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**(2009) 04 DEL CK 0212**  
**In the Delhi High Court**  
**Case No : Criminal Appeal No. 755 of 2005**

Sanjeev Kumar

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision :** 21-04-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 201, 302, 392, 397, 414

**Citation :** (2009) 04 DEL CK 0212

**Hon'ble Judges :** Pradeep Nandrajog, J;Aruna Suresh, J

**Bench :** Division Bench

**Advocate :** K.B. Andley and M.L. Yadav, for the Appellant; Pawan Sharma, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Pradeep Nandrajog, J.—Since written submissions have been filed in Court on 13.4.2009 when arguments were closed in the appeal, we propose to note the submissions urged by learned Counsel for the appellant as recorded in the written submissions. Noting at the outset that the learned Counsel has made no submissions pertaining to the recoveries effected at the instance of the appellant pursuant to his disclosure statement. When questioned as to why no submissions have been made pertaining thereto, learned senior counsel responded that since the case of the prosecution is based on circumstantial evidence, if the circumstances which have been questioned during arguments in appeal and in respect whereof written submissions have been filed, were to fail, the remaining circumstances are inadequate to draw the inference of guilt. The written submissions filed are as under:

The substance of prosecution case against the appellant is on the following circumstances with the Trial Court held as having been proved.

(a) The accused Sanjeev Kumar was employed as a servant with the deceased;

- (b) That his behaviour was slightly abnormal from a week prior to the date of incident;
- (c) That on 6.12.2001 i.e. in the afternoon, PW-7 Kuldeep Kumar noted accused in a passive mood;
- (d) That the deceased received a sum of Rs. 2,40,000/- in cash from PW-4 Nagma;
- (e) That accused absconded after the incident;
- (f) That the said amount of Rs. 2,40,000/- was also found missing;
- (g) That the key Ex.PX of the lock Ex.P-20/4 of the office of deceased was got recovered at the instance of accused Sanjeev Kumar;
- (h) That on 8.1.2002 accused Sanjeev Kumar led to the recovery of cash of Rs. 25,000/- and of Rs. 40,000/- and a country made pistol Ex.PY concealed in the mud floor of his house;
- (i) That the bullets recovered from the body of the deceased were of 8mm/.315 bore and could be fired from pistol Ex.PY;
- (j) That accused Sanjeev Kumar led to arrest of his father accused Rajbir and further recovery of Rs. 9,800/- in cash and a pass book Ex.PZ-1 with a deposit entry of Rs. 1 lakh; and
- (k) False explanation/false defence taken by the accused that he was never an employee of the deceased provides the missing link;

Admittedly the case of the prosecution is based only on circumstantial evidence and in case the appellant is able to prove that such chain of circumstantial evidence is affectively broken then the benefit of doubt must be accorded to the appellant.

Now taking the circumstances narrated above serial- wise it is submitted that such chain of circumstantial evidence is effectively broken.

Admittedly, in the FIR recorded in the case there is no mention at all about appellant Sanjeev Kumar. Neither there is any documentary proof as such to show that appellant was in the service of deceased Kuldeep Gandhi.

Shashi Gandhi (PW-6) wife of the deceased on oath stated that her husband was an Income Tax payee. As such it can logitenently be presumed that he was maintaining regular accounts. No such accounts have been produced to show about the employment and payment of salary to the appellant.

Further PW-6 had telephoned Madan Lal (PW-3) thrice on the day of occurrence and asked PW-3 to verify about her husband Kuldeep Gandhi as to why he has not come back to the house. However, at no time she asked PW-3 to verify about the appellant who according to her was residing in that office during the night

and was also supposed to be having the key of the office. In case the version of PW-6 about the service of the appellant and about the presence of the appellant in the said office during the night was to be believed the natural inference would be that she would ask PW-3 to make verification about the appellant at that odd hour of night. Admitted it was not so done.

The legitimate inference, therefore, would be that the appellant was not in the service of deceased.

Another important feature to justify such inference in favour of the appellant is that according to PW-6 the deceased was suspecting the conduct of the appellant since about a week prior to this occurrence and was thinking about terminating his service. If that was true the deceased would be the last person to keep substantial amount of Rs. 2,40,000/- on his person till that odd hour of night knowing fully well that the appellant was there.

