of five accused who were tried, as per evidence there was no recovery of any ornaments from the accused 3 to 5 who were acquitted by the trial Court. As far as the appellant is concerned, number of ornaments have been recovered from his possession and also from others on the basis of the confession given by him. The evidence is available in this case to the extent that the appellant had been in possession of the ornaments of the deceased within few days from the date of occurrence and some of the ornaments were handed over to the other witnesses by the appellant. The recovery of those ornaments prove that the appellant had taken part in committing the offence of dacoity and murder of the deceased. The occurrence had taken place inside the house of the deceased and the deceased was found murdered with several injuries and the articles in the house were looted

and as such the dacoity and the murder in the house are interconnected. In the illustration as to Section 114(a) of the Indian Evidence Act, if a person is found in possession of stolen goods soon after the theft, it could be presumed that he had committed the theft, accounts for his possession. This would mean that if a person is found in possession of the stolen goods soon after either robbery or dacoity or murder, it could be presumed that the person committed the offence of either robbery or dacoity or murder. The nature of offence should be substituted for the word theft in the illustration (a) of Section 114 of the Indian Evidence Act. The learned prosecutor further submitted that the appellant had not given any explanation for the possession of the ornaments which belonged to the family of the deceased. The presumption should be drawn that the appellant had committed the offence of dacoity and murder. The learned Public Prosecutor also placed reliance on the decision of the Hon'ble Supreme Court in;

(a) Gulab Chand v. State of Madhya Pradesh : 1995 SCC (Cri) 552 : AIR 1995 SC 1598.

(b) Mukund v. State of Madhya Pradesh : 1997 SCC (Cri) 799 : 1997 Cri LJ 3182.

13. The learned Counsel for the appellant by way of reply submitted that, stretching the presumption available under Section 114(a) of the Indian Evidence Act to the offence of murder is very unsafe to the facts and circumstances of the case. The learned Counsel also relied on the decision of the Hon'ble Supreme Court, reported in : 2002 SCC (Cri) 1044 : 2002 Cri LJ 590 (Limbaji v. State of Maharashtra) and drew the attention of this Court that the decision cited by the learned Additional Public Prosecutor have been referred in this decision and the Hon'ble Supreme Court relied on the earlier decision of the Three Judges of the Hon'ble Supreme Court of Nathu v. State of Uttar Pradesh reported in : AIR 1956 SC 56 : 1956 Cri LJ 152.

14. This Court considered the submissions of both sides and perused the records. According to the prosecution case, the deceased, wife of P.W. 2 was found dead in her house with 33 stab injuries. The homicidal death of the deceased has been established by the prosecution by examining the postmortem Doctor. P.W. 17 and by marking the post-mortem certificate Ex. P.24. The body of the deceased was

found in the bathroom of the house. The iron safe almirah in the room was found broke open, the articles were lying pell-mell and the jewels in the jewel box were missing. In Ex.P. 1 the complaint given by P.W. 1, father-in-law of the deceased, it is mentioned that the gold jewels, gold bangles and gold ring which the deceased wearing was missing and the gold ornaments from the bureau were also found missing. The occurrence has taken place on 13-5-1995, P.W. 24 Inspector of Police arrested the absconding accused Mariappan on 19-2-1996. From his possession, one wrist watch, one knife were recovered and subsequently in the pursuance of the confession given to P.W. 24, one gold chain, one pair of ear stud, one gold nose stud, gold ring, Bombay model gold bangle, Singapore cutting gold bangle, Peari bangle, five gold ear studs, two gold rings and further one gold thali chain and four gold rings were recovered. On 22-2-1996 at 5.30 a.m. Investigation officer P.W. 24 arrested the accused Kannan (appellant herein) and accused Lakshmanan and accused Muthu (absconding accused) and recorded the confession of the accused Kannan. Ex. P.29 is the admissible portion of the confession. Ex. P.30 is the admissible portion of the confession given by Lakshmanan. The accused Kannan/appellant herein took the police to his house and produced the jewels one pair ear pendant, two gold nose stud, one lady wrist watch, three silver golusu, two pawn broker shop receipts and two knife. They were recovered under Ex. P. 10 in the presence of mahazar witnesses P.W. 1 Pandian and one Ponnuvel. On the same day at 2.00 p.m., the double row gold chain was recovered from P.W. 16 pawn shop owner. The said jewel was pledged as per the receipt Ex. P.5 by witness P.W. 5 Saroja. In Ex. P.5, the name of the accused Kannan and the name of Saroja are written and Ex. P.5 receipt is signed by P.W. 5 Saroja. P.W. 5 Saroja had stated in her evidence that the accused Kannan-appellant herein has given the jewels to her saying that he wanted money as his mother was unwell. She pledged the jewel in the shop of P.W. 16 and given him a sum of Rs. 7500/- and also handed over the pawn broker receipts. On 24-2-1996 at 10.00 a.m., one gold thalli, two gold ball and one pair gold ear stud were recovered from P.W. 10 Mallaram Choudary pawn broker shop owner. On 24-2-1996 at 10.30 a.m. one gold thalli dot, two gold balls, one pair of kammal and two pawn broker receipts for pledging jewel and two receipts for purchase of jewels were recovered from P.W. 13 Amudha from her house under Ex.P6 mahazar.

