
(1982) 01 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 65 of 1978

Ram Gopal and Others

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 05-01-1982

Acts Referred:

Evidence Act, 1872 — Section 114, 3, 8, 9
Penal Code, 1860 (IPC) — Section 120B, 302, 34

Citation : (1982) ShimLC 225

Hon'ble Judges : Vyas Dev Misra, C.J.; H.S. Thakur, J

Bench : Division Bench

Advocate : P.S. Man, P.S. Bhuller, P.S. Paul, O.P.B.B. Vaid and Arvind Goel, for the Appellant; L.S. Panta, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

H.S. Thakur, J.—The learned Additional Sessions Judge, Solan Sessions Division, by an order and judgment dated June 28, 1978, has convicted the above-named five Appellants for offences punishable under Sections 120B and 302/34, IPC and has consequently sentenced them to undergo life imprisonment and to pay a fine of Rs. 2,500 each u/s 120B, IPC and has further sentenced them to life imprisonment and to pay a fine of Rs. 2,500 u/s 302/34, IPC on each count for three murders committed by them. Thus each Appellant is sentenced to a total fine of Rs. 10,000 and, in default of payment of fine, each one has to undergo rigorous imprisonment for one year more, under each count, that is, in total four years each. The learned Additional Sessions Judge has, however, ordered that in the event of the recovery of the fine, Rs. 10,000 shall be paid by way of compensation to Shri Malik Ram for the loss of his property and Rs. 10,000 each to S/Shri Malik Ram, Krishan Lal and Hari Kishan, the fathers of the three deceased, as compensation. Regarding the case property, the learned Sessions Judge ordered that the small cash amounts collected from various shopkeepers and others be returned to them by money orders after deducting money order commission fee. The articles recovered from the Appellant Ram Gopal, that is,

the amount of cash and ornaments were ordered to be given to Shri Malik Ram, as stolen property. The gold piece Ex. P. 39 weighing 100 grams and 500 miligrams recovered from Shri Balwant Singh goldsmith of Jaitu Mandi and Rs. 5,000 from Shri Dalip Singh father of Sampuran Singh being stolen property, its proceeds were also ordered to be paid to Shri Malik Ram. A sum of Rs. 1200 recovered from Shri Ved Raj at Amritsar being stolen property was further ordered to be given to Malik Ram. Moreover, the articles recovered from the dancing girls and the cash amounts of Rs. 2400 from Irshad, Rs. 500 from Maya Devi dancing girl and Rs. 500 from Putlibai also being stolen property its proceeds were ordered to be given to Malik Ram. A sum of Rs. 600 recovered from Surjit Singh Appellant at Jallalwala was also ordered to be given to Shri Malik Ram. However, the rest of the recovered amounts and articles were ordered to be returned to the respective persons from whom they had been collected. A sum of Rs. 200 collected from Kala Singh being stolen property was ordered to be given to Shri Malik Ram.

2. Aggrieved by the aforesaid order and judgment, the Appellants have preferred this appeal.

3. The prosecution story may be narrated. On 3rd December, 1975, Sobha Ram (P.W. 1) while ploughing his field in his village, found a human right foot part in his field. His wife was also with him. Immediately, he informed Shri Vidya Dutt, Pradhan Panchayat (P.W. 27), about it. Shri Vidya Dutt alongwith Hans Raj (P.W. 30) came to the village. The foot part was covered with a basket. Shri Sobha Ram went to report the matter to the police. He lodged the report (Ex. PA) at Police Station, Solan. A.S.I. Abhi Ram alongwith Head Constable Baldev Singh and some other constables came to the spot with Sobha Ram. The Pradhan and the other persons were present there. On the following morning police dog was given smell of the foot part and the dog ran to the nearby Jatala Nallah followed by the police party and witnesses. This led to the recovery of human skeletons and clothes etc. A skeleton, with right hand separated, and fleet shoe in one foot, and clothes were also found on the skeleton. Nearby, another set of clothes was also found. Another skeleton with head parts separated from the neck alongwith clothes was also found at the place where other clothes were lying. Broken pieces of whisky bottle "BK" were found in the aforesaid Nallah. Another empty whisky "BK" bottle was found nearby in the ghasni (grass land). Three sets of clothes with two skeletons and three right foot parts indicated that murders had been committed. A.S.I. Abhi Ram sent memo Ex. P.W. 179/2 for registration of the case and accordingly F.I.R. Ex. P.W. 181/1 dated 4th December, 1975 was registered. On the same day, police photographer Shri Darshan Singh (P.W. 184) took photos of skeletons etc. at the spot. Shri Abhi Ram A.S.I. prepared the inquest report Ex. PAK, P.W. 29/1 and Ex. P.W. 29/2 on the same day. The skeletons, separated parts, and other articles were brought to the field where one foot part was initially found. A right hand part was detected being carried by a dog which was taken in possession and placed with the other skeleton parts. The same day, doctors S/Shri Suresh (P.W. 16) and 1am Lal (P.W.

