A STATE OF RAJASTHAN

v.

TALEVAR & ANR.

(Criminal Appeal No. 937 of 2005)

B JUNE 17, 2011

[DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]

Evidence Act, 1872:

C *s.114, Illustration (a) – Presumption on the basis of articles recovered in a case of dacoity with murders – Out of 8 accused two accused-respondents acquitted by High Court – Appeal by State – HELD: Admittedly, there is no evidence of identification of the accused – Recovery on disclosure* D *statements was not in close proximity of time from date of incident – More so, recovery is either of cash, small things or a scooter, which can change hands without any difficulty – Therefore, no presumption can be drawn against the accused u/s 114, Illustration (a) – No adverse inference can be drawn* E *on the basis of the recoveries made on their disclosure statements to connect them with the crime – Penal Code, 1860 – ss. 395, 396 and 397.*

Code of Criminal Procedure, 1973:

F *Appeal against acquittal – HELD: Only in exceptional cases, where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal – The appellate court should bear in mind the presumption of innocence of* G *the accused and further that the trial court's acquittal bolsters the presumption of his innocence – Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference – In the instant case, there is no reason to interfere with the well reasoned*

H

judgment and order of the High Court acquitting the respondents – Penal Code, 1860 – ss. 395.396 and 397 – Constitution of India, 1950 – Article 136.

An FIR was lodged by P.W.13 on the morning of 17.12.1996 stating that in the previous night 8-10 miscreants committed dacoity in his house in which the dacoits killed two persons, namely, his chowkidar and his neighbour, and decamped with cash, jewellery and silver wares. Respondent no. 2 was arrested on 24.12.1996 and respondent no. 1 on 19.1.1997. On the basis of disclosure statements made by them, some cash and some articles were recovered. In all, nine accused including the two respondents faced the trial. One of the accused died pending trial. The trial court convicted all the remaining 8 accused. On appeal, the High Court while maintaining conviction and sentence of imprisonment for life awarded to six of the accused, acquitted the respondents.

In the instant appeal filed by the State, the question for consideration before the Court was: whether adverse inference could be drawn against the accused merely on the basis of recoveries made on their disclosure statements.

Dismissing the appeal, the Court

HELD: 1.1. Admitted facts remained, so far as the two respondents/accused are concerned, that no test identification parade was held at all. Further, none of the eye witnesses, particularly, 'PW.12', 'PW.13', 'PW.2', 'PW.14' and 'PW.15', identified either of the respondents in the court. Therefore, there is no evidence so far as their identification is concerned. [para 6] [1057-G]

1.2. As regards the adverse inference on the basis of the recoveries made on disclosure statements made by

A the accused, the law on this issue can be summarized to the effect that where only evidence against the accused is recovery of stolen properties, then although the circumstances may indicate that the theft and murder might have been committed at the same time, it is not safe B to draw an inference that the person in possession of the stolen property had committed the murder. It also depends on the nature of the property so recovered, whether it was likely to pass readily from hand to hand. Suspicion should not take the place of proof. [para 7.7] C [1060-C]

Gulab Chand v. State of M.P., 1995 (3) SCR 27 = AIR 1995 SC 1598; *Tulsiram Kanu v. State*, AIR 1954 SC 1; *Geejaganda Somaiah v. State of Karnataka*, 2007 (3) SCR 899 = AIR 2007 SC 1355, *Sanwat Khan v. State of* D *Rajasthan*, AIR 1956 SC 54; *Earabhadrappa v. State of Karnataka* 1983 (2) SCR 552 = AIR 1983 SC 446; *Sanjay @ Kaka etc. etc. v. The State (NCT of Delhi)* AIR 2001 SC 979; *Ronny Alias Ronald James Alwaris & Ors. v. State of Maharashtra*, AIR 1998 SC 1251; *Baiju vs state of m.p.* E 1978 (2) SCR 1978= AIR 1978 SC 522; *Mukund @ kundu mishra vs state of m.p.* 1997 AIR 2622 – referred to.

