

(2002) 05 CAL CK 0040
In the Calcutta High Court

Case No : Death Reference No. 2 of 2000 and Criminal Appeal No. 232 of 2002

Manoj Singh and Rita Mondal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 25-05-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 366

Evidence Act, 1872 — Section 114, 25, 26, 27

Penal Code, 1860 (IPC) — Section 302, 34, 394

Citation : (2003) 2 CALLT 253

Hon'ble Judges : Malay Kumar Basu, J; Debiprasad Sengupta, J

Bench : Division Bench

Advocate : Sekhar Basu, Joymalya Bagchi and Soubhik Mitra, for the Appellant; Kazi Safiullah, Public Prosecutor and S.K. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Sengupta, J.—Both the aforesaid Death Reference and Criminal Appeal are being dealt with and disposed of by this judgment as they arise out of the same judgment of learned Sessions Judge, 3rd Bench, City Sessions Court, Calcutta passed in Sessions Trial No. 1(March)/96. The trial Court by its judgment dated 22.6.2000 convicted both the appellants u/s 302/34 of the Indian Penal Code for committing murder of three aged ladies and by its order dated 26.6.2000 sentenced both the appellants to death.

2. The trial Court has referred the case u/s 366 of the Code of Criminal Procedure to this Court for confirmation of death sentence. Both the death reference and the criminal appeal are being disposed of by this judgment as already noted above.

3. The prosecution case was as follows:

On Bijoy Kumar Khandelwal of 7, Rajendra Dev Road, Calcutta-7 lodged an information with Jorasanko Police Station to the effect that he was a resident of

the 2nd floor in the said premises with his maternal uncle Brijnath Khandelwal, the wife of Brijnath Khandelwal named Smt. Ramdulari Khandelwal (78 years), the sister-in-law of Brijnath named Bidya Devi Khandelwal (65 years) and the widow sister of Brijnath named Prema Devi (76 years). Brijnath Khandelwal used to work as a sharebroker and Bijoy Khandelwal was used to look after the business of Brijnath Khandelwal. They had a servant named Raju, who also used to live in the said house. They had also two other part-time maid-servants. Bijoy (informant) and his maternal uncle Brijnath used to leave their house everyday at 11 a.m. for their business place leaving the aforesaid three aged ladies in the house along with Raju. On the date of incident, i.e., on 15.12.94 Brijnath left his business place at about 3.30 p.m. for his home. At about 4.30 p.m. Bijoy got a telephonic information from their house from his maternal uncle that the collapsible gate and the wooden door of their flat were locked and nobody was responding from inside the flat. Bijoy also rang up their residential telephone. But nobody responded. Thereafter Bijoy and his cousin Ajit Khandelwal came to the house and suspecting wrong inside the flat tried to contact Jorasanko P.S. over telephone, but could not get the connection. Both of them went to the P.S. and informed about such incident. Police came to the house of Khandelwal, broke open the locks of the flat and entered into the flat along with Bijoy and Ajit Khandelwal. They found Prema Devi lying on the floor of the drawing room in a pool of blood with her head covered with a quilt. Then Bijoy searched for his two other aunts and the servant Raju. But they were not found inside the flat. The almirah in the bedroom of maternal uncle was found open and the articles inside the almirah were ransacked. The telephone connection was also found cut up. On further search Bijoy and the Police Officers found the store room locked outside. Police broke open the lock and all of them went inside the store room where Ramdulari Khandelwal and Bidya Devi Khandelwal were found lying on the floor in a pool of blood. Servant Raju was found absent. But his wearing apparels stained with blood were found in an abandoned room adjacent to the pump room. On a preliminary checking Bijoy found one Videocon Colour Television, one National VCR and one blue coloured medium size suit case found missing. Bijoy also stated to the police that he would report to the police details of other articles lost from their residence. The statement of Bijoy Khandelwal was recorded by the police and the same was treated as FIR.

4. During investigation police arrested Monoj and Rita and produced them before the Court on 4.1.95. But Raju Kamath (servant in the house of the informant) could not be arrested by the police. As such the case against Raju was filed on 23.5.95 by the committing Court.

5. The prosecution had examined as many as 24 witnesses to prove its case and none was examined on behalf of the defence. It is also to be noted that conviction in the present case is based on circumstantial evidence.

