

(2016) 05 DEL CK 0029
In the Delhi High Court
Case No : Crl. A. No. 782 of 2000

Phool Chand

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-05-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 404

Citation : (2016) 7 ADDelhi 11

Hon'ble Judges : Pradeep Nandrajog and Mukta Gupta, JJ.

Bench : Division Bench

Advocate : Mr. Davinder Hora and Mr. Sikandar Khan, Advocates, for the Appellant; Mr. Varun Goswami, APP for the State with Inspector R.K. Meena and PS Rajinder Nagar, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—Phool Chand has been convicted for murdering Dr. Shanti Raj, removing gold bangles and two gold rings from her body, committing theft of the household goods from the house of the deceased vide impugned judgment dated August 30, 2000 and directed to undergo imprisonment for life for offence punishable under Section 302 IPC and to undergo rigorous imprisonment for two years for offence punishable under Section 404 IPC vide order on sentence dated September 08, 2000.

2. According to the prosecution it proved fourteen circumstances to convict the appellant of which except circumstance Nos. 4 and 8, the learned Trial Judge held that the same had been proved. However, to fill in the gap in respect of circumstance Nos. 4 and 8, the learned Trial Court pressed in explanations under Section 313 Cr.P.C which were found to be false and thus convicted the appellant. The circumstances pressed in by the prosecution are:

"(1) That deceased Shanti Raj was an old lady, aged about 76 yrs.and was putting up alone at the ground floor at the house No.R-901, New Rajender Nagar,

and one Gopal was working as a domestic help in her house.

(2) That Gopal was requesting the deceased to leave her services as domestic help and he was absent for two days prior to the murder of Dr. Shanti Raj.

(3) That on 10-9-96 deceased had gone to her sister Dr. Leela Raj in the noon time for taking lunch at her house at 569, Double Storey, New Rajender Nagar and the deceased took leave of her sister at about 4 p.m. by saying that she had an appointment with a servant at her house at 5 p.m. who was to work in place of domestic servant Gopal.

(4) That accused Phool Chand @ Prem was employed as domestic servant, in the evening of 10-9-96, to work as domestic servant in the house of the deceased and on 11.09.96 he was found missing from the house of the deceased.

(5) That previous domestic servant Gopal had not left the service of the deceased and on 11-9-96 in the evening Gopal informed Dr. Leela Raj that he had gone to the house of Dr. Shanti Raj where he found that the doors of her house were open and lights were on and there was no response from the house to the door bell.

(6) That Dr. Leela Raj went to the house of the deceased and found dead body in the kitchen of the house and she found that one gold bangle, two gold rings and one wrist watch were missing from the dead body of her sister.

(7) That Dr. Shanti Raj was seen alive for the last time on 10-9-96 at about 4 p.m. and she died a homicidal death on 10-9-96.

(8) That accused was seen in the house of the deceased at 5 p.m. on 10-9-96 and he was talking to the deceased.

(9) That on 12-9-96 complainant Dr. Leela Raj gave a list of the articles found missing in the house of deceased Dr. Shanti Raj which included one Colour T.V. make Sony with remote control, one Seiko Quartz time piece, one white bed cover, two ladies umbrellas, one blue T.V. cover and some clothes.

(10) That accused was apprehended on the basis of a secret information on 18-9-96 and he made his disclosure statement stating inter-alia that he removed Sony T.V., remote control, Seiko watch, some sarees and shawl and other articles and the jewellery and kept the T.V. and the other articles in a bag in the jhuggi of one Ram Prasad residing at DBG Road, Karol Bagh Trl. and concealed the jewellery in the ridge area under a stone.

(11) That accused after his arrest pointed out to ground floor house no. R-901, New Rajender Nagar as the place of the occurrence vide pointing out memo Ex.PW17/B.

(12) That accused pointed out to the Jhuggi No. C-43/44 of Ram Prasad near Karol Bagh, Bus Trl. and the ridge area from where the police recovered the stolen articles found missing from the dead body and from the house of the

deceased.

(13) That in consequence of the disclosure statement of the accused, police recovered the T.V. and other articles in a bag from the jhuggi of Ram Prasad and jewellery articles from the ridge area.

