
(2008) 04 AHC CK 0026

In the Allahabad High Court

Case No : Capital Sentence R. No. 1 of 2007 and Cri. A. No. 156 of 2007

Saleem alias Nawab alias Mota and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 106, 114, 144, 24, 25
Penal Code, 1860 (IPC) — Section 302, 394, 411, 412

Citation : (2008) 3 ACR 2897

Hon'ble Judges : K.K. Misra, J;D.V. Sharma, J

Bench : Division Bench

Advocate : Rishad Murtaza, for the Appellant; R.P. Shukla and Abid Ali and A.G.A., for the Respondent

Judgement

D.V. Sharma, J.—All the above mentioned criminal appeals are directed against the judgment and order dated 3.1.2007, passed by learned Addl. Sessions Judge, Pratapgarh in Sessions Trial No. 29 of 2004.

2. Convicting the Appellants Saleem alias Nawab alias Mota, Shami alias Sanjay Dutt alias Pradhan alias Riyaz and Hira alias Sahwan alias Tasir u/s 302, I.P.C. and sentencing each of them capital sentence of death. They have further been convicted u/s 394, I.P.C. and sentencing them to undergo ten years" R.I. and to pay a fine of Rs. 10,000 each and in default of payment of fine, they have to undergo further one year"s simple imprisonment. The Appellant Smt. Ashida has been convicted u/s 411, I.P.C. and sentencing her to undergo three years" R.I. and to pay a fine of Rs. 5,000 and in default of payment of fine, she has to undergo six months" simple imprisonment. However, she has been acquitted of the charges under Sections 302 and 394, I.P.C. Since Appellants Saleem, Shami and Hira have been awarded capital sentence, Capital Sentence Reference No. 1 of 2007 has been made for confirmation of death sentence. These three Appellants besides filing Criminal Appeal No. 156 of 2007, have also filed Criminal Appeal Nos. 176 of 2007, 177 of 2007 and 178 of 2007 separately

through jail.

3. The factual matrix is as under :

According to the prosecution case, on the fateful night between 30th and 31st of August, 2003 at about 3.00 a.m. while complainant alongwith his wife Smt. Geeta Devi was sleeping in a room of his house and in another room his father Hira Lal and mother Smt. Phool Kali alongwith complainant's son named Aman were sleeping and in third room complainant's sister Kavita Devi and Savita Devi were sleeping, miscreants entered the house by scaling down from the roof through the stairs. Hearing the sound of foot steps the complainant, his wife and sisters woke up and saw that all the four miscreants went towards the room of his father and started plundering. Out of the four miscreants three had dandas with them and one had cot leg in his hand and started beating his parents and infant son with their weapons. Thereafter, they entered into the room where his sisters were sleeping and committed robbery there also. The complainant and his wife hid themselves under the cot due to fear of the miscreants. After the miscreants fled away the complainant, his wife and sisters raised alarm which attracted Prem Narain, Dinesh Kumar, Kalideen and several other neighbours. The miscreants were seen and identified in the light of torch and electric bulb which was burning at that time. The witnesses claimed that they could recognize the miscreants and the looted articles as and when they were put up before them. Thereafter complainant entered the room of his father and saw that his father, mother and son Aman were pooled in blood. He took them to the hospital where they were declared dead by the doctors. The complainant lodged written report Ext. Ka-1 at P.S. Kotwali, Pratapgarh on 31.8.2003 at 4.30 a.m., on the basis of which check report Ext. Ka-8 was prepared and a case was registered at Crime No. 473 of 2003 u/s 394/302, I.P.C. against four unknown persons.

4. The complainant had also given a list of looted articles in written report, which are as under :

1. One silver kardhani consisting of 8 chains weighing about 500 gms., worth Rs. 4,000 in which name of his wife is engraved.
2. One silver kardhani of child weighing about 50 gms., worth Rs. 200.
3. One pair of silver payal weighing about 150 gms., worth Rs. 600.
4. One pair of silver payal consisting of chains, weighing about 200 gms., worth Rs. 800.
5. One pair of silver payal having engraved flowers, weighing about 150 gms., worth Rs. 600.
6. One pair of payal of child weighing about 50 gms., worth Rs. 200.
7. One pair of silver payal weighing about 100 gms., worth Rs. 400.
8. One pair of silver payal weighing about 300 gms.

9. One pair of silver payal having ghungaroo, weighing about 50 gms., worth Rs. 200.
10. One silver chain, weighing about 20 gms., worth Rs. 80.
11. One silver hair pin weighing about 15 gms., worth Rs. 50.
12. One pair of kara of child having ghungaroo, weighing about 20 gms., worth Rs. 80.
13. Twenty five silver bichuas, weighing about 150 gms., worth Rs. 600.
14. One golden ring having inscription of Ashok Latt, weighing about 5 gms.
15. One golden ring weighing about 4 gms., worth Rs. 2,000.
16. One locket of mangal sutra weighing about 5 gms., worth Rs. 2,500.
17. Cash about Rs. 3,000.
18. Golden chain weighing about 25 gms., worth Rs. 12,500.
19. Two golden chains weighing about 35 gms., worth Rs. 17,500.
20. Four golden kangans weighing about 20 gms., worth Rs. 10,000.
21. One grey colour pant and shirt of check belonging to his father, worth Rs. 550.
22. One printed blue saree of his mother, worth Rs. 300.