6. The defacto complainant in the present case Bijoy Khandelwal has been examined as PW 3. He fully corroborated the statement given in the FIR. Initially

PW3 could not furnish the details of the missing articles and he gave out to the police that he would furnish the details of missing articles later. PW 3 later on addressed one letter to the police on 30.12.94 along with a list of missing articles with all details which was marked as Exhibit-6. PW 3 also identified in Court one Videocon Colour TV, one Video Cassette Recorder, one Suit case, and four pieces of golden churis. PW 3 deposed that such gold churis (bangles) were being used by the deceased Vidya Devi and that all those articles belonging to them were stolen from their house on 15.12.94. One Bechuprasad Jaiswal was examined as PW 7, who stated in his evidence that on 15.12.94 at about 11.00 a.m. he started from his place of business for Bellilious Road, Howrah for collection of money and he hired a taxi bearing No. WB-04-3386 from the Fire Brigade Head Quarters at Chittaranjan Avenue, Calcutta and he returned from Howrah at about 2.00/2.30 p.m. He also deposed that he got down from the taxi at Thanthania Kalibari", entered the said Kali Temple and after coming out from the said temple he saw that the said taxi was hired by two persons and it was categorically stated by this witness that those two persons were Raju and Monoj. PW 7 also identified the present accused appellant Monoj in Court. This witness further deposed that he noted down the number of the said taxi as the taxi driver earlier refused to go inside a lane when the driver was asked to do so by PW 7 after reaching Thanthania Kali Temple. PW 7 was cross examined at length by both the accused persons and suggestions were put to them but those have not at all discredited the oral testimony of this witness since he emphatically negatived all such suggestions. It is also noticeable that no suggestion was given to this witness by any of the accused persons to the effect that this witness did not know Raju and Monoj from before the date of occurrence, that the taxi was not hired by those two persons namely, Raju and Monoj and that the said taxi did not go inside the lane. It is further revealed from the cross examination of this witness by accused Monoj that he had some altercations with the taxi driver as the taxi driver refused to go Inside the lane as directed by PW 7.

7. Mr. Sekhar Bose learned advocate for the appellants submits that PW 7 is only a chance witness. He did not disclose how he knew Raju and Monoj from before the date of incident and if Raju was known to him from before why he did not disclose it to PW 3 as to what he had seen in the afternoon. He did not disclose any thing to any body till he was examined by PW 24 (Investigating Officer). Mr. Bose, learned advocate next argues that noting down the taxi number by PW 7 in a piece of paper, which was never produced before the Court, is totally unbelievable. It is highly improbable, according to Mr. Bose, that PW 7 would note down the number of the taxi and keep it in his pocket till the date of his examination by the police. But we are unable to accept such argument of the learned advocate of the appellants. It is in the evidence that PW 7 had some altercations with the taxi driver, who refused to go inside the lane, for which taxi number was noted down in a chit of paper by PW 7. At that point of time there was no reason for the PW 7 to disclose the said incident of refusal of taxi driver and noting down the number of the taxi to anybody. Having gone through the

evidence of PW 7 we do not find any improbability and we do not find any reason to disbelieve such witness. In our considered view the conduct of this witness is natural human conduct and no adverse inference can be drawn from it. Simply because he did not disclose the fact of noting down the taxi number to the Investigating Officer or to any other person, his evidence cannot be disbelieved.

8. PW 8 is the owner of hair cutting saloon in the same locality and he knows PW 7, who is his customer. This witness stated in his evidence that on 15.12.94 at about 8.00 p.m. he met PW 7 in front of his saloon, when PW 7 told this witness that in the afternoon on the same date when he (PW 7) returned home, he found Raju and Monoj hiring a taxi which PW 7 hired earlier for returning home on the same day. This witness categorically stated that he knew Raju and Monoj from before the incident since they were working in the same locality as servants and he identified the accused appellants in Court. This witness (PW 8) also stated to the police that he knew Raju and Monoj from before the incident as they were also customers of his saloon. He also stated before the police that Raju was a servant in the house of Khandelwal and Monoj was a friend of Raju. No suggestion was given to this witness that he did not know Raju and Monoj from before.

9. From the evidence of the aforesaid two witnesses it becomes evident that both PW 7 and PW 8 knew Raju and Monoj (appellant No. 1) from before the date of incident; that Raju and Monoj hired the taxi bearing No. W.B.-04-3386 at about 2.00/2.30 p.m. on 15.12.94 near Thanthania Kali Temple. This was also corroborated by PW 8 who stated that the fact of hiring taxi by Raju and Monoj was narrated to him by PW 7 on the same day at about 8.00 p.m.

10. PW 9 Pradip Jaiswal is a dealer in machine parts and he supplies such parts to his customers who are shopkeepers. He deposed that on 15.12.94 at about 2.00 p.m. he had been to a shopkeeper running a business under the name and style "Sankar Phool Chand" to enquire about the price of a machine parts had having reached the said shop on Rajendra Dev Road near Thanthania Kali Temple, he found that the shopkeeper had gone out for lunch and came to know that he (shopkeeper) would return soon. This witness further deposed that the said shop is opposite to the premises No. 7, Rajendra Dev Road and he decided to wait on the verandah of the said shop for return of the shopkeeper. This witness further stated that he went out of the shop room in order to wash his hands in a nearby tube-well located just below the verandah of the house adjacent to premises No. 7, Rajendra Dev Road. At that time he found a taxi which stopped in front of premises No. 7, Rajendra Dev Road. This witness also noticed that an altercation was going on between the taxi driver in one side and Raju and Monoj on the other side over the issue of taking the taxi backward. This witness then came back to the shoproom, where he was waiting for the shopkeeper. The witness (PW 9) further deposed that he knew Raju and Monoj from before the incident as they had a "Kochuri shop" in front of premises No. 5, Bechu Chatterjee street near Thanthania Kali Temple, PW 9 further deposed that

