

GANESH LAL

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v.

STATE OF RAJASTHAN

OCTOBER 31, 2001

[R.C. LAHOTI AND ASHOK BHAN, JJ.]

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Criminal Trial :

Appreciation of Evidence—Circumstantial Evidence—Incriminating circumstances—No explanation offered by accused for such circumstances—Held, they can be used as inculpatory circumstances—Such circumstances form a complete chain and silence of accused supplies 'missing link' if any—On facts, held, accused guilty of offence charged—Code of Criminal Procedure, 1973—Section 313.

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Indian Evidence Act, 1872—Section 114—Presumption—More than one offence taking place as part of one transaction—Recovery of recently stolen property from possession of accused—Possession unexplained—Other unexplained incriminating circumstances also available—Held, presumption arises against accused in respect of commission of other offences also forming part of same transaction—Indian Penal Code, 1860—Sections 302, 376(2) (f) and 404.

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The body of deceased, a young girl of 11 years, was found near the field belonging to her father. Her neck was found broken, there was injury marks on the neck, blood was oozing out from neck and private parts of the body, her both legs were chopped off from near the ankles and kuralias, silver ornament worn by deceased, one in each leg, were found missing. Prosecution alleged that appellant accused had raped the girl and then killed her by throttling. Trial Court convicted accused of offences punishable under Sections 376(2)(f), 302 and 404, IPC which was upheld by the High Court. Hence the present appeal.

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Dismissing the appeal, the Court

HELD : 1. There is no reason to disbelieve the evidence of recovery and seizure. The seals thereon were affixed at the police station. It was

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A rainy season. It had also rained on that night. The fields were wet and had water logging at some places. The recovery and seizure had taken place in the wee hours and the only means of light available was a torch carried by the police. In such situation, merely because the articles were not sealed at the place of seizure but were sealed at the police station, the recovery and seizure do not become doubtful. [625-B-C]

2. In the facts and circumstances of a given case relying on the strength of the presumption the Court may dispense with direct proof of certain such facts as can be safely presumed to be necessarily existing by

C applying the logic and wisdom underlying Section 114 of the Evidence Act. Where offences, more than one, have taken place as part of one transaction, recent and unexplained possession of property belonging to deceased may enable a presumption being raised against the accused that he is guilty not only of the offence of theft or dacoity but also of other offences forming part of that transaction, on the following tests being satisfied: (i) D The offence of criminal misappropriation, theft or dacoity relating to the articles recovered from the possession of the accused and such other offences can reasonably be held to have been committed as an integral part of the same transaction; (ii) the time lag between the date of commission of the offence and the date of recovery of articles from the accused is not too E wide as to snap the link between recovery and commission of the offence; (iii) availability of some piece of incriminating evidence or circumstances, other than mere recovery of the articles, connecting the accused with such other offence; (iv) caution on the part of the Court to see that suspicion, howsoever strong, does not take the place of proof. In such cases the F explanation offered by the accused for his possession of the stolen property assumes significance. Ordinarily the purpose of Section 313 of Code of Criminal Procedure is to afford the accused an opportunity of offering an explanation of incriminating circumstances appearing in prosecution evidence against him. It is not necessary for the accused to speak and explain. G However, when the case rests on circumstantial evidence the failure of the accused to offer any satisfactory explanation for his possession of the stolen property though not an incriminating circumstance by itself would yet enable an inference being raised against him because the fact being in the exclusive knowledge of the accused it was for him to have offered an H explanation which he failed to do so. [627-A-B; G-H; 628-A-C]

Baiju v. State of M.P., [1978] 1 SCC 588; *Earabhadrappa v. State of Karnataka*, [1983] 2 SCC 330; *Gulab Chand v. State of M.P.*, [1995] 3 SCC 574; *Mukund @ Mishra & Anr. v. State of Madhya Pradesh*, AIR (1997) SC 2622; *A. Devendran v. State of T.N.*, [1997] 11 SCC 720 para 20; *State of Maharashtra v. Suresh*, [2000] 1 SCC 471 and *Shivappa v. State of Mysore*, [1970] 1 SCC 487, relied on.