(14) That Dr. Leela Raj identified two rings, gold bangles, one cloth bag, keo karpin hair oil, table clock (Seiko), T.V. remote control, one umbrella, T.V. Cover, two sarees, shawl and jewellery in identification proceedings."

3. Learned counsel for the appellant challenging the conviction contends that even as per the impugned judgment, afore noted circumstance Nos. 4 and 8 have not been proved and hence there is no witness who has seen the appellant with the deceased. Thus the chain of circumstance proved against the appellant is incomplete however, the learned Trial Court erroneously sought to complete the same by noting that the appellant gave false explanation in his statement under Section 313 Cr.P.C. The explanation noted to be false was an answer to question No.36 wherein the appellant replied that he was a hawker selling eatables and had never worked as domestic servant at any house for any period which was contrary to the statements of Ms. Nalini Bajaj, PW-3 and Mr. Rakesh Bajaj, PW-4. The prime public witnesses who informed Dr. Leela Raj, PW-1, that is, Gopal and Bhawani were not examined by the learned Trial Court. There is no evidence that the appellant Phool Chand was known by the name Prem. The testimony of Ram Prasad, PW-6 does not support the prosecution case as he deposed that the police visited his jhuggi 2-3 days after September 10, 1996. The appellant was arrested on September 18, 1996 thus the recoveries could not be at his instance. Ram Prasad categorically stated that when the police searched his house, the appellant was not present. Further Ram Prasad also denied the suggestions in the cross-examination by the learned APP regarding taking the appellant to the ridge and getting the gold ornaments recovered. There are contradictions in the statement of police witness with regard to the alleged recovery of gold ornaments from the ridge. Further the alleged recovered articles were of ordinary use with no specific mark of identification and thus Dr. Leela Raj could not have identified the same. The recovery of gold bangles was from an open place accessible to all and thus could not be attributed to the appellant. Since there is no evidence on record to prove that the appellant was employed with the deceased or that the alleged property belonged to the deceased ingredients of Section 404 IPC are not made out. Hence the appellant be acquitted of the charges framed.

4. We have also heard Mr. Harsh Prabhakar, Advocate on the panel of the Delhi High Court Legal Service Committee on behalf of the appellant whom we had appointed vide order dated April 19, 2016 as learned counsel for the appellant was not appearing despite the matter being on Board for a long time and the learned counsel having been informed telephonically by the Court Master. Mr. Harsh Prabhakar, Advocate contends that the case of the prosecution is based on circumstantial evidence and largely depends on the recovery of the stolen articles

at the instance of the appellant however, there are ample circumstances to show that the alleged recoveries were suspicious. As per Dr. Leela Raj, PW-1 she and police reached the spot of occurrence in the late evening of September 11, 1996 however, still the fardbayan wherein factum of articles missing was disclosed was recorded belatedly at around 3.00 PM on September 12, 1996. Though the investigating agency had attempted to explain the delay by stating that the inquest proceedings were pending, thus registration of FIR was deferred however, the death report itself shows presence of scratch marks on the neck besides other injuries on the body of the deceased unequivocally evidencing homicidal death. Thus the FIR was registered belatedly by padding up facts. Even the brief facts dated September 12, 1996 reveal that no household articles were found missing, thus the possibility of planting the household articles and implicating the appellant cannot be ruled out. Dr. Leela Raj, PW-1 deposed that the police recorded her first statement on September 11, 1996 itself whereas SI Rajesh Kumar, PW-24 deposed that he did not record the statement of Dr. Leela Raj on September 11, 1996. As per the post-mortem report, the deceased died around 11.45 PM on September 10, 1996 however, the alleged stolen articles were stated to be deposited with Ram Prasad, PW-6 at 8.00 PM on September 10, 1996 which creates a serious dent in the theory propounded by the prosecution. Though the recoveries affected were stated to be deposited in the Malkhana at 1.00 AM on September 19, 1996 by HC Kishan Chander, PW-17 however, the Malkhana register notes the date as September 18, 1996. Reliance is placed on the decision reported as 2009 (14) SCC 415 Subramaniam v. State of Tamil Nadu and Anr..