131) carried out post-mortem examination at the field and thereafter the skeletons and clothes were taken to hospital mortuary and were kept for identification purpose. On 6th December, 1975, third skull part with other bones was also found nearby by A.S.I. Sarwan Singh (P.W. 181). He prepared inquest report Ex. PO and PAL. Dr. Singla (P.W. 17) conducted the post-mortem examination of the skull in the hospital the same day. The police collected the clothes and skeletons etc. from the hospital on 5 th December, 1975 and 9th December, 1975 respectively. The skeletons and clothes were identified by S/Shri Malik Ram, Hari Kishan and Krishan Lal before the Sub-Divisional Magistrate, Solan in the identification parades conducted in the hospital regarding skeletons, and clothes, in his court premises. The identification revealed that the deceased were their sons belonging to Hoshiarpur, who were missing since 10th of November, 1975. Shri L.C. Kaushesh, D.I. and Shri Amar Nath proceeded to Hoshiarpur on 9th December, 1975 for investigation. On investigation, they learnt that the three deceased were friends and were also on friendly terms with Pawan Kumar and Ram Gopal Appellants. The said Appellants were, however, not available at Hoshiarpur. It was also learnt that a theft had taken place on the night of 10th November, 1975 at the house o Malik Ram, at Hoshiarpur, of a trunk containing gold ornaments weighing 33 "tolas" and cash of Rs. 45,000. The aforesaid Investigating Officers came to know that the theft took place with the connivance of Bhajji deceased, son of Malik Ram and the other two deceased, with the assistance of Pawan Kumar, Ram Gopal Appellants, and Sarwan (P.W. 130), who acted as rickshaw puller for disposing of the trunk at night in a cho. The aforesaid two Appellants are alleged to have joined the other three Appellants, Subash, Sampuran Singh and Surjit Singh to cause the murder of the three deceased so that they could get the stolen property and thought that the theft will go untraced due to suspicion resting on the deceased, to have taken away the stolen property and having run away with it to some unknown place. On the basis of this plan, the three deceased are stated to have been brought to Solan by the Appellants. New clothes were made for them. The clothes of Rakesh deceased were, however not changed. On 19th November, 1975, Ram Gopal alongwith Brij Lal alias Bhajji and Dev Raj alias Debo (hereinafter to be called Bhajji and Debo) reached Solan and rented a room in the lodge of Paras Ram. At Solan, in "Sunder Cinema" in the afternoon show, they met Nand Ram (P.W. 6) and Basti Ram (P.W. 137) there. Ram Gopal is stated to have developed friendship with Nand Ram. On 20-11-1975, Sampuran Singh, Pawan Kumar and Subash are stated to have reached Solan and stayed in the Tourist Lodge, Solan. Same day, Surjit Singh also reached Solan with Rakesh and joined Ram Gopal and two deceased to stay there. Surjit Singh, however, stayed with Sampuran Singh, Subash and Pawan Kumar, in the Tourist Lodge. On 21st November, 1975, Nand Ram is stated to have met Ram Gopal at Solan and the four accused excepting Surjit Singh went to Nand Ram's place at Parag and Dhaunsi whereas Surjit Singh and the three deceased remained at Solan. Only Ram Gopal is stated to have come back to Solan. He sent Bhajji and Rakesh with Surjit Singh to Solan Brewery where Nand Ram met them who had come there to purchase

cigarettes and took them to Dhaunsi village. Thereafter, Ram Gopal accompanied by Debo is stated to have reached Dhaunsi. They stayed for the night at Dhaunsi but Ram Gopal stayed with Nand Ram at village Parag. On 22nd November, 1975, Nand Ram and Ram Gopal also joined others at Dhaunsi Sampuran Singh suggested that liquor be sent for and Nand Ram was deputed for the purpose to go to Salogra to bring whisky. When Nand Ram was away, the others took liquor and potassium cyanide is alleged to have been administered to the three deceased. Soon thereafter, Pawan Kumar, Subash and Sampuran Singh left the Dogri for Solan. Nand Ram on return from Solan found Ram Gopal and Surjit at Dogri. They also left the house of Nand Ram and gave him their Addresses which were found wrong. They also gave some money to the children at Nand Ram's house. Thereafter, they went to Simla whereas the remaining three left for Chandigarh and further to Faridkot. The above two Appellants returned from Simla and reached Ludhiana the same night and stayed with Lal Chand (P.W. 4). Thereafter, they visited different places and spent sufficient amount of money except Surjit Singh who remained at the house of his in-laws at Jallalawala. They were arrested between 4th to 10th of January, 1976. Ram Gopal was arrested at Ludhiana on 4th January, 1976, Sampuran Singh at Jaito Mandi district Faridkot on 6th January, 1975 whereas Pawan Kumar and Surjit Singh were arrested at Jallalawala district Ferozpur on the night of 7th January, 1976 at the house of the in-laws of Surjit Singh, Subash was arrested at Jullundur at his own place on 10th January, 1976. During the investigation, they were identified by witnesses in the identification parade conducted by the Chief Judicial Magistrate, Solan. Ram Gopal made the recovery of currency notes, ornaments and the articles purchased etc. Some of the accused-persons made disclosure statements resulting in the recoveries of cash, ornaments and other articles. All the Appellants also pointed out different places which were visited by them before and after the occurrence or for commission of offences. It was found that the accused-persons were seen by different witnesses at Dhaunsi and Parag villages at the relevant time. At Dhaunsi, finger impressions of Ram Gopal and Subash accused were detected on one empty whisky bottle (Solan No. 1). This is in short the prosecution version.

4. It may be pointed out that at the time of occurrence, the ages of Bhajji, Debo and Rakesh deceased were stated to be about 16 1/2 years, 16 1/2 years and 17 1/2 years respectively. The ages of the Appellants Ram Gopal, Subash, Sampuran Singh, Pawan Kumar and Surjit Singh are stated to be about 22 years, 23 years, 22 years, 22 years and 27 years respectively. It is contended by the learned Counsel for the Appellants that there is no conclusive evidence on record to show that the Appellants are guilty of the offences alleged against them. Inter alia, it is contended that the identity of the deceased-persons have not been established. It is argued that the skeletons and other parts of the dead bodies were not established to be those of the deceased. It is also pointed out that the identification of the clothes of the deceased is also not proper inasmuch as Shri Kaushesh in whose presence the clothes were identified has not been examined

as a witness. It is further contended that whereas case and ornaments are stated to have been recovered at the instance of Ram Gopal, Sampuran Singh and Surjit Singh Appellants but no recovery has been made at the instance of the remaining two Appellants Even the recoveries made from the above named three Appellants are highly suspicious. The learned Counsel further contended that the story of administering potassium cyanide to the deceased is a mere speculation and is if highly doubtful. Similarly, it is contended that the evidence showing the purchase of potassium cyanide is an afterthought and a patent fabrication. The learned Counsel has also invited on attention to the statements of different witnesses and also to certain documents. Such evidence would be considered and discussed at a later stage. The learned Counsel has referred to the decisions in *The State of Punjab Vs. Bhajan Singh and Others*, and *Smt. Phino Vs. State of Punjab*, In *Smt. Phino's case (supra)*, their Lordships of the Supreme Court after considering the evidence in that case came to the conclusion that the possibility of the death due to any virus infection or any different cause other than the one attributable to poisoning could not be ruled out. Under the circumstances, it was further observed that in such a situation, when two views were possible, there was no justification in interfering with the order of acquittal. Similarly, in *Bhajan Singh's case (supra)*, their Lordships of the Supreme Court while reiterating well established principle of appreciation of evidence in criminal cases observed that suspicion by itself howsoever strong it may be is not sufficient to take the place of proof and finding of guilt is not warranted. In this judgment, it was also observed that in case circumstantial evidence suffers from a number of infirmities and the dead bodies are found in a decomposed state and doctor is also unable to find the cause of death, it could not be said that the death of the persons whose bodies were recovered was homicidal. These are established principles of the appreciation of evidence in a criminal case and have to be followed.

