
(1955) 10 AHC CK 0023
In the Allahabad High Court
Case No : Criminal Govt. Appeal No. 361 of 1953

The State	Vs	APPELLANT
Murli and Others		RESPONDENT

Date of Decision : 19-10-1955

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 337, 367, 417, 418, 423
Evidence Act, 1872 — Section 114, 133, 3, 5

Citation : AIR 1957 All 53 : (1957) CriLJ 32

Hon'ble Judges : Mukerji, J;James, J

Bench : Division Bench

Advocate : H.N. Seth, A.G.A, for the Appellant; Baleshwari Prasad, to 3, for the Respondent

Final Decision : Allowed

Judgement

Mukerji, J.—In this case I have had the advantage of reading the carefully prepared judgment of my learned brother James. I am in agreement with him that the State appeal should be allowed as against two of the respondents, namely Nathu and Murli.

2. I consider it unnecessary to go into the facts of this case in any detail, inasmuch as, all the facts have been set out in my learned brother's judgment. I shall, therefore, only briefly indicate the reasons that have impelled me to agree with the conclusions arrived at by my learned brother.

3. A young girl Ram Kali was done to death and the respondents were charged with her murder. The prosecution were able to call at the trial Imirti, the wife of Misri, to give direct testimony of the murder. The position of Imirti was more or less that of an accomplice in the case, so that her testimony could not be relied upon without adequate corroboration. There was a further difficulty in accepting Imirti's testimony without corroboration, because the defence case was that she deposed to in the manner, she did in order to get rid of her male relations so that she could be free to carry on with her intrigues, unhampered, with Kanchan

Singh.

Although I have been unable to accept the defence suggestion that Imirti had any such intentions or that Imirti deliberately perjured herself with the nefarious object of putting her husband and his male relations out of her way, yet I have taken this factor into account in order to caution myself further in accepting the testimony of Imirti without adequate corroboration. The corroboration which is available on the record to the testimony of Imirti is of a circumstantial character. I shall, therefore, refer to the circumstances which, in my judgment, lent adequate and ample corroboration to Imirti's testimony.

4. On the admitted facts the following circumstances have emerged-

- (1) The deceased was called to the house of the accused by one of the accused, namely Nathu.
- (2) The deceased was last seen alive in the company of accused Nathu.
- (3) The murder of Ram Kali was committed in the house of the accused which was jointly owned and used by the accused.
- (4) The body of Ram Kali in two parts--head and trunk separated was recovered from a room of the house where the different parts were found buried in different corners of the room.
- (5) The ornaments of the deceased were recovered, some from the possession of Nathu and the rest from under the ground of one of the rooms of the accused's house.
- (6) The discovery of the dismembered corpse of Ram Rali and her ornaments was made at the instance of at least one of the accused.
- (7) Nathu accused attempted to sell some of the ornaments of the deceased clandestinely.
- (8) None of the accused took any steps to give information of the crime to anyone, indeed, they did all that they could to obliterate material evidence of the crime.

5. The facts which I have found established on the evidence are these:--

- (1) That Murli was financially in embarrassed circumstances.
- (2) That Nathu made an extra-judicial confession before the villagers and in this confession he implicated himself, his father and his brother. The learned Judge's opinion that Nathu did not implicate himself in his extra-judicial confession does not appear to me to be sound, for he discarded that portion of the prosecution case on the sole ground that the fact of Nathu having implicated himself in the crime was not clearly set down in the first information report. The first information report in this case was made by Chote Lal, the father of the deceased girl Ram Kali, and any omission in that report of the fact that Nathu

also implicated himself in the crime could not, in my opinion, be justly taken to disbelieve the direct testimony on this matter given by Mumtaz Ali and Baldeo.

The slight variation in the sequence of statements which were alleged to have been made by the accused before the villagers who were collected at Bharat Singh's chabutra could not, in my judgment, shake the testimony of the witnesses who deposed to having heard the statement made by Nathu.

(3) That though Murli and Misri did not make any statements before the villagers, yet they did not deny that what Nathu had stated was true: they chose to remain silent. This, in my view, was conduct which could legitimately be taken into account in weighing the scales against the accused.

(4) That Murli deliberately made false statements to Chhote Lal and Kokila about Ram Kali's visit to his house: this, too, in my view, was conduct which could be taken into account.

6. From the circumstances which I have enumerated above and which, in my opinion, have emerged without any doubt attaching to them, I am satisfied that Murli and Nathu were certainly parties to the murder of Ram Kali.

7. The case against Misri accused has been held to be doubtful by my learned brother, and I concur in that opinion of his. My reason for my agreement is based on the ground that Kokila stated definitely that Misri did not commit the murder. Further, that there was no admission of any guilt by Misri in any shape or form. Imirti had not in her statement in Court ascribed any definite part to Misri. The prosecution did not allege that Misri made any pointing out or gave any information from which it could be gathered that he was either a participant or even a privy to the murder.

8. Before I part with this case I wish to express my opinion in regard to a matter which also has been dealt with fully by my learned brother, a matter in respect of which a good deal of argument was made at the Bar. This was in respect of the power of the High Court to interfere with acquittals in appeals preferred by the State against such acquittals. There have been of late several weighty pronouncements of the Supreme Court on this matter.

The Supreme Court has in these respective decisions used certain phrases, some of which have been noticed by my learned brother in his Judgment, which appear to have given an impression to learned counsel for the accused that the power of the High Court to upset a trial Judge in the case of an acquittal by him was a power which was more or less a dormant power.

I have carefully considered every decision of their Lordships of the Supreme Court in which they have made observations in regard to the power of the High Court while dealing with State. Appeals against acquittal, and I have come to the conclusion that their Lordships of the Supreme Court have not in any manner departed from the principles which were laid down by the Privy Council in 1934 in the well-known case of *Sheo Swarup and Others vs. King Emperor*. In that case

their Lordships of the Privy Council stated this :

Sections 417 418, and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as-

- (1) the views of the trial Judge as to the credibility of the witnesses;
- (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial;
- (3) the right of the accused to the benefit of any doubt; and
- (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.