5. On lodging of the F.I.R. the police swung into action. According to the prosecution, on 31.8.2003 itself while S.S.I. Indrajeet Singh alongwith constables Ramnuj Mishra, Hari Shanker Mishra, Vidyapati Tiwari, Umesh Chandra Shukla and Krishna Kumar Tiwari was checking vehicles on the crossing of Bhopiya Mau in search of the accused, at about 8.25 a.m. a Tata Sumo bearing No. U.P. 72 C/8006 having passengers came from Pratapgarh and on checking two persons got down from the vehicle and started walking towards Prithiviganj Road. On suspicion, they were tried to be stopped, but they started running, one of them was intercepted near the Canal Culvert and the other succeeded in fleeing away. On being interrogated, the arrested person told his name as Salim s/o Bhura, resident of Kasai Tola, Kannauj and on being searched, a polythene bag was found in his right hand containing a silk saree of blue colour, Rs. 2,900 cash, one pair of silver payal, one pair of silver pazebe and one another pair of silver payal, one silver mangal sutra having golden locket, one golden male ring having inscription of Ashok Latt, one lady's ring. All these articles were wrapped by the saree. About these ornaments and sarees, accused Salim told that they were looted by him and his elder brother Shami, younger brother Babloo and a relative Shahwan in the last night from mohalla Sagra situating at a distance of 1-1/2-2 kms. from bus station, Pratapgarh.

6. On 12.9.2003 S.I. Panch Bahadur Singh alongwith S.I. Diwakar Pandey and

constables Ram Narain Dubey, Shiv Balak Yadav, Brajesh Chandra Yadav, Budhi Raj Singh, Krishna Kumar Tripathi and Umesh Chandra Shukla were deployed on law and order duty, meanwhile the complainant came and informed that amongst the miscreants who had committed robbery in his house, two of them were present at the bus station. Believing this information, the police personnel alongwith the complainant went towards the bus station. The complainant indicated towards those miscreants, who tried to run away on seeing the police personnel, but were intercepted at about 11.00 a.m. near Meera Bhawan. On being inquired, they told their names as Shami alias Sanjay Dutt alias Pradhan alias Riyaz s/o Bhura and Hira alias Tasir alias Shahwan s/o Yad Mohammad alias Gulzar, residents of mohalla Kasai Tola, P.S. Kotwali, Kannauj. On being searched a plastic bag was found in the right hand of Shami containing clothes and ornaments alongwith cash of Rs. 180. Hira alias Tasir was also searched and a polythene bag was recovered containing ornaments and Rs. 140 cash from his pant pocket. During investigation wife of the complainant Smt. Geeta Devi, sisters of the complainant Km. Kavita and Savita and neighbours Prem Narain and Dinesh Kumar were called. On seeing both the miscreants they told that it were they who had committed robbery and murders in the house of the complainant. On seeing the ornaments the wife of the complainant and his sisters told that recovered silver ornaments were of their house, but golden ornaments did not belong to them. At the pointing of arrested accused Saleem, one leg of cot having bloodstains was recovered from village Rupapur near the house of Shivharak Sharma concealed in a heap of leaves. All these articles were sealed separately and fards thereof were prepared.

7. Panchnama of all the three dead bodies were prepared on 31.8.2003, which ended at 11.30 a.m. They were sealed and were sent to mortuary for post-mortem examination alongwith necessary papers. The Investigating Officer had also prepared the site plan of the place of occurrence and recorded the statement of the witnesses.

8. According to the prosecution on 12.9.2003, arrested accused Shami and Hira confessed their guilt and told about the remaining ornaments to have been kept at their dera Kasai Tola, P.S. Kannauj. On this information, the Investigating Officer alongwith police force and taking the complainant Rajesh Kumar Yadav and witness Prem Narain went to Kannauj to their dera, where Smt. Asida w/o accused Shami and his sister Shahida met them and were arrested at 6.45 p.m. on 12.9.2003. One silver kardhani consisting of 8 chains was recovered from the possession of Smt. Asida who was wearing it in her waist, in which Geeta Devi Yadav was engraved and some ornaments were also recovered from the possession of Shahida, whose case has been separated being juvenile. After completing the investigation the police submitted a charge-sheet under Sections 394, 302 and 412, I.P.C.

9. On committal of the case accused Saleem, Shami, Shahwan and Smt. Ashida were charged under Sections 394, 302 and 412, I.P.C. to which they pleaded not

guilty and claimed to be tried.

10. The prosecution in support of its case examined P.W. 1 Rajesh Kumar the complainant, P.W. 2 Savita, sister of the complainant. Both are eye-witnesses of the occurrence, who identified the accused persons as well as the recovered articles in the Court. The complainant also proved the cot leg Ext.-1 recovered at the pointing out of accused Saleem.

11. Besides P.W. 3 Dr. Rajesh Prasad Chaubey was also examined who conducted the autopsy on the dead bodies of Aman, Hira Lal and Smt. Phool Kali Devi and proved their post-mortem reports, Exts. Ka-5, Ka-6 and Ka-7.

12. P.W. 4 constable Sharda Prasad Yadav was examined to prove the check report Ext. Ka-8 prepared on the basis of written report filed by the complainant. He has further stated that on 12.9.2003 two accused persons were arrested, entry of which was made in the G.D. at serial No. 27, copy of which is Ext. Ka-10.

13. P.W. 5 constable Hari Shanker Mishra was examined, who stated that on 31.8.2003 he was accompanying S.S.I. Indrajeet Singh and other police personnel before whom S.S.I. Indrajeet Singh had prepared the fards of recovered articles Ext. Ka-11. He has also stated that before him S.S.I. Indrajeet Singh and Kavita and Savita had signed the fards.

14. P.W. 6 S.I. Yogendra Singh Chauhan on 31.8.2003 had prepared the inquest reports of the deceased Aman, Hira Lal and Smt. Phool Kali, Exts. Ka-12, Ka-13 and Ka-14 and had sent the dead bodies for post-mortem examination alongwith necessary papers.