5. On behalf of the State, it is contended by Shri L.S. Panta, learned Deputy Advocate General that there is ample and conclusive evidence on record to warrant the conviction of the Appellants and that the learned Sessions Judge has correctly found them guilty of the offences alleged against them. He has contended that there is sufficient evidence on record to show that the three young boys of tender ages have been the victim of the motive of the Appellants to do them away in order to get the jewellery and cash stolen by them. He has invited our attention to the statements of different witnesses and the documents relevant to the case. Inter alia, it is contended by him that the deceased were last seen with the Appellants. It is also pointed out that at Solan, so many witnesses saw them in the company of the Appellants. They had also stayed at Solan and visited Simla. Numerous articles were recovered at the instance of the Appellants. The finger prints of Ram Gopal were found on whisky bottle which was consumed. The deceased were also identified from the photographs. According to the learned Counsel for the State, there is a chain of circumstances which conclusively and beyond any reasonable doubt establish the offences

against the Appellants. He has referred to certain paragraphs of Modi's Medical Jurisprudence.

6. We have heard the learned Counsel for the parties at length and have also perused the record including the documents. The learned trial court in its judgment has correctly projected two pertinent posers to decide the matter. They are:

(i) Whether the three human skeleton parts were of the three deceased youngsters?

(ii) Whether they were killed by the accused persons.

7. It may be noticed that the prosecution has examined as many as 185 witnesses in support of its case. The Appellants did not choose to produce any defence evidence. The plea of the Appellants has been of a complete denial of all the facts and circumstances brought on record. They did not furnish any explanation as to why they were implicated in the case. It has been, however, stated by them by way of defence that they had been shown to the witnesses by S.I. Sardar Mohammed before identification parade was held and that Investigating Officers had got written some papers under duress from Ram Gopal and Sampuran Singh Appellants. They also denied their visits to various places and spending lavishly by making purchases, and paying to the dancing and singing girls and others. They also denied the recoveries of cash and ornaments effected at their instance.

8. Now the evidence on record may be discussed with relevant details. The prosecution has examined S/Shri Krishan Lal (P.W. 10), Hari Kishan (P.W. 48) and Malik Ram (P.W. 49), the fathers of the three deceased, Varinder and Rajrani (P.Ws. 12 and 15) and brother and mother respectively of Bhajji deceased. From their evidence, it appears that the three deceased (Rakesh, Bhajji and Debo) were missing from their homes at Hoshiarpur with effect from 10th of November, 1975 and that they did not return home thereafter. The clothes which were found on recovery of skeletons in Jatala Nallah on 4th December, 1975, lying on one skeleton were identified as those which Rakesh deceased was wearing when he left his home. Shoes of Debo which he was wearing at the time of leaving home and other clothes which had been prepared for them by the Appellants and worn by Debo and Bhajji deceased were also found. The statement of Shri Nand Ram (P.W. 6) is relevant in this respect. It is further in evidence that the clothes of Rakesh deceased could not be changed as he had been brought from Faridkot to Jatala nallah accompanied by Surjit Singh Appellant before he was brought to Solan by him on 20th November, 1975. The father of Rakesh deceased, Shri Krishan Lal (P.W. 10) identified shirt Ex. P. 1, bell-bottom (pant) Ex. P. 2, pair of shoes Ex. P. 7, belt Ex. P. 13, piece of socks Ex. P. 14 recovered from Jatala nallah as those of Rakesh deceased. P.W. 10 also identified one skeleton to be that of his son Rakesh. Such identification was made by P.W. 10 in the identification parade held before the Sub-Divisional Magistrate and also in the

court during the trial. It is in evidence that shirt Ex. P. 1 was stitched by Surinder Singh tailor (P.W. 155) whereas bell-bottom Ex. P. 2. was prepared by Nirmal Singh (P.W. 156). There is an entry in the register of P.W. 156 regarding the tailoring of this pant. Krishan Lal P.W. has also proved that the cloth of Ex. P. 1, that is, shirt of Rakesh and his own shirt was the same. Surinder Singh tailor has further corroborated that he had stitched both the shirts for the father and the son. Ex. P. 3 shoes of Debo found at Jatala nallah were identified by Hari Kishan his father (P.W. 48) to be that of his son. His version is supported by Bhupinder Singh (P.W. 11) who had sold the pair of shoes and issued cash memo Ex. PO/1 in the cash memo book Ex. P.O. on 9th October, 1975. Bhupinder Singh P.W. has made a mention of the identification marks of the shoe with reference to the seal of manufacturer. Hari Kishan P.W. has also identified this pair of shoes in the identification parade held before the Sub-Divisional Magistrate. The Appellants Ram Gopal Subash and Sampuran Singh had purchased cloth for three shirts and three pants from Nanak Singh (P.W. 178) on 15th November, 1975 for Rs. 335.30 P. so that the clothes of the deceased could be changed. Carbon copy of cash memo is Ex. P.W. 149/6 in cash memo book Ex P.W. 149/5. Pant Ex. 6 (worn by Debo), Shirt Ex. P. 8 (worn by Bhajji) have been identified by P.W. Nanak Singh to be of the same cloth as sold by him. Pant Ex. P. 59 was recovered at the instance of Rata Gopal Appellant from the house of Shri Avinash (P.W. 79) and a memo Ex. P.W. 77/2 was prepared. The cloth tallies with the sample piece Ex. P. 71 collected from the shop of Nanak Singh P.W. The pant was meant to be worn by Rakesh deceased but he could not wear the same as he was sent with Surjit Singh Appellant to Jallalwala and came to Solan later. Nand Ram P.W. has identified these clothes as being worn by the three deceased when he saw them at Solan as also at his Dogri, between 19th and 21st November, 1975. Jersey Ex. P. 5 which was purchased by Ram Gopal Appellant in the presence of P.W. 6 Nand Ram and P.W. 137 Basti Ram from Sahni Store at Solan on 19th November, 1975 was worn by Debo deceased. P.W. 132 Badri Sahni had sold this jersey to Ram Gopal Appellant which tallied with the other similar piece of jersey Ex. P. 47 collected by the police during investigation and prepared memo Ex. P.W. 29/5.