To state this however is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

Their Lordships of the Supreme Court have in my opinion only used different phraseology to convey the same idea which the Privy Council emphasised. An appellate Court is always slow to Interfere with the decision of the trial Judge" when such a decision is based entirely on the evaluation of oral testimony, for the obvious reason that the trial Court has an advantage which the appellate Court has not, namely, the advantage of having the witness before it during the course of that witness's examination and cross-examination.

Watching the demeanour of a witness in the witness-box is always an advantage to a trial Judge, for it often assists in assessing the credibility of a witness. Their Lordships of the Supreme Court have emphasised in different words the same thing that the Privy Council emphasised in Sheo Swarup's case (A), that while dealing with an appeal against an acquittal the High Court is faced with the decision of the trial Judge whereby the presumption of innocence in favour of the accused is re-enforced.

The Supreme Court has stressed one matter which possibly had not been stressed in that manner by the Privy Council in Sheo Swamp's case (A), and that is, that before a High Court can upset a trial Judge it must weigh the reasons Which the trial Judge had given for arriving at the conclusion that the accused were entitled to an acquittal. The Supreme Court has elaborated this aspect and has laid down that while considering the reasons of the trial Judge the High Court should not discard those reasons by resorting to an elaborate process of ratiocination.

What, I think, their Lordships of the supreme Court have laid down is that the

High Court, should not discard a reason given by the trial Court or an argument of the trial Court should not be brushed aside simply because that reason or that argument does not appeal to the High Court; nor should the High Court reject any reason of the Court below, if the reason suggested by the trial Court was a possible reason even though that reason may not be an unexceptional reason and even though it may not make any great appeal to the High Court.

9. The decision of the trial Judge in this appeal cannot be sustained even on a most liberal interpretation to the decisions of the Supreme Court. In this case we have closely examined all that the trial Judge had to say, and we have given not only due weight but we have, if I may say so, given undue weight to the reasons of the trial Judge. The trial Judge has in this case completely misdirected himself by not considering properly the undoubted circumstances of the case. In order to discard the views of the trial Judge we have not had to resort to any elaborate process of reasoning.

If the trial Judge had marshalled the circumstances and had considered them in their proper perspective, then we have no doubt that he would have come to the same conclusion to which my learned brother and I have come. I believe that it is because the trial Judge failed to marshal the circumstances and weigh them properly that he has fallen in an error in this case.

10. In the result, I would, in agreement with my learned brother, allow the Government appeal as against Murli and Nathu, but dismiss it as against Misri. I agree with my learned brother that this case calls for the extreme penalty prescribed by law, for the murder was a cruel and calculated murder of a defenceless girl for the sordid motive of depriving her of the ornaments that she wore.

I, therefore, agree with my learned brother that Murli should be sentenced to death and Nathu to transportation for life. Nathu, in my opinion, deserves the lesser penalty not only on account of his extreme youth but also because he appears to have acted under the influence of his father. JAMES J. :

11. Murli Kori (aged 60) and his sons Misri (aged 30) and Naththu (aged 18) were charged with offences under Sections 392 and 302 read with Section 34, I. P. C., and in the alternative for abetment of these offences of robbery and murder u/s 114, I. P. C. In addition Murli and Naththu were charged with an offence u/s 411, I. P. C. They were tried by the Sessions Judge of Farrukhabad.

The learned Judge found the charges of robbery and murder, or the abetment thereof, as not proved and accordingly acquitted them. He however held the charge u/s 411, I. P. C., established and convicting Murli and Naththu of this charge sentenced them to three years" rigorous imprisonment each. The present appeal is by the State Government and seeks the reversal of the order of acquittal with regard to the offences under Sections 392 and 302, I. P. C. or the abetment thereof u/s 114, I. P. C.

12. The respondents are residents of village Shahjahanpur in police circle Chhibraman, district Farrukhabad. Murli has another son Laltu. All his three sons are married, the wife of the respondent Misri being Imarti (aged 18), a person who figures prominently in the evidence. Murli and his family live jointly in a house in the village which consists of an open courtyard, a verandah and several rooms including a kitchen.

13. The victim of the crime was a married girl named Ram Kali, aged 16 or 17, who was the sister of Chhote Lal Dhobi of the village, and daughter of Sm. Kokila. According to the medical evidence, Ram Kali was thinly built. Now, in May 1952 the marriage of Chhote Lal's younger brother was due to be celebrated, and, as is customary on such occasions, Ram Kali had come from her husband's village to her brother's house in order to attend it.

As is also customary, she wore for the occasion all her ornaments, which consisted of a pair of Karas, and a sutia (Exs. I and II), and chhail churis, 11 lachchhas and a kardhani (Exs. III to V), all made of silver and worth a total of Rs. 380/-. The wedding ceremonies were completed on the night of 9-5-1952.

14. The admitted facts of the case before us are as follows: On Saturday 10-5-1952, the day following the marriage ceremonies of Chhote Lal's brother, the respondent Murli's other son Laltu was away from home, as were also the wives of Laltu and Naththu. Murli's daughters-in-law. That day Ram Kali and her mother Kokila were alone in Chhote Lal's house, the latter having proceeded, to the nearest river-bank for washing clothes, and other inmates having gone on other business. Ram Kali had on all her ornaments Exs. I to V.

At about 10 a.m. the respondent Naththu arrived and told the girl that she was wanted by his sister-in-law Imarti. The unsuspecting Ram Kali accompanied him, and together they entered the house of the respondents. That was the last she was seen alive by anyone barring her murderers. When she failed to return home her mother began a search for and looked for her in all likely places, including the house of the respondents, but no trace of her could be found. Chhote Lal on returning home was apprised of the disappearance of his sister, but his search too yielded no result.

The search was continued on the following two days but proved unavailing. On Monday the 12th May the respondent Misri went to the police station at Chhibramau, six miles away, and lodged a report under Sections 323 and 506, I. P. C., marked Ex. P-8, in which he accused three outsiders of threatening and assaulting him on the ground that he had had a hand in the abduction of the Dhobi girl, but the report was not followed up by any complaint in Court. Tuesday the 13th May was the market day of Chhibramau, a largish place.