3.1. The accused was seen near the place of occurrence a little before the time of commission of the crime and his having seen the likely victim of the crime thereat. The recovery of kuralias worn by the deceased was made at the instance of the accused and there is a time lag of just 2 days between the offence and the recovery. An axe was recovered on an information given by the accused which was found to be stained with human blood. The axe had mud, pieces of bone and shreds of flesh and fat on it at the time of recovery. Clothes of the accused were recovered on being produced by him from his house. The four clothes were bundled up in a piece of cloth and kept hidden in an earthen pot. The manner in which the clothes were kept is not one in which the wearing apparels are ordinarily kept in the house. All these clothes were found to be stained with mud and human blood. The chaddi (underwear) was having stains of blood and semen-both. The accused is a bachelor. He had two injuries on his person which could have been caused at or about the time of occurrence. The nature of injuries was such that they could have been caused either by the scratches of the victim resisting the act of the accused or by the accused coming in contact with rough surface of the ground in the course of commission of the crime. All these circumstances were put to the accused. The accused failed to offer any explanation of such circumstances and therefore they can be used as inculpatory circumstances against him. [629-C-G]

3.2. The medical evidence shows that the victim girl was raped, her neck twisted and she was throttled. The accused was in recent unexplained possession of kuralias. These several criminal acts-rape, killing and theft-were committed in one transaction. The availability of incriminating circumstantial evidence and their having remained totally unexplained forge a complete chain of incriminating circumstantial evidence so as to fasten guilt upon the accused beyond any reasonable doubt. The silence of the accused supplies the 'missing link' if any. It is not only the recovery of stolen property but also availability of other strong circumstances which have fastened inescapable connectivity of the accused with the offences

A charged. [629-H; 630-A-B]

State of Maharashtra v. Suresh, [2000] 1 SCC 471, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1034-1035 of 2000.

B From the Judgment and Order dated 26.5.2000 of the Rajasthan High Court in D.B. Crl. J.A. No. 617/94 and D.B. Crl. A. No. 56 of 1995.

Seeraj Bagga (A.C.) for the Appellant.

C Ranji Thomas for Javed Mahmud Rao for the Respondent.

The Judgment of the Court was delivered by

R.C. LAHOTI, J. 'G' a young child of 11 years, daughter of PW6, the father and PW7, the mother, resident of a village within the limits of P.S.

D Shambhupura, Distt. Chittorgarh had gone to fetch fodder from the field of theirs at about 4 p.m. on 2.9.1992. She did not return back to home until 7 p.m. whereupon an extensive search was launched by the parents, associated with the villagers, who made inquiries not only in the village but also in nearby villages but without any result. Mohan Lal and Chhagan Lal, PW16 and PW23

E found the dead body of the missing girl in the field of Udai Lal at about 7 a.m. on 3.9.1992. Udai Lal's field is situated near the field of PW6. They informed the villagers whereupon they assembled in the field of Udai Lal. The dead body was in a bad shape. The neck was broken. There were marks of injury on the neck which appeared to have been twisted. Blood was oozing out from neck and private parts of the body. Her both legs were chopped off from near

F the ankles and were lying separated near the body. The *kuralias* (silver ornament worn by girls in the villages) which the deceased used to wear, one in each leg, were missing. The dead body and the chopped off legs were picked up from the field and brought to home. Bhanwar Lal, PW5, was sent to police station to lodge an F.I.R. of the incident. The investigation commenced.

G Ghaghara (a garment worn by girls on the lower part of the body) which the deceased was wearing, was found to be stained with blood oozing out from vagina and was seized. Post mortem was conducted. According to the facts found and the opinion based thereon, the girl was raped and then killed by throttling. The neck of the deceased was pressed with thumb and fingers.

H Thumb and finger marks could be visibly seen on the neck. The death was

caused by asphyxia. The legs were separated from the body after her death by chopping off with a sharp edged weapon.

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The accused was arrested shortly after midnight of 3rd and 4th September, 1992. The investigation pointed out to his involvement in the crime. He was challaned and put up for trial. The trial Court held the accused guilty of the offences punishable under Sections 376(2)(f), 302 and 404 IPC. The accused was sentenced to 10 years rigorous imprisonment and fine of Rs.100, in default to undergo additional R.I. for 3 months under Section 376(2)(f), to life imprisonment and fine of Rs.100, in default to undergo additional R.I. for 3 months under Section 302 and to 2 years R.I. and fine of Rs.100, in default to undergo additional 3 months R.I. under Section 404, IPC. The Division Bench of the High Court has maintained the conviction recorded and sentences passed by the trial Court dismissing the appeal preferred by the accused. This appeal has been preferred by special leave.

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A perusal of the judgment of the trial Court and of the High Court shows the following pieces of incriminating circumstantial evidence having been found proved so as to hold the accused guilty of the offences charged:-

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- (i) Recovery, on the information given by the accused and on his pointing out and producing, of *kuralias* belonging to the deceased and which she was wearing on the date of the occurrence;
- (ii) recovery of axe, stained with human blood, on information given by the accused;
- (iii) presence of human blood and semen stains on the chaddi (longish underwear) of the accused;
- (iv) presence of marks of injury (two abrasions) on his person; and
- (v) presence of blood stains on dhoti, baniyan and bush-shirt of accused.