P.W. 13 had stated in her evidence that the accused Kannan had given gold chain to her husband and she sold the chain for a sum of Rs. 16000/- and out of that amount she purchased one pair of ear stud, one thalli, two gold balls and her husband handed over the accused a sum of Rs. 4200/- and gold ring. After 10 days, again pledged ear studs and gold chain in the pawn broker shop. P.W. 10 pawn broker also given evidence corroborating the evidence of P.W. 13. On the same day at 12.30 p.m. from P.W. 11 pawn broker shop owner, one pair of gold bangles and gold ring were recovered under Exs. P. 17 and 18 which were pledged by P.W. 6 and Exs. P. 6 and P.9 are the receipts. P.W. 6 Dhanasekaran in his evidence deposed that he knows the accused Kannan and Kannan handed over one pair of gold jewels and he wanted him to pledge. P.W. 6 pledged the jewels in the shop of P.W. 11 for a sum of Rs. 5000/- and handed over the cash and pledge receipt Ex. P.6. On the same day at about 3.30 p.m., a gold chain was recovered from P.W. 12. owner of the jewellery shop. P.W. 12 has stated that a gold chain was sold by one Pappathiammal on 25-12-1995, and out of that amount, a ring and two pair of ear stud and one thalli chain and bangles were purchased. He had given the balance amount of Rs. 4000/-. Ex. P.22 is the receipt for the sale of the new jewel by him and Ex. P.23 is the receipt for the purchase of the old jewels. In the receipts, Exs. P.22 and P.23, the name of the accused Kannan is also mentioned. According to P.W. 13, the said Pappathiammal is her mother. On the same day, at 4.30 p.m., a camera was recovered from one Kumar under Ex. P.20. P.W. 8 Gandhibabu in his evidence stated that he knows the accused and in the end of December 1995, accused Kannan handed over the camera to him and as his friend one Kumar wanted to go to Mahabalipuram, he gave that camera to him. As the police had come to him, he took the police to the house of Kumar and M.O. 42 Camera was recovered.

15. The above evidence let in by the prosecution shows that M.O. 39 series, silver anklets, M.O. 40 watch, M.O. 24 ear stud, M.O. 25 gold nose stud, M.O. 26 gold nose stud were recovered from the possession of the accused Kannan himself. M.O. 35 Thalli dot, M.O. 34 gold balls, M.O. 30 ear stud, M.O. 33 gold chain, M.32 ear stud, M.O. 6 gold bangle, M.O. 23 ring, M.O. 22 gold chain with dollar, M.O. 42 Camera were all recovered, though they were not in possession of the accused. The witnesses have stated that originally the accused was in possession of those

properties and he only handed over to them. All these recoveries of articles connect the accused Kannan to his possession. Ex. P. 5 pawn broker receipt dated 16-12-1995, Ex. P.23 dated 25-12-1995 show that the accused had been in possession of the jewels within few days from the date of occurrence. Though the learned Counsel for the appellant pointed out some of the infirmities in the evidence about the recovery and also with regard to the identification of the properties, this Court is unable to accept the contention of the learned Counsel for the appellant in view of the huge recovery of articles made from the accused himself and from other witnesses supported by their oral testimony and also by document. P.W. 2 husband of the deceased had identified all the jewels belongs to him, wife and children and also he identified the camera M.O. 42. The accused had only denied the evidence regarding recovery of the properties and he had not offered any explanation. In the said circumstances, we hold that the recovery of the articles belonging to that of the deceased and her family had been recovered from the accused and it is also proved that the accused had been in possession of stolen property after the occurrence.