A man named Baldeo Kachhi of village Shahjahanpur had gone there to make some purchases. In the market there he accidentally met the respondent Naththu who showed him the karas and sutia Exs. I and II, said that he was trying to sell them but could find no purchaser, and offered Rs. 10/- to Baldeo to

dispose of them. Baldeo's suspicion was Immediately aroused, for, like all the other residents of the village, he was aware of the events of the preceding Saturday and the fruitless search for Ram Kali.

Accordingly on the pretext of buying the ornaments himself he brought Naththu back to the village, and leaving him in a grove on the outskirts went to a certain platform where, a number of respectable men of the village were sitting. Among these was Mumtaz Ali, a retired Subedar of the Army, who is a person of unimpeachable character. Chhote Lal Dhobi too was present nearby.

Baldeo related to these men what had happened some men were immediately despatched to bring Naththu, and he was produced at the platform within a short time. Mumtaz Ali asked Naththu to show what he had in his possession, and he produced the karas and sutia Exs. I and II from a scarf tied round his waist. Chhote Lal immediately recognised the two ornaments as belonging to his sister Ram Kali.

Naththu was thereupon interrogated. He gave the village people certain information which showed that Bam Kali had been murdered and robbed of her ornaments. On receiving this information Mumtaz Ali and his companions sent for Imarti, the wife of the respondent Misri. On enquiry she said that Murli, Misri and Naththu had killed the girl, buried the body in the house and removed her ornaments. Thereafter Murli and Misri were sent for, but they kept silent.

15. The next step of the village people was to inform the police. To avoid all possibility of tampering they left Murli in charge of his house, at the same time placing a guard of villagers over him. Taking with them Naththu, Misri and Sm. Imarti and the ornaments Exs. I and II they proceeded to the police station at Chhibramau on two ekkas.

On reaching there at 11-30 p.m. Chhote Lal dictated the first information report Ex. P-1, which was taken down word for word by Sub-Inspector Ram Singh, the station officer of Chhibramau. At the same time Mumtaz Ali delivered to the Sub-Inspector the karas and sutia Exs. I and II, stating that they had been handed over by Naththu and had been recognised by members of the deceased girl's family as her property. Both the ornaments were sealed up then and there.

16. The report Ex. P-1 is a document of vital Importance and deserves to be quoted in full:

"Ten days back on Sunday I brought my sister, Sm. Ram Kali, aged 17 years, from her susral in connection with the marriage of my brother, Ram Kishun. Five days back on Saturday I had gone to the ghat for washing clothes, while Ram Kishun and Piare had gone to Hayatnagar to return articles sent for in connection with the marriage. When I returned home after midday, my mother told me that before midday Naththu Kori had come and taken away Ram Kali along with him and that she had not returned till then. I went and enquired from Naththu and Murli, Koris. They told me that she had come, but she had returned.

Then I and my brothers, who had returned in the evening, made a search in the village and neighbourhood. She was not found. We made a search on Sunday and Monday as well among our relations at distant places. She was not found. My brother Ram Kishun and nephew, Kirpal, have not returned from the search as yet. Ram Kali was wearing a sutia, weighing about 1/2 seer, valuing about Rs. 70/- in her neck, a kardhani, weighing about Rs. 55, valuing about Rs. 100/-, around her waist, eleven lachchhas, weighing about 1/4 seer, valuing about Rs. 35 in her legs, one pair of Chhail churis, weighing about 1/4 seer, valuing about Rs. 35/-, and one pair of anklets, weighing a little less than 1 seer, valuing about Rs. 140/-, all silver ornaments. Out of these the kardhani was given by me, while the remaining ornaments were given to her at her susral.

Today at midday Baldeo had come to Chhibramau for dhoti and clothes. Naththu Kori, who has come along with us, asked Baldeo Kachhi at Chhibramau to get one pair of karas and sutia, belonging to my sister Bam Kali and which Subedar Sahib is depositing, sold, promising him Rs. 10/- in return. Baldeo became suspicious. He took Naththu back to the village saying that he would purchase these. Baldeo told me. Subedar Sahib, Mahendra Singh, Bharat Singh, Munshi Singh and others in the village.

Then I took Basant, Bhura and Dwarka Dhobi along with me and going to the mango grove of Ghasi Ram, Ram Sahai caught hold of Naththu and brought him before the Subedar Sahib, Mahendra Singh and others. One pair of Karas and one sutia, mentioned above, were recovered from Naththu Kori. Subedar Sahib kept the same with himself.

Mahendra Singh, Kanchan Singh and others having asked him after some manoeuvring, he told that on Saturday when he called away Ram Kali at midday to his house, his lather, Murli and brother Misri, took her in a kothri inside the house and cut her with a Baqa (chopper), that all the three of them buried her head in one corner and trunk in another corner of the same kothri, that his father had taken off her ornaments and that today he had given him these karas and sutia to sell in the market for payment of a certain amount of debt to Ishwar, Dayal, Numbardar, and purchase of dhotis and clothes for being sent to his sister, Lutkya.

On his telling these things we searched for Misri and Murli and have brought Misri and his wife along with us leaving behind Dwarka Dobi, Narain Dhobi, Basant Dhobi, Khairu Chamar, Kirpal Singh Thakur, Sumer Kachhi and others of the village to keep guard on Murli and his house. The Mukhia lives at Jasuamai and the Chowkidar lives at Sikandarpur. Both of these were not found at their houses. For this reason we could not bring them with us. I bring against Naththu, Misri and their father Murli, Koris, residents of my village a charge of murdering my sister, Ram Kali, and taking her ornaments."

After recording the report and sealing up Exs. I and II the Sub-Inspector recorded the statements of Chhote Lal, Sm. Imarti, Baldeo, Mumtaz Ali and

several others who had gone to the police station. Immediately after doing so he left for Shahjahanpur, taking with him Naththu, Imarti and the villagers, but leaving behind Misri, since he was not giving out any information. The party reached the village at 5 a.m., and Murli's house was the first to be visited by the Sub-Inspector. Murli was present at his door-step, guarded by village people.

