Supreme Court of India
Mohan Lal & Anr vs Ajit Singh And Anr on 2 May, 1978
Equivalent citations: 1978 AIR 1183, 1978 SCR (3) 823
Author: P Shingal
Bench: Shingal, P.N.

PETITIONER:
MOHAN LAL & ANR.

Vs.

RESPONDENT:
AJIT SINGH AND ANR.

DATE OF JUDGMENT02/05/1978

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
DESAI, D.A.

CITATION:
1978 AIR 1183 1978 SCR (3) 823
1978 SCC (3) 249
CITATOR INFO :
R 1979 SC1284 (5)
F 1989 SC1205 (18)

ACT:
Evidence Act, 1872-S.114 (a)-Presumption to be drawn against the accused is a matter which depends on the circumstances of each case.
Criminal Procedure Code, 1973, s. 313-It is permissible to accept that part of the statement which accords with the evidence on the record and to act upon it--Evidence--Finger print evidence at crime, scenes, reliability of.

HEADNOTE:
Nishan Chand (deceased), son of appellant Mohan Lal, resident of Roranwali, was the Secretary of Roranwali, and Phulukhere Co-operative Societies. Respondent Ajit Singh, Nishan Chand's friend, was the Secretary of Roranwall Patti Sikhan Co-operative Society. He also lived in village Roranwali, with his maternal uncle Gurdial Singh who was the village Chairman. On June 17, 1974 both Nishan Chand and the respondent left for villages Lambi and Malaut on the former's bicycle for depositing the moneys realised on account of the dues of the Co-operative societies. They did not, however, return to Roranwali that night. On the next

day, Satpal, the younger brother of Nishan Chand, found the bicycle of his brother lying at some distance from the boundary of the village near a culvert and his brother's body in a field at a short distance from there and informed his father Mohan Lal. Mohan Lal and his brother Dharam Chand went to the place where the dead body lay. The dead body had many injuries, and a blood stained blade of a knife (Ex. P3) was lying near it. A black piece of cloth "fifty" was lying at some distance on the road, and as it was worn by Ajit Singh the-previous day, a report was lodged with the police. Ajit Singh was arrested on 21st June, 1974 and on his information that he had buried a sum of 41.00/- and a gold ring in his purse, tied in a handkerchief, near the water lift, and had concealed the blood stained clothes and a shoe inside the heap of cotton 'sticks' in a kiln on a road, the Police recovered those articles at his instance. The bundle of currency notes which was recovered at the instance of the respondent contained one currency note of Rs. 100/- which was suspected to have fingerprints. Ajit Singh was tried and was convicted by the Additional Sessions Judge of offences under ss. 302, 392 and 397 I.P.C. The Additional Sessions Judge sentenced him to death for the offence under secton 302 I.P.C. and to rigorous imprisonment for five years and seven years respectively for the offences under sections 392 and 397 I.P.C. On appeal, the High Court gave him the benefit of doubt and acquitted him. Mohan Lal (father of the deceased) and one Surinder Kumar filed the present appeal, by special leave.

Allowing the appeal, the Court,

HELD : (1) While considering the statement of the accused under section 313 Crl. P.C., 1973 it is permissible to reject the exculpatory part of the statement if it is disproved by the evidence on record, and to acts upon it. [832 BC]

Nishikant Jha V. State of Bihar [1969] 2 SCR 1033; Applied.