Another very important feature of the case is that the body of the deceased was found in a sitting posture on the Sofa set. In front thereof on the table two glasses of whisky and one bottle of whisky was found. This shows that some other person was with the deceased and took whisky with him. That other person cannot be appellant who, according to PW-6, was merely a servant of the deceased at a salary of Rs. 1,000/- per month. May be that the said other person had committed the crime.

In view of the above said circumstances, the chain of circumstantial evidence against the appellant is effectively broken and the benefit thereof should have been given to the appellant.

2. Case of the prosecution is that Kuldeep Gandhi was engaged in the business of sale and purchase of properties and the appellant was his employee. The deceased had received a sum of Rupees Two Lakhs Forty Thousand in cash from one Mrs.Nagma on 6.12.2001. On said day, the appellant murdered Kuldeep Gandhi in his office and ran away with the loot. On being apprehended and interrogated, the appellant got substantial amount recovered from his house as also led the police to the place where from a firearm (used to commit the crime) was recovered as also got recovered the key of the lock put on the rear door of the office of Kuldeep Gandhi which was broken open by the police on 7.12.2001.

3. From the written submissions filed by learned Counsel for the appellant, and as noted above, it is apparent that after the evidence was recorded, learned Trial Judge has held that it stood established that the appellant was employed by the deceased and that on 6.12.2001 the deceased had received Rupees Two Lakhs Forty Thousand from Mrs.Nagma PW-4, which sum was found missing and Rupees Sixty Five Thousand in cash was recovered from the appellant. Rupees Nine Thousand Eight Hundred in cash was recovered from his father and Rupees One Lakh was found deposited in the account of his father. It has further been held that it has been established that the appellant was absconding after the incident and the key of the lock of the office of the deceased was recovered from

a hidden place after the appellant made a disclosure statement that he knew the where about of the key and led the police to the place where from the key was recovered. The firearm got recovered by the appellant from the mud floor of his house was of the bore which corresponded to the bullet recovered from the body of the deceased.

4. The process of law was set into motion when in the intervening night of 6th and 7th December 2001 HC Jitender Singh PW-8 and Const. Jagbeer Singh PW-9, on night patrol, were contacted by Madan Lal PW-3 at around midnight who told them that Kuldeep Gandhi had his office at B-6/19, Sector-18, Rohini and that he was not responding and that the lights in the office were on but the door was locked from outside.

5. HC Jitender Singh PW-8, telephonically informed the duty officer at Police Station Samaipur Badli about the said fact pursuant to which DD No. 29A, Ex.PW-21/A, was recorded. He and Const. Jagbeer Singh proceeded to B-6/19, Sector-18, Rohini along with Kuldeep Gandhi.

6. Taking along with them a copy of the DD entry No. 29A SI Om Prakash PW-12, accompanied with Const. Rajesh PW-17, reached the spot where HC Jitender Singh and Const. Jagbeer had already reached along with Madan Lal. They broke open the lock of the main door of the premises and found Kuldeep Gandhi lying dead on a sofa.

7. In the meantime, Inspector Balbir Singh PW-20, also reached the spot. On finding no eye-witness, Inspector Om Prakash PW-21, made an endorsement Ex.PW-21/B on DD Entry Ex.PW-21/A, and at 3.30 A.M. handed over the same to Const. Rajesh PW-17, for registration of an FIR. Const. Rajesh took Ex.PW-12/B to HC Dharambir Singh PW-1, who recorded the FIR No. 817/01, Ex.PW-1/B.

8. At the place of the occurrence Inspector Balbir Singh PW-20, prepared the rough site plan Ex.PW-20/A, recording therein point "A" where the dead body of the deceased was found. Const. Yashpal PW-12, reached the spot, on being summoned and took photographs Ex.PW-12/A5 to Ex.PW-12/A8; negatives whereof are Ex.PW12/A1 to Ex.PW- 12/A4. From the portions of the sofa which were found to be stained with blood, sample sofa control and the lock of the door of the premises which was broken to gain entry into the premises were seized vide memo Ex.PW-20/E. Two empty glasses and a bottle of whiskey of the brand Royal Challenge, found on the table in front of the sofa were seized vide memo Ex.PW-20/F.