15. P.W. 7 S.I. Panch Bahadur Singh stated that on 12.9.2003 he was in-charge of police chauki, Makanderganj and was busy in law and order duty alongwith S.I. Diwakar Pandey and other constables, meanwhile complainant came and informed that two miscreants who had committed robbery in his house, were present at the bus station. Consequently, both the miscreants were intercepted, one of them told his name as Shami and the other as Hira. On being searched, certain ornaments were recovered from both the accused, fards thereof were prepared. At the time of recovery besides the complainant, his wife and sisters and Prem Narain reached there. They identified the accused persons as well as the articles recovered from them. Thus, this witness proved the fard recovery Ext. Ka-3 as well as arrest of both the accused persons.

16. P.W. 9 S.S.I. Indrajeet Singh has stated that he was posted as Sub-Inspector at Kotwali City, Pratapgarh on 31.8.2003 and investigated this case. On the aforesaid date, in search of the accused, he was checking the vehicles at the Bhupiya-Mau crossing alongwith other constables, when two suspects got down from the vehicle and started running away. One of them was apprehended but the other made his escape good. The arrested person told his name as Saleem who on interrogation confessed his guilt that in the last night he, his brother Shami and a relative Shahwan committed robbery in the house in question. He

also told that the cot leg with which he committed the crime was thrown away in the way and he could get it recovered which was later on recovered at his pointing, fard of which Ext. Ka-11 was prepared by him. He has also stated that on 12.9.2003 accused Shami and Hira were arrested by the police party and on interrogation both the accused persons had confessed their guilt and had told about the looted articles to have been kept in their dera at Kannauj. In the hope of recovery of ornaments the police party consisting of S.I. Dharmendra Tiwari and other constables including Mahila constable Mamta Yadav alongwith witnesses Prem Narain and the complainant went to Kannauj and recovered looted articles from Smt. Ashida and Shahida and arrested them.

17. P.W. 10 Suresh Chandra Malviya was the station house officer, who conducted the initial investigation in this case, recorded the statements of the witnesses, prepared the site plan and took bloodstained and simple earth in his custody. He also took a piece of bloodstained gadda and prepared their fards. On 1.9.2003, he interrogated accused Saleem and on 13.9.2003 interrogated accused Shami, Hira, Shahida and Smt. Ashida.

18. Lastly, P.W. 8 Inspector Karan Singh took investigation in his hand on 25.10.2003 and after due completion of investigation, submitted the charge-sheet against the accused persons.

19. Statements of the accused persons were recorded u/s 313, Cr. P.C. in which they denied the allegations levelled against them and stated that they have been falsely implicated in this case.

20. After hearing the learned Counsel for the parties and considering the material on record, the trial court came to the conclusion that the prosecution has been successful in bringing home the guilt of the accused persons beyond all reasonable doubt and consequently it convicted and sentenced them as indicated above.

21. Feeling aggrieved by the order of aforesaid conviction and sentence, the Appellants have preferred these appeals.

22. We have heard Shri Rishad Murtaza, learned Counsel for the Appellants, learned A.G.A. Shri R. P. Shukla as well as Shri Abid Ali, learned Counsel for the complainant and perused the entire material available on record including the judgment of the trial court carefully.

23. The factum of occurrence is not disputed in this case, rather it is proved beyond all reasonable doubt by the overwhelming documentary as well as oral evidence on record. The incident took place in the intervening night of 30/31.8.2003 at about 3.00 a.m., in which certain properties were looted and three persons lost their lives. A written report of the occurrence Ext. Ka-1, giving full details including the list of looted properties was lodged by the complainant Rajesh Kumar Yadav on 31.8.2003 at 4.30 a.m. at P.S. Kotwali, Pratapgarh, on the basis of which check report Ext. Ka-8 was prepared and a case was

registered at Crime No. 473 of 2003 u/s 394/302, I.P.C. against four unknown persons. Thus, it is apparent that the F.I.R. was lodged after a lapse of one and a half hour of the occurrence, which has been proved by P.W. 1 Rajesh Kumar, the complainant and P.W. 4 constable Sharda Prasad Yadav. The occurrence is further proved by the statement of P.W. 3 Dr. Rajesh Prasad Chaubey who conducted the autopsy on the dead bodies of three persons and proved post-mortem reports Exts. Ka-5 to Ka-7.

24. Consequently, it cannot be said that the F.I.R. was lodged with undue delay and there was no question of embellishment, deliberation or consultation and there was no question of ante-timing. The Appellants failed to demonstrate as to how the genuineness of the check report, which gives strength to the prosecution version, should be viewed with suspicion. On the contrary, the genuineness of the first information report cannot be brushed aside in the given circumstances. The F.I.R. transpires that the prosecution has come with actual version before the Court and not with jaundice eyes. Thus, the reliance can be placed upon it.

25. To prove its case the prosecution has examined P.W. 1 Rajesh Kumar the complainant who in his testimony on oath has narrated the whole story of the occurrence by stating that in the night of 30/31.08.2003 he alongwith his wife was sleeping in a room of his house, his father, mother and son aged about two years were sleeping in another room and in the next room, which was adjacent to his room, his two sisters Savita and Kavita were sleeping. Electric bulb was lighting in the house. At about 3.00 a.m. four miscreants entered the house by scaling down from the roof through the stairs. Hearing the sound of foot steps, he and his wife woke up and awakened his sisters. They saw that three miscreants had dandas with them and one had cot-leg and passing through the room of puja, they entered the room where his father, mother and son were sleeping and committed robbery. Thereafter, they entered the room of his sisters where they broke open the attachee and lock of almirah and looted ornaments and cash. Due to fear of the miscreants they hid themselves under the cot and identified the miscreants in the light of electric bulb. Robbery was committed for about 20-25 minutes. After committing robbery the miscreants bolted the doors from outside of his room and that of his sisters. The complainant and his wife anyhow came out of the room through window and raised alarm which attracted Prem Narain, Dinesh Kumar and Kalidin. Thereafter he went into the room of his parents and saw that his father, mother and son were pooled in blood and were unconscious. He with the help of neighbours after arranging the vehicle took the injured persons to Sadar Hospital, Pratapgarh, where the doctor declared them dead.