the said taxi then stopped near the foot path in front of the gate of premises No. 7, Rajendra Dev Road. Raju and Monoj then came there with a TV and kept the same inside the carrier of the taxi and a bag was also kept by them on the top of the TV and the back carrier (Dicky) of the taxi was thereafter closed. This witness further deposed that a lady aged in between 16 and 18 years thereafter boarded the taxi with a VCP or VCR wrapped in a cloth and the taxi then proceeded by the side of the Kali Temple. PW 9 further stated that the lady before boarding the taxi came out of the lane leading to the gate of premises No. 7, Rajendra Dev Road and that Raju and Monoj brought the TV and the bag from that lane.

11. The learned advocate for the appellant challenging the evidence of PW 9 submits that this witness should not have been believed by the learned trial Judge. According to him this witness is a resident of C.R. Avenue which is far off from the place of occurrence and he also did not disclose to the Investigating Officer the name of the shop, the shopkeeper and that he went there to enquire about the price of machine parts. It is further argued that if Monoj was known to him from before there was no necessity in asking him to identify Monoj in T.I. Parade. Mr. Bose further submits that this witness saw every thing while he was waiting for the shopkeeper in the shoproom, but he forgot his business after the taxi left. But we are unable to accept such argument advanced by the learned advocate of the appellants. PW 9 deposed that he knew Raju and Monoj from before as they ran a temporary food shop on the footpath near the Thanthania Kali Temple sometime before the Durga Puja in the year 1994 and that they closed down the said shop 1/2 months thereafter. This part of the evidence of this witness corroborates his earlier statement recorded by the police u/s 161 Cr.PC. We are of the view that simply because there are some minor discrepancies in the cross-examination of this witness and his earlier statements recorded by police u/s 161 Cr.PC, his entire evidence cannot be discarded. Accordingly we do not find any reason to disbelieve this witness simply because of the reason that he did not state anything about what he did after the taxi left the place.

12. Mr. Bose further argues that it is really very surprising that none of the aforesaid witnesses opened their mouth before PW 23 and made statements only when PW 24 took charge of investigation. But it is difficult for us to accept such argument. The evidence of those witnesses cannot be disbelieved only because of the reason that they could not be examined by the police immediately after the incident and were examined only a few days thereafter.

13. The driver of the taxi was examined as PW 10 and he deposed that on 15.12.94 he went out with the taxi in the morning and at about 9/10 a.m. a passenger boarded the taxi at Central Avenue and he had been to different places with the said passenger including Howrah. He stated that at about 2/2.30 p.m. he came near Thanthania Kali Temple with that passenger. The said passenger wanted to go further but he refused as his lunch time was on. This

witness also stated that he had an altercation with this passenger as he refused to go further as per his direction and the passenger threatened him by saying that he would note down his taxi number. The passenger then got down from the taxi after paying the taxi fare and at that time two persons came to him from Thanthania Kali Temple and proposed to hire the taxi. Those two persons took the taxi driver (PW 10) in front of an iron gate by the left hand side of Thanthania Kali Temple and that iron gate was in front of a red building having on its wall a writing of the figure "7". PW 10 further deposed that those two persons then brought a blue bag and a TV and kept the same inside the back side carrier (dicky) of the taxi and that those two articles were brought from a place from inside the iron gate. This witness further deposed that thereafter a woman with a VCP or VCR wrapped up in a cloth came out from a place from inside the iron gate and sat on the rear seat of the taxi and those two persons then told him to take the woman to the place where she would want to go. The said woman then took the taxi in front of a sweet meat shop at Amherst Street and asked him to wait there. She called for her associates, who then removed the articles from the taxi. This witness also identified the accused Rita Mondal (appellant No. 2) in T.I. Parade as the woman who took him (PW 10) in front of a sweet meat shop at Amherst Street with the articles as stated above. This witness also identified the accused Monoj (appellant No. 1) in the T.I. Parade.

14. The T.I. Parade was held by PW 19, learned Metropolitan Magistrate and it is evident from T.I. Parade report that this witness (PW 10) identified both the accused persons Raju and Monoj in such parades.

15. It is submitted by Mr. Bose learned advocate for the appellants that PW 10 is a taxi driver by profession and everyday he meets different people different in age, complexion, height, appearance etc. Such taxi driver cannot keep in his mind the look or appearances of all the passengers who travelled in his taxi. According to Mr. Bose the height of tutoring this witness is manifested through his identification of TV and blue bag more than three years after the incident. But we do not find any merit in such argument. It is in the evidence on record that PW 10 was examined by the Investigation Officer of the case about 10/12 days after the incident and it is only at the time of interrogation by the Investigation Officer this witness came to know about the murder of three aged ladies. So it is quite natural that such an incident will be remembered by PW 10 for a considerable period. He identified the accused persons in the T.I. Parade as also in the Court. We are of the view that it was not at all improbable for the taxi driver (PW 10) to remember the incident, to depose in Court and to identify the articles more than three years after the incident.