9. Since the deceased was found dead at the spot, his body was sent to the mortuary, where Dr. R.K. Punia PW-19, conducted the post-mortem at 11.45 A.M. on 07.12.01 and gave his report Ex.PW-19/A, which records that one penetrating lacerated wound (bullet entry wound) was found present on lateral angle of the left eye; that one penetrating lacerated wound (bullet entry wound) was found present over front of left side chest measuring 1.5 cm X 1 cm situated 6 cm below left clavical and 8 cm left to interior midline; that the two injuries

were ante-mortem, sufficient to cause death in the ordinary course of nature and were caused by a firearm. A bullet each was recovered from the right side of the head and the right lung of the deceased.

10. After conducting the post-mortem, Dr. R.K. Punia PW- 19, handed over the blood sample and the clothes of the deceased and the two bullets recovered from the body of the deceased to Const. Jagbir Singh PW-9, who seized the same vide memos Ex.PW-9/A and Ex.PW-9/B respectively.

11. In her statement made to the police the wife of the deceased told them that the appellant was employed by her husband and since the appellant was found absconding, he became a suspect more so for the reason Nagma PW-4 told the police that on the day of the incident she had given Rupees Two Lakhs Forty Thousand to the deceased, which sum was found missing.

12. Before he could be apprehended, on 12.12.01 the appellant surrendered before the Juvenile Court alleging that he was a minor; a fact which was disproved as a result of inquiry conducted by the board. The appellant was arrested at 3.45 P.M. on 07.01.02 as recorded in the arrest memo Ex.PW- 20/J.

13. Inspector Balbir Singh PW-20, interrogated the appellant in the presence of SI Om Prakash PW-21 and one Deepak Kumar Diwan PW-10, who was an acquaintance of the deceased. The appellant made a disclosure statement Ex.PW- 10/A wherein he confessed having murdered the deceased and stated that he can get recovered the key to the lock of the main door of the office of the deceased; as also the sum of Rupees Two Lakhs Forty Thousand stolen by him as also the revolver with which he had shot the deceased. Pursuant thereto, the appellant led the police to the building in which the office of the deceased was situated and from a place outside the office where the electricity meters were installed, got recovered a key which was lying hidden and could not be seen by the eye. Thereafter he led the afore-noted persons to his residence and got recovered a revolver which he had concealed and two plastic bags containing a sum of Rs. 25,000/- and Rs. 40,000/- respectively. The key, sum of Rs. 25,000/- and Rs. 40,000/- and the revolver recovered at the instance of the appellant were seized vide memos Ex.PW-10/B, PW-10/C, PW-10/D and Ex.PW-10/E respectively.

14. Since the appellant had told that he had parted with a substantial amount to his father, his father Rajvir Singh was arrested by Inspector Balbir Singh PW-20. He was interrogated in the presence of SI Om Prakash PW-21 and Deepak Kumar Diwan PW-10. Rajvir Singh made a disclosure statement Ex.PW-10/H wherein he stated that he had assisted the appellant in concealing the amount stolen by the appellant and that he can get recovered a part of the said amount. Pursuant thereto, he produced a sum of Rs. 9,800/- and a passbook which showed a cash deposit of Rupees One Lakh. The money and the passbook were seized vide memo Ex.PW- 10/G.

15. The two bullets recovered from the body of the deceased and the revolver

recovered at the instance of the appellant were sent to a ballistic expert for his opinion. Vide report Ex.PW-20/L it was opined that the revolver recovered at the instance of the appellant is a .32" caliber firearm designed to fire a standard .315" cartridge and is in working condition; that the two bullets recovered from the dead body of the deceased corresponded to the bullet of standard .315" cartridge and that the individual characteristic of striations are insufficient for comparison and opinion whether the said bullets were fired through the revolver recovered at the instance of the appellant.

16. Armed with the aforesaid material, a challan was filed accusing the appellant of having murdered the deceased and robbed him of Rs. 2,40,000/- by using a deadly weapon and causing disappearance of evidence by throwing empty cartridges. Charges were framed against the appellant for having committed offences punishable under Sections 302/392/397/201 IPC. His father was charged for having intentionally received stolen property i.e. for the offence punishable u/s 414 IPC.

17. At the trial, the prosecution examined 22 witnesses. The material witnesses of the prosecution were Madan Lal PW- 3, Nagma PW-4, Shashi Gandhi PW-6, Kuldeep Kumar PW-7, Deepak Kumar Diwan PW-10 and Ram Gopal Saxena PW-18. The police witnesses deposed to the facts pertaining to the registration of the FIR, the arrest of the accused persons, their interrogation, the recording of disclosure statements, the pointing out of places where from the key, the revolver and bags containing money were recovered and the investigation which was conducted.