(2)The evidence on record was sufficient to show that the statement of the respondent which led to the recovery of certain articles was not only voluntary but fell within the purview of section 27 of the Evidence Act in as much as the "fact discovered" was the place from which the various articles were produced by the respondent and his knowledge of it. Moreover the actual recovery of the currency notes, the ring (bearing the initials of the deceased) and the purse (containing a library card having the address of the respondent) in pursuance of the information given by the respondent, and at his instance, was sufficient guarantee of the truth of that information and it could safely have been relied upon by the High Court. [834 C-D]

(3)There is no gainsaying the fact that a majority of fingerprints found at crime scenes or crime articles are partially smudged, and it is for the experienced and skilled fingerprint expert to say whether a mark is usable as fingerprint

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evidence. Similarly it is for a competent technician to examine and give his opinion whether the identity can be established, and if so whether that can be done on eight or even less identical characteristics in an appropriate case. In this case there was the categorical statement of the Director, Finger Print Bureau, Phillaur, that one particular impression on the currency note was photographically enlarged alongwith the right middle finger impression of the respondent, that it was comparable, and there existed not less than eight points-of similarity i.e. matching characteristic details in their identical sequence, without any discordance, between its comparable portion and the corresponding portion of the photographically enlarged right middle finger impression. The Director graphically showed the eight points of similarity, in their same form and position and indicated the nature, direction and sequence of each point. He clearly stated that so many points of similarity could not be found to occur in impressions of different thumbs and fingers and that they were identical and were of one and the same person. [840 F-G, 841 D-E]

(4)The recovery of incriminating articles in pursuance of the respondent's information is an important piece of evidence against him. The question whether a presumption should be drawn against him under illustration (a) of section 114 of the Evidence Act is a matter with depends on the evidence and the circumstances of each case. The nature of the recovered articles, the manner of their acquisition by the owner, the nature of the evidence about their identification, the manner in which the articles were dealt with by the accused, the place and the circumstances of their recovery, the length of the intervening period and the ability or otherwise of the accused to explain the recovery, are some of those circumstances. All these factors were against the respondent.[841 G-H, 842 A]

Baiju Bharosa v. State of Madhya Pradesh [1978] 2 SCR 594 reiterated.

(5)The ring (Ex. PI) was made of gold and bore the initials of the deceased, and the goldsmith was able to establish that it belonged to the deceased. It was found tied in a handkerchief alongwith other two highly incriminating articles, namely, the finger marked currency note and the respondent's own purse about whose identity there could possibly be no reason for any doubt. The respondent knew that he would be suspected of the crime because the deceased was last seen in his company, and the fact that he buried the articles near the water lift in the middle of the way leading from Khankanwali to his village shows that he wanted the articles to lie there until he could feel reassured enough to dig them out. It so happened however that he was suspected from the very beginning, was arrested within four days and gave the information within the next two days which led to the discovery of an important

fact within the meaning of section 27 of the Evidence Act. It must therefore be held that the incriminating articles were acquired by the respondent at one and the same time and that it was he and no one else who had robbed the deceased of the money and the ring and had hidden them at a place and in a manner which was known to him. Then there is the further fact that the respondent was unable to explain his possession. All these facts were not only proof of robbery but were presumptive evidence of the charge of murder as well.[842 B-F]

Wasim Khan v. The State of U.P. [1956] SCR 191; Tulsiram Nanu v. The State, AIR 1954 SC 1; Sunderlal v. The State of M.P., AIR 1954 SC 28 Alisher V. State of U.P. [1974] 4 SCR 254; and Baiju @ Bharosa v. State of M.P., [1978] 2 SCR 594 reiterated.

(6)The High Court committed serious errors in reading the evidence on the record and very often based its findings on mere conjectures. Its finding that the prosecution had failed to "connect the accused with the commission of the crime" was quite incorrect and must be set aside. Reasoning of High Court examined with reference to the direct and circumstantial evidence on record. [838-C-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 377 of 1975.

From the Judgment and Order dt. 9th July, 1975 of the Punjab and Haryana High Court in Criminal Appeal No. 1423 of 1974.

S. C. Manchanda and N. K. Agarwal for the Appellants. D. Mookerjee, S. K. Mehta, K. R. Nagaraja and P. N. Puri Hardev Singh for Respondent No. 2.