16. The next argument advance by Mr. Bose learned advocates for the appellant is that the evidence of PW 11 Jalaluddin (owner of the taxi) is sufficient to show that the Investigating Officer cooked up a false case. Mr. Bose points out that according to PW 11, on 15.12.94 on Nayim of 6, Saklet Lane was the driver of the taxi. But the person who was examined by the prosecution as PW 10 was one

Md. Neejam and Nayim. Mr. Bose further points out that PW 10 (taxi driver) was examined by police 10/15 days after the incident, which took place on 15.12.94. But PW 11 (owner of the taxi) stated in Chief that he was examined on 18.12.94, i.e., 3 days after the incident, it is very difficult to believe how the Investigating Officer reached PW 11 on 18.12.94 without examining PW 10 (driver) who was examined 10/15 days after the incident.

17. After careful scrutiny of the evidence on record we are unable to accept the argument advanced by Mr. Bose learned advocate. According to PW 11 (owner of taxi), his drivers name was Nayim, who took out the taxi from his garage on 15.12.94. We find that the person who was examined as PW 10 was Md. Nayeem. In the statement recorded by police u/s 161 CrPC the name is also mentioned as Md. Nayeem. But in the paper book the name of PW 10 is typed as Md. Neejam. This is nothing but a typographical mistake in the paper book. Although in his examination in Chief PW 11 stated that he was examined by the Investigating Officer on 18.12.94, we find from the statement recorded by police u/s 161 CrPC that police recorded his statement on 3.1.95 and the statement of PW 10 on 2.1.95. So it is quite natural that after examining PW 10 (driver) on 2.1.95 the Investigating Officer examined PW 11 (owner) on 3.1.95, i.e. on the next date. There may be some discrepancy in the evidence of PW 11 regarding the date of his examination by police, but simply because of this reason his evidence should not be discarded.

18. PW 24 is Sub-Inspector of Calcutta Police attached to the Detective Department, Lal Bazar and he took up the investigation of the case on 29.12.94. He deposed that working out a secret information he arrested the present accused Monoj Singh and recorded his statement, The statement of accused Monoj Singh leading to the recovery of articles as made to this witness is marked as Ext. 23 which is as follows:

This witness further stated that accused Monoj Singh then led the police party to the premises No. 123/2, A.P.C. Road within the Jurisdiction of Amherst Street Police Station, identified Rita Mondal, who was arrested by this witness (PW 24). Accused Rita gave a statement to this witness and she brought out four gold bangles (churis) and a blue coloured suit case having 20 pieces of sarees inside. Those articles were seized by this witness under a proper seizure list after observing all the formalities. Accused Rita Mondal made a statement before this witness that she would be able to identify the place where the other articles were kept by her. PW 24 further deposed that on the following morning he left alongwith accused Rita and Monoj for making further search. Both the accused persons led the police party to the premises No. 96H/1/B Kali Ghosh Road within the jurisdiction of Baranagar Police Station and after reaching that place Rita identified the husband of his sister named Sumit Das and stated that she had kept on VCR, one colour TV and one Video cassette in his house. Said Sumit Das then produced all those articles being so directed by accused Rita. The articles were seized under a seizure list. The statement of Rita Mondal leading to

recovery of such articles were marked as Ext. 24,

19. Mr. Bose learned advocate of the appellants submits that the statement made by Monoj (Ext, 23) cannot be considered to be a confessional statement leading to recovery of any article since Monoj did not make any statement leading to the direct recovery of any article. But is not possible for us to accept such contention, because the recovery of articles, even though it was made through the other accused Rita, was the direct effect of the confessional statement of accuse Monoj Singh. It is argued by Mr. Bose that the statement of Mono) Singh which had been admitted u/s 27 of the Evidence Act are hit by Section 25 of the Evidence Act as those are statements made by the accused while in police custody.

20. The prosecution relied upon the most important circumstances in this case, namely the disclosure statements made by the accused persons and recovery of stolen articles pursuant to statements. The learned advocate of the appellants challenges the admissibility of such disclosure statements that such statements are not admissible in evidence as those are hit by section 25 and 26 of the Evidence Act.

21. But we are unable to accept such contention. Section 25 of the Evidence Act provides that no confession made to a police officer shall be proved against an accused person. Similarly Section 26 provides the confession made by the accused while in police custody cannot be proved against him. Section 27 of the Evidence Act is an exception to the rule of Sections 25 and 26 of the Evidence Act. Section 27 of the Act provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 27 is a proviso to Sections 25 and 26 of the Evidence Act. Such statements of the accused are generally termed as "disclosure statements". Section 27 of the Evidence Act is based on the view that if a fact is actually discovered pursuant to any information given, some guarantee is afforded thereby that the information was true and accordingly it can safely be allowed to be admitted in evidence.