The southern room, which was found to be locked, was first pointed out. It was emitting foul smell. On being opened a mat was found on the floor covered with blood. There were also stains of blood on the walls. Two spots were pointed out in the floor. On digging a head was recovered from one spot and a trunk from the other, and the body was immediately recognised as that of the missing Ram Kali.

On further pointing out the chopper Ex. VII was recovered from the western room and the chhail churis, eleven lachchhas and kardhani, Exs. III to V, from the kitchen, the chopper did not bear any blood marks, the ornaments Exs. III to V had been buried in the kitchen floor and were dug out from there.

17. Medical evidence on Ram Kali's body shows that it had an incised wound 1 1/2" x 1/2" with the bone cut underneath on the chin, an incised wound 3" x 1/2" down to the bone on the back of the head, and an incised wound 5" x 4" completely severing the head from the body, the margins disclosing that several cuts had been made. The wounds were obviously by a heavy sharp cutting instrument like a chopper. That the girl was the victim of a cruel and dastardly murder can admit of no doubt whatsoever.

18. The case which the prosecution have attempted to set up is to the following effect. The respondent Murli was in debt and needed money. He and his two sons therefore planned to murder Ram Kali with the object of robbing her of her ornaments Exs. I to V. Taking advantage of the fact that with the exception of Sm. Imarti other inmates of the house were away from home they inveigled Ram Kali inside their house by Naththu being sent to fetch her on the pretext that she was wanted by Imarti. When she reached the house she was taken into the southern room, while Imarti was locked up in the western room and enjoined on pain of death not to utter a word.

Inside the southern room the unfortunate girl was thrown down on the mat and killed with the chopper Ex. VII and her five ornaments appropriated. The head was then severed from the body, and the two parts buried at two different spots in the floor. The room was then locked and the key kept by Murli. Enquirers were turned away with the false information that the girl had left shortly after meeting Imarti.

Imarti herself was forbidden from meeting anyone, and to ensure that she did not divulge the crime one of the respondents accompanied her whenever she had to go out for answering the call of nature. The ornaments were buried in the kitchen, while on the 13th May Murli gave two of them, Exs. I and II, to Naththu and asked him to go and sell them at the Chhibramau bazar. There the accidental meeting with Baldeo Kachhi revealed that the respondents had a direct hand in

the girl's disappearance.

19. The prosecution go on to allege that when produced before the village people on the platform Naththu gave the information that he, his father and brother had taken the girl into the room and killed her with a chopper, that they had buried the head in one corner and the trunk in another corner and that his father had given him Exs. I and II to sell in the market for payment of debts. It is further stated that when the Sub-Inspector reached the scene Naththu was the person who pointed out the southern room, that Murli produced the key with which its lock was opened and that Naththu pointed out the two spots from where Rain Kali's head and trunk were dug out.

Further, Naththu produced the chopper Ex. VII from the western room, while Murli pointed to the place in the kitchen where the ornaments Exs. III to V had been buried, and that he himself took out these three articles and handed them over. No doubt no blood was detected on the chopper, but this is explained by the fact that it had been carefully washed by the murderers.

20. The prosecution claim that there is sufficient evidence, mostly circumstantial, on the record which proves beyond any possibility of doubt that Ram Kali was conjointly murdered by the three appellants and robbed by them of her ornaments.

21. Although each respondent denies his own complicity in the crime, it is important to note that on their behalf it is admitted that Ram Kali was murdered inside their house and her body disposed of in the manner alleged by the prosecution; nor is it denied that the ornaments Exs. I to V belonged to the deceased girl. No explanation is however given for the recovery of three of the ornaments from the floor of their kitchen.

Murli pleads that he was away from home on the day of the murder; he denies producing the key of the southern room or the three ornaments from the kitchen. Misri's defence is that throughout the fateful day he was working as a labourer in another village, and on his behalf it is pointed that the prosecution do not allege that he gave any information which led to the incriminating discoveries. Both he and his father plead that his wife Imarti has illicit connection With one Kanchan Singh and accuse her for being responsible for their prosecution.

22. The defence of the respondent Naththu is quite different. Except for the actual murder he acknowledges all the parts attributed to him by the prosecution in this tragedy. For the murder he places the entire blame on his sister-in-law Imarti, and he declares that he had stolen the ornaments Exs. I and II from Imarti for selling them in the bazar, and further that, the extra judicial confession he made to the villagers was, not that he was a party to the crime, but that that was the work of his sister-in-law exclusively. He processes to be an eye-witness of the murder, which he described before the committing Magistrate in the following words :

"I called Ram Kali to my house at 10 a.m. at the instance of my brother's wife. When Ram Kali came to my house she felt sleepy as there had been a marriage at her house. My brother's wife told her to sleep on the mat, Ex. VI, which was spread in the kothri. My father had gone out to scrape grass. My brother had gone to work at Jagatpur. My brother's wife sent me to fetch green mangoes. When I returned I saw that my brother's wife had almost finished cutting Ram Kali with the gandasa, Ex. VII. She severed her head from the trunk in my presence.

When I asked my brother's wife as to what she had done, she ran to assault me. I asked her not to assault me. Upon this she told me that I should not tell anybody about that and that she would pay me for that. My brother's wife dug a ditch in the kothri and rolled the trunk in it and buried it. After that she dug another ditch and buried the head in it. As my brother's wife had said that in case I told anybody about that, I would also be murdered, I said nothing to anybody."

23. Before I turn to examine the evidence produced by the parties I should like to make a brief discussion of the law applicable to appeals against orders of acquittal. There seems to be an impression currently held that, in view of certain recent decisions of the Supreme Court, such an appeal, if based on questions of fact, cannot succeed. I am of opinion that this impression is erroneous. The leading case on the subject is that of *Sheo Swarup and Others vs. King Emperor* wherein their Lordships of the Judicial Committee laid down the following :

"Sections 417, 418 & 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittals should be reversed. No limitation should be placed upon that power, unless to be found expressly stated in the Code.