9. Three skeletons were recovered from Jatala nallah. These skeletons were identified by the fathers of the deceased, that is, Krishan Lal (P.W. 10), Hari Kishan (P.W. 48) and Malik Ram (P.W. 49). i he identification is based on teeth peculiarity and other identification marks, fingers, foot part and hair etc. They have asserted that they could identify as they had been seeing their sons from their very birth for a long time. Doctors S/Shri Suresh and Ram Lal (P.Ws. 16 and 131) conducted the postmortem examination of three skeletons at the spot on 4th of December, 1975. The skull of the 3rd skeleton was not traced on that day but was recovered on 6th December, 1975 and its postmortem examination was conducted by Dr. R.P. Singla (P.W. 17). Shri M.M. Mathur is Professor of Anatomy, Medical College, Simla. He examined different bones including skull and mandibles etc. of the skeletons. His reports are Ex. P.W. 154/1 and 154/2. In his reports, he has opined that the three skeletons were of young adult males

between the ages of 15 to 18 years.

10. In order to prove that the three deceased boys were last seen with the Appellants may be also noticed. It is in evidence that on 19th November, 1975, Ram Gopal Appellant came to Solan alongwith Debo and Bhajji deceased and stayed in room No. 3 of the rooms meant for being rented out. He also made an entry in the register Ex. PE. under item Ex. PE/1 in which he gave his wrong address. This entry is proved by Shri Ashok Kumar (P.W. 34) and hand-writing expert Shri Santokh Singh (P.W. 18) as also by Paras Ram (P.W. 5). Similarly, Nand Ram (P.W. 6) and Basti Ram (P.W. 137) have proved their stay in the room. Brij Mohan (P.W. 35) has further corroborated this fact. S/Shri Arjan Singh (P.W. 60) the proprietor of New Khalsa Hotel, Jai Lal waiter (P.W. 174), Badri Sahni (P.W. 132), Sant Ram (P.W. 55) and Mohammed Shareef (P.W. 51) tailor, Solan have proved that Ram Gopal Appellant was at Solan on 19th November, 1975 and 20th November, 1975. Shri Naresh Kumar (P.W. 9) has proved the entry Ex. PM/1 in the register Ex. PM made by Sampuran Singh Appellant in the tourist Lodge wrongly showing his name as Tarlok Singh of Tarantarn district Amritsar. It is also in evidence that Rakesh deceased came to Solan with Surjit Appellant on 20th November, 1975. Rakesh as also the other two deceased boys and Ram Gopal stayed in the rented rooms whereas Surjit Singh alongwith Pawan, Sampuran and Subash Appellants stayed at Tourist Lodge, Solan. The inevitable conclusion which can be drawn from this evidence is that on 21st November, 1975, the five Appellant, and the three deceased boys were at Solan. It is in the statements of Paras Ram (P.W. 5) and Naresh Kumar (P.W. 9) that the Appellants and the three deceased left Solan on the fore-noon of 21st November, 1975 and returned to Tourist Lodge for taking their articles on 22nd November, 1975 at about 11.30 A.M. The sequence of events shows that four of the Appellants excepting Surjeet Singh and the deceased on 21st November, 1975 forenoon came with Nand Ram P.W. to his village Parag and Dogri at Dhanusi whereas Surjit Singh and the three deceased joined them in the evening at Dhaunsi. It is in evidence of Nand Ram P.W., Vidya Devi (P.W. 18), Nirmala Devi (P.W. 19) Chhangi (P.W. 20) and Leela (P.W. 21) that the Appellants and the three" deceased were seen there till the forenoon of 22nd November, 1975. This fact is further corroborated by Shyama Devi (P.W. 31), Soma Devi (P.W. 32) Shakuntla (P.W. 36) and Parwati (P.W. 43). It may be noticed that Ram Gopal Appellant was seen with Nand Ram P.W. at Solan Brewery by S/Shri Charan Dass, Suresh and Chhanga (P.Ws. 44 to 46) on 21-11-1975. They have stated that Ram Gopal Appellant purchased eatables as also whisky and utensils from them on that day.

11. On 22nd November, 1975, the Appellants and the deceased including Nand Ram P.W. after taking break fast, deputed Nand Ram to get a bottle of whisky from Salogra. On return from Salogra, which is stated to be at a distance of 3 to 4 kms. Nand Ram found Ram Gopal and Surjit Singh Appellants present at Dhaunsi. He was told by them that their other companions had left for Solan side. Soon thereafter, the Appellants left the place and gave false addresses to Nand Ram P.W. (Ex. PG and PG/1) Ex. P.W. 5/1 to P.W. 5/3 ate the photographs

of the deceased. They have been identified in the photographs by their fathers as also by Smt. Rajrani mother of Bhajji, Ashok Kumar (P.W. 34), Brij Mohan (P.W. 35), Nand Ram (P.W. 6), Basti Ram (P.W. 137), Paras Ram (P.W. 5) and Naresh Kumar (P.W. 9). At the same time, P.Ws. Nand Ram, Vidya Devi n other of Nand Ram, Nirmala sister of Nand Ram (P.W. 19), Chhangi (P.W. 20). Soma Devi (P.W. 32), Shakuntla (P.W. 36) and Parwati (P.W. 43) identified the accused-persons in the identification parade held by the Chief Judicial Magistrate, Solan (P.W. 160) conducted in the sub-jail, Solan. At the same time, S/Shri Nand Ram, Brij Mohan, Ashok Kumar, Paras Ram and Naresh P.Ws. have identified the Appellants in the identification parade as also in the trial court. It may be pointed out that besides the above witnesses, Shri Ram Avtar (P.W. 166) also proved the presence of the Appellants at Dhaunsi. Finger print expert had also visited Dhaunsi on 10th December, 1975. Finger impressions were found on the bottle Ex. P. 12. The finger impressions are reported to have tallied on comparative examination with the specimen finger impressions of Ram Gopal and Subash Appellants.