5. The star witnesses of the prosecution case are PW-1 Dr. Leela Raj and PW-6 Ram Prasad.

6. Dr. Leela Raj PW-1, the sister of the deceased Dr. Shanti Raj deposed that her sister was unmarried and was residing alone at R-901, New Rajender Nagar, New Delhi. That her sister was a retired medical practitioner and on September 10, 1996 she had come to her house at about 12.00 PM. They had lunch together. At about 4.00 PM her sister left her house stating that she had given an appointment to a servant at her house at 5.00 PM. Gopal, the domestic servant of Dr. Shanti Raj wanted to leave and thus she was required to employ another person. Gopal was absent from the house since two days prior to September 11, 1996. On September 11, 1996 when Gopal went to the house of her sister he found the doors of the house open, lights on and there was no response from inside the house on ringing the door bell. While Gopal came to her and narrated these facts, one washer man Bhawani also came and told the same story. Alarmed at the situation, she along with Bhawani and Gopal went to her sister's house where she found her sister lying dead in the kitchen. There were blood stains on the floor of the kitchen and clotted blood on her clothes, face and nostrils etc. She also found gold bangles, two gold rings and one watch missing from the body of her sister. The accused Prem employed by her on the evening of September 10, 1996 was also found missing. On her statement Ex.PW-1/A police

registered the FIR. On September 12, 1996 she gave a list of articles which she found missing from the house including a colour T.V., one Seiko Watch, some clothes, two ladies umbrellas and transistor etc. Later on the police recovered the articles and she identified the same before the Magistrate.

7. In cross-examination PW-1 Dr. Leela Raj admitted that she could not identify the appellant as the servant employed in the house of her sister because she had not seen him. The two other witnesses PW-3 Ms. Nalini Bajaj and PW-4 Mr. Rakesh Bajaj also did not support the prosecution case of having identified Prem as the domestic servant who had been employed by the deceased on the evening of September 10, 1996 though they stated that they knew Prem as he had been working at the house of Rakesh Bajaj's father five-six years ago.

8. In view of the evidence as noted above, the learned Trial Court rightly held that the circumstance Nos. 4 and 8 had not been proved as none of the witnesses deposed that the appellant had been employed by the deceased at 5.00 PM on September 10, 1996 nor he was seen talking to the deceased at that time. Though Gopal could not be produced as a witness as he could not be traced however, from the testimony of PW-1 Dr. Leela Raj as noted above circumstance Nos. 1, 2, 3, 5, 6 and 9 stood proved.

9. The deceased died a homicidal death as proved by Dr. Akash Jhanjhee, PW-18 who conducted the post-mortem and found the following injuries on the body of the deceased:

"1. Contusion, reddish in colour in an area of 3 x 2 cms. present on the left side of forehead just above the inner end of left eye-brow.

2. Multiple bruises with superficial lacerations present over the lower lip, reddish in colour.

3. Irregular red coloured contusion area with dimensions of 4 x 3 cms. present over the left side chin just below the left angle of mouth.

4. Multiple crescentric abrasions, reddish in colour present in area of the 5 x 3 cms. on the front of left side of the neck 2 cms. below the chin and 5 cms. below the left angle of mouth.

5. Contusion, reddish in colour in an area of 3 x 2 cms. present on the front of right side of neck 1 cm below the level of mandible.

6. Multiple crescentric abrasions, with contusion around in an area 7 x 4 cms present on front of right side abdomen, 5 cms. outer to umbilicus level, reddish in colour."

10. Dr. Akash Jhanjhee opined the injuries to be ante mortem in nature and the cause of death was opined to be due to asphyxia as a result of combined effect of manual strangulation (throttling) and smothering. He opined that injury Nos. 4 to 6 were caused by some sharp pointed object and other injuries were caused by blunt object/surface impact. The post-mortem was conducted at 11.45 A.M.

on September 12, 1996 and the probable time since death was opined to be around 36 hours. Thus the homicidal death was caused on the intervening night of September 10 and 11, 1996.

11. This brings us to the most crucial evidence of the prosecution i.e. the appellant leaving a television and a bag at the house of Ram Prasad, PW-6 which belonged to the deceased and recovery of articles including the jewellery at his instance. The prosecution has examined Ram Prasad, PW-6 and three Police Officers i.e. Inspector Anil Kumar PW-28, HC Krishan Chander PW-17 and HC Ram Kumar PW-19 to prove the afore-noted circumstances Nos. 9 to 14.