26. The witness also stated that the miscreants had looted certain ornaments, clothes and cash about Rs. 3,000 including one silver kardhani having eight chains, weighing about half kg. in which the name of his wife "Gita Devi" was engraved. He further stated that he had lodged the written report at the Police Station scribed by himself, on the basis of which a case was registered. A piece

of bloodstained gadda was taken into custody by the police, memo of which was prepared by the Investigating Officer, which is Ext. Ka-2 on record bearing the signatures of Prem Narain and of himself. He also identified the miscreants in the Court, whom he had seen and recognised at the time of committing robbery.

27. The witness further stated that while going to katchehry on 12.9.2003 he had seen two miscreants coming from the side of bus station and had informed the Sub-Inspector of Police about them, who alongwith other police personnel had arrested them in his presence and interrogated them. On interrogation they have told their names as Shami and Hira. On their search, certain ornaments and clothes were recovered from them, which were sealed on the spot and their recovery memo Ext. Ka-3 was prepared. He also proved fard recovery of ornaments recovered from Kannauj as Ext. Ka-4. The witness also identified bloodstained cot-leg Ext. 1 in the Court, which was recovered by the police at the pointing out of accused Saleem. He further identified certain clothes and ornaments kept in different sealed covers which were opened before him in Court as Exts. 2 to 28.

28. Next eye-witness is P.W. 2 Savita, sister of the complainant. She has fully corroborated the statement P.W. 1 Rajesh Kumar on all material points by narrating the manner of occurrence and about the looted articles. She has also claimed to have seen and identified the miscreants while committing robbery. She identified the accused as well as ornaments looted from her house in the Court. She also proved the arrest of accused Saleem and fard recovery Ext. Ka-11.

29. Both the witnesses were cross-examined at length, but nothing material could be elicited from their statements so also to discredit their testimony. Since the occurrence took place in the night intervening 30/31.8.2003 at about 3.00 a.m. and the F.I.R. was lodged at 4.30 a.m. itself by the complainant himself, his presence at the time of occurrence cannot be doubted. Both the witnesses are reliable, trustworthy and can be acted upon.

30. Besides above, the prosecution has examined P.W. 3 Dr. Rajesh Prasad Chaubey, who conducted the post-mortem on the dead bodies of Aman, Hira Lal and Smt. Phoolkali Devi and prepared their post-mortem reports. The time of death as given by the doctor fully corresponds with the time of occurrence. The inquest-reports of the dead bodies of the deceased were prepared on 31.8.2003 by P.W. 6 S.I. Yogendra Singh Chauhan. P.Ws. 4 and 5 Constables Shardha Prasad Yadav and Hari Shanker Misra were examined to prove the check report Ext. Ka-8 and fards of certain recovered articles. P.W. 7 S.I. Panch Bahadur Singh has stated that on 12.9.2003 he alongwith other police personnel had arrested two accused persons namely Shami and Hira with the help of other police personnel and recovered certain articles from them. He has also stated that arrested persons confessed their guilt and informed the police party about the rest of the looted articles to be kept at their dera at Kannauj, from where certain articles were recovered from the accused Smt. Ashida wife of accused Shami. P.W. 9

S.S.I. Indrajeet Singh has been examined to prove the arrest of accused Saleem and recovery of certain looted articles from him. He had also recovered a cot-leg stained with blood at the pointing out of accused Saleem with which he had inflicted injuries on the victims. P.W. 8 Inspector Karan Singh after completing due investigation submitted charge-sheet against the accused persons.

31. It has been urged on behalf of the Appellants that there is inherent incredibilities in the evidence so much so the identification parade was not held for person and property. Learned Counsel for the Appellants has urged that in this case test identification parade was necessary. Neither the recovered articles were put up for identification nor the suspects-the Appellants were permitted to stand anywhere amongst other persons. We are unable to agree with the aforesaid contentions for the reasons that identification parades are not primarily meant for the Court. They are meant for investigation purposes. The object of conducting test identification parade is two folds, first to enable the witnesses to satisfy themselves, that the persons whom they suspected is really the one who was seen by them in connection with the commission of the crime, second is to satisfy the authorities that the suspects are the real persons whom the witnesses had seen in connection with the said occurrence.

32. In the case of Amitsingh Bhikamsing Thakur Vs. State of Maharashtra, the Hon'ble Apex Court observed that in Jadunath Singh and Another Vs. The State of U.P., the submission that absence of test identification parade in all cases is fatal, was repelled by this Court after exhaustive consideration of the authorities on the subject.

33. It seems to us that it has been clearly laid down by this Court in Crl. Appeal No. 92 of 1956, Parkash Chand Sogani v. State of Rajasthan, decided on 15.1.1957, that the absence of test identification in all cases is not fatal and if the accused person is well-known by sight it would be waste of time to put him up for identification.

34. In Harbajan Singh Vs. State of Jammu and Kashmir, though a test identification parade was not held, this Court upheld the conviction on the basis of the identification in Court corroborated by other circumstantial evidence.

35. In view of this corroborative evidence we find no substance in the argument urged on behalf of the Appellant that the Investigating Officer ought to have held an identification parade.