16. The next question is that on the fact that the accused Kannan had been in possession of the stolen property and the properties have been recovered being the solitary circumstance available in this case against the accused, to what extent an inference should be drawn with regard to the offence against the accused as per Section 114 of the Indian Evidence Act.

17. In : 1995 SCC (Cri) 552 : AIR 1995 SC 1598 (Gulab Chand v. State of M.P.) it has been observed as follows:

4. ...The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen articles is or is not calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. In our view, it has been rightly held by the High Court that the accused was not affluent enough to possess the said ornaments and from the nature of the evidence adduced in this case and from the recovery of the said articles from his

possession and his dealing with the ornaments of the deceased immediately after the murder and robbery a reasonable inference of the commission of the said offence can be drawn against the appellant. Excepting an assertion that the ornaments belonged to the family of the accused which claim has been rightly discarded, no plausible explanation for lawful possession of the said ornaments immediately after the murder has been given by the accused. In the facts of this case, it appears to us that murder and robbery have been proved to have been integral parts of the same transaction and therefore the presumption arising under Illustration(a) of Section 114 of Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her ornaments.

18. In *Mukund Alias Kundu Mishra v. State of M.P.* reported in : 1997 SCC (Cri) 799 : 1997 Cri LJ 3182, in paragraph 9, it has been observed as follows:

9. ...If in a given case - as the present one - the prosecution can successfully prove that the offences of robbery and murder were committed in one and the same transaction and soon thereafter the stolen properties were recovered, a Court may legitimately draw a presumption not only of the fact that the person in whose possession the stolen articles were found committed the robbery but also that he committed the murder. In drawing the above conclusion we have drawn sustenance from the judgment of this Court in *Gulab Chand v. State of M.P.* : (1995) 3 SCC 574 : AIR 1995 SC 1598.

19. In *Limbaji v. State of Maharashtra* reported in : 2002 SCC (Cri) 1044 : 2002 Cri LJ 590 it has been observed as follows:

III.(9) As the presumption under Section 114 of the Evidence Act looms large in this case, a brief discussion on the basic postulates and evidentiary implications of presumption of fact may not be out of place. A presumption of fact is type of circumstantial evidence which in the absence of direct evidence becomes a valuable tool in the hands of the Court to reach the truth without unduly diluting the presumption in favour of the innocence of the accused which is the foundation of our criminal law. It is an inference of fact drawn from another proved fact taking due note of common experience and common course of events. Holmes, J. in

Greer v. US 245 US 559 (1917) : 62 L Ed 469 remarked 'a presumption upon a matter of fact, when it is not merely a disguise for some other principle, means that common experience shows that the fact to be so generally true that Courts may notice the truth'. Section 114 of the Evidence Act shows the way to the Court in its certainty. Under the Indian Evidence Act, the guiding rules for drawing the presumption are set out broadly in the Section. Section 114 enjoins:

114. 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. Having due regard to the germane considerations set out in the section, certain presumptions which the Court can draw are illustratively set out. It is obvious that they are not exhaustive or comprehensive. The presumption under Section 114 is, of course, rebuttable. When once the presumption is drawn, the duty of producing evidence to the contra so as to rebut the presumption is cast on the party who is subjected to the rigour of that presumption. Before, drawing the presumption as to the existence of a fact on which there is no direct evidence, the facts of the particular case should remain uppermost in the mind of the Judge. These facts should be looked into from the angle of common sense, common experience of men and matters and then a conscious decision has to be arrived at whether to draw the presumption or not. Among the illustrations appended to Section 114 of the Evidence Act, the very first one is what concerns us in the present case.

The Court may presume:

(a) that a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. Taylor in his treatise on The Law of Evidence has this to say on the nature and scope of the presumption similar to the one contained in Section 114(a):

The possession of stolen property recently after the commission of a theft, is prime facie evidence that the possessor was either the thief, or the receiver, according to the other circumstances of the case, and this presumption, when unexplained,