12. Ram Prasad, PW-6 deposed that he knew appellant Phool Chand @ Prem as he belongs to his wife's native place. On September 10, 1996 Phool Chand came to his house with some articles including a television and bag. Phool Chand stated to him that he has no place to keep the goods and requested him to keep the same so that after two days when he goes to his village, he can take them. Ram Prasad kept the articles in his jhuggi however Phool Chand did not turn up. After 2-3 days Police came to his jhuggi at about 10.00-11.00 PM and made enquiries as to whether Phool Chand had come to his house. Ram Prasad replied to the Police in affirmative and also told the Police about the television and the bag he had kept. The articles were taken in possession by the Police vide memo Ex.PW-6/A which was signed by Ram Prasad. However, Ram Prasad did not depose about the rest of the facts which were deposed by the Police officers.

13. Inspector Anil Kumar, PW-28 deposed that on September 12, 1996 after registering FIR on the statement of Dr. Leela Raj and conducting the inquest proceedings search was made for the appellant when on September 18, 1996 an information was received that he would be coming to old Rajender Nagar market from the side of Pusa Road. Thus Phool Chand was apprehended near Rapid Flour Mill, Old Rajender Nagar Market. Pursuant to the arrest Phool Chand made a disclosure statement about keeping the stolen articles except jewellery in the jhuggi of Ram Prasad near Karol Bagh bus terminal, opposite Naaz Cinema and hiding the jewellery under a stone in the Ridge Area, Shankar Road. After the pointing out memos were prepared, Phool Chand led police party to the jhuggi of Ram Prasad from where they got recovered television and 13 articles in the bag i.e. one white bed sheet, shawl, saree, umbrella, Seiko quartz table clock, remote control Sony, four perfume bottles and one 20 inch colour television besides soaps etc. These articles were seized and sealed vide seizure memo Ex.PW-17/C. Thereafter Phool Chand led the Police party to the area and pointed towards the stone. On lifting the stone, gold ornaments consisting of one gold kara, which was bent from several places and two gold rings were recovered. The same were sealed and seized vide memo Ex.PW-17/D.

14. HC Krishan Chander PW-17 and HC Ram Kumar PW-19 deposed in sync with Inspector Anil Kumar PW-28.

15. The recovered articles were duly identified by Dr. Leela Raj PW-1 to be

belonging to the deceased Dr. Shanti Raj in a Test Identification Parade carried out by PW-25 Shri A.S. Dateer, the learned Metropolitan Magistrate who was not cross-examined.

16. The contention of learned counsel for the appellant that Phool Chand was not available at the time of recoveries made from the jhuggi of Ram Prasad for the reason Ram Prasad, PW-6 stated that the police visited his jhuggi two three days after September 10, 1996 whereas Phool Chand was arrested on September 18, 1996 deserves to be rejected. Though Ram Prasad did not support the prosecution case in its entirety however, he admitted having signed the seizure memo Ex.PW-6/A which noted the date as September 18, 1996. Further the testimony of the police witnesses and the seizure memo Ex.PW-6/A fortifies the search and seizure made from the house of Ram Prasad on September 18, 1996. The recovery of the gold ornaments from the ridge was from under a stone thus concealed and cannot be said to be from an open place accessible to all. Further Ram Prasad PW-6 was suggested that Bhagwan Din had kept the goods in his jhuggi when he returned from the work which suggestion was denied by Ram Prasad, an independent witness on which the appellant relies. Even though the gold ornaments were of daily routine however, there is generally a difference in the size and the design and they were duly identified by Dr. Leela Raj, PW-1. Even in the cross-examination Dr. Leela Raj, PW-1 reiterated the identification of the recovered articles in the test identification parade conducted by Shri A.S. Dateer, PW-25. Moreover, the testimony of the learned Metropolitan Magistrate, PW-25 has gone unchallenged and thus no infirmity in the test identification parade of the case property has been pointed out. The fact that Phool Chand was also known as Prem is deposed by Rakesh Bajaj, PW-4 who stated that he knew the appellant as Prem and he had worked in the house of his father five-six years ago.