But in exercising the power conferred by the Code and before reaching its conclusion upon fact, the High Courts should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this however is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

24. That case has been followed with various shades of emphasis by the Supreme Court in all subsequent cases, the emphasis depending, so far as I have been able to see, on the particular facts of the case before their Lordships. All the relevant decisions were recently reviewed by a Division Bench of this Court, of

which I was a member, in State Vs. Ram Autar Chaudhry and Others, and the conclusion arrived at was that for upsetting the trial Court's acquittal the High Court

"should find such reasons which may be termed compelling and substantial reasons or which may be deemed to be clinching and conclusive before it would be justified, in upsetting an order of acquittal."

25. There is also the very recent case of Bansidhar Mohanty Vs. State of Orissa, where the Supreme Court had before them an appeal from a judgment of the High Court of Orissa reversing an order of acquittal passed by the Sessions Judge. Their Lordships found that the High Court had reversed the decision of the trial Court without noticing or giving due weight and consideration to the inherent weaknesses in the prosecution case and had been to a large extent influenced by suspicion, and observed:

"In our opinion the High Court was not justified, in an appeal from an order of acquittal, in brushing aside the view taken by the trial Court which is by no means patently absurd or unreasonable merely because, as a result of an elaborate and laborious process of reasoning, the High Court came to think that it might be possible to take a different view of the evidence. This approach appears to us to be utterly contrary to the salutary principles hereinbefore referred to."

26. This means that the High Court must give due weight and consideration to the inherent weaknesses, if any, in the prosecution case, must not be influenced by mere suspicion, must not by an elaborate and laborious process of reasoning come to the conclusion that a view different from that of the trial Court might be possible, and must not brush aside the trial Courts (sic) they are found patently absurd or unreasonable.

It clearly follows that if after avoiding such pitfalls the High Court on an examination of the entire evidence on the record comes to the conclusion that the charge against the accused is established beyond reasonable doubt it is its duty to set aside the order of acquittal, despite the fact that the charge against the accused person embraces only questions of fact.

27. These principles have got well settled by the authority of judicial pronouncements. The difficulty arises in their practical application. The guiding factors are the four matters laid down by the Privy Council in Sheo Swarup's case (A) (Supra). There is always the presumption of innocence in favour of the accused, a presumption not weakened by the fact that he has been acquitted at his trial. There is his ever-present right to the benefit of any reasonable doubt. These two factors must always operate in his favour until the time that he is actually found guilty.

But what is the true import of the other two matters laid down by the Privy Council, namely, the opinion of the trial Court on the credibility of the witnesses

and the findings of fact arrived at by it on the strength of their testimony, inasmuch as the point on which their Lordships lay particular stress in this connection is the advantage the trial Court has of having the witnesses before itself, an advantage denied to the Court of appeal? An analysis of this point seems necessary, more so as I have not seen it done in reported cases which have come to my notice so far.

28. Now, what are the ways by which the trial Court can hold a witness unreliable? In my opinion there are four, to wit:

(a) The witness's statement is inherently improbable or contrary to the course of nature, e.g. he says that he identified the focused by face in pitch darkness, or that he recognized his voice from a mile away, or that he saw the accused killing the deceased with a lathi whereas medical evidence proves that he died of a bullet wound.

(b) The witness's deposition contains mutually contradictory or inconsistent passage, e.g., at one place he says that A was the murderer, but at another that it was B.

(c) The witness is found to be a bitter enemy of the opposite party and therefore possesses ample motive for wishing him harm.

(d) The witness's demeanour whilst under examination is found abnormal or unsatisfactory (a contingency provided for by Section 363 Criminal P. C.)

29. I fail to see how with regard to items (a), (b) and (c) above the Court of appeal in evaluating the testimony of a witness is at all in an inferior position compared to the trial Court. Indeed, I am of opinion that the appellate Court stands in a position of greater advantage over the trial Court, for it can view the evidence of the witness concerned more objectively and consequently is in an even better position to decide the question of his credibility.

30. It is only in respect of item (d) that the trial Court can be deemed to be in a more favourable position, for it alone has the advantage of watching the demeanour of the witness whilst in the witness-box and can, if it so chooses, make a note about the demeanour. Here I might add that the trial Court is entitled to make its remark regarding demeanour either in the record of the deposition itself or in its judgment for we have it on the authority of the decision of a Division Bench of this Court briefly reported in *State v. Hari* AIR 1955 NUC 1521 (D) that it does not make any difference whether the Court concerned follows one method or the other,

One thing however I should like to mention in this connection, a long experience as a trial Judge has made me chary of judging a witness's trustworthiness merely through his demeanour, for I have found the most brazen liar giving his testimony in an impeccable manner whereas many an honest man displays such nervousness in Court and testifies with such hesitancy that an observer might be deceived into thinking that he was speaking falsely; it is indeed the deceptive

nature of the demeanour of a witness that makes trial Courts reluctant to record remarks u/s 363, Criminal P. C.

31. Coupled with these considerations is the sense in which the word "proved" is used in India. Section 3, Evidence Act recites;

"A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

32. This is a statutory definition of "proof" which I am afraid is frequently ignored. This definition combined with the analysis attempted in the foregoing would go to show that when the trial Court as a result of its observation of the demeanour of a witness reaches a certain conclusion on the credibility of the witness and thereupon arrives at a finding of fact, that finding must be given great weight by the appeal Court, but if the trial Court's assessment is based on one or more of items (a) (b) and (c) above there is no legitimate reason why the Court of appeal should not, after taking into account the matters before it including the reasons advanced by the trial Court, find a fact "proved" and thereby upset a finding on that point by the trial Court.

33. Accordingly the four matters laid down by their Lordships of the Privy Council in Sheo Swarup's case (A) appear to me to amount to the following.

(1) There is a presumption of innocence in favour of the accused persons, a presumption certainly not weakened by the fact that he has been acquitted at trial;

(2) the accused always has a right to the benefit of any reasonable doubt;

(3) great weight is deserved by a finding of fact given by the trial Court on the basis of the demeanour of witnesses testifying to it; and

(4) a finding of fact arrived at otherwise can be reversed by the Court of appeal if after giving consideration to the matters before it including the views of the trial Court it finds a fact "proved" in terms of Section 3, Evidence Act.