18. Madan Lal PW-3, deposed that the deceased was his neighbour. On 06.12.01 he had gone to the office of the deceased three times at the requests of wife of the deceased. That on each visit he had found that the door of the office was locked and that he got no response from inside despite giving several knocks. That on the third visit he had peeped inside through a window and saw the feet of someone sitting on a sofa. That at the time of his third visit one Mr. Kuldeep Nagru who was accompanied with one Mr. Chauhan was also present there. That they also peeped inside and saw the upper portion of the body of the deceased. That Kuldeep Nagru went to a police post situated nearby pursuant to which the police arrived at the spot and broke open the lock of the main door of the office whereupon it was found that the deceased was lying dead on a sofa. That the appellant was employed by the deceased.

19. Nagma PW-4, deposed that the deceased was a property dealer and that she had purchased a flat situated at Rohini from the deceased. That on 06.12.01 she had paid a sum of Rs. 2,40,000/- to the deceased at her residence towards the sale consideration of the flat. That prior to said date she had paid three installments to the deceased in his office and that on said three occasions she had seen the appellant in the office of the deceased.

20. Shashi Gandhi PW-6, the wife of the deceased, deposed that the appellant

was employed by the deceased and that he used to reside in the office of the deceased. That the keys of the office used to remain with the appellant. That about a week prior to his death the deceased had told her that he had noticed a change in the behavior of the appellant, that the appellant had started to misbehave with him, that he kept an eye on the deals struck by him and that he was thinking of terminating the services of the appellant. That at around 2.30 P.M. on the date of the incident the deceased had telephoned her and informed her that he had received a payment of Rs. 2,40,000/- from one Ms.Nagma. That when she had come to the office of the deceased after receiving the news of his death she had found that appellant was not present at the office and that the amount Rs. 2,40,000/- received by the deceased earlier in the day was also missing.

21. That video cassette Ex.PW-6/A was a recording of a function organized at her residence which showed the presence of the appellant in the function.

22. Kuldip Kumar PW-7, deposed that he was having business dealings with the deceased. That at around 1.30 P.M. to 2.00 P.M. on 06.12.01 the appellant who was an employee of the deceased had come to him for the purposes of handing over a file. That on the said day he had found the behavior of the appellant somewhat abnormal from his usual behavior. That at around 11 P.M. on the same day he had gone to the office of the deceased at the request of the wife of the deceased and had found that the car of the deceased was parked outside, that the main door of the office was locked from outside and that the lights of the office were switched on. That one Madan Lal was also present there at that time. That after sometime the police also reached there and broke open the lock of the main door of the office whereupon the deceased was found lying dead on a sofa.

23. Deepak Kumar Diwan PW-10, deposed that the appellant had made a disclosure statement Ex.PW-10/A and had got recovered a revolver, two plastic bags containing a sum of Rs. 25,000/- and Rs. 40,000/- respectively and a key in his presence.

24. Ram Gopal Saxena PW-18, Branch Manager, District Co-operative Bank, Sahibabad Branch, Ghaziabad deposed that accused Rajvir Singh was holding an account in his bank and that a sum of Rs. 1,00,000/- was deposited in the said account on 26.12.01.

25. In his examination u/s 313 CrPC the appellant denied everything and pleaded false implication. He stated that he was never employed by the deceased and was known to him in connection with a property transaction. That he had attended the function organized at the residence of the deceased recording whereof is contained in the video cassette Ex.PW-6/A as a guest. Accused Rajvir Singh also pleaded false implication in his examination u/s 313 CrPC. In defence, two witnesses namely Manbir Singh and Jaibir Singh were examined by accused Rajvir Singh as DW-1 and DW-2 respectively.

26. Manbir Singh DW-1, deposed that he had paid a sum of Rs. 25,000/- to the

accused persons in connection with a property transaction.

27. Jai Bhagwan DW-2, the brother of the deceased, deposed that he had given a sum of Rs. 1,50,000/- to accused Rajvir Singh in connection with a sale transaction.