12. Ram Gopal Appellant is shown to have purchased potassium cyanide from Jogindra Paul (P.W. 64) at Hoshiarpur from the shop of his brother Hakeem Ram Prakash (P.W. 65), on 16th November, 1975. Sale and stock register entries Ex. PAB/1 contains the signatures of Ram Gopal Ex. PAB/2. The hand-writing expert Shri Santokh Singh (P.W. 138) has proved the signatures being those of Ram Gopal Appellant. On this basis, it can be found that Ram Gopal was in possession of potassium cyanide.

13. Ram Gopal Appellant made a disclosure statement on 20th January, 1976 (Ex. P.W. 77/1) in the presence of Mohinder Singh a school teacher (P.W. 77) and Hardev Singh (P.W. 78) that he had kept Rs. 1000 in cash and ornaments in a brief case at the house of Avinash Chandra (P.W. 79). On the same day at Faridkot, the brief-case Ex. P. 54 in which these articles were kept and the ornaments Ex. P.W. 22/1 to 6 were recovered, that is, bangles, necklaces Ex. P. 23 and 24, small chain Ex. P. 25, another necklace Bx. P. 26, Kantas Ex. P. 27 to 29 and rings Ex. P. 30 to 34. Pant Ex. P. 59, banyan Ex. P. 62 and Kachhas Ex. P. 60 and 61, were also recovered vide memo Ex. P.W. 77/3. These articles were packed and sealed and handed over to Harder Singh (P.W. 78) to produce them in the court.

14. The ornaments Ex. P. 22 to 34 were identified in the court by Smt. Rajrani (PW. 15), her husband Shri Malik Ram (PW. 49) as belonging to them. Goldsmiths S/Shri Sunder Dass and Jagan Nath (P.Ws. 116 and 117), had made some of these ornaments for Shri Malik Ram. Sunder Dass had made bangles Ex. PW. 22/1 to 4, necklace Ex. P. 24 and Kantas Ex P. 27 whereas Shri Jagan Nath had made necklace Ex. P. 23, small chain Ex. P. 25, Kantas Ex. P. 28/1, matching with sample Ex. P. 28 and finger ring Ex. P. 30. PW Rajrani and the" above goldsmiths identified these ornaments in the identification parade held by the Chief Judicial Magistrate, Solan. These ornaments are part of stolen property of Malik

Ram as indicated in the first information report Ex. PW. 158/1 lodged by him on 12th November, 1975. Ram Gopal Appellant also made another disclosure statement Ex. PT on 19th January, 1976 saying that he had kept Rs. 5,000 in a locked trunk in his house at Hoshiarpur. On the basis of that statement, recovery of the amount vide memo. Ex. PU was also made in the presence of S/Shri Kasturi Lal and Sat Paul (P.Ws 13 and 14) respectively.

15. Sampuran Singh Appellant had passed on four pieces of gold made from melting of ornaments to Madhukar (PW. 25) for purification. The same was converted into one piece after purification weighing 100 grams and 500 miligrams Ex. P. 39, and returned it to Sampuran Singh Appellant which he sold for Rs. 5,000 to Balwant Singh (PW. 27). This recovery memo is Ex. PW. 27/1. A sum of Rs. 5,000 was also recovered from Dalip Singh father of Sampuran Singh Appellant vide memo Ex. PW. 28/1 though Balwant Singh PW stated that it was given to him for making ornaments by Darshan singh. Similarly, Shri Madhukar (PW. 25) denied that this gold was given to him for purification by Sampuran Singh Appellant but in his cross-examination he had to admit this fact.

16. Surjit Singh Appellant disclosed on 21st January, 1976 (Ex. PW. 151/3) that he had kept Rs. 600 at the house of his father-in-law in the outer room and led to its recovery (recovery memo Ex. PW. 151/4). The recovery was made in the presence of S/Shri Ama Chowkidar (PW. 151) and Jarnail Singh. Shri Ama has proved this disclosure and recovery. Jarnail Singh, however, could not be examined as he had died. Surjit Singh and Pawan Kumar were arrested on 7.1.1976 at Jallalawala within district Ferozpur which is bordering Pakistan.

17. The prosecution has also pointed out to the conduct evidence of the Appellants after the commission of the alleged offences. It is in evidence that Sampuran Singh, Pawan Kumar and Subash Appellants left for Faridkot from Solan via Chandigarh on 22nd November, 1975. They hired a taxi of Inder Singh (PW. 50) for Rs. 300 from Chandigarh to Faridkot. Ram Gopal and Surjit Singh Appellants had gone to Simla for making certain purchases and Surjit Singh got himself clean-shaved though he was growing a beard. They made some purchases in Simla on 22nd of November, 1975 vide cash memo Ex. PW. 56/1 and PW. 59/5. PWs 56 to 59 are the witnesses to prove this fact. Shri Anil Kumar (PW. 58) is a barber in Lower Bazar, Simla who proved the fact that Surjit Singh got his beard shaved. Both of them left for Ludhiana by night and reached the house of Lal Chand (PW. 61) who is a relation of Ram Gopal. They stayed with him for the night and left early next morning. Subash Appellant stayed at Raj Mahal Hotel, Delhi with one Raj Kumar and Amir Chand (PW. 129) from 29th December 1975 to 31st December, 1975. The entries to this effect are contained in Ex. PW. 118/2, bearing the signature of Subash marked Ex. PW. 118/3. The entry was made by Shri Gopal Dutt, Manager (PW. 118). Bill Ex. PW. 118/4 also contains the signature of Subash Appellant. He further stayed at Madras Hotel, Jaipur from 26th December, 1975 to 28th December, 1975 The entry in the register to this effect is Ex. PW. 127/1 bearing his signature Ex. PW. 138/5.