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The accused was arrested at 2 a.m., i.e. in the wee hours of 4.9.1992. Soon on his arrest he gave information that an axe and two silver *kuralias* were kept in the south-east corner of the field of victim's father and he could point out the places. Pursuant to the information so given, the accused led the police, accompanied by Panch witnesses, to the field of father of the deceased girl in

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A the early hours of the same day. The accused took out a polythene bag, containing two *kuralias*, which was lying hidden in the groundnut crop standing in the field. From another place, at a little distance from the place wherefrom the *kuralias* were recovered, the accused took out and produced an axe which was lying hidden below some grass and groundnut crop. The axe was smudged with mud. Some shreds of flesh and fat, pieces of bone and blood were also found sticking on the axe. All these articles recovered were seized, packed at the place of the seizure, brought to the police station and then sealed in the presence of the witnesses. The accused also pointed out the place of the occurrence whereat a dantli (sickle used for cutting grass) was found lying.

B The accused also gave information about his clothes kept in his residential house concealed in a *kothi* (an earthen pot used for storing foodgrains) and then led the police to his house. From the *kothi* he took out a few clothes bundled up in a piece of cloth. On opening the bundle came out a dhoti, a bush-shirt, a *chaddi* (a longish underwear, tailor made, from striped cloth, and not necessarily worn as an underwear only) and a baniyan. These clothes had mud stains on them. All the four clothes were found to have stains on them which, in the opinion of the investigating officer and the Panch witnesses, were blood stains. The *chaddi* had a few white stains which appeared to be of human semen. All the clothes were seized.

C The seized *kuralias* were promptly put up for test identification parade conducted by Prayagchand Verma, PW10, Addl. Chief Judicial Magistrate. They were satisfactorily identified by the parents of the deceased as the *kuralias* which the deceased girl used to wear usually and were also worn by her on the date of the incident.

D All the seized articles were sent to Forensic Science Laboratory Rajasthan, Jaipur. The blood smeared soil seized from the place of the incident, the ghaghra seized from the body of the deceased, kulhari recovered on pointing out by the accused and the four pieces of clothes, namely dhoti, *chaddi*, baniyan and bush-shirt seized on being produced by the accused from his house, were all found to be stained with human blood although grouping could not be carried out because of the blood having disintegrated. The Forensic Science Laboratory also detected human semen on ghaghra seized from the body of the victim and the *chaddi* produced by the accused.

E So far as the several recoveries are concerned, the statement of

investigating officer is corroborated by the testimony of Panch witnesses who are respectable residents of the same village in which the families of the victim and the accused also reside. There is no reason to disbelieve the evidence of recovery and seizure. The Panch witnesses have deposed that although *kuralias*, axe and dantli having been seized from the respective places whereat they were found, were cautiously packed and fully covered with the help of paper, cloth and thread at the place of the seizure, the seals thereon were affixed at the police station. It was rainy season. It had also rained on that night. The fields were wet and had water clogging at places. The recovery and seizure had taken place in the wee hours and the only means of light available was a torch carried by the police. In such situation, merely because the articles were not sealed at the places of seizure but were sealed at the police station, the recovery and seizure do not become doubtful. There is no suggestion that any of the seized items were so tampered with as to implant thereon any piece of incriminating evidence which was not otherwise available on the seized articles.

The *kuralias* recovered at the instance of the accused and on his pointing out were placed, before recovery, in such a way that they could not have been visible to anyone else unless pointed out and produced by the accused and therefore exclusive knowledge of concealment of *kuralias* should be attributed to the accused. So is the case with the axe. *Kuralias* were satisfactorily identified by the parents of the victim girl at the test identification parade and also in the Court. The father and the mother - both stated that the *kuralias* were those which the deceased used to wear and was wearing on the date of occurrence also. There is no reason to doubt the testimony of the two parents who in the ordinary course of things must have seen their daughter wearing the *kuralias* for several days and therefore they are the best persons who could have identified those articles. There is nothing in the cross examination of the two witnesses to doubt veracity of their identification of *kuralias*.