22. In the present case the property recovered consequent upon the making of disclosure statements has been proved to be the properties of the members of the Khandelwal family, which were taken away by the accused persons after commission of the murder of three aged ladies.

23. In the present case it becomes evident from the depositions of PW 12 and PW 13 that on the very date of incident the articles mentioned above were found in possession of the accused Rita. Mr. Bose points out some discrepancy as regards time of arrival of Rita with the stolen articles at the place of PW 12. According to Mr. Bose it was not at all possible for Rita to come to the place of PW 12 at 1.30/2.00 p.m., when PW 7 saw the hiring of the taxi at about

2.00/2.30 p.m. But in or considered view such minor discrepancy as regards time is not at all significant in the facts and circumstances of the present case.

24. PW 14 Jagannath Jaiswal and PW 15 Jagadish Chowdhury have categorically stated that on 3.1.95 police came to premises No. 123/2, A.P.C. Road along with a male accused tied with rope and interrogated Rita Mondal. It is also evident from their deposition that Rita Mondal brought out 4 bangles (churis) and 20 sarees kept inside a suit case. They also deposed that those articles were seized under property seizure list, which was signed by them. PW 15 also categorically deposed that he was the landlord of premises No. 123/2, A.P.C. Road and that Rita Mondal was a tenant in the said house. This witness also identified accused Rita in Court like PW 14. Those two witnesses are natural and trustworthy and we do not find any reason to disbelieve them.

25. PW 17 is a witness to the seizure of one VCR, one TV and one Video cassette. He stated that the police officer entered a house along with him, some other persons and a person tied with rope on the waist. He also deposed that Rita Mondal was present in that house at that time by identifying Rita in Court. This witness also identified accused Monoj Singh as the person whom he had seen tied with rope. This witness was cross-examined at length. Suggestions were also given to this witness that he identified the accused persons as also the articles in the Court as those were earlier shown to him by the police, But all such suggestions were negated by this witness.

26. PW 20 Rupak Mitra is an employee of M/s. Great Eastern Company and he stated that the TV, marked as material Exhibit XVI and bearing No. 1069, was sold by this concern to Brijnath Khandelwal (maternal uncle of PW 3). This witness also proved a letter written by him to the police on 28.1.95 showing the sale of the said TV by the said concern to Brijnath Khandelwal. We do not find any reason to disbelieve this witness, who is absolutely disinterested and truthful. In view of the oral testimony of PW 20 and that of PW 3 it becomes clear that PW 3 and Brijnath Khandelwal were the owners of the aforesaid TV set, VCR, Video cassette and the suit case containing 20 pieces of sarees and four bangles. That being the position it also becomes evident that those articles belonging to them were recovered by the police from different places pursuant to the confessional statement made by the accused persons leading to such recovery.

27. Prosecution also examined one Kamala Das as PW 16, who used to serve as a maid servant in the house of Khandelwals at 7, Rajendra Dev Road near Thanthania Kali Temple. She deposed that on the date of incident she went to the house of Khandelwal in the early morning and she washed the utensils of that family. She further stated that she saw Raju (absconding accused) boiling water and milk in the kitchen of that family. After washing the utensils she left that house and at that time she found the three male members of the family present at the house. This witness further deposed that on the same day at about 1.30 p.m. she again came to that house and finding the door of the house under lock

left the place. At about 3.00 p.m. she again came to the house of Khandelwals for her daily work and at that time she found Raju standing on the lane just in front of the house. She then asked Raju as to the whereabouts of the members of Khandelwal family and Raju then asked her to go away by saying that he (Raju) had already washed the utensils of the family. She then left the place as Raju told her to do so. This witness was cross-examined at length, but nothing came out of such cross-examination so as to come to the conclusion that this witness was unworthy of credence. From the evidence of this witness it becomes clear that she found the door of the house, in which the three female members were living, closed at about 1.30 p.m. and Raju was standing on the lane just in front of the house at about 3.00 p.m.

28. PW 22 is Dr. D. Guha Roy and he held post mortem over the three dead bodies. He found a number of injuries on the head on all over the body of Prema Devi Khandelwal (76 years) and most of the head injuries as found, by him were sufficient to cause the death of Prema Devi and those injuries might have been caused by some hard, blunt and heavy substance. This witness also found number of injuries similar in nature on the body of Ramdulari Khandelwal and Bidya Devi Khandelwal. All the injuries found by him on the said dead bodies, according to this witness, might have been caused by hard, blunt and heavy substance and such injuries were ante mortem and homicidal in nature,

29. Mr. Bose learned advocate of the appellant argues that when so many external injuries were found by PW 22 the Autopsy Surgeon, then how PW 21 did not find those injuries on the body of the said three deceased. But we are not able to accept such argument. It is evident from the evidence of PW 21 that he was attached to the Medical College and Hospital and on the relevant date of incident (15.12.94) he was on duty as Emergency Medical Officer. He specifically stated in his evidence that when a patient is brought in the Emergency Department the doctor on duty first ascertain whether there is any sign of life and it is not possible for a doctor on duty in the Emergency Department to examine a dead body thoroughly. This, in our view, is sufficient explanation for such discrepancy in number of injuries found by PW 22 and PW 21 and only for this reason the evidence of PW 22 the Autopsy Surgeon, cannot be said to be unreliable.