Subash Appellant further stayed at Ashoka Hotel, Jaipur from 25th December, 1975 to 26th December, 1975 with Amir Chand PW and Raj Kumar viae entry Ex. PW. 138/4 made by him. Ha also stayed at Akash Hotel, Ambala on 30-11-1975 vide entry Ex. PW. 138/7/1 in visitor"s book Ex. PW. 138/7.

18. Subaih and Sampuran Singh Appellants stayed in Malabar Hotel, Delhi from 28th November to 30th November, 1975. Entries to this effect made by them are Ex. PAS/2 and Ex. PAS/3 Subash, Ram Gopal and Pawan Kumar Appellants stayed in Malabar Hotel Delhi from 10th December to 15th December, 1975 vide entry Ex. PAR made by Subash containing his signature Ex PAR/2. Sampuran Singh Appellant also visited them during this period in the hotel and stayed with them. Shri Surjit Singh (P.W. 24), manager, Malabar Hotel, Delhi has proved the entry. Handwriting expert has also proved the same as having been made by these Appellants. Subash, Ram Gopal and Pawan Kumar Appellants were at Tonk from 7th December to 9th December, 1975. Subash Appellant sent a telegram Ex. P.W. 148/1 on 8th December, 1975 to Sampuran Singh Appellant asking him to meet them at Malabar Hotel and also to bring a sum of Rs. 3,000 on 11th December, 1975 at 11-00 A.M. Shri Jamil Ahmed (P.W. 52) with whom the three Appellants had stayed at Tonk has stated that a telegram was booked in his presence. Shri N.L. Nadwana (P.W. 148), Post Master has proved the original telegram and its sender Subash Appellant. The handwriting expert. Shri Santokh Singh (P.W. 138) has proved the signatures on the telegram as that of Subash Appellant. Mohammed Saleem (P.W. 53) has supported this version and has stated that the above Appellants remained at the house of Jamil Ahmed.

19. Shri Kala Singh (P.W. 22) has proved the stay of Subash, Ram Gopal, Pawan Kumar and Sampuran Singh in Malabar Hotel, Delhi on 12th December, 1973. He has also proved the receipt of letter Ex. PAN received by him from Pawan Kumar after they had left Delhi. The letter contains the advice to him that in case anybody asked about their stay at Delhi, he should deny this fact. Even on 28th December, 1975 Subash Appellant stayed at Malabar Hotel, Delhi in room No. 7 and made entry Ex. PAR/4/1 and left on the following day. He also stayed at Gateway Hotel, Ludhiana on 31st December, 1975 and made entry Ex. P.W. 68/3/1. Ram Gopal Appellant made entry in the name of Subash Ex. PAR/3 in Malabar Hotel on 22nd December, 1975 when in fact Pawan Kumar had stayed with him. This entry is proved by Shri Surjit Singh, Manager of the hotel and hand-writing expert Shri Santokh Singh (P.Ws. 24 and 138). Ram Gopal Appellant also made entry in the Railway Waiting register with his signatures at Ex. PS 100/3 dated 5th December, 1975 with three first class tickets from Delhi to Jaipur. Shri Laxmi Narain, Ticket Collector, Delhi (P.W. 100) has proved the register with the entries. The hand-writing expert has also proved the entry as made by Ram Gopal Appellant. Ram Gopal, Subash and Pawan Kumar Appellants also stayed in Park View Hotel, Jaipur from 9th December to 10th December, 1975 vide entry Ex. P.W. 138/2 signed by Ram Gopal. They also stayed in Rajdhani Hotel, Jaipur from 5th December to 7th December, 1975. Entry in this behalf is Ex. P.W. 133/1 which is signed by Ram Gopal Appellant. The entries are

proved by the hand-writing expert and corroborated by the Manager of the hotel. The stay of these persons at Delhi and Jaipur is also confirmed from the statements of dancing and tinging girls of these places visited by them. They were paid well by these Appellants. Ram Gopal, Subash, Pawan Kumar and Sampuran Singh had visited the Kotha of Irshad and paid her Rs. 2500 at the time of their first visit and further a sum of Rs. 590 subsequently by Subash Appellant. The Kotha was pointed out by these Appellants and the story is corroborated by dancing girls, Meena (P.W. 96), Kiran (P.W. 97), Amita (P.W. 113) and Kamlesh (P.W. 111). The police also collected Rs. 2400 from Irshad. Subash Appellant also purchased a shawl (Ex. P. 66), saree (Ex. P. 65) and an attache-case (Ex. P. 67). These articles were given by him to Amita (P.W. 113) a dancing girl. Shawl was purchased from the shop of Som Dutt (P.W. 143) vide cash memo Ex. 143/1. Saree was purchased from the shop of Om Parkash Ram Dulare (P.Ws. 140 and 141) vide cash memo Ex. P.W. 100/3 and an attache case from the shop of Parmod Kumar (P.W. 142). Saree had the marks of initials of Shri Om Parkash on it as identified by him. The above articles were collected by the police vide memo Ex. P.W. 133/1, Sampuran Singh Appellant had given a finger ring Ex. P. 64 to Kamlesh (P.W. 111) which was also collected by the police during investigation and a memo Ex. P.W. 95/3 was prepared. Maya Devi (P.W. 115) is also running a Kotha in Ajmeri Gate Delhi which was visited by Subash and paid Rs. 500. The amount was collected by the police during investigation and a memo Ex. P.W. 112/1 was prepared.

20. Ram Gopal, Subash and Pawan Kumar during their stay at Jaipur visited the kotha of Putlibai (PW. 102) and paid the dancing girls there. Those dancing girls are Malika (PW 103), Nafeesa (PW 104), Saheeda (PW 105) and Ruhisa (PW 106). A sum of Rs. 500 was collected by the police and a memo Ex. PW. 101/1 was prepared. The same is proved by Abdul Rehman (PW 101).

21. Letter Ex. PAZ/2 which is written by Subash to Sampuran Singh is also proved by the hand-writing expert. This letter is dated 27th December, 1975. It was sent from Jaipur informing Sampuran Singh that he along with Amir Chand (PW. 129) and Raj Kumar has not been able to get any house and was staying in a hotel there. The letter was recovered by the police from Sampuran Singh on his arrest vide memo Ex. PLZ/3 along with his passport Ex. PLZ.