34. It follows that no limitation is placed on the power of the High Court under Sections 417, 418 and 423. Criminal P. C. to review at large the evidence upon which the trial Court's order of acquittal is founded and to reach the conclusion that upon that evidence, the order of acquittal should be reversed, provided that proper weight and consideration is given to these four matters.

The impression that owing to some recent decisions of the Supreme Court an appeal against an acquittal based on questions of fact can hardly ever succeed does not appear to be justified, though no doubt in Banshidhar Mohanty's case (C) (supra) the Supreme Court have warned the High Court against being influenced by mere suspicion, against concluding through an elaborate and laborious process of reasoning that a view different from that of the trial Court

might be possible, and against brushing aside the trial Court's findings unless they are found patently absurd or unreasonable.

35. I turn now to discuss the evidence on the record. I have mentioned earlier that on 10-5-1952 there were just four persons in the house, namely, the three respondents and Misri's 18 years old wife Imarti. Imarti has been produced as a witness by the prosecution, and indeed she is the sole eye witness of the crime. Her account of it is to the following effect. Naththu brought Ram Kali, who was wearing her five ornaments, to the house.

Imarti told her that she had not called her but asked her to sit down. Then at Naththu's bidding Imarti went into the western room, and the door of that was chained from the outside by Naththu. But through a barred window in the southern wall of the room Imarti could see a good deal of what was going on and could also hear sounds clearly. The three respondents seized Ram Kali by the hand, took her into the southern room and closed its door.

Imarti next heard Ram Kali shrieking. Hearing these shrieks she herself cried out to the respondents as to what they were doing, but Naththu from inside the southern room shouted out that she should keep quiet else she too would be killed. A short time later the three respondents emerged, from the southern room holding the chopper Ex. VII. They washed this chopper and then bathed themselves.

Thereafter, after looking up the door of the southern room, they opened her own room and she was able to come out. From that time they forbade her from going out even for drawing water, and whenever she had to answer the call of nature one of them invariably accompanied her. For these reasons she was not able to apprise anyone of the crime. On the 13th May she was called to the platform where Mumtaz Ali and the other village people showed her the ornaments Exs. I and II and enquired as to what had happened to Ram Kali. Thereupon she told them the entire story of the girl's murder.

36. This woman's testimony has been the subject of much controversy. The learned Sessions Judge has found her as "not at all a reliable witness". His principal reason for this view seems to be that she was on intimate terms with the prosecution witness Kanchan Singh and was therefore to use the words of the learned Judge--"a woman of easy virtue, who may have no love for her men-folk, and may even wish to put them out of the way".

There is no doubt some force in the contention that she has connection with Kanchan Singh, though it must be pointed out that according to the prosecution witness Chhote Dhobi the intimacy commenced subsequent to the present murder. Besides there is nothing whatsoever in the evidence to suggest that Imarti had ever tried to put her men-folk "out of the way". The learned trial Judge has further thought that there were certain contradictions in Imarti's story and that she might have been tutored by Kanchan Singh since on the 13th May she travelled with him in the same ekka from the village to the police station.

On the last point the learned Judge is manifestly wrong since there is unimpeachable evidence that in the same ekka her husband Misri also travelled, so that there could be no question of any outsider having a chance of coaching her into implicating her husband in the serious charge of murder. Finally the Sessions Judge has considered that the woman made her deposition under coercion from the police. This is based on the following passage in her cross examination before the Sessions Court:

"I told the Subedar (i.e. Mumtaz Ali) and others that I would not depose against my husband. I had disclosed the fact because it was true, but I told them that I would not depose in Court. The Sub-Inspector forced me to give evidence. He did not beat, torture or threaten me, but only orally compelled me to give evidence".

37. Thus on her own showing no coercion was exercised. But where the trial Judge really went wrong in dealing with Imarti's testimony was to treat her as an ordinary witness for the prosecution instead of as an accomplice, which is her true character. Had he done so he would not have brushed aside her evidence in the way that he did.

Under Section 337, Criminal P. C. an "accomplice" is "any person supposed to have been directly or indirectly concerned in or privy to the offence". In the case of Ramaswami Gounden v. Emperor ILR Mad 271 (E) it was pointed out that an accomplice signifies a guilty associate in crime, and that he is a person who sustains such a relation to the criminal act that he could be jointly charged with the accused.

The circumstances of the instant case clearly indicate that Imarti must have been a party to Ram Kali's murder, participating in the prior concert with the others and possessing the same common intention as them, though it is permissible to suppose that she did not take any direct part in the execution of the crime. She is the person who, admittedly without legitimate reason, had sent for the girl, for otherwise on the latter's arrival she would have told her so and the girl would have gone back at once.

The deceased girl's mother Kokila, a witness against whose veracity not a word has been suggested and who actually made several admissions favourable to the respondents, has stated that on the 10th May when she went to the respondents' house looking for her missing daughter she met Imarti and was told by her that the girl had come but had returned, a deliberate lie. Although she acknowledged that she was a witness of the crime Imarti neither raised any alarm nor informed anyone.

I cannot believe her for a moment when she declares that whenever she went outside she was accompanied by member of the family, for there is not a scrap of evidence to support this. She must have had ample opportunity of telling others, but she failed to avail herself of it. She omitted to perform her statutory duty u/s 44, Criminal P. C. to lodge information with the nearest Magistrate or police officer of the commission of the murder. It was not until the 13th May that for

the first time she spoke of the crime, and that too when taxed by the village people. These circumstances patently ascribe to her the character of an accomplice.

38. This being so, the question arises as to what is the real value of her testimony? On the negative side, there is the undoubted fact that it is a self-exculpatory statement, for she has been careful to pretend that she was an unwilling witness to and not a participant in the crime. She also might possibly be credited with a desire to harm her men-folk in view of her liaison with Kanchan Singh.

On the positive side, there is the impressive fact that, unlike an approver, she is not giving her testimony in lieu of a portion; she is not testifying for the sake of a personal advantage to herself. Then, her present story is confirmed by the statement she made before her fellow-villagers as early as the 13th May, and there is no suggestion whatsoever of any coercion having been used for making her do so. Again, as an acknowledged inmate of the house who was actually present she must speak with personal knowledge of the crime.