30. In the present case there are two sets of evidences-- circumstantial evidence so far as the murder is concerned and direct evidence as regards recovery of articles. So far as the murder of three aged ladies is concerned, prosecution tried to prove its case by circumstantial evidences. In such cases Court must be very careful in scrutinizing the evidence to come to a conclusion that the offence was committed by the accused persons.

31. Mr. Bose, learned advocate of the appellants relies on a judgment of the Hon"ble Apex Court reported in Hanumant Vs. The State of Madhya Pradesh, . In the said Judgment it was held by the Hon"ble Apex Court as follows:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence of far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

32. Next Judgment relied upon by Sanwat Khan and Another Vs. State of Rajasthan, wherein it was held by the Hon''ble Supreme Court that no hard and fast rule can be laid down as to what inference should be drawn from a certain circumstances. However, where the only evidence against the accused persons is the recovery of stolen articles and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murderer.

33. In our considered view the aforesaid judgment is not at all applicable in the present case. In the said case the only evidence against the accused was the recovery of articles belonging to the deceased. There was no other evidence against the accused. Recovery was also made after a fortnight. But the facts and circumstances of the case referred to above are quite different from the present case. Here, on the very date of incident the accused persons were found in possession of the articles. PWs 9 and 10 and PWs 12 and 13 found that accused persons in possession of the articles immediately after the incident on the very same day of murder. In our view the presumption permitted to be drawn u/s 114, illustration (a) of the Evidence Act has to be read along with the important time factor. If the articles owned by the deceased or his/her relative are found in possession of a person soon after the murder, a presumption of guilt may be permitted to be drawn. But if a considerable period expires in between the commission of murder and recovery of articles, the presumption cannot be permitted to be drawn having regard to the circumstances of the case.

34. The judgment of the Hon''ble Supreme Court reported in Amar Singh and Others Vs. State of Madhya Pradesh, , relied upon by the learned advocate of the appellant is also not applicable in the present case as the facts and circumstances of the said case all totally different from the present case. For the same reason, we are of the view that the judgment of the Hon''ble Supreme Court reported in 2000(4) SCS 481 is also not applicable in the present case.

35. The next judgment relied upon by the learned advocate of the appellant is reported in 2001(8) Supreme 722 (Limbaji and Ors. v. State of Maharashtra). From a reading of the said judgment it appears that the prosecution relied upon only the circumstantial evidence of recovery of ornaments worn by the deceased,

pursuant to the information furnished by the accused to the police. A presumption was drawn by the High Court u/s 114(a) of the Evidence Act and having found the accused guilty of the offences punishable u/s 302 read with Section 34 and Section 392 read with Section 34, set aside the judgment of the Sessions Judge. It is the correctness of that view that fell for consideration before the Hon''ble Supreme Court. It was held that the fact that the ornaments on the person of the deceased came into the hands of the accused soon after the crime and they failed to give any explanation for the circumstances appearing against them, Justified the presumption that they themselves removed those articles from the person of the deceased. In the facts and circumstances of the said case the Hon''ble Court was of the view that an inference could be safely drawn that the appellants committed robbery in furtherance of common intention. But it was held that when there is reasonable scope for two possibilities and the Court is not in a position to know the actual details of occurrences, it is not safe to extend the presumption u/s 114 of the Evidence Act so as to find the appellants guilty of the offence of murder with the aid of Section 34 IPC. Accordingly, conviction u/s 302 was set aside and the accused was convicted u/s 394 read with Section 34 of the Indian Penal Code.

36. After going through the aforesaid judgment we find that the facts and circumstances of the present case is totally different from the case referred to above. As it has already been discussed above, in the present case apart from the recovery of the articles, there are other circumstances to connect the accused persons with the offence. In order to prove its case the prosecution examined a number of witnesses, who deposed about various circumstances which went against the accused persons and in favour of the prosecution.

37. Finally it is submitted by Mr. Bose that even if the conviction is upheld by this Court, the present case cannot be brought under the category of "rarest of rare cases".

38. Mr. Bose in support of his contention relies on two judgments, one reported in Shamshul Kanwar Vs. State of U.P., , and the other is a Division Bench judgment of this Court reported in Utpal Mondal Vs. State of West Bengal, . In both the cases the Hon''ble Court having regard to the totality of facts and circumstances of the case, were of the view that in those cases sentences of imprisonment for life, instead of death sentence, would meet the ends of justice.