1.3. In the instant case, respondent no. 2 was arrested on 24.12.1996 and a silver glass and one F thousand rupees were alleged to have been recovered on his disclosure statement on 29.12.1996. Again on disclosure statement dated 2.1.1997, a scooter alleged to have been used in the dacoity, was recovered. Similarly, respondent no. 1 was arrested on 19.1.1997 and on his G disclosure statement on 26.1.1997, two thousand rupees, a silver key ring and a key of an Ambassador car alleged to have been used in the crime were recovered. Thus, it is evident that recovery on the disclosure statements of either of the respondents/accused persons was not in close proximity of the time from the date of incident. More H

so, recovery is either of cash, small things or vehicles which can be passed from one person to another without any difficulty. In such a fact situation, the inescapable conclusion is that no presumption can be drawn against the two respondents/accused u/s 114 Illustration (a) of the Evidence Act. No adverse inference can be drawn on the basis of recoveries made on their disclosure statements to connect them with the commission of the crime. [para 8] [1060-D-H]

2. The instant appeal has been preferred by the State against the judgment and order of acquittal of the respondents by the High Court. The law on the issue is settled to the effect that only in exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. In the instant case, there is no reason to interfere with the well reasoned judgment and order of the High Court acquitting the respondents. [para 9-10] [1061-A-E]

Brahm Swaroop & Anr. v. State of U.P., AIR 2011 SC 280; *V.S. Achuthanandan v. R. Balakrishna Pillai & Ors.*, (2011) 3 SCC 317; *and Rukia Begum & Ors. v. State of Karnataka*, (2011) 4 SCC 779, relied on

Case Law Reference:

1995 (3) SCR 27	referred to	para 7.1
2007 (3) SCR 899	referred to	para 7.2
AIR 1956 SC 54	referred to	para 7.2

A	**AIR 1954 SC 1**	**referred to**	**para 7.3**
	1983 (2) SCR 552	**referred to**	**para 7.4**
	AIR 2001 SC 979	**referred to**	**para 7.5**
B	**AIR 1998 SC 1251**	**referred to**	**para 7.6**
	1978 (2) SCR 1978	**referred to**	**para 7.6**
	1997 AIR 2622	**referred to**	**para 7.6**
C	**AIR 2011 SC 280**	**relied on**	**para 9**
	(2011) 3 SCC 317	**relied on**	**para 9**
	(2011) 4 SCC 779	**relied on**	**para 9**

D CRIMINAL APPELALTE JURISDICTION : Criminal Appeal No. 937 of 2005.

From the Judgment & Order dated 27.10.2004 of the High Court of Judicature for Rajasthan, Jaipur bench at Jaipur in D.B. Criminal Appeal No. 1579 of 2002.

E

Manish Singhvi, AAG, Milind Kumar, Altaf Hussain, Harbans Lal Bajaj for the appearing parties.

The Judgment of the Court was delivered by

F **DR. B.S. CHAUHAN, J.** 1. This appeal has been preferred by the State of Rajasthan against the judgment and order dated 27.10.2004 passed by the High Court of Judicature for Rajasthan, Jaipur Bench, in Criminal Appeal No. 1579 of 2002 acquitting the respondents, setting aside their conviction and G the sentence passed by Additional District and Sessions Judge, (Fast Track), Laxmangarh, Alwar, dated 2.11.2002 in Sessions Case No. 4 of 2002 (14/2000) for the offences punishable under Sections 395, 396 and 397 of the Indian Penal Code, 1860 (hereinafter called the IPC).

H

2. The facts and circumstances giving rise to this case are as under:

A. Santosh Jagwayan (PW.13) lodged an FIR on 17.12.1996 at 8.30 A.M., that in the intervening night between 16th and 17th December, 1996 on hearing the noise, he sent his Chowkidar Gopal Nepali (deceased) to the roof of his house. Gopal Nepali went upstairs and opened the gate of the roof and found that 8 to 10 accused persons were trying to enter into the house by breaking upon the door of the roof. They immediately fired shot at Gopal Nepali (deceased) and entered into the house. The accused persons locked Shashi Devi (PW.12) wife of complainant, Preeti (PW.14) and Sandhya (PW.15), his daughters, in the bathroom and started looting the moveable properties. In the meanwhile, his neighbours raised their voice. Thus, the accused immediately fired a shot at Mrs. Anita Yadav, as a result of which, she died on the spot. Kripa Dayal Yadav (PW.2), husband of Anita Yadav (deceased) caught hold of one of the accused but he was beaten with the butt of the gun by the other accused persons and they got the accused released from his clutches. The accused decamped with cash, jewellery and silver wares etc.

B. On the basis of the said complaint, an FIR No. 240 of 1996 (Ex.P-30) was registered under Sections 395, 396, 397 and 398 IPC and investigation ensued. The dead bodies of Gopal Nepali and Anita Yadav were recovered and sent for post-mortem examination. Kuniya - accused/respondent was arrested on 24.12.1996. He made a disclosure statement (Ex.P-76) on 29.12.1996 on the basis of which a silver glass and one thousand rupees were recovered vide recovery memo (Ex.P-53). Further, on his disclosure statement, a scooter bearing No. RJ-05-0678 was recovered vide recovery memo (Ex.P-52) on 2.1.1997.