22. In the face of the volume of evidence discussed above, it has to be determined whether the charges levelled against the Appellants have been established or not. A large number of witnesses from different places have been examined to substantiate the offences alleged against the Appellants. Numerous documents have been also produced. It is really shocking that three youngsters have been found dead. The first point which has been vehemently canvassed before us is about the identity of the three alleged deceased boys. The skeletons and parts of bodies were found after some days in the condition already depicted earlier above. Dr. M.M. Mathur, after examining the available parts of the skeletons, opined that they were of male young adults of the ages ranging

between 16 to 18 years. He has given reasons for forming the opinion. There appears to be no plausible reason to disagree with the opinion of the expert. It is no doubt well settled, that expert opinion must always be received with great caution. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. Expert evidence cannot be conclusive because it is, after all, opinion evidence. Expert evidence being opinion evidence, can rarely take the place of substantial evidence and before acting on such evidence, it is desirable to consider whether it is corroborated either by direct evidence or by circumstantial evidence. It is necessary that reasons for the opinion must be carefully probed and examined. Other relevant evidence has to be considered in cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony may be accepted. It is established that the Appellants named above were found in possession of some of the articles which were stolen by the deceased from the house of PW Malik Ram. Those articles were identified as discussed above. As such under the law, unexplained possession of the stolen property by the Appellants justifies the presumption that the Appellants had committed the murders. The stolen property was recovered from the above named Appellants or at their instance after the commission of the above offences. No explanation has been given by the Appellants, to explain their possession. The question whether a presumption should be drawn under illustration (a) of Section 114 of the Evidence Act is a matter which depends on the evidence and the circumstances of each case. The nature of the stolen articles, the manner of their acquisition by the owner, the nature of the evidence about its identification, the manner in which they were dealt with by the Appellants, the place and the circumstances of their recovery, the length of the intervening period, the ability or otherwise of the Appellants to explain their possession, are factors which have to be taken into consideration in arriving at a decision. In the face of the overwhelming evidence on which reliance has been placed, it is reasonable to raise the presumption as contained in illustration (a) of Section 114 of the Evidence Act. There is ample evidence to show that the deceased-youngsters were last seen in the company of the Appellants. No explanation has been given by the Appellants. There are eye witnesses who have proved the identity of the Appellants as also of the deceased. The Appellants had lavishly spent money in visiting different places. They have denied the entire evidence produced in the court. Large number of witnesses from different places have been examined. There is nothing on record to show that they had any enmity or motive to depose against the Appellants. The fathers of the deceased have also been able to identify the remains of the deceased boys. In the ordinary course of human conduct, no near relation like a father, would like to implicate falsely any one. The evidence of identification of the skeletons by the fathers of the deceased as also identification of three sets of clothes and two pairs of shoes and one fleet shoe worn by the deceased read with medical opinion especially of Professor Mathur is of a clinching character and

its reliability cannot be doubted. When this evidence is examined alongwith other facts that the five Appellants alongwith three youngers had gone to village Parag and Dhaunsi to Nand Ram's place and that only five accused were seen returning from there, it stands established that the skeletons recovered were of none else than those of three youngsters. The inevitable conclusion which follows from such evidence is that the Appellants are responsible for putting them to death as they were last seen together. Similarly, identification of skeletons by their close relations, coupled with the evidence of clothes, leaves no room for any doubt. It is established that the deceased-younsters were last seen with the Appellants on 22nd November, 1975 at Dhaunsi village near Jatala nallah from where skeletons were recovered on 4th December, 1975. The Appellants have offered no explanation as to what happened to the deceased-youngsters. The inescapable conclusion is that they were murdered by none else than the Appellants. Giving of wrong addresses by the Appellants is also an incriminating conduct on their part and is presumed to be inconsistent with their innocence. It is also established that the Appellant Ram Gopal purchased potassium cyanide from Jogindera Paul. The Appellant has failed to give any explanation for the presence of his signatures on the sale register Bx. PAG which are proved by the evidence of witnesses of recovery of the register and of the hakeem that the signatures were already there when the police seized the register. The hand-writing expert has also proved the signatures being those of Ram Gopal Appellant. The viscera of the three deceased was not available for being examined by the Chemical Analyst for presence of poison. When the possession of poison is proved and there was an opportunity to the Appellants to administer the same to the deceased, the deceased persons seen with the Appellants last in perfect health, and no explanation offered for their disappearance or death by the Appellants, leads to the inevitable conclusion that the deceased-persons were put to death by administering potassium cyanide to them. It is not necessary that the poison should always be detected on postmortem examination where circumstantial evidence proves the death by poisoning. A case of murder by administration of poison is almost always one of secrecy. While the circumstances often speak with unerring certainty, the autopsy and the chemical analysis taken by themselves may be most misleading. There is ample evidence as discussed earlier above that the conduct of the Appellants was so knit together as to make a network of circumstances pointing only to their guilt. The case was one of extreme cunning and premeditation. As noticed earlier above, the Appellants have not given any explanation regarding the evidence established against them. They have falsely denied several relevant facts which have been conclusively established. In such a situation, the court is justified in drawing an adverse inference against the Appellants.

23. No doubt, there is no eye witness and the case against the Appellants rests on circumstantial evidence. It is often said that men may lie but circumstances do not. As observed earlier above, there is a chain of circumstances established which leaves no doubt that the alleged offences were committed by the

Appellants and none else. Circumstantial evidence, of course, has to be considered and appreciated with the totality of the circumstances to bring home the guilt. Each circumstance considered in isolation may not be sufficient, but all the circumstances taken together have to be considered to conclude if the conviction can be based on them. Similarly, common intention has to be inferred from the acts and conduct and other facts and circumstances of the case. Overt act by a particular accused is not necessary. In order to establish conspiracy on the part of the five Appellants in this case, the facts and circumstances discussed above show that they had planned the murder of three youngsters and, in that scheme, they had acted together in furtherance of their common intention and had commonly planned the scheme. Inferential proof has to be seen for conspiracy as direct evidence, is seldom available because conspiracy is hatched in privacy.