either by direct evidence, or by the character and habits of the possessor, or otherwise, is usually regarded by the jury as conclusive. The question of what amounts to recent possession varies according to whether the stolen articles is or is not calculated to pass readily from hand to hand....V(b). (17) The question then is, applying Illustration (a) to Section 114, whether the presumption should be that the accused stole the goods or later on received them knowing them to be stolen. Though the trial Court observed that the accused 'might have robbed' the ornaments of the deceased after he was murdered by someone else, it found them guilty of the offence under Section 411 IPC only which is apparently self contradictory. On an overall consideration of the circumstances established, it is reasonable to presume that the accused committed the theft of the articles from the person of the deceased after causing bodily harm to the deceased. The fact that within a short time after the murder of the deceased, the appellants came into possession of the ornaments removed from the person of the deceased and the first accused offered one of the stolen articles for sale on that very day and the further fact that the other articles were found secreted to the knowledge of the appellants coupled with non-accountal of the possession of the articles and the failure to give even a plausible explanation vis-a-vis the incriminating circumstances would go to show that they were not merely the receivers of stolen articles from another source but they themselves removed them from the person of the deceased. Thus, the presumption to be drawn under Illustration (a) to Section 114 should not be confined to their involvement in the offence of receiving the stolen property under Section 411 but on the facts of the case, it can safely go beyond that. In this context, the Three-Judge Bench decision of this Court in *Sanwat Khan v. State of Rajasthan* : AIR 1956 SC 54 : 1956 Cri LJ 150 is quite apposite. While holding that from the solitary circumstance of unexplained recovery of the articles belonging to the deceased from the houses of the accused, the presumption of commission of offence of murder cannot be raised, the Court nevertheless held that they can be convicted of theft under Section 380, IPC which was one of the charges against the accused. Another decision of relevance in *Shivappa v. State of Mysore* : 1970 (1) SCC 487 : 1971 Cri LJ 260. That was a case in which bundles of cloth being carried in carts were looted by twenty persons and the accused were charged for dacoity. Searches which took place

within a few days after the incident lead to the recovery of large quantities of stolen clothes from their houses. On these facts the Court drew the presumption that the persons with whom the items of clothes were found were the dacoits themselves and the conviction was sustained. Hidayatullah, C. J., speaking for the three Judge Bench observed that : (SCC p. 489, para 5) 'It is only when the accused cannot be connected with the crime except by reason of possession of the fruits of crime that the presumption may be drawn' Drawing support from these decisions too, we are of the view that by invoking the presumption under Section 114 read with Illustration (a) thereto, the appellants must, as a first step, be held to have committed theft of ornaments which were removed from the person of the deceased and that they are not mere receivers of stolen property. Theft is a component of the offence of robbery and theft becomes robbery, if, in order to the committing of theft, the offender causes or attempts to cause death, hurt or wrongful restraint or instils fear thereof. Whether, on the facts, they shall be convicted for robbery is yet another aspect which we shall advert to a little later. We are only pointing out presently that if we stop at applying Illustration (a) to Section 114, the accused can be safely convicted for the offence of theft rather than for the offence under Section 411. What is the position if we look beyond Illustration (a) is another aspect.

VI(a).(18) The above discussion paves the way for consideration of a more important question whether, having regard to the facts of this case, the presumption should be extended to the perpetration of the offence of robbery or murder or both. Presumption envisaged by Illustration (a) to Section 114 has been stretched in decided cases to make a similar presumption as the basis for conviction for graver offences of robbery and murder, if they are part of the same transaction. Strictly speaking, such presumption does not come within the sweep of Illustration (a), though in some cases Illustration (a) has been referred to while upholding the conviction for robbery and murder. Extending the presumption beyond the parameters of Illustration (a) could only be under the main part of the section. The Illustration only provides an analogy in such a case. With this clarification, let us examine whether there is scope to presume that the appellants committed robbery and murder sharing the common intention. While on this point, we have come across divergent approaches by this Court in various cases. In

some cases, the extended presumption was drawn while in some cases the Court considered it unsafe to draw the presumption merely on the basis of recovery of incriminating articles from the possession of the accused soon after the crime. The decisions of this Court in *Union Territory of Goa v. Beaventura D'Souza* : 1993 Cri LJ 181, *Surjit Singh v. State of Punjab* : AIR 1994 SC 110 : 1993 Cri LJ 3901 and *Sanwat Khan v. State of Rajasthan* : AIR 1956 SC 54 : 1956 Cri LJ 150 fall in one line, whereas the decision in *Gulab Chand v. State of Madhya Pradesh* : (1995) 3 SCC 574 : AIR 1995 SC 1598 falls on the other side of the line. In the midway we find certain decisions wherein the presumption was invoked as an additional reason to support the conclusion based on circumstantial evidence. We shall briefly refer to these decisions.