28. In view of the evidence led i.e. the recovery of the key of the broken lock which was found locking the entrance to the room in which the body of the deceased was found and noting that the lock could be opened by the key; the fact that the appellant was an employee of the deceased and was found absconding; and the recovery of money pursuant to the disclosure statement of the appellant and the appellant having no satisfactory explanation as to how he got so much money, the learned Trial Judge had convicted the appellant of all the charges framed against him. However, holding that the prosecution has not been able to establish that accused Rajvir Singh had any knowledge that the amount Rs. 1,09,800/- recovered from his possession was received by him knowing that it was stolen by the appellant, the learned Trial Judge acquitted him.

29. As noted herein above, the first submission advanced by the learned senior counsel was that the name of the appellant is not mentioned in the FIR Ex.PW-1/B.

30. Absence of name of the appellant in the FIR is hardly of any significance inasmuch as there was no evidence pointing to the involvement of the appellant in the crime till the time the FIR was registered.

31. The next two submissions relate to the proof of employment of the appellant with the deceased. The gist of the submissions advanced by the learned Counsel is that no documentary proof particularly the accounts maintained by the deceased were produced by the prosecution to establish the factum of the said employment.

32. The reason which led the learned Trial Judge to arrive at a conclusion that the appellant was an employee of the deceased was that the ocular evidence led by the prosecution to establish the said employment was not seriously controverted by the defence. The Trial Judge noted that Madan Lal PW-3, Kuldeep Kumar PW-7 and Deepak Kumar Diwan PW-10, had testified that the appellant was an employee of the deceased and no suggestion to the contrary was given to the said witnesses by the defence.

33. Another piece of evidence which strongly points to the fact that the appellant was an employee of the deceased is the testimony of Nagma PW-4, who is an independent witness. As noted herein above, Nagma PW-4, who had purchased a flat from the deceased, had testified that the appellant was present in the office of the deceased on all the three occasions when she had gone there to make part payments towards the sale consideration of the flat purchased by her to the deceased.

34. The afore-noted testimony of Nagma PW-4, when coupled with the testimony

of Shashi Gandhi PW-6, the wife of the deceased and the uncontroverted testimonies of Madan Lal PW-3, Kuldip Kumar PW-7 and Deepak Kumar Diwan PW-10, that the appellant was an employee of the deceased establishes the factum of the said employment.

35. Pertaining to the submission that no documentary proof was produced by the prosecution to prove the factum of the said employment, suffice would it be to state that the deceased was a small scale businessman and cannot be expected to have issued appointment letter, salary slips etc. to the appellant. Courts cannot remain oblivious to the ground realities prevailing in this country. The fact that the petty businessmen conduct their businesses in a most slipshod manner cannot be lost sight of. The deceased was not a big businessman. He conducted the business himself and had only one employee i.e. the appellant. What books of account would he be maintaining? Hardly any. In any case, at a criminal trial the purity of civil transactions is not in issue and hence a civil transaction need not be proved in the manner required by the law of contract or any other civil law.

36. The plea that the conduct of the wife of the deceased, in not inquiring about her husband is strange.

37. We fail to understand the logic of the argument. As noted in the foregoing paragraphs, the wife of the deceased had deposed, a fact confirmed by Madan Lal that the wife of the deceased had repeatedly contacted him telling him that her husband had not returned home and he i.e. Madan Lal should go the office of her husband and find out as to why her husband had still not returned. Now, the office of the deceased was far away from his residence and what more normal conduct can be shown by a wife whose husband has not returned home other than to inform the friend of the husband to try and find out as to why the husband has not returned home.

38. There is some merit in the plea urged by learned Counsel for the appellant that the testimony of PW-6 and PW-7, pertaining to the conduct of the appellant is an exaggerated version and hence the circumstance of abnormal conduct of the appellant is a wrong finding returned by the learned Trial Judge. We exclude said circumstance while considering the incriminating evidence against the appellant.

39. But, this does not mean that the testimony of PW-6 and PW-7 has to be rejected in its entirety. Witnesses, especially in India, have a tendency to over state or exaggerate their case. Even the truthful witnesses, not infrequently, exaggerate or imagine or tell half truths. The courts must try to extract and separate the hard core of the truth from the remaining. Courts must separate "the chaff from the grain". If after considering the whole mass of evidence, a residue of acceptable truth is established by the prosecution beyond any reasonable doubt the courts are bound to give effect to the result flowing from it and not throw it overboard on purely conjectural and hypothetical grounds.