The Judgment of the Court was delivered by SHINGHAL, J.-This appeal by special leave is directed against the judgment of the Punjab and Haryana High Court dated July 9, 1975, giving benefit of doubt to respondent Ajit Singh (hereinafter referred to as the respondent) and acquitting him of offences under sections 302, 392 and 397 I.P.C. for which he was convicted by the Additional Sessions Judge of Faridkot on October 31, 1974. The Additional Sessions Judge had sentenced the respondent to death for the offence under section 302 I.P.C. and to rigorous imprison- ment for five years and seven years respectively for the offences under, sections 392 and 397 I.P.C. Nishan Chand (deceased); son: of appellant Mohan Lal (P. W.

5), was a resident of Roranwali. He was Secretary of Roranwali and Phulu Khera Co-operative Societies. The respondent was Nishan Chand's friendand was Secretary of Roranwali Patti Sikhan Co-operative Society. He also used to live in village Roranwali with his maternal-uncle Gurdial Singh who was the village Chairman.

It is alleged that Nishan Chand and the respondent left together on June 17, 1974, for villages Lambi and Malout on Nishan Chand's bicycle, as they had to deposit the money realised by them. They did not however return to Roranwali that night. Mohan Lal's other son Satpal, who was, studying in Class VIII in a school at Sikhanwala, saw Nishan Chand's bicycle lying at some distance from the boundary of village Roranwali, near a culvert, on the "Pakka" road leading to Sikhanwala, and he also saw a man lying dead in a field at a short distance from there. As the dead body appeared to be of Nishan Chand, Satpal went back to his house and informied his father Mohan Lal (P. W. 5) at about 7 a. m. Mohan Lal, (P. W. 5) and his brother Dharam Chand (P. W. 8) went to the place where the dead body was lying. It bad many injuries and a blood stained blade of Knife (Ex'. P. 3) was lying near it. A black piece of cloth ("fifty") was lying at some distance towards the road. As Nishan Chand used to bring home the money of the societies some times, Mohan Lal suspected that the respondent might have murdered him for the money.It seemed to him that the black piece of cloth ("fifty") belongedto the respondent which he was wearing on the previous morning. Mohan Lal therefore left for police station Lambi, which was at a distance of about 9 miles from the place of occurance. As he found Sub- inspector Harnek Singh (P. W. 19). it Sikhanwala bus stand, he reported the matter to him at about 9.30 a.m. The Sub- Inspector recorded Mohan Lal's statement and sent it along with constable Mal Singh to police station Lambi for registering a case.

2 320 SCI/78 S.I. Harnek Singh went to the place of occurrence with Mohan Lal and found Dharam Chand (P. W. 8) and Nishan Chand's mother Smt. Agyawanti near the dead body. He found foot-prints two of bare foot and one with the shoe near the dead body. The blade of knife (Ex. P. 3) was also found lying near the dead body and a shoe was found lying in the water channel at a distance of 7 or 8 'karams' The small piece of black cloth ("fifty") (Ex. P. 4) was found lying at a distance of 25 or 30 'karams' from the dead body. The Sub- Inspector recorded the statement of Smt. Agyawanti. He lifted moulds of the foot-prints and took them in his possession. The blood stained blade of knife (Ex. P. 3) was also taken in possession vide memorandum (Ex. P. K.) and was sealed. The Sub-Inspector took the shoe also in his possession. He prepared, an inquest report and sent Nishan Chand's dead body for postmortem examination. Dr. P. K. Narang (P. W. 1) of Civil Hospital Gidderbaha examined the dead body and found 12 injuries, all of which were ante- mortem. The doctor found that Nishan Chand's death was due to the injuries to vital organs of the brain as a result of injuries Nos. 1 and 2 which were as follows,-

> (i)A stab wound with clean cut edges 2. 5 X
>
> 0. 5 cm. on the front of left side of forehead just above the eye brow. Blood stained brain matter was coming out of the wound. Bone underneath was cut, and the wound was directed backwards and downwards.
>
> (ii)A stab wound 3.5 X 1 cm. with clean cut edges on the left temporal region of head 7.5 cm. above the ear, directed downwards and inwards. Bone underneath was cut."