24. The prosecution case is also corroborated by the motive on the part of the Appellants to do away with the lives of the deceased. The motive was obviously to grab the cash and ornaments stolen and possessed by the deceased. By causing the murder of these youngsters, the Appellants wanted not only to grab the entire cash and ornaments but, at the same time, desired to eliminate the evidence and possibility of disclosure of their association in the crime of theft and as receiver of stolen property, at the instance of the deceased if they returned home afterwards. The Appellants believed that by causing the death of these youngsters, their parents and family-men would have continued to place their suspicion on them, to have run away with the money and ornaments, to some unknown place. This evidence of motive goes a long way to corroborate the link in the chain of circumstantial evidence.

25. Shri L.S. Panta has referred to a decision in Rama Nand and Ors. v. The State of Himachal Pradesh ILR 1981 64. In this case the Appellants, who were the husband and father-in-law of the deceased, were charged for committing the murder of a young married girl aged about 19 years. The decomposed parts of the body were found. The bones were sent to determine the age and sex of the deceased. There was no eye witness to the occurrence and the case entirely depended on circumstantial evidence. A legless and armless dead body in a highly decomposed state was found. It appeared that dogs etc. had eaten away the flesh. A part of the skull was found intact while the remaining part of it was lying at some distance. A few components of the skeleton, including the mandible, were sent for examination and opinion. The doctors opined that the mandible belonged to a child of not more than 10 years of age. The components of the skeleton were also sent to professor of Anatomy. His opinion about the age of the deceased was also the same. The sex of the skeleton could also not be determined. Under these circumstances, Justice Sarkaria speaking for the Court observed as under:

Ordinarily, the recovery of the dead body of the victim or a vital part of it, bearing marks of violence, is sufficient proof of homicidal death of the victim.

There was a time when under the old English Law, the finding of the body of the deceased was held to be essential before a person was convicted of committing his culpable homicide. "I would never convict", said Sir Mathew Hale, "a person of murder or man-slaughter unless the fact were proved to be done, or at least the body was found dead." This was merely a rule of caution, and not of law. But in those times when execution was the only punishment for murder, the need for adhering to this cautionary rule was greater. Discovery of the dead body of the victim bearing physical evidence of violence, has never been considered as the only mode of proving the corpus delicti in murder. Indeed very many cases are of such a nature where the discovery of the dead-body is impossible. A blind adherence to this old "body" doctrine would open the door wide open for many a heinous murderer to escape with impunity simply because they were cunning and clever enough to destroy the body of their victim. In the context of our law, Hale's enunciation has to be interpreted no more than emphasising that where the dead-body of the victim in a murder case is not found, other cogent and satisfactory proof of homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eye witness, or by circumstantial evidence, or by both. But where the fact of corpus delicti i.e. "homicidal" death is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definite character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world, and absolute certainty is a myth. That is why u/s 3, Evidence Act, a fact is said to be proved, if the Court considering the matters before it, considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculcating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned.

26. Shri L.S. Panta has further pointed out that the conduct evidence of the Appellants before and after the commission of the offences is such which points towards the guilt of the Appellants. Such evidence is admissible u/s 8 of the Evidence Act.

27. A reference has also been made to a decision in Ram Lochan Ahir Vs. State of West Bengal, In this case the identify of the deceased was to be established by means of identifying the skeleton as that of the deceased by superimposed photographs. Admissibility of such evidence was objected. Under the situation, the Supreme Court observed as under:

Facts necessary to explain or introduce a fact in issue or relevant fact or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or

which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose. The question at issue in the case is the identity of the skeleton. That identity could be established by its physical or visual examination with reference to any peculiar features in it which would mark it out as belonging to the person whose bones or skeleton it is stated to be. Similarly the size of the bones, their angularity or curvature, the prominences or the recessions would be features which on examination and comparison might serve to establish the "the identity of a thing" within the meaning of Section 9. What we have in the present case is first a photograph of that skull. That the skull would be admissible in evidence for establishing the identity of the deceased was not disputed, and similarly a photograph of that skull. That a photograph of the deceased was admissible in evidence to prove his facial features, where these are facts in issue or relevant facts, is also beyond controversy. Now what P.W. 18 with the assistance of P.W. 19 has done is to combine these two. The outlines of the skull which is seen in the superimposed photograph show the nasion prominences, the width of jaw bones and their shape, the general contours of the cheek bones, the position of the eye cavity and the comparison of these with the contours etc. of the face of the deceased as seen in the photograph serve to prove that features found in the skull and the features in the bone of the face of the deceased are identical or at least not dissimilar. It appears that such evidence would clearly be within Section 9 of the Evidence Act.

The learned Counsel for the Appellant urged that the superimposed photograph was not a photograph of anything in existence and was for that reason not admissible in evidence. This argument proceeds on a fallacy. In the first place, a superimposed photograph is not any trick photograph seeking to make something appear different from what it is in reality. There is no distortion of truth involved in it or attempted by it. A superimposed photograph is really two photographs merged into one or rather one photograph seen beneath the other. Both the photographs are of existing things and they are superimposed or brought into the same plane enlarged to the same size for the purpose of comparison. Possibly some illustrations might make this point clear. For instance, if the photo of the deceased when alive were printed of a transparent medium and that were placed above a photograph of the skull - both being of the same size - the visual picture seen of the two together would approximate to the document objected as inadmissible. In the above, it would be seen both the photographs would be admissible in evidence and no objection could be taken to their being examined together.

28. Keeping in view the evidence as discussed above and bearing in mind the principles of appreciation of evidence in criminal cases, we are of the view that the offences alleged against the Appellants have been fully established beyond any reasonable doubt. The learned Sessions Judge has minutely considered the evidence on record and has rightly found the Appellants guilty of the offences. It may be recorded that the investigating agency has laboured very hard in

collecting volume of evidence from different places, to establish the offences alleged against the Appellants.

29. The result of the above discussion is that there is no merit in this appeal and the same is hereby dismissed. The order of the learned Sessions Judge regarding the disposal of the property is also maintained.