C. Another accused Talevar – respondent, was arrested on 19.1.1997 and on his disclosure statement made on

A 26.1.1997, two thousand rupees, a silver key ring and a key of Ambassador car was recovered vide seizure memo (Ex.P-45).

D. Some more recoveries were made from the other accused persons. After completing the investigation chargesheet was filed against 9 accused persons including the two respondents. As all of them pleaded not guilty, they were put to trial for the offences punishable under Sections 395, 396 and 398 IPC.

E. In the Sessions trial prosecution examined 34 witnesses in support of its case. The ornaments and stolen articles were identified by Shashi Devi (PW.12) and Santosh Jagwayan (PW.13). The trial court vide judgment and order dated 2.11.2002 convicted 8 accused including the two respondents. One accused named Ram Krishan, died during the trial. All of them stood convicted under the provisions of Sections 395, 396 and 397 IPC. All the accused were awarded punishment to undergo life imprisonment and a fine of Rs. 1,000/- and in default of payment of fine, to further undergo six months rigorous imprisonment under Section 396 IPC. All of them were convicted for the offence punishable under Section 397 IPC and a sentence to undergo rigorous imprisonment for seven years and a fine of Rs.500/- and in default of payment of fine, to further undergo three months rigorous imprisonment. They were further convicted under Section 395 IPC, awarded life imprisonment and fine of Rs. 1,000/- and in default of payment of fine, to further undergo six months rigorous imprisonment. Accused namely, Ghurelal, Chunchu @ Bhagwan Singh, Kallu, Rajpal and Samay Singh were further convicted under Sections 3/25 and 3/27 of the Arms Act and sentence was awarded to undergo three years rigorous imprisonment and a fine of Rs. 500/- each of them, in default of payment of fine, to further undergo three months rigorous imprisonment.

F. Being aggrieved by the said decision, all the accused including the two respondents preferred Criminal Appeal No. 1579 of 2002, which has been decided by the High Court vide

judgment and order dated 27.10.2004 acquitting the two respondents/accused though maintaining the conviction and sentence in respect of other accused. Hence, this appeal by the State against their acquittal.

3. Dr. Manish Singhvi, learned Additional Advocate General for the State of Rajasthan, has submitted that recovery of some of the looted property had been made on the basis of the disclosure statements made by the said respondents. The law provides for a presumption that they had participated in the crime and, therefore, the High Court has wrongly acquitted the said accused and thus, the appeal deserves to be allowed.

4. On the contrary, Shri Altaf Hussain, learned counsel appearing for the said two accused, has vehemently opposed the appeal contending that mere recovery of looted property on the disclosure statement of the accused, is not enough to bring home the charges of offence of loot or dacoity, when the recovery is made after expiry of a considerable period from the date of incident and particularly when the nature of the looted property is such which can change hands easily. Thus, no inference can be drawn against the respondents. The order of acquittal made by the High Court has been passed on proper appreciation of facts and application of law. The appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. Admitted facts remained so far as the two respondents/ accused are concerned, that no test identification parade was held at all. Further none of the eye witnesses, particularly, Shashi Devi (PW.12), Santosh Jagwayan (PW.13), Kripa Dayal Yadav (PW.2), Preeti (PW.14) and Sandhya (PW.15), identified either of the said respondents in the court. Therefore, there is no evidence so far as their identification is concerned.

7. Thus, the sole question remains to be decided whether

A adverse inference could be drawn against the accused merely on the basis of recoveries made on their disclosure statements.

7.1. In *Gulab Chand v. State of M.P.,* AIR 1995 SC 1598, this Court upheld the conviction for committing dacoity on the
B basis of recovery of ornaments of the deceased from the possession of the person accused of robbery and murder *immediately* after the occurrence.

7.2. In *Geejaganda Somaiah v. State of Karnataka,* AIR 2007 SC 1355, this Court relied on the judgment in *Gulab*
C *Chand* (supra) and observed that simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery. But culpability for the aforesaid offences will depend on the facts and circumstances of the case and the
D nature of evidence adduced.

It has been indicated by this Court in *Sanwat Khan v. State of Rajasthan,* AIR 1956 SC 54, that no hard and fast rule can be laid down as to what inference should be drawn from certain
E circumstances.