The medical officer expressed the opinion that these two injuries were individually sufficient to cause death in the ordinary course of nature.

it was found during the course of the investigation that Nishan Chand had collected the dues of the co-operative societies from Atma Singh., Avtar Singh and Balli Singh and others on June 17, 1974, and had gone with the respondent to deposit the same in the Central Cooperative Bank, Malout. Inspector Gurdial Singh (P. W. 14) of the Co-operative department had also gone there to attend a meeting of his department. Nishan Chand and the respondent met him after 3 P.M. and asked him to get the sum of about Rs. 2000/- deposited in the Bank. He could not however succeed in depositing the money as the cash had been closed by that time. It is alleged that Nishan Chand collected Rs. 4156/- and that be and the respondent met Darshan Lai (P. W. 6) at Lambi at 6.30 p.m. The prosecution has relied on the statement of Darshan Lal (P. W. 6) for the subsequent conduct of the respondent and has led its evidence to show that he was searched but could not be found. He was arrested on June 21, 1974, at about 8 p.m, near village Fatuekhera. He was interrogated by the Investigating Officer and is alleged to have made statement Ex.P.O. on June 23, 1974, to the effect that he had buried a sum of about Rs. 4100/- and a gold ring in his purse tied in a handkerchief near the water lift in the middle of the way leading from village Khankhanwali to Roranwali which he could recover, and that he had kept concealed his clothes and one shoe under the heap of cotton "sticks" in a kiln on the road outside Khankhanwali village which also he could recover. The respondent's statement to that effect was recorded in the presence of witnesses Balbir Singh (P. W. 7) and Avtar Singh. The respondent then went to the place near the heap of cotton "sticks" and recovered the blood stained clothes Ex. P. 5 to P. 7, which were in jhola' Ex. P. 8, along with a shoe. The recovered articles were taken in police custody vide memorandum Ex. P. 0. It is further alleged that the respondent went to the, place near the water lift and dug out a handkerchief which contained currency notes of Rs. 4142/gold ring Ex. P. 1 and purse Ex. P. 9. One currency note No. AD 53007632 of Rs. 100/- (Ex. P. 10), which was at the ton of the bundle of currency notes, had some blood stained fingerprints. The purse (Ex. P. 9) was of plastic on which Government College, Mukhtsar, was written in Punjabi and English and it contained a library card of R.S.D. College, Ferozepur, which contained the address of the respondent written in English. The ring was of gold and weighed about 3 grams. The initials 'N. C., were inscribed on it. All the articles were sealed and were taken in possession vide memorandum Ex. PR. Mohan Lal (P. W. 5) has identified the ring to be that of his son Nishan Chand which he was wearing when he left the house. Kartar Singh (P. W. 17) of village Lambi has stated that lie prepared the ring for Nishan Chand 8 or 9 months before his statement and had made the inscription as desired by him. The Sub-Inspector made an application before Magistrate Mukhtiar Singh (P. W. 3) on June 28, 1974, for taking the moulds of the foot-prints of the respondent. The moulds prepared by him were not found fit for comparison and wire again taken on July 4, 1974 in the presence of Magistrate Dina Nath (P. W. 2). They were sent for comparison to the Director of Forensic Laboratory who has made his report Ex. P. FF stating that the impressions on the crime mould were found to tally with the test moulds.

Finger impressions (Ex. PF/2) of the respondent were also taken by Magistrate, Mukhtsar, and were sent for comparison along with the finger impression on the currency note of Rs. 100/- (Ex. P. 10) to the Director Fingerprint Bureau, Phillaur. The Director's report Ex. P. BB is on the record. He photographically enlarged the impressions and expressed the opinion that there were eight points of Similarity in respect of the form and the position, which were graphically shown by him in his report, and that the nature, direction and sequence of each point had been indicated in its relevant circle. According to the expert, so many points of similarity could not be found to occur in the

impressions of different fingers and that they were "identical or are of one and the same person". The expert ignored the other impressions which were sufficiently smudged or were partly interfered with by the design and the printed writing of the currency note or were faint.