17. This brings us to the moot question urged by learned Amicus Curiae Mr. Harsh Prabhakar, Advocate who pointed out that as per the testimony of Ram Prasad, PW-6, Phool Chand had visited his house at 8.00 PM on September 10, 1996 when he left a television and a bag containing various articles whereas as per the post-mortem report the deceased died around 11.30 PM on the night of September 10, 1996. Thus the articles did not belong to the deceased. It is well settled that the time since death given by the autopsy surgeon is approximate based on the rigour mortis which develops on the body. Further, stages in the rigour mortis also vary with temperature and atmospheric conditions. Thus the time since death of 36 hours was not the exact time but a rough estimation and it cannot be held that the television and bag with articles left by Phool Chand at the house of Ram Prasad at 8.00 PM did not belong to the deceased. In the decision report as 2006 (13) SCC 229 Ramjee Rai & Ors. v. State of Bihar the Supreme Court held:

"37. Medical science has not achieved such perfection so as to enable a medical practitioner to categorically state in regard to the exact time of death. In a case

of this nature, it was difficult to pinpoint the exact time of death. The autopsy surgeon told about the approximate time-lag between the date of post-mortem examination and the likely date of death. He did not explain the basis for arriving at his opinion.

38. This Court on a number of occasions noticed that it may not be possible for a doctor to pinpoint the exact time of death.

39. In *Ramreddy Rajesh Khanna Reddy v. State of A.P.* [(2006) 10 SCC 172: (2006) 3 SCC (Cri) 512: (2006) 3 Scale 452] this Court observed: (SCC pp. 179-80, paras 20-21)

"20. In this case, the time of actual offence having regard to the different statements made by different witnesses may assume some importance, as one of the grounds whereupon the High Court has based its judgment of conviction is the time of death of the deceased on the basis of the opinion rendered by Dr. P. Venkateshwarlu (PW 13). 21. In *Modi's Medical Jurisprudence*, 22nd Edn., as regards duration of rigor mortis, it is stated:

Average

Minimum

Maximum

Hours

Minutes

Hours

Minutes

Hours

Minutes

Duration of rigor mortis

19

12

3

0

40

0"

It was, therefore, extremely difficult to purport the exact time of death of the deceased, more so when no sufficient reason was assigned in the post-mortem report."

18. The contention of learned counsel for the appellant that the factum of articles missing from the house was disclosed belatedly and there was padding up in the FIR is incorrect for the reason the FIR only notes one golden kara, two gold rings and a watch missing from the body of the deceased which could be noted immediately whereas list of other missing articles was given by PW-1 Dr. Leela Raj later on. As regards the noting in the malkhana with regard to the recoveries made on September 18, 1996 having been deposited at 1.00 AM on September 19, 1996 still the date noted is September 18, 1996 we note that HC Satbir Singh PW-26 who deposed about depositing the articles recovered in the malkhana has not been cross-examined on this aspect. The discrepancy having not been brought to the notice of this witness so that he could render the explanation cannot be now used by the appellant in view of the law laid down in the decision reported as 1998 (3) SCC 561 State of U.P. v. Nahar Singh (dead) & Ors. wherein the Supreme Court reiterated the principle of law laid down in (1893) 6 The Reports 67 Browne v. Dunn, as under:

"14. The oft quoted observation of Lord Herschell, L.C. in Browne v. Dunn, (1893) 6 The Reports 67 clearly elucidates the principle underlying those provisions. It reads thus:

"I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practise in the conduct of a case, but it is essential to fair play and fair dealing with witnesses."

This aspect was unfortunately missed by the High Court when it came to the conclusion that explanation for the delay is not at all convincing. This reason is, therefore, far from convincing."

19. The contention of learned counsel for the appellant that the ingredients of Section 404 IPC are not made out is incorrect for the reason the prosecution has proved beyond reasonable doubt the dishonest misappropriation of the property of the deceased by the appellant. Section 404 IPC contemplates dishonest misappropriation of the property of the deceased even by a person who is not proved to be a clerk or servant of the deceased in which case the punishment is enhanced.