39. Mr. Safiullah, learned Public Prosecutor appearing for the State submits that in the present case the date of incident was 15.12.94 and on the very date of the incident the accused persons were found in possession of the articles. Learned Public Prosecutor points out that PWs 9, 10, 12 and 13 are the witnesses who saw the accused persons in possession of the articles on the very date of incident. Subsequently the articles were recovered at the instance of the accused person on 3.1.95 and 4.1.95 and no plausible explanation was given by the accused for lawful possession of the articles. In such circumstances the presumption was rightly drawn that the accused persons not only committed the

murders of three aged ladies, but also committed offence u/s 411 of the Indian Penal Code.

40. Mr. Safiullah, learned Public Prosecutor relies on a judgment of the Hon''ble Supreme Court reported in Gulab Chand Vs. State of Madhya Pradesh, . In the said judgment it was held by the Hon''ble Supreme Court as follows;

"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 offence will depend on the facts and circumstances of the case and the nature of evidence adduced. It has been indicated by this Court in Sanwat Khan and Another Vs. State of Rajasthan, , that no hard and fast rule can be laid down as to what inference should be drawn from certain circumstances. It has also been indicated that where only evidence against the accused is recovery of stolen properties, then although the circumstances may indicate that the theft and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of the stolen property had committed the murder. A note of caution has been given by this Court by indicating that suspicion should not take the place of proof. It appears that the High Court in passing the impugned judgment has taken note of the said decision of this Court. But as rightly indicated by the High Court the said decision is not applicable in the facts and circumstances of the present case. The High Court has placed reliance on the other decision of this Court rendered in Tulsiram Kanu Vs. The State, . In the said decision, this Court has indicated that the presumption permitted to be drawn u/s 114, illustration (a) of the Evidence Act has to be read along with the important time factor. If the ornaments in possession of the deceased are found in possession of a person soon, after the murder, a presumption of guilt may be permitted. But if several months had expired in the interval, the presumption cannot be permitted to be drawn having regard to the circumstances of the case. In the instant case, it has been established that immediately on the next day of the murder, the accused Gulab Chand had sold some of the ornaments belonging to the deceased and within 3-4 days, the recovery of the said stolen articles was made from his house, at the instance of the accused. Such close proximity of the recovery, which has been indicated by this Court as an "important time factor", should not be lost sight of in deciding the present case. It may be indicated here that in a later decision of this Court in Earabharappa v. State of Karnataka , this Court has held that the nature of the presumption and illustration (a) u/s 114, of the Evidence Act must depend upon the nature of evidence adduced. No fixed time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article 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."

41. Learned Public Prosecutor next relied on a judgment reported in *Shri Bhagwan Vs. State of Rajasthan*, . In the said judgment it was held by the Hon"ble Supreme Court as follows:

The possession of the fruits of the crime recently after it has been committed, affords a strong and reasonable ground for the presumption that the party in whose possession they are found was the real offender, unless he can account for such possession in some way consistent with his innocence. It is founded on the obvious principle that if such possession had been lawfully acquired, that party would be able to give an account of the manner in which it was obtained. His unwillingness or inability to afford any reasonable explanation is regarded as amounting to strong, self inculpatory evidence. If the party gives a reasonable explanation as to how he obtained it, the Courts will be justified in not drawing the presumption of guilt. The force of this rule of presumption depends upon the recency of the possession as related to the crime and that if the interval of time be considerable, the presumption is weakened and more especially of the goods are of such kind as in the ordinary course of such things frequently change hands. It is not possible to fix any precise period. This Court has drawn similar presumption of murder and robbery in series of decisions especially when the accused was found In possession of these incriminating articles and was not in a position to give any reasonable explanation..."

"In the instant case, the appellant could not give an explanation as to how he came into possession of various gold ornaments and other articles belonging to Shiv Pratap and the members of his family. The appellant also could not give any reasonable explanation how he sustained injuries on his body and how his shirt became blood-stained. In the facts and circumstances, it is a fit case where the presumption under Illustration (a) to Section 114 of the Evidence Act could be drawn that the appellant committed the murders and the robbery. The Courts below have rightly held the appellant guilty of the offences charged against him."

42. Mr. Saffullah also relies upon a judgment of the Hon"ble Supreme Court reported in 2001 CLJ 1231 (*Sanjay @ Kaka v. State*). After going through the said judgment it appears that the most important circumstances in the said case to connect the accused with the commission of crime are the disclosure statements made by them and recovery stolen properties, weapon etc. made in consequence thereof. It was held by the Hon"ble Supreme Court in the said judgment as follows:

"In the instant case also, the disclosure statements were made by the accused

persons on the next day of the commission of the offence and the property of the deceased was recovered at their instance from the places where they had kept such properties on the same day. To the same effect are the judgments in Mukund alias Kundu Mishra and another Vs. State of Madhya Pradesh, and Ronny @ Ronald James Alwaris Etc. Vs. State Of Maharashtra, . In the latter case the Court held (para 31 of AIR CriLJ).