36. Learned Counsel for the Appellants has argued that no independent witness was examined and only closely related, interested and partisan witnesses were examined, hence no finding of conviction could have been recorded on the basis of their evidence. We may observe that generally independent witnesses do not wish to indulge themselves in such type of cases. We have scrutinised their evidence with care and caution. In this regard we may refer the case of Munshi Prasad and Others Vs. State of Bihar, wherein their Lordships have observed as under :

It is the quality of the evidence and not the quantity, which is required. The crux of the issue being has the prosecution been able to bring home the charges with the evidence available on record-if the evidence on record is otherwise satisfactory in nature and can be ascribed to be trustworthy, an increase in the number of witnesses cannot be termed to be a requirement for the case. The two independent witnesses have also been grouped in the group of interested witnesses, which is neither acceptable nor worthy of acceptance and in any event the same does not have the support from the available records. Apart therefrom P.Ws. 1, 2 and 3, they may be related to each other but that does not mean any imply total rejection of the evidence: interested they may be but in event they are so it is the predominant duty of the Court to be more careful in the matter of scrutiny of the evidence of these interested witnesses and if on such a scrutiny it is found that the evidence on record is otherwise trustworthy, question of rejection of the same on the ground of being interested witnesses would not arise. As noticed above, it is the totality of the evidence which matters and if the same creates a confidence of acceptability of such an evidence, question of rejection on being ascribed as "interested witness" would not be justifiable.

37. In the case of Sucha Singh and Another Vs. State of Punjab, their Lordships of the Hon"ble Apex Court observed as under :

26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge alongwith the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

38. They further observed :

Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

39. Thus, the ground that witnesses being close relative and consequently being partisan witnesses should not be relied upon, has no substance.

40. It is next contended by the learned Counsel for the Appellants that there were major contradictions in the statements of the prosecution witnesses. On the

scrutiny of the evidence, we find that the statements of P.Ws. 1 and 2 are consistent with each other on all material points barring minor contradictions, which are bound to occur and they are not such which may go to the very root of the prosecution case, rather they find full corroboration and support from medical evidence and other surrounding circumstances. The Hon"ble Apex Court in State of Rajasthan v. Kalki AIR 1981 SC 390: 1981 (SC) 254 , has observed that "normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition in such as shock and horror at the time of occurrence and those are always there, howsoever honest and truthful a witness may be." Later on the same view has been expressed in the Munshi Prasad's case (supra), which is reproduced as under :

Incidentally, be it noted that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of this prosecution case, ought not to prompt the Court to reject evidence in its entirety. If the general tenor of the evidence given by the witness and the trial court upon appreciation of evidence forms opinion about the credibility thereof, in the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of, and we do not see any justification to pass a contra-note, as well, on perusal of the evidence on record.

41. Thus, the testimony of both the witnesses is reliable, trustworthy, inspires confidence and they can safely be relied upon. Their presence on the spot is very natural.

42. In this case there is no direct evidence as regards the involvement of the Appellants in the murder of the deceased and the recovery. We find that following circumstances were relied upon by the prosecution :

1. The Appellants except Smt. Ashida were seen together inside the house of the complainant. The Appellants entered the room, inflicted injuries and inmates of the house including the complainant heard the cries and shrieks of the deceased Hira Lal, Smt. Phoolkali and Aman and also found that the articles referred in the F.I.R. were removed from their house after infliction of serious injuries on the body of the deceased persons.

2. The Appellant Saleem was found in possession of recovered articles Exts. 1 to 8 ; Appellant Hira in possession of Exts. 9 to 23 ; Appellant Shami in possession of Exts. 25 to 27 and Appellant Smt. Ashida in possession of Ext. 24, which were recovered on 31.8.2003 at about 8.25 a.m. by P.W. 9 Sub-Inspector, Indrajeet Singh and on 12.9.2003 at about 11.00 a.m. and 6.45 p.m. by S.I. Indrajeet Singh, S.I. Panch Bahadur Singh and S.I. Dharmendra Tiwari.

3. Recovery of kardhani was made from the possession of Appellant Smt. Ashida, in consequence of the information given by the Appellants Hira and Shami.

4. Human blood noticed on the cot-leg.

5. Chemical Examiner's report reveals that blood was found thereon.

43. Now, we are left with the recovery of articles of the complainant. This is on the basis of confessional statements of accused Saleem, Hira and Shami soon after the occurrence by Sub-Inspectors Indrajeet Singh, Panch Bahadur Singh and Dharmendra Tiwari u/s 27 of the Indian Evidence Act.

44. In this connection, it is relevant to quote the observations of the Hon'ble Apex Court made in the case of AIR 2002 491 (SC) which read as under :

We are now left with the evidence of recovery of the ornaments belonging to the complainant, on the basis of the confessional statement of accused u/s 27 of Evidence Act, leaving apart from the time being the aspect concerning injuries inflicted on the deceased. The question then is whether there was discovery of incriminating articles in consequence of information received from the accused in custody and whether such discovery warrants a presumption to be drawn u/s 114 and if so, to what extent that presumption has to be drawn.

As the presumption u/s 114 of Evidence Act looms large in this case a brief discussion on the basic postulates and evidentiary implications of presumption of fact may not be out of place. A presumption of fact is a type of circumstantial evidence which in the absence of direct evidence becomes a valuable tool in the hands of the Court to reach the truth without unduly diluting the presumption in favour of the innocence of the accused which is the foundation of our criminal law. It is an inference of fact drawn from another proved fact taking due note of common experience and common course of events. Holmes, J. in *Greer v. U.S.*, 245 USR 559, remarked "a presumption upon a matter of fact, when it is not merely a disguise for some other principle, means that common experience shows the fact to be so generally true that Courts may notice the truth". Section 114 of the Evidence Act shows the way to the Court in its endeavour to discern the truth and to arrive at a finding with reasonable certainty. Under the Indian Evidence Act, the guiding rules for drawing the presumption are set out broadly in the Section. Section 114 enjoins :

the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case.