20. Though nobody deposed having seen Phool Chand with the deceased at 5.00 PM on September 10, 1996 however, it is established that a domestic servant was to meet the deceased at 5.00 PM, where after the deceased died a homicidal death and soon after the incident, the appellant was found in possession of articles of the deceased which he left with Ram Prasad, PW-6. Thus, the present case is akin to the illustration under Section 114(a) of the Indian Evidence Act. Dealing with illustration (a) of Section 114 of the Indian Evidence Act, the Supreme Court in the decision reported as (1983) 2 SCC 330 Earabhadrapa @ Krishnappa v. State of Karnataka held:-

"13. This is a case where murder and robbery are proved to have been integral parts of one and the same transaction and therefore the presumption arising under Illustration (a) to Section 114 of the Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her gold ornaments which form part of the same transaction. The prosecution has led sufficient evidence to connect the appellant with the commission of the crime. The sudden disappearance of the appellant from the house of PW 3 on the morning of March 22, 1979 when it was discovered that the deceased had been strangled to death and relieved of her gold ornaments, coupled with the circumstance that he was absconding for a period of over one year till he was apprehended by PW 26 at village Hosahally on March 29, 1980, taken with the circumstance that he made the statement Ex.P-35 immediately upon his arrest leading to the discovery of the stolen articles, must necessarily raise the inference that the appellant alone and no one else was guilty of having committed the murder of the deceased and robbery of her gold ornaments. The appellant had no satisfactory explanation to offer for his possession of the stolen property. On the contrary, he denied that the stolen property was recovered from him. The false denial by itself is an incriminating circumstance. The nature of presumption under Illustration (a) to Section 114 must depend upon the nature of the 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. There was no lapse of time between the date of his arrest and the recovery of the stolen property."

21. Reiterating the principle of law, the Supreme Court in the decision reported as (1995) 3 SCC 574 Gulab Chand v. State of M.P. held:

"4. We have considered the judgment passed by the learned Sessions Judge and also by the High Court and we have been taken through the evidences adduced in this case. It has been established in the instant case that the appellant Gulab Chand was taken into custody on 27-4-1979 by the police and when the police

searched his house with the key supplied by the accused, a musical instrument called Banjo was found in his room and from inside the said instrument, the police seized gold Tabij (Article 10), two pairs of Jhumkas (Article 11), Shringaridan (Article 9), silver bangles (Article 7), one brass Bungari (Article 21) and currency notes worth Rs. 1200. It has also been established in this case that on the information given by the said accused, the police seized certain silver ornaments from PW 12, Balram, from his shop at Jabalpur and it has been established that the accused sold the said ornaments to Balram and signed in the register maintained by Balram in proof of selling the said ornaments. It has also been established by cogent evidence that the said ornaments belonged to the deceased. It may be stated that on 29-5-1979 a test identification parade was held in which the recovered ornaments were duly identified as belonging to the deceased by Durgaprasad and other witnesses. 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. It has been indicated by this Court in *Sanwat Khan v. State of Rajasthan* [AIR 1956 SC 54: 1956 Cri LJ 150] 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 v. State* [AIR 1954 SC 1 : 1954 Cri LJ 225]. In the said decision, this Court has indicated that the presumption permitted to be drawn under Section 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 *Earabhadrapappa v. State of Karnataka* [(1983) 2 SCC 330: 1983 SCC (Cri) 447], this Court has held that the nature of the presumption and Illustration (a) under

Section 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. 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 Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her ornaments. We therefore, do not find any reason to interfere with the impugned decision of the High Court and accordingly this appeal fails and is dismissed."

22. Considering the facts and circumstances of the case, the prosecution having established beyond reasonable doubt that the deceased was to meet a new domestic servant at 5.00 PM on September 10, 1996 for which she left the house of her sister Dr. Leela Raj PW-1 and did meet a person at 5.00 PM as witnessed by Ms. Nalini Bajaj, PW-3; Dr. Shanti Raj was found dead on September 11, 1996 and the appellant was found in possession of the articles stolen from the house and body of the deceased soon after the incident on the night of September 10, 1996 itself, we uphold the conviction of the appellant for the offences punishable under Sections 302 IPC and 404 IPC. The order on sentence is also upheld.

23. Appeal is dismissed.

24. During the pendency of the appeal, the sentence of Phool Chand @ Prem was suspended vide order dated October 22, 2002. Phool Chand @ Prem will surrender to custody and undergo the sentence. The bail bond and surety bond are cancelled.

25. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

26. TCR be returned.