(21) Now, it is time we refer to *Gulab Chand v. State of M.P.* : (1995) 3 SCC 574 : AIR 1995 SC 1598, where presumption under Section 114 of the Evidence Act was carried to the utmost extent. In that case the accused were charged under Sections 120-B, 302, 394 and 397 for having committed the murder and robbery. The appellants were convicted under Section 380. On appeal by the State, the High Court reversed the order of acquittal and convicted the appellant Gulab Chand under Sections 302, 394 and 397. The conviction of the other accused was modified to one under Section 411. In that case, within a few days after, the incident, on the search of the appellant's house, various articles were found including ornaments belonging to the deceased. Some of the ornaments were also recovered from a shop on the basis of the information given by the accused. The Court started the discussion with the preface : (SCC p. 577, para 4).

It is true that simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery. But culpability for the aforesaid offences will depend on the facts and circumstances of the case and the nature of evidence adduced. After referring to the test of time factor for drawing the presumption under Section 114(a) as laid down in *Tulsiram Kanu v. State* : AIR 1954 SC 1 : 1954 Cri LJ 225, the Court observed, if the ornaments of the deceased were found in possession of a person soon after the murder, a presumption of guilt can follow. But if several months have expired, the presumption may not be permitted to be drawn. Having regard to

the close proximity of the time of recovery and lack of credible explanation for the possession thereof and on account of dealing with the ornaments immediately after the crime, it was held that a reasonable inference of commission of offence could be drawn against the accused. In conclusion, the learned Judges observed : (SCC p. 578, para 4).

In the facts of this case, it appears to us that murder and robbery have been proved to have been integral parts of the same transaction and therefore the presumption arising under Illustration (a) of Section 114 of the Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of the ornaments.....(25) Whether the approach of the Court and ratio of the decision in Gulab Chand case : (1995) SCC (CrI) 552 : AIR 1995 SC 1598, is in consonance with the three-Judge Bench decision in Sanwat Khan case 1956 Cri. L.J. 150 : : AIR 1956 SC 54 is, at least a debatable issue. When this decision was brought to the notice of Their Lordships who decided Gulab Chand case, it was merely observed that 'the said decision is not applicable in the facts and circumstances of the present case,' There was no further elaboration. In this state of law, the safer course would be to give due weight to the dicta laid down and the ultimate conclusion reached by the larger Bench in Sanwat Khan case. We cannot go against that decision insofar as it applies to the present case.

VI(c).(28) Whether the presumption could be further stretched to find the appellants guilty of the gravest offence of murder is what remains to be considered. It is in this arena, we find divergent views of this Court, as already noticed. In Sanwat Khan case, the three-Judge Bench of this Court did not consider it proper to extend the presumption beyond theft (of which the accused were charged) in the absence of any other incriminating circumstances excepting possession of the articles belonging to the deceased soon after the crime. However, we need not dilate further on this aspect as we are of the view that in the peculiar circumstances of the case, it would be unsafe to hold the accused guilty of murder, assuming that murder and robbery had taken place as part of the same transaction.

VII. (29) In the result, we set aside the conviction of the accused under Section 302, IPC. We find the accused guilty of the offence punishable under Section 394 r/w Section 34, IPC and accordingly convict the accused under Section 394....

20. In view of the ratio laid down by the Honourable Apex Court in the decisions cited supra, it is to be decided to what extent the appellant is liable on the facts and circumstances of this case. Though it is possible to hold that murder and robbery had taken place as part of the same transaction, in this case, this Court feels that it is unsafe to hold that the appellant is guilty of murder also, since out of seven accused, three of the accused have already been acquitted by the trial Court and the absence of any other incriminating circumstances, except the possession of the stolen articles belonging to the deceased family soon after the crime. As already pointed out, out of seven accused, three accused have been acquitted it is also not possible to hold the appellant had committed the offence of dacoity, which requires participation of minimum five persons.

21. For the above said reasons, the appellant cannot be held guilty for the offence of murder and dacoity, but has to be held guilty for the offence of robbery using deadly weapon.

22. In the result, the appeal is partly allowed. The conviction and sentence imposed on the appellant/accused Kannan under Sections 302, 395 and 449, IPC is set aside. Instead he is convicted under Section 392 r/w 397, IPC and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs. 1000/- in default to undergo six months simple imprisonment. The appellant is also convicted under Section 451 IPC and sentenced to undergo two years Rigorous Imprisonment and to pay fine of Rs. 5000/- in default to undergo six months Simple Imprisonment. The conviction and sentence imposed by the trial Court on him under Section 404, IPC is confirmed. The sentence of imprisonment imposed on the appellant is to run concurrently.