In these circumstances the safest course appears to me to be that laid down by the Supreme Court in *Kashmira Singh Vs. State of Madhya Pradesh*, wherein their Lordships have observed that the Court may call in aid the woman's statement and use it to lend assurance to the other evidence and thus fortify itself into believing what without the aid of the statement it would not be prepared to accept.

Accordingly this is the use I propose to make of Imarti's evidence, though I should like to add that in my opinion there is other evidence on the record which proves the guilt of at least two of the respondents so conclusively that it is really not necessary to seek the assistance of Imarti's testimony.

39. To turn now to a consideration of the rest of the evidence. In order that a complete picture of the affair be drawn it will be helpful if the various material facts or circumstances are dealt with in chronological order. (After narrating certain circumstances as disclosed in the evidence His Lordship proceeded :)

(40-47) We next have discoveries of material facts made on information supplied by the respondents Naththu and Murli. Incidentally, it is common ground that no information was given by the respondent Misri which led to any discovery, and indeed this was the reason why the Sub-Inspector did not bring him along to the village. The witnesses on this part of the prosecution case are Sub-Inspector, Ram Singh, Mumtaz Ali and Ishwar Dayal. The Sub-Inspector's impartiality stands unquestioned.

We have already seen that Mumtaz Ali's credit is unimpeachable. Ishwar Dayal too must be placed in the same category for at the trial the defence made no attempt whatsoever to challenge his veracity. Thus all these three witnesses must be considered to be honest and impartial. It appears from their testimony

that after the first report Ex. P-1 had been recorded and the ornaments Exs. I and II taken in possession by the Sub-Inspector the latter took the statements of the persons who had gone to the thana.

After doing so he brought Naththu with him to the village, reaching there at 5 a.m., the 14th May. He called Mumtaz Ali and Ishwar Dayal to serve as witnesses of the searches and recoveries. First of all, Naththu pointed out the southern room. Its door was found locked, whereupon Murli produced, the key from his pocket and the door was opened. The room was smelling badly. The blood-stained mat was lying on the floor, and there were also blood-stains on the wall.

Naththu indicated two spots in two corners. On digging Ram Kali's head was recovered from one spot and her trunk from the other. Next Naththu took out the chopper Ex. VII from the western room and handed it over. After that Murli dug out the ornaments Exs. III to V, tied up in a piece of cloth, from the floor of his kitchen, and delivered them to the Sub-Inspector. It is a common ground that these belonged to Ram Kali.

48. Naththu admits pointing out the southern room and the spots from where the deceased girl's head and trunk were recovered, but he attempts the explanation that he was able to do so because he had seen Imarti burying them there. He also acknowledges delivering the chopper, though it must be conceded that this cannot be deemed to be an incriminating circumstance inasmuch as the weapon was innocent of blood-stains--we have seen Imarti declaring that the chopper had been washed by the respondents soon after the crime.

Murli however denies being responsible for the recovery of the ornaments Exs. III to V. In face of the clear evidence of the Sub-Inspector. Mumtaz Ali and Ishwar Dayal his disclaimer cannot be accepted for a moment. Even the learned Sessions Judge has agreed that the discoveries were made in the manner alleged by the prosecution.

But with regard to Naththu his view is that no discovery can be deemed to have been made at his instance inasmuch as the room and the two spots had already been indicated in the first report, while in respect of Murli he has found himself unable to believe that the way of the southern room was supplied by this respondent because this fact is not found mentioned in--to quote from the Judge's judgment--"the inquest report Ex. P-4". What the learned Judge had in mind was the recovery memo Ex. P-3. The learned Judge's views on both points are erroneous.

The report Ex. P-1 speaks of the burial of the head and trunk in two corners of "a room" but is silent on the identity of that room, and it will be recalled that the house of the respondents consists of several rooms. Without the pointing out by Naththu it would not have been possible for the Sub-Inspector or the witnesses to know which one of the various rooms in the house had been used for the murder or which contained the two portions of the dead body. Clearly material, and indeed highly incriminating, the facts were discovered on the basis of

information supplied by this respondent.

With regard to Murli I am prepared to concede that the recovery memo Ex. P-3 does not mention his producing the key of the lock placed on the southern room. Nevertheless this fact has been proved from the testimony of witnesses of the calibre of Mumtaz Ali and Ishwar Dayal and must therefore be accepted; it is not possible to expect every little item to find place in a mere memorandum.

As regards the recovery of the ornaments Exs. III to V the learned Judge has accepted this as being made at the instance of Murli, but tenders the opinion that mere recovery is ""not conclusive against the accused on the charge of murder. It is certainly conclusive on the charge of retention of stolen property". I agree that taken by itself the mere fact of recovery of the ornaments as a result of Murli's information is not conclusive regarding the murder charge; nevertheless it requires to be considered whether taken in conjunction with other evidence it establishes that charge also.

It has been argued on the strength of the decision in Trimbak Vs. The State of Madhya Pradesh, that mere recovery of the ornaments on the pointing out by Murli cannot be interpreted as evidence of his guilt. In my opinion the facts of Trimbak's case (G) are clearly distinguishable. There the ornaments were recovered from an open field which was accessible to all and sundry which made it difficult for their Lordships to hold positively that the accused was in possession of the articles. Their Lordships further pointed out that the fact of recovery by the accused was compatible with the circumstance of somebody else having placed the articles there and of the accused somehow acquiring knowledge about their whereabouts.

The instance case relates neither to an open field accessible to all and sundry nor to a place with a hundred rooms; it is concerned with an ordinary village house comprising half a dozen rooms, the house being in the exclusive possession of the respondents and being completely inaccessible to all outsiders. The ornaments Exs. III to V could not have been buried in the kitchen without Murli being in possession of them and without his being fully aware of their true nature. Nor was it possible for him or his son Naththu to be unaware of the use to which the locked southern room had been put and of its contents.

49. This completes the discussion of the facts or circumstances appearing from the evidence adduced on behalf of the prosecution. The respondents examined two witnesses before the trial Court, Sriram Singh and Megha. (After discussing the evidence of these witnesses his Lordship proceeded:)

50-52. My conclusions from the discussion attempted above may now be summarised. Item-wise they are as follows :

(a) The respondent Murli was in embarrassed circumstances financially and was in need of money.