The axe was found to be stained with human blood. The four pieces of clothes recovered from the house of the accused on his pointing out are accompanied by such unusual circumstances which are also incriminating. The four items of clothes were bundled together, wrapped in another piece of cloth and then kept in a kothi (an earthen pot used for storing foodgrains in house) which is not the ordinary and usual way of keeping usable clothes. Ratan Lal PW8, resident of the same village and who knew the accused too well, stated that the clothes were of the accused as he had seen the accused

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A often wearing those clothes. The clothes, at the time of seizure, were found to be stained with mud. They were also found to be stained with human blood. The *chaddi* was stained with human semen. According to Dal Chand PW18, the accused was a bachelor. On 5.9.1992, the accused was sent up for medico-legal examination. He was examined by Dr. Subhas Jain, PW9 at 1.45 p.m. on 5.9.1992. There were two abrasions situated on his left shoulder and back of left elbow, each of the dimension of 1" x 1/10" and could have been caused by any blunt object. The two abrasions, looking to their situation and nature, could have been caused by coming in contact with the rough surface of the earth or by scratching. The accused was found to be potent and capable of performing sexual intercourse though there was no external injury on or around his private parts.

In the late afternoon of the day preceding the day on which dead-body of the victim girl was found, a few villagers about 4 in number including Mangilal, PW2 and Kani Ram, PW24 happened to be together in the field of D Mahender Singh which was under cultivation of Mangilal, PW2 who had sown Soyabin crop therein. There the accused came. They had puff of bidi (country-cigarette made of Tendu leaves) for a few minutes whereafter these villagers had left leaving the accused-appellant behind there itself. Mangilal, PW2 had seen a young girl of the height of about 3 feet being given a *dantli* (sickle) by E the accused. The girl had moved towards the field of her father. Mangilal saw the accused also going in that direction. However, the girl could not be identified by Mangilal because of distance in between. A sickle was found lying near the place which was identified to be the place of the incident where the victim girl was raped. The field of the father of the victim girl, the field F of Dalchand, PW18 whose land was taken by the father of the accused for cultivation on sharing basis and the field of Mahender Singh under cultivation of Mangilal, PW2 are situated almost adjoining each other as per the site plan.

Section 114 of the Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being G had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. Illustration (a) provides that a man who is in possession of stolen goods soon after the theft may be presumed by the Court to be either the thief or one who has received the goods knowing them to be stolen, unless he can account for his possession. H The presumption so raised is one of fact rather than of law. In the facts and

circumstances of a given case relying on the strength of the presumption the Court may dispense with direct proof of certain such facts as can be safely presumed to be necessarily existing by applying the logic and wisdom underlying Section 114. Where offences, more than one, have taken place as part of one transaction, recent and unexplained possession of property belonging to deceased may enable a presumption being raised against the accused that he is guilty not only of the offence of theft or dacoity but also of other offences forming part of that transaction.

In *Baiju v. State of M.P.*, [1978] 1 SCC 588, *Earabhadrappa v. State of Karnataka*, [1983] 2 SCC 330, *Gulab Chand v. State of M.P.*, [1995] 3 SCC 574, *Mukund @ Mishra & Anr. v. State of Madhya Pradesh*, AIR (1997) SC 2622 and *A. Devendran v. State of T.N.*, [1997] 11 SCC 720, para 20, murder and robbery were proved to have been integral parts of one and the same transaction and the presumption arising under illustration (a) to Section 114 of the Evidence Act was applied for holding the accused guilty of not only having committed robbery but also murder of the deceased. The presumption was founded on recovery of stolen property belonging to the deceased.

While raising such presumption the time factor between the date of the offence and recovery of stolen property from the possession of the accused would play a significant role. Precaution has to be taken that the presumption may not be so stretched as to permit suspicion taking the place of proof. No hard and fast rule can be laid down.

A review of several decisions of this Court, some of which we have cited hereinabove, leads to the following statement of law. Recovery of stolen property from the possession of accused enables a presumption as to commission of offence other than theft or dacoity being drawn against the accused so as to hold him a perpetrator of such other offences on the following tests being satisfied: (i) The offence of criminal misappropriation, theft or dacoity relating to the articles recovered from the possession of the accused and such other offences can reasonably be held to have been committed as an integral part of the same transaction; (ii) the time-lag between the date of commission of the offence and the date of recovery of articles from the accused is not so wide as to snap the link between recovery and commission of the offence; (iii) availability of some piece of incriminating evidence or circumstance, other than mere recovery of the articles, connecting the accused with such other

- A offence; (iv) caution on the part of the Court to see that suspicion, howsoever strong, does not take the place of proof. In such cases the explanation offered by the accused for his possession of the stolen property assumes significance. Ordinarily the purpose of Section 313 of Code of Criminal Procedure is to afford the accused an opportunity of offering an explanation of incriminating circumstances appearing in prosecution evidence against him. It is not necessary for the accused to speak and explain. However, when the case rests on circumstantial evidence the failure of the accused to offer any satisfactory explanation for his possession of the stolen property though not an incriminating circumstance by itself would yet enable an inference being raised against him because the fact being in the exclusive knowledge of the accused it was for him to have offered an explanation which he failed to do. (See *Earabhadrappa v. State of Karnataka*, para 13 (supra), *Gulab Chand v. State of M.P.*, para 4 (supra)).