7.3. In *Tulsiram Kanu v. State,* AIR 1954 SC 1, this Court has indicated that the presumption permitted to be drawn under Section 114, Illustration (a) of the Evidence Act 1872 has to be drawn under the *'important time factor'*. If the ornaments in
F possession of the deceased are found in possession of a person *soon after the murder,* a presumption of guilt may be permitted. But if a long period has expired in the interval, the presumption cannot be drawn having regard to the circumstances of the case.

G

7.4. In *Earabhadrappa v. State of Karnataka* AIR 1983 SC 446, this Court held that the nature of the presumption under Illustration (a) of Section 114 of the Evidence Act must depend upon the nature of evidence adduced. No fixed time-limit can
H be laid down to determine whether *possession is recent or*

otherwise. Each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according "as the stolen article is or is not calculated to pass readily from hand to hand". If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed could not be said to be too long particularly when the appellant had been absconding during that period.

7.5. Following such a reasoning, in *Sanjay @ Kaka etc. etc. v. The State (NCT of Delhi),* AIR 2001 SC 979, this Court upheld the conviction by the trial court since disclosure statements were made by the accused persons on ***the*** *next day* of the commission of the offence and the property of the deceased was recovered at their instance from the places where they had kept such properties, on the same day. The Court found that the trial Court was justified in holding that the disclosure statements of the accused persons and huge recoveries from them at their instance by itself was a sufficient circumstance on the very next day of the incident which clearly went to show that the accused persons had joined hands to commit the offence of robbery. Therefore, recent and unexplained possession of stolen properties will be taken to be presumptive evidence of the charge of murder as well.

7.6. In *Ronny Alias Ronald James Alwaris & Ors. v. State of Maharashtra,* AIR 1998 SC 1251, this Court held that apropos the recovery of articles belonging to the family of the deceased from the possession of the appellants *soon after the robbery and the murder of the* deceased remained unexplained by the accused, and so the presumption under Illustration (a) of Section 114 of the Evidence Act would be attracted :

> "It needs no discussion to conclude that the murder and the robbery of the articles were found to be part of the same transaction. The irresistible conclusion would

A therefore, be that the appellants and no one else had committed the three murders and the robbery."

(See also: *Baijur v. State of Madhya Pradesh,* AIR 1978 SC 522; and *Mukund alias Kundu Mishra & Anr. v. State of Madhya Pradesh,* AIR 1997 SC 2622).

B

7.7. Thus, the law on this issue can be summarized to the effect that where only evidence against the accused is recovery of stolen properties, then although the circumstances may indicate that the theft and murder might have been committed C at the same time, it is not safe to draw an inference that the person in possession of the stolen property had committed the murder. It also depends on the nature of the property so recovered, whether it was likely to pass readily from hand to hand. Suspicion should not take the place of proof.

D

8. In the instant case, accused Kuniya was arrested on 24.12.1996 and a silver glass and one thousand rupees were alleged to have been recovered on his disclosure statement on 29.12.1996. Again on disclosure statement dated 2.1.1997, a E scooter alleged to have been used in the dacoity, was recovered. Similarly, another accused Talevar was arrested on 19.1.1997 and on his disclosure statement on 26.1.1997, two thousand rupees, a silver key ring and a key of Ambassador car alleged to have been used in the crime were recovered. Thus, it is evident that recovery on the disclosure statements F of either of the respondents/accused persons was not in close proximity of time from the date of incident. More so, recovery is either of cash, small things or vehicles which can be passed from one person to another without any difficulty. In such a fact situation, we reach the inescapable conclusion that no G presumption can be drawn against the said two respondents/ accused under Section 114 Illustration (a) of the Evidence Act. No adverse inference can be drawn on the basis of recoveries made on their disclosure statements to connect them with the commission of the crime.

H

9. The instant appeal has been prepared by the State against the judgment and order of acquittal of the respondents by the High Court. The law on the issue is settled to the effect that only in exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

(See : *Brahm Swaroop & Anr. v. State of U.P.*, AIR 2011 SC 280; *V.S. Achuthanandan v. R. Balakrishna Pillai & Ors.*, (2011) 3 SCC 317; and *Rukia Begum & Ors. v. State of Karnataka*, (2011) 4 SCC 779).

10. In view of the above, we do not find any reason to interfere with the well reasoned judgment and order of the High Court acquitting the said respondents. The appeal lacks merit and is accordingly dismissed.

R.P. Appeal dismissed.