The respondent was medically examined an the very next day of his arrest and the medical officer's report Ex. P.F has been placed on the record, according to which he had three simple lacerated wounds of a duration of more-than 48 hours on the left ring finger.

As has been stated, the Additional Sessions Judge of Faridkot found the respondent guilty of the offences under sections 302, 392 and 397 I.P.C. As the High Court has set aside the conviction by its impugned judgment dated July 9, 1975, by giving the benefit of doubt to the respondent, Mohan Lal (P. W. 5), father of Nishan Chand (deceased), and one Surinder Kumar have filed the present appeal by special leave.

The High Court has examined the question of motive first of all and has referred to the good relations between the respondent and the deceased. It has also made a mention of the statement of the respondent that he and the deceased left village Roranwali on the bicycle of the deceased, for Malout, on June 17, 1974, at about 7.30 a.m. The High Court has then examined the evidence of the prosecution regarding the alleged collection of Rs. 4256/- by Nishan Chand from four persons on June 17, 1974, and his failure to deposit the same in the Central Co-operative Bank at Malout and has taken the view that the collection of the money by Nishan Chand had not been proved and that the motive for the crime had not been established.

The first item of collection relates to the recovery of Rs. 2000/from Avtar Singh (P. W. 10) at Malout on June 17, 1974. Avtar Singh has stated that he had taken a loan from the Co-opcrative Society of his village and had been asked by the deceased to repay it. He promised to make the repayment at Malout Mandi. He took his wheat there on June 17, 1974, and asked his commission agent to pay Rs. 2000/- to the deceased. Rs. 2000/- were accordingly paid by his commission agent to the deceased. He has further stated that one Atma Singh (P. W. 12) paid Rs. 623/- in his presence to Nishan Chand. Avtar Singh however did not obtain a receipt for the payment from Nishan Chand. The High Court has disbelieved the payment because the name of the commission agent was not disclosed by Avtar Singh and he" did not take. any receipt or the signature of Nishan Chand in his bahi in token of the payment. The prosecution examined Behari Lal (P. W. 26) as the commission agent who had made the payment of Rs. 2000/- on behalf of Avtar Singh to the deceased. The witness produced his bahi entry Ex. P. W. 26/A in respect of the payment, but the High Court rejected the evidence because the signature of Nishan Chand Was not obtained by Behari Lal. As it was possible for the High Court to take that view. we would leave it at that Atma Singh (P. W. 12) has stated that he paid Rs. 623/- to the deceased on June 17, 1974, at 2 p.m. after obtaining the money from the firm of Shadi Ram Amar Nath of Malout. Avtar Singh (P. W. 10) has also stated about the making of that payment by Atma Singh in his presence, but the High Court has rejected the evidence for want of Nishan Chand's receipt for the payment, and the failure to examine someone on behalf of the firm which had made the payment. Here again, it cannot be said that the view taken by the High Court was not possible, and we would therefore not disturb its finding in this respect also. The prosecution, however, examined Balli Singh (P. W. 1 1) who stated that he paid Rs. 856/- to the

deceased on June 17, 1974, vide receipt Ex. PS at Malout at 2 p.m. after obtaining the money from his commission agent. It was stated in the receipt that the payment had been made by way of recovery of the loan from Balli Singh. It was not disputed that the receipt was signed by Nishan Chand, and it is not disputed before us that the name has wrongly been printed as Nishan Singh in the paper book. The High Court however rejected the evidence on the ground that Balli Singh did not state who wrote the receipt Ex. PS and that it bore the signature of Nishan Chand. We have gone through the statement of Balli Singh and we have no doubt that it shows that the payment of Rs. 856/- was made to the deceased vide receipt Ex. PS. There was as such no justification for insisting on the disclosure of the name of, the scribe of the receipt, or the production of other evidence to prove the signature of Nishan Chand thereon. There was also no justification for the High Court to reject the evidence merely because of the failure to examine a witness from the shop of the commission agent who had made the payment. It has to be appreciated that there was in fact no cross- examination worth the name regarding Balli Singh's statement about his liability to pay Rs. 856/- to the, Co-operative Society, and the payment of that money by him to the deceased against receipt Ex. PS. The prosecution has, all the same, relied on the statement of Inspector Gurdev Singh (P.W. 14) who was Inspector of Co- operative Societies at Lambi, to prove the signature of the deceased on receipt Ex. PS. The High Court has rejected his evidence to this effect on the ground that the witness did not state that he had seen Nishan Chand signing and writing, and could identify his signature, and also because he did not state that "in the ordinary course of business documents purported to be written by Nishan Chand had been habitually submitted to him." We have gone through the statement of Gurdev Singh (P.W. 14). He was the Inspector of Co-operative 'Societies, Lambi, and Nishan Chand was the Secretary of two Cooperative Societies within his area. The witness was therefore in a position to state that receipt Ex. PS was in the hand writing of Nishan Chand and he in fact made a clear statement to that effect in the trial court. If the defence had any reason to think that he was not a competent witness for the purpose of expressing an opinion under section 47 of the Evidence Act, it was open to it to cross-examine him on the point. The fact however remains that this was not done.

It would thus appear that the High Court could not have rejected the evidence which was furnished by the prosecution in regard to the payment of Rs. 856/- by examining Balli Singh (P.W. 11) and Gurdev Singh (P.W. 14) and by producing the original receipt Ex. PS, and we have no hesitation in holding that the, finding of the trial court in regard to that payment was correct and must be restored.

Evidence has also been led to prove the payment of Rs. 667/- to the deceased by one Budh Singh on June 17, 1974, vide pass book entry Ex. P. II. It was stated by Gurdev Singh (P.W. 14) that the entry in the pass book had been made in the hand writing of Nishan Chand, but the High Court rejected that evidence for the reason already stated. As there was no justification for doing so, we would restore the finding of the trial court regarding that item of payment as, well.

The High Court has gone to the extent of basing its finding to the contrary for the further reason that Mohan Lal (P.W.

5), who was the father of the deceased, did not state that receipt Ex. PS and the pass book Entry Ex. P. 1 1 were written and signed by his son Nishan Chand. The High Court however forgot that Mohan Lal was an illiterate man who had thumb-marked even. the first information report Ex. P.G./1 and was not in a position to make a statement regarding the hand-writing or the signature of his son on the two documents.

So even if the items of Rs. 2,000/- and Rs. 623/- are left out, the fact would still remain that the deceased had a sum of about Rs. 1533/- with him at the time of his murder. The High Court has brushed aside the prosecution evidence in this respect by observing that none of the witnesses has deposed that the respondent was with the deceased at the time when the payments were made to him. Here again, the High Court lost sight of the statement of Inspector Gurdev Singh (P. W. 14) who as the Inspector of Co-operative Societies must have known the Secretaries or the societies within his jurisdiction. He has stated that a meeting was called by the Joint Registrar of Co-operative Societies at Malout on June 17, 1974, and that the deceased and the respondent met him in the Central Cooperative Bank at Malout after 3 p.m. The deceased asked him to get the sum of more than Rs. 2,000/- deposited in the bank and the witness told him that as the cash had been closed by that time, the money could not be deposited.. He has further stated that the deceased then told him that he would deposit the amount of Rs. 5,000/- the next day as he had some more recoveries to make. No effective cross-examination was directed against the statement of the Inspector to this effect, and no effective argument has been made before us why he should not have been believed. The High Court thus failed to read the statement of Gurdev Singh correctly even though it had a direct bearing on the question of the respondent's knowledge of the money in the possession of the deceased. Its finding to the contrary must be set aside and it must be held that the prosecution has succeeded in proving its case about the respondent's knowledge that the deceased had collected at least Rs. 2,000/- by the time he met Inspector Gurdev Singh some time after 3 p.m. The High Court has examined the question whether there was evidence to prove that the respondent had absconded after the incident, and has found that it could not be said that he did so to conceal his guilt. He was arrested on June 21, 1974, and it appears that the intervening delay would not by itself be evidence of his guilt.

While dealing with the evidence that the deceased was last seen in the company of the respondent, the High Court has made a reference to the statement of Mohan Lal (P.W. 5) and to the respondent's admission that he had gone with the deceased, on his bicycle, to Malout, on June 17, 1974. The prosecution has examined Darshan Lal (P.W. 6) in regard to their movements at about 6 p.m. in Lambi and has placed reliance on the statement of Prita Singh (P.W. 9) about their movements within a short distance of village Roranwali. We think that the view taken by the High Court in regard to the evidence of these two witnesses is justified and does not call for interference. But the High Court went wrong in finding that there was no evidence to prove that the accused was seen with the deceased "before or after the occurrence." There could possibly be no evidence to prove that the respondent was seen with the deceased "after" the occurrence i.e. after his death and the prosecution cannot be blamed for its inability to produce any such evidence. The prosecution has however led its evidence to prove that the deceased was last seen in the company of the respondent, and it will be enough to refer to two basic facts in this respect. Firstly, the respondent has admitted in his statement in the trial court that he and Nishan Chand first went to Lambi on June 17, 1974;

and he did not deny that they went there on Nishan Chand's bicycle at about 7.30 a.m. He has also admitted that he was with Nishan Chand at Malout upto 10 a.m. He claimed that he went to village Ferozepur thereafter to meet his elder brother, but that was a matter for him to prove, and thereby establish a good defence. The fact however remains that he did not do so and his leaned counsel has not thought it possible to explain why he could not examine his own brother to establish that plea, or to invite our attention to any other evidence that may have been led in that behalf. Secondly, the High. Court lost sight of the fact that Inspector Gurdev Singh (P. W. 14) of the Co- operative Societies. Department had clearly stated that he went to Malout on June 17, 1974 to attend the meeting which had been called by the Joint Registrar of Co-operative Societies and that the respondent and the deceased met him there after 3 p.m. in the Central Co-operative Bank. He has further stated that the deceased asked him to get the sum of Rs. 2,000/- deposited in the bank, but that could not be done as the cash had been closed. The witness has stated that a meeting was actually held in the Rest House that day and that he had gone to the Bank to- collect the figures of recovery for purposes of that meeting. The presence of the deceased and the respondent was therefore quite natural as it explains their anxiety to make as much recovery as possible before the meeting. As has been shown, there was no reason for disbelieving the statement of Gurdev Singh, and the High Court clearly misread the record in respect of a material particular in holding that there was no evidence to prove that the respondent was last seen in the company of the deceased.

An attempt was made to argue that if the statement of the respondent is to be considered at all, it must be taken as a whole and that it is not permissible to act upon one portion of the statement which shows the presence of the respondent in the company of the deceased, and leave out those portions which are exculpatory. It will be enough to say that the matter has been examined by this Court in Nishi Kant Jha v. State of Bihar(1), and as the evidence on the record disproves the exculpatory part of the respondent's statement in the trial court, it is clearly permissible to accept that part of the statement which accords with the evidence on the record, and to act upon it.