Having due regard to the germane considerations set out in the section, certain presumptions which the Court can draw are illustratively set out. It is obvious that they are not exhaustive or comprehensive. The presumption u/s 114 is, of course, rebuttable. When once the presumption is drawn, the duty of producing evidence to the contra so as to rebut the presumption is cast on the party who is subjected to the rigour of that presumption. Before drawing the presumption as to the existence of a fact on which there is no direct evidence, the facts of the

particular case should remain uppermost in the mind of the Judge. These facts should be looked into from the angle of common sense, common experience of men and matters and then a conscious decision has to be arrived at whether to draw the presumption or not. Among the illustrations appended to Section 114 of the Evidence Act, the very first one is what concerns us in the present case :

The Court may presume-

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

Taylor in his treatise on The Law of Evidence has this to say on the nature and scope of the presumption similar to the one contained in Section 114(a) :

The possession of stolen property recently after the commission of a theft, is prima facie evidence that the possessor was either the thief, or the receiver, according to the other circumstances of the case, and this presumption, when unexplained, either by direct evidence, or by the character and habits of the possessor, or otherwise, is usually regarded by the jury as conclusive. The question of what amounts to recent possession varies according to whether the stolen article is or is not calculated to pass readily from hand to hand.

This presumption which in all cases is one of fact rather than of law, is occasionally so strong as to render unnecessary any direct proof of what is called the corpus delicti. Thus, to borrow an apt illustration from Maule, J., if a man were to go into the London Docks quite sober, and shortly afterwards were found very drunk, staggering out of one of the cellars, in which above a million gallons of wine are stored, "I think," says the learned Judge-and most persons will probably agree with him-"that this would be reasonable evidence that the man had stolen some of the wine in the cellar, though no proof was given that any particular vat had been broached, and that any wine had actually been missed.

45. We shall now examine as a first step whether the conditions, or to put it in other words, factual circumstances contemplated by illustration (a) to Section 114 are fulfilled.

46. There can be no doubt that the ornaments which were located at the instance of the accused were the personal belongings of the complainant and they were being worn by the family of the complainant. The evidence of P.W. 1 and P.W. 2, who are the son and daughter of the deceased-victim bear testimony to this fact and even a gruelling cross-examination could not raise a cloud on the veracity of their deposition on this aspect.

47. Thus, the learned trial court came to the conclusion that the ornaments which were located at the instance of accused persons and also recovered by the three Sub-Inspectors of Police belonged to the deceased. The recovery of stolen property from the possession of the Appellants enables a presumption as to the commission of the offence. The prosecution has successfully proved about the

commission of the offence of murder and loot of the recovered articles from the possession of the Appellants. Thus, it can reasonably be held that the offence of robbery has been committed alongwith murder and both of them has an integral part of the same transaction. Consequently, the presumption can be raised u/s 114(a) of the Indian Evidence Act. The time lag between the commission of the offence and the recovery of articles from the possession of the Appellants is not so wide as to snap the link between the recovery and the commission of the offence. There is availability of the evidence other than the recovery of articles connecting the Appellants with such offence, i.e., they were identified during the commission of robbery, they were coming out from the house and they were subsequently identified at the time of recovery by the complainant and Ors. :

In the well-known case of Pulukuri Kotayya v. King-Emperor AIR 1947 PC 67, it was held as under :

10. If we may respectfully say so, this case clearly brings out what part of the statement is admissible u/s 27. It is only that part which distinctly relates to the discovery which is admissible ; but if any part of the statement distinctly relates to the discovery it will be admissible wholly and the Court cannot say that it will excise one part of the statement because it is of a confessional nature. Section 27 makes that part of the statement which is distinctly related to the discovery admissible as a whole, whether it be in the nature of confession or not. Now the statement in this case is said to be that the Appellants stated that they would show the place where they had hidden the ornaments. The Sessions Judge has held that part of this statement which is to the effect "where he had hidden them" is not admissible. It is clear that if that part of the statement is excised the remaining statement (namely, that he would show the place) would be completely meaningless. The whole of this statement in our opinion relates distinctly to the discovery of ornaments and is admissible u/s 27 of the Indian Evidence Act.

48. In the case of Amitsingh Bhikamsing Thakur Vs. State of Maharashtra, it has been laid down that the scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in Pulukuri Kotayya"s case (supra) in the following words, which have become locus classicus : (1A p. 77) "It is fallacious to treat the "fact discovered" within the section as equivalent to the object produced ; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife ; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant.

49. The aforesaid position was again highlighted in Prabhu Vs. State of U.P., which is quoted below :

Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases (in the background events proved therein) is not always free from difficulty. It will therefore be worthwhile at the outset, to have a short and swift glance at Section 27 and be reminded of its requirements. The section says :

27. Provided 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.

"The expression "provided that" together with the phrase "whether it amounts to a confession or not" show that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly relates to the fact thereby discovered" is the linchpin of the provisions. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery.