(b) On 10-5-1952 the only occupants of the house of the respondents were the

three respondents and Sm. Imarti.

(c) That day at about 10 a.m. Naththu took the girl Ram Kali to the house by telling her that she was required by Imarti. At that time the girl was wearing the five ornaments Exs. I to V. That was the last time she was seen by anyone barring her murderers.

(d) When her mother Kokila went out in search, of her Murli told her that the girl had never visited his house. But later when her brother Chhote made the same enquiry Murli informed him that the girl had come but had gone back.

(e) None of the respondents did anything about the matter on the 10th or 11th May, although other villagers remained busy searching for the missing girl.

(f) On the 12th May Misri lodged the report Ex. P-8, which was in the nature of peshbandi. It was made before the discovery of any relevant fact and while the search for the girl was still being pursued.

(g) On the 13th May Naththu accidentally met Baldeo Kachhi in the Chhibramau market, showed him the ornaments Exs. I and II and offered him a bribe of Rs. 10/- for selling them, falsely explaining that they belonged to his mother.

(h) When brought to the village by Baldeo the same day Naththu made an extra-judicial confession before his fellow-villagers, comprising men of integrity, acknowledging that Ram Kali had been, murdered conjointly by himself and his father and brother and robbed of her ornaments, and stating that Exs. I and II had been given to him by his father to sell.

(i) When called by the village people Imarti attributed the murder and robbery to the three respondents but took care not to implicate herself in the crime.

(j) But when Murli and Misri were summoned before the village people they chose to remain silent.

(k) All these facts were ascertained by the villagers themselves unassisted and were mentioned the same night in the Erst information report Ex. P-1.

(l) Early in the morning on the 14th May Naththu pointed out the southern room. Its lock, was opened with a key supplied by Murli. A bloodstained mat was lying on the floor, and there were also blood-stains on the wall. Naththu further pointed out two spots in two corners, and from, these spots Ram Kali's head and trunk were recovered Murli pointed out the kitchen and from its floor dug out and delivered the girl's ornaments. Exs. III to V. (The recovery of the chopper Ex. VII on the pointing out of Naththu may be disregarded since no incriminating signs were detected on it.) These discoveries made as they were on information supplied by Murli and Naththu are compatible only with their direct hand in the murder and robbery.

(m) Naththu's story, related for the first time in Court, putting the blame solely on Imarti is a complete fabrication, and is Intended to shift the blame from the

shoulders of himself and his father and brother.

(n) There are circumstances which go to throw a certain amount of doubt on Misri's complicity in the crime.

53. In view of my finding with regard to Misri it is permissible to hold that the charge against him has not been proved to the extent essential in a criminal case, more so when he has secured an acquittal from the trial Court. But the items (a) to (m) above, considered as they have been on the basis of my interpretation of the four matters laid down by the Privy Council in Sheo Swarup's case (A), leave no room for doubting the guilt of Murli and Naththu.

In arriving at this finding I have reviewed at large the evidence upon which the trial Court's order of acquittal was founded, and I have not held any individual item established unless it was proved in terms of Section 3, Evidence Act. I have further endeavoured not to allow mere suspicion to take the place of proof and to avoid any elaborate and laborious process of reasoning for taking a view different from that of the trial Judge, and have not brushed aside the learned Judge's findings on any point unless it was patently unreasonable.

Indeed, on the proved items of evidence I do not even find it necessary to call in aid the evidence of Imarti. There are thus substantial and compelling reasons for reversing the order of acquittal passed in respect of Murli and Naththu. I therefore allow this appeal, set aside the order of acquittal and convict these two respondents of offences punishable under Sections 302 and 392, I. P. C. read with Section 34, I. P. C. Misri is however given the benefit of doubt and his acquittal affirmed, so that the appeal against him must be dismissed.

54. This was a cruel, cold-blooded and dastardly murder committed on a defenceless girl who had never given the slightest provocation to her murderers. Its sole motive was to deprive her silver ornaments so as to enable Murli to shoulder his financial obligations. The only appropriate sentence for Murli is therefore one of death. Naththu however is entitled to some concession on account of his extreme youth. Besides, in his case it is permissible to inter that he acted under the domination of the will of his father Murli. The lesser penalty for murder should suffice in his case.

55. In the result Murli is held guilty u/s 302/34, I. P. C. and sentenced to death, and it is directed that the sentence be carried out according to law. For the same offence Naththu is sentenced to transportation for life. Further, each of these persons is sentenced to seven years' rigorous imprisonment u/s 392 34, I. P. C. Naththu's sentences shall run consecutively.

56. Misri's acquittal is maintained. He shall be released from custody forthwith unless he is required on some other charge.

57. BY THE COURT : We allow this appeal in respect of Murli and Naththu, set aside their order of acquittal and find them guilty of offences under Sections 302 and 392. I. P. C. read with Section 34, I. P. C. We sentence Murli to death u/s

302 34. I. P. C., order that he be hanged by the neck till he be dead and direct that the sentence be carried out according to law. u/s 302/34, I. P. C. we sentence Naththu to transportation for life.

Further u/s 392 34, I. P. C. we sentence each of these two respondents to rigorous imprisonment for seven years. The imprisonment of Naththu shall be consecutive. We dismiss the appeal in respect of Misri, maintain his order of acquittal and direct that he be released from custody forthwith unless he is required on some other charge,

58. Mr. Baleshwari Prasad, who appeared on behalf of the respondents, prayed for a certificate of fitness for appeal to the Supreme Court in this case. So far as one of the respondents Murli is concerned, we have sentenced him to death after allowing the Government appeal, so that Murli would undoubtedly have a right of appeal under Article 134(1)(a) of the Constitution.

The question whether the other convicted person Naththu would also have a right of appeal under that Article or not need not detain us for we are of opinion that in case there is an appeal by Murli then the entire appeal should be open before the Supreme Court and in that view of the matter we considered it appropriate to accord necessary certificate to Naththu in case he wishes to prefer an appeal.