40. Thus, the exaggerated version of the wife and the friend of the deceased that

the deceased became suspicious of the appellant prior to his death and that on the day of the incident the conduct of the appellant being suspicious, is not fatal to the case set up by the prosecution against the appellant, if the remaining evidence led by the prosecution is sufficient to nail the appellant.

41. Pertaining to the last submission advanced by the learned senior counsel that the fact that two glasses were found on the table lying in front of the sofa on which the dead body of the deceased was found establishes the presence of a third person in the office of the deceased on the day of the incident and that the said third person "may" have committed the murder of the deceased, we note that there is no evidence which even remotely suggests the involvement of any other person besides the appellant in the crime of the murder of the deceased.

42. The key of the lock which had to be broken open was recovered pursuant to the disclosure statement made by the appellant and on his pointing out the place to the police where from the key was recovered. As noted in the impugned decision, the lock could be opened by the key. We may note that no witness deposed that the key could operate the lock in question, but finding that the learned Trial Judge has so recorded in the impugned decision, on 8.4.2009, during argument in the appeal we had directed that the broken lock Ex.P-20/4 and the key Ex.PX should be produced before us. The lock and the key were produced before us with the seal of the District & Sessions Judge, Delhi affixed on the two parcels containing the key and the lock. The seals were broken in Court. The parcels were opened. The key and the lock were taken out. In our presence, the key was put to use on the lock and it was found that the lock could be operated i.e. locked and unlocked with the key in question. We recorded said fact in our order dated 13.4.2009 before recommencing arguments in the appeal. The fact that the office of the deceased had no signs of a forcible entry, it is apparent that the office was locked by somebody after the deceased had been shot at. Who else, other than the appellant could have done so for the reason, the key to the lock was recovered by the police pursuant to the disclosure statement of the appellant and on the appellant leading the police and pointing out the place where from the key was recovered. The appellant has given no explanation to said circumstance, which by itself is conclusive and clinching evidence wherefrom the only inference which can be drawn is to the guilt of the appellant. We would be failing to note that during arguments in the appeal, we had repeatedly questioned learned senior counsel for the appellant whether he had any arguments to make to question the recovery of the key in question from a hidden place pursuant to the disclosure statement of the appellant. The learned senior counsel made no submissions and for this reason we have verbatim reproduced the written submissions filed which evidence that no such plea was urged.

43. No doubt, the report of the ballistic expert is inconclusive, but the recovery of an unlicensed revolver from the appellant cannot be lost sight of as also the fact that the same was capable of firing bullets of the bore which were recovered

from the body of the deceased. Though the value of the said incriminating evidence would be minimal, but put in the scales of incriminating circumstances adds on the weight of circumstances against the appellant to the extent it shows his criminal tendencies.

44. We are satisfied that the evidence on record establishes that the appellant was an employee of the deceased and had knowledge that the deceased had received Rupees Two Lakhs Forty Thousand on the day of the incident, which money was found stolen and the appellant was found absconding. We are satisfied that the evidence on record establishes that the deceased was shot inside his office and thereafter the office was locked and the key to the lock was recovered after the appellant was arrested and made a disclosure statement and led the police to the place wherefrom, at his pointing out, the key, which could not be seen otherwise, being hidden, was recovered. We are satisfied that the evidence on record establishes that Rupees Sixty Five Thousand in cash was recovered pursuant to the disclosure statement of the appellant and on his pointing out the places where the said sum was hidden. We are satisfied that the evidence on record establishes that the father of the appellant deposited Rupees One Lakh in cash in his account which was a part of the booty. We note that the appellant nor his father could explain as to how they had so much money with them. The witnesses of the defence who attempted to prove having given money to the father of the appellant are worthy of no credence as they failed to prove having any money with them which they could give to the father of the appellant. We hold that the aforesaid evidence forms a chain of circumstances wherefrom the only inference possible is that of the guilt of the appellant and rules out his innocence. The fact that the prosecution could not prove that while receiving money from the appellant, his father knew that it was stolen, resulting in the acquittal of the father of the appellant of the charge of knowingly receiving stolen property, does not dilute the said recovery as an incriminating evidence against the appellant.

45. In view of the above discussion, the appeal is dismissed.