"Apropos the recovery of articles belonging to the Ohol family from the possession of the appellants soon after the robbery and the murder of the deceased (Mr. Mohan Ohol v. Mrs. Ruhi Ohol and Mr. Rohan Ohol) which possession has remained unexplained by the appellants the presumption under illustration (a) of Section 114 of the Evidence Act will be attracted. It needs no discussion to conclude that the murder and the robbery of the articles were found to be part of the same transaction. The Irresistible conclusion would therefore, be that the appellants and no one else had committed the three murders and the robbery."

43. We have heard the learned advocates of the respective parties. We have also gone through the judgments referred to above. As it is clear from the evidence on record that there is no direct evidence of committing murder or theft, and the prosecution entirely relied upon the circumstantial evidence. It is in the evidence on record that PW 3 and Brijnath Khandelwal (maternal uncle of PW 3) left the premises No. 7, Rajendra Dev Road at 11.00 a.m. when Prema Devi, Ramdulari Devi and Vidya Devi were all alive, PW 7, PW 9 and PW 10 found Raju and accused Monoj Singh hiring the taxi bearing No. WB-04-3386 at about 2 or 2.30 p.m. on 15.12.94 near Thanthania Kali Temple. It is also in the evidence on record that accused Monoj Singh and Raju were found coming from inside the lane leading to the premises No. 7 Rajendra Dev Road with a blue bag and a television and putting the said articles inside the "dicky" of the said taxi. After a while Rita Mondal (present appellant No. 2) boarded the said taxi with a VCR and left the place with the said taxi. The prosecution very successfully proved that those articles were owned by the Khandelwals. The disclosure statements made by the accused persons after their arrest led to the recovery of articles along with four bangles of 20 pieces of sarees, which were inside the suit case. The evidence of PW 16 also goes to show that she (PW 16) found Raju standing on the lane in front of 7, Rajendra Dev Road when she came for the third time to the said premises on 15.12.94 at about 3.00 p.m. in order to work in the family of Khandelwals and Raju at that time told her to go away by saying that he (Raju) had already washed the utensils. This clearly suggests that Raju and present two appellants committed murders of the three aged ladies and only for this reason Raju did not allow PW 16 to enter into the house of Khandelwals, where the dead bodies were lying, since in that event the incident of murders would be exposed to the people. It is very much clear from the evidence of PW 16 that Raju kept standing on the lane in front of the house of Khandelwals only to restrain PW 16 from entering into the house of Khandelwals and to keep the fact of murders of three persons concealed. It is also very significant to note that

no satisfactory explanation could be given by the present appellants as to how the articles came into the possession of accused Rita Mondal.

44. After going through the entire evidence on record we are of the view that the circumstances enumerated above, complete the chain of circumstances to prove the guilt of the accused persons. The recent and unexplained possession of the stolen articles should be taken to be presumptive evidence of the charge of murders of three aged ladies as well and it may be safely concluded that Raju and present two appellants, namely Monoj Singh and Rita Mondal took away all those articles from Ramdulari Devi, Prema Devi and Vidya Devi after committing murder of the three aged ladies.

45. Now comes the question of sentence. It is for our consideration whether the death sentence awarded by the trial Court should be sustained and confirmed. There is no doubt that the incident is a very sad and unfortunate one as it involves death of three aged ladies. But in such a case we are to follow the principle laid down in the case of Bachan Singh Vs. State of Punjab, where the Hon"ble Court ruled that sentence of death should not be passed except in the "rarest of rare cases". In the present case three aged ladies were murdered by their domestic servant Raju (since absconding) and his two associates (the present appellants). The appellants committed the murders only with a motive of taking away the belongings of the family of Khandelwals. The accused persons belong to the poor Section of the society serving in the houses as servant and maid servant. The offence was committed by them to grab the property of Khandelwal's family. These accused persons are not profession murders and they do not have any criminal background. The appellants, who belong to the poorer section of the society, committed the offence out of greed to have the belongings of Khandelwals family. We may say that in the present case the appellants suffered from temporary mental imbalance and in that particular situation they totally lost control over themselves and committed the offence.

46. Having regard to the totality of the facts and circumstances of the present case, we are of the view that in this case sentence of imprisonment for life, instead of death sentence, for conviction u/s 302/34 of the Indian Penal Code will meet the ends of justice.

Conviction u/s 302/34 of the Indian Penal Code is hereby upheld. But we set aside the death sentence imposed by the trial Court on the appellant and instead sentence the appellant to imprisonment for life for his conviction u/s 302 of the Indian Penal Code.

In the result the death reference is rejected. The connected appeal preferred by the present appellants is also dismissed subject to the above modification as regards sentence.

M.K. Basu, J.

I agree.