"At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in Pulukuri Kotayya case (1946-47) 74 IA 65 and in Udai Bhan Vs. The State of Uttar Pradesh,

50. The various requirements of the section can be summed up as follows :

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with

question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

51. As observed in Pulukuri Kotayya's case it can seldom happen that information leading to the discovery of a fact forms the foundation of the prosecution case. It is one link in the chain of proof and the other links must be formed in manner allowed by law. To similar effect was the view expressed in K. Chinnaswamy Reddy Vs. State of Andhra Pradesh,

52. In this context, we may also refer the decision of the Hon''ble Apex Court in Geejaganda Somaiah Vs. State of Karnataka, , wherein it has been observed as under :

11. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person.

12. We may also make a reference to a decision of this Court in C. Chenga Reddy v. State of A. P. (1960) 10 SCC 193, wherein it has been observed thus

21. In a case based on circumstantial evidence, the settled law is that the circumstance from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

13. In Padala Veera Reddy Vs. State of Andhra Pradesh and others, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests :

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established ;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused ;

(3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else ; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence.

14. In State of U.P. Vs. Ashok Kumar Srivastava, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

15. Sir Alfred Wills in his admirable book Wills" Circumstantial Evidence (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum ; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability ; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits ; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt ; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

16. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

17. In Hanumant Vs. The State of Madhya Pradesh, it was observed thus : 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 so 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.

18. A reference may be made to a later decision in Sharad Birdhichand Sarda Vs. State of Maharashtra, Therein, while dealing with circumstantial evidence, it has

been held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are : (SCC p. 185, para 153) "(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

...the circumstances concerned "must or should" and not "may be" established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency ;

(4) they should exclude every possible hypothesis except the one to be proved ; and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

23. The position of law in relation to Section 27 of the Evidence Act was elaborately made clear by Sir John Beaumont in *Pulukuri Kottaya v. Emperor* AIR 1947 PC 67, wherein it was held : (IA pp. 76-77) "Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence ; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. On this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity, would all be admissible. If this be the effect of Section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That

ban was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction Their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In Their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced ; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife ; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

26. In *Earabhadrapa v. State of Karnataka* (1983) 2 SCC 330, it was held that for the applicability of Section 27 of the Evidence Act two conditions are prerequisite viz. (i) information must be such as has caused discovery of the fact, and (ii) the information must "relate distinctly" to the fact discovered. u/s 27 only so much of the information as distinctly relates to the fact really thereby discovered, is admissible. While deciding the applicability of Section 27 of the Evidence Act, the Court has also to keep in mind the nature of presumption under illustrations (a) to (s) of Section 114 of the Evidence Act. The Court can, therefore, presume the existence of a fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

27. In *State of Maharashtra Vs. Damu Shinde and Others*, it has been held that Section 27 of the Evidence Act was based on the doctrine of confirmation by subsequent events and giving the section actual and expanding meanings, held : (SCC pp. 282-83, para 35)

35. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable

information. Hence, the Legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. It is now well-settled that recovery of an object is not discovery of a fact as envisaged in the section. The decision of the Privy Council in *Pulukuri Kottaya v. Emperor* AIR 1947 PC 67, is the most quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.

28. Besides Section 27 of the Evidence Act, the Courts can draw presumptions u/s 114, illustration (a) and Section 106 of the Evidence Act. In *Gulab Chand Vs. State of Madhya Pradesh*, where ornaments of the deceased were recovered from the possession of the accused immediately after the occurrence, this Court held : (SCC pp. 577-78, para 4) "it is true that simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery. But culpability for the aforesaid offences will depend on the facts and circumstances of the case and the nature of evidence adduced. 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 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 alongwith 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 in "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 *Earabhadrapa v. State of Karnataka* (1983) 2 SCC 330, 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. Excepting an assertion that the ornaments belonged to the family of the accused which claim has been rightly discarded, no plausible explanation for lawful possession of the said ornaments immediately after the murder has been given by the accused. In the facts of this case, it appears to us that murder and robbery have been proved to have been integral parts of the same transaction and therefore the presumption arising under illustration (a) of Section 114 of the Evidence Act is that not only that the Appellant committed the murder of the deceased but also committed robbery of her ornaments.

53. The presumption u/s 144(a) is not confined to the charge of robbery but extends to all charges, however, penal not excluding even murder. It has further been held in the case of Ronny @ Ronald James Alwaris Etc. Vs. State Of Maharashtra, , that apropos the recovery of articles belonging to the deceased family from the possession of the Appellants soon after the robbery and the murder of the deceased, which possession has remained unexplained by the Appellants, so 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 three murders and the robbery.

54. It is relevant to mention here that the Appellants were expected to afford explanation as to how else he came to know about the looted property and as to why they refrained from telling the Court as to how they were in possession of the articles and bloodstained articles which were used in the commission of the crime. The presumption is well justified course as the same was adopted by the trial court. Thus, on the basis of recovery u/s 27 of the Evidence Act read with the presumption as per illustration 114(a) of the Evidence Act including other circumstantial evidence, we do not find any inherent incredibility in the evidence.

55. Thus, on the basis of the aforesaid observations, we further find that three different police officers recovered the articles. The police officers like other State functionaries are expected to exhibit impartiality in discharge of their functions

and take a detached view in the situations and it is not enough to discard their evidence on the ground that they are police officers. Their Lordships of Hon''ble Apex Court in State of Haryana Vs. Jagbir Singh and Others, observed that the evidence of police officers cannot be underestimated merely because they are police officers. On the fact of it, we find that the trial court was perfectly justified in arriving at a decision that all the three police officers who recovered the articles are reliable witnesses and their testimony can be accepted without any corroboration for the reason that the Appellants failed to account for their possession of the articles referred in the F.I.R., though they have not furnished any explanation in regard to their possession. The same view has been expressed by the Lordships of the Hon''ble Apex Court in Pradeep Narayan Madgaonkar 1995 SCC 708, relevant portion of which is quoted below :

Indeed, the evidence of the official (police) witnesses cannot be discarded merely on the ground that they belong to the police force and are, either interested in the investigating or the prosecuting agency but prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence in material particulars should be sought. Their desire to see the success of the case based on their investigation, requires greater care to appreciate their testimony.