- D In *State of Maharashtra v. Suresh*, [2000] 1 SCC 471 a female child of tender years was raped and murdered. Case against the accused rested on circumstantial evidence. The accused when arrested was found to have injuries on his person and blood and semen on under-clothes. There were several other incriminating circumstances pointing to the guilt of accused and this one, mentioned just before, termed by this Court in its judgment as 'most formidable incriminating circumstance' was put to the accused but he could not give any explanation whatsoever and instead chose to deny the existence thereof. This Court held that a false answer offered by the accused on his attention being drawn to such circumstance renders the circumstance capable of inculpating him. The Court went on to say that in a situation like this such a false answer can also be counted as providing 'a missing link' for completing the chain of circumstantial evidence.

- G In *Shivappa v. State of Mysore*, [1970] 1 SCC 487 this Court set out a little different line of logical thinking, for a judge of facts, by stating that if there was other evidence to connect an accused with the crime itself, however small, the finding of stolen property with him is a piece of evidence which connects him further with the crime; there is then no question of presumption; the evidence strengthens the other evidence already against him. It is only when the accused cannot be connected with the crime except by reason of possession of the fruits of crime that the presumption may be drawn.

- H In *A. Devendran v. State of T.N.*, (1997) 1 SCC 720 this Court empha-

sized the need of taking into consideration, in arriving at a decision, the factors such as the nature of stolen articles, the nature of their identification by the owner, the place and the circumstances of recovery, the intervening period between the date of occurrence and the date of recovery and the explanation of person from whom the recovery is made.

In the case at hand a little before the probable time of commission of the crime the accused was seen near the place of occurrence. We should not be misunderstood as holding the evidence of availability of the accused near the place of occurrence and his passing on a dantli (sickle) to a young girl-child as evidence of 'last seen together'. We are only holding the presence of the accused near the place of occurrence a little before the time thereof and his having seen the likely victim of the crime thereat. The recovery of *kuralias* worn by the deceased was made at the instance of the accused and there is a time-lag of just 2 days between the offence and the recovery. An axe was recovered on an information given by the accused which is found to be stained with human blood on examination by forensic science laboratory. The axe had mud, pieces of bone and shreds of flesh and fat on it at the time of recovery, as depoed to by the witnesses and perception of which facts needs no expertise. Clothes of the accused were recovered on being produced by him from his house. The four clothes were bundled up in a piece of cloth and kept hidden in an earthen pot. The manner in which the clothes were kept is not one in which the wearing appurtenances are ordinarily kept in the house. All these clothes were found to be stained with mud and human blood. The *chaddi* (underwear) was having stains of blood and semen – both. The accused is a bachelor. He had two injuries on his person which could have been caused at or about the time of occurrence. The nature of the injuries was such that they could have been caused either by the scratches of the victim resisting the act of the accused or by the accused coming in contact with rough surface of the ground in the course of commission of the crime. All these circumstances were put to the accused. His only answer to all such circumstances is '*Galat Hai*' (i.e., it is false or incorrect). The fact remains that the accused failed to offer any explanation of such circumstances and therefore they can be used as inculpatory circumstances against him and the necessary inferences flowing therefrom used as links in chain of incriminating circumstantial evidence fastening guilt on him. The medical evidence shows that the victim girl was raped, her neck was twisted and she was throttled to kill her. On her death the two legs were chopped off and the *kuralias* worn by her were removed. The accused was in

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- A recent unexplained possession of *kuralias*. These several criminal acts – rape, killing and theft – were committed in one transaction. The availability of the abovesaid pieces of incriminating circumstantial evidence and their having remained totally unexplained forge a complete chain of incriminating circumstantial evidence so as to fasten guilt upon the accused beyond any reasonable doubt. The silence of the accused supplies the 'missing link', if any, as held by this Court in the case of *State of Maharashtra v. Suresh* (supra). It is not only the recovery of stolen property but also availability of other strong circumstances which have fastened inescapable connectivity of the accused with the offences charged.
- B For the foregoing reasons we do not find any case having been made out for interference with the judgment of the High Court, confirming the finding of guilty recorded by the Trial Court for the several offences for which the accused was charged and the sentences passed thereon. The appeal is dismissed.
- C We would like to place on record our appreciation of very able assistance rendered to Court by Shri Seeraj Bagga, Advocate, who appeared *amicus curiae* for the appellant.

A.K.T.

Appeal dismissed.