Another important piece of evidence against the respondent was his statement Ex. P.O. dated June 21, 1974, under section 27 of the Evidence Act and the recoveries which were made in pursuance thereof. The statement was recorded by Sub-Inspector Harnek Singh (P.W. 19) in the presence of Avtar Singh and Balbir Singh (P.W. 7). The prosecution gave up Avtar Singh on the ground that lie had been won over, but Balbir Singh and Harnek Singh were examined in the trial court. The. High Court however rejected the entire evi- dence in that respect on the ground that the statements of these two witnesses were contradictory and inconsistent with each other and held that the making of disclosure statement and the alleged recovery were "concocted by the police." The only contradiction which has been pointed out by the High Court is that while according to Harnek Singh the interrogation of the respondent started on June 23, 1974 at about 12 noon and continued for two, hours, Balbir Singh has stated that he and Avtar Singh reached the police station at about 12.30 p.m. and the respondent was interrogated for about 5 or 7 minutes in their presence and that he did not make the disclosure statement. The High Court has stated further that Balbir Singh has claimed that he advised the respondent to give the articles which he had in his possession, and then he made the disclosure statement. A reference to the statements of Hamek Singh (P.W. 19) and Balbir Singh (P.W. 7) shows however that there is no contradiction or inconsistency between them. Balbir Singh (P.W. 7) has clearly stated that when be reached the police Station at about 12.30 p.m. the

respondent was being interrogated there. His further statement that the respondent was interrogated for five or seven minutes in his presence, cannot therefore belie the statement of Harnek Singh that the interrogation lasted for about two hours. The High Court therefore misread the evidence in this respect. The High Court also misread the statement of Balbir Singh when it observed that he bad admitted that he did not "know" whether the disclosure statement (Ex. P.O.) was recorded at the police station before the articles were recovered or thereafter. Here again a reference to Balbir Singh's statement shows that what be stated was that he did not "remember"

(1) [1969] 2 S.C.R. 1033.

if the disclosure statement was recorded before or after the recovery. He however proved statement Ex. P.O. and admitted that he attested it.He also stated that his own statement was recorded after the recovery. It was not found possible to point out any inconsistency in his version in that statement and his statement in the trial court. The, High Court, therefore, clearly fell into an error of record in reaching the conclusion that the statement of the Sub- Inspector was belied by the statement of the witness. The High Court has observed in this connection that Balbir Singh (P.W. 7) has stated that there were certain footprints near the place where the money was recovered, but no moulds were prepared by the police even though it was incumbent for it to do so. We have gone through the statement of Balbir Singh, but he has not made any such statement. If however anything turned on the failure to take the moulds of the footprints at the place where the money was recovered, the proper course for the defence was to cross-examine the Investigating Officer concerned in that respect, but that was not done. The High Court has disbelieved the statement of 'Balbir Singh (P.W. 7) for the further reason that he had been convicted on some occasions and his explanation that he had gone to the police station to inquire from the Sub- Inspector whether they should continue to depute men to keep watch on electricity installations and the Sub-Inspector's reply in the negative, had not been entered in the record of the police station. The High Court has obviously relied in this respect on Balbir Singh's statement that no entry was made in the daily diary about his visit and inquiry from the Sub-Inspector, but it was not noticed by the High Court that Balbir Singh was not in a position to depose anything about the making or not making of an entry in the police diary. That was a matter which could be established by cross- examining the Sub-Inspector or by producing any other evidence which could show that the entry had not been made in the daily diary. So here again the High Court cannot be said to have read the evidence on the record correctly. The High Court has gone to the extent of recording a finding that the disclosure statement Ex. P.O. was involuntary as the respondent was "interrogated for several hours after his arrest", and was hit by section 24 of the Evidence Act. The fact however remains that even the respondent has not stated that he was compelled to make the disclosure statement, and there is no other evidence to show that this was so. The High Court has arrived at its conclusion to the contrary on the basis of the statement of Harnek Singh (P.W. 19). The relevant portion of that statement reads as follows,-

> "On 21st June, 1974, 1 interrogated him where he was arrested. He was then taken to Roranwali and was interrogated there in the presence of many persons. From there we returned to police station at 10-30 P.M. On 22nd June, 1974 he was again interrogated at the police station. But no other person was present at the time of the

> interrogation. He did not give any disclosure statement that day.
>
> He was interrogated regarding the handle of the knife. On 23rd June, 1974 I started interrogating the, accused at about 12 noon. The witnesses came to the police station of their own accord. I interrogated him for about two hours."

Three facts therefore emerge from the statement : (i) that the total period of interrogation was about two hours, (