56. P.W. 9 S.I. Inderjeet Singh had on 31.8.2003 itself arrested the Appellant Saleem alongwith looted articles from the crossing of Bhupia Mau near Pratapgarh while checking the vehicles after about five hours of the occurrence and on interrogation he confessed his guilt and on search being made, certain looted ornaments, cash of Rs. 2,900 and clothes belonging to the family of the complainant were recovered. He has also stated that on 12.9.2003, Appellants Sami and Hira were arrested by S.I. Panch Bahadur Singh. They had also confessed their guilt and on search being made, certain looted clothes and ornaments belonging to the family of the complainant were recovered and informed about rest of the ornaments to be kept at their dera situating at Kannauj. On this information, he alongwith S.I. Dharmendra Tiwari, other constables and witnesses Rajesh Kumar and Prem Narain went to the dera of the Appellants under the guidance of arrested accused Sami and Hira and there arrested Appellant Smt. Ashida, wife of Appellant Sami from whose possession one silver kardhani of eight chains having inscription of the name "Geeta Devi", wife of the complainant, was recovered and also arrested Km. Sharda alias Shahida from whose possession one pair of payal belonging to the family of the complainant was recovered.

57. P.W. 7 S.I. Panch Bahadur Singh on 12.9.2003 alongwith S.I. Diwakar Pandey and other constables were busy in law and order duty. He came to know through complainant that two miscreants who had committed the crime at his house, were standing near bus station. He alongwith the complainant and other police personnel rushed towards the bus station and near Mira Bhawan he intercepted the miscreants, who on interrogation told their name as Sami and Hira and

confessed their guilt. On their search being made, certain ornaments and clothes were recovered of which recovery memos were prepared. On interrogation, they also informed that rest of the ornaments were kept at their dera situating at Kannauj.

58. It is significant to note that the prosecution witnesses had no animosity against the accused persons so as to falsely implicate them. The Appellants are residents of district Kannauj, which is about 250 kms. away from Pratapgarh, the venue of occurrence. The Appellants have not claimed the recovered articles of their own. They are said to be of beggars community. Recovery of silver kardhani on which the name of the wife of the complainant was engraved as Geeta Devi and the recovery of one golden ring having the inscription of Ashok Latt, which are mentioned in the written report in the list of looted articles cannot be doubted.

59. Thus, it is a settled proposition of law that the Appellants who were found in possession of the part of the looted property soon after the robbery, we may presume that they were the robbers and they committed murder during the course of same transaction. We further find that the statement of the complainant P.W. 1 and P.W. 2 is reliable and there is nothing on record to show that they had any lis or any motive to falsely implicate the Appellants in this case leaving real culprits.

60. Thus, the trial court was justified in arriving at the conclusion on the basis of the testimony of the witnesses that the property was recovered by three Sub-Inspectors at three different places on the pointing out of the Appellants and Ors. were found in possession of the property. Even if there is any lapse on the part of the Investigating Officer by not requesting the Executive Magistrate to hold test identification parade during the course of test identification, the recourse of test identification cannot provide any dividend to the Appellants. Even for want of test identification parade the Appellants cannot escape from their liabilities. The Investigating Officer satisfied himself about the participation of the Appellants in the occurrence and complainant and Ors. were satisfied with the participation of the Appellants in the commission of the crime through which the lives of three persons were snapped and the properties were looted and subsequently recovered. The learned trial court found that all those circumstances were established and they formed themselves into a complete chain unerringly pointing to the guilt of the Appellants.

61. Thus, the prosecution presented reliable and formidable circumstances forming into a complete chain and pointing unerringly, irresistible and inescapable conclusion that the deceased were killed by none else other than the Appellants during the commission of robbery. Thus, there is no circumstance which may exonerate the Appellants of such grotesque crime. We, therefore, find no hesitation in upholding the conviction as recorded by the trial court.

62. Learned Counsel for the Appellants has failed to substantiate the grounds of

appeal in this case or to point out that there was wrong appreciation of evidence by the trial court. Thus, the view taken by the trial court is not erroneous. Accordingly, on this count it is not possible to substitute another finding. We do not find any compelling reason or infirmity in the appreciation of evidence by the trial court ; rather the view taken by the trial court relying over the evidence as credible is based on the evidence of two witnesses and recovery of certain articles made by three Sub-Inspectors. Thus, the presumption drawn by the trial court is well justified. That being the position the appeals are clearly without any merit and deserve dismissal. In a similar circumstance the Hon''ble Apex Court declined to interfere and held that if two views are possible and the view taken by the trial court is not erroneous or not based on evidence then it should not be disturbed.

63. Admittedly, the Appellants committed ghastly murder of the house wife, her husband and one child and thereafter looted their ornaments and other valuable articles. Even then in the circumstances of the case the offence does not fall within "rarest of rare case". That brings us to the last contention of the Appellants that in any case the Appellants did not deserve the sentence of death. Accordingly, death sentence is converted into imprisonment for life, but we maintain the sentences imposed by the trial court for other convictions. Consequently, Capital Sentence Reference No. 1 of 2007 is dismissed and all the appeals are thus disposed of accordingly.

64. All the Appellants are in jail. They shall be detained to serve out their sentences imposed by the trial court as well as by this Court.

65. Material Ext. 1 shall be destroyed and Exts. 2 to 28 shall be returned to the complainant only if the Appellants do not approach the Hon''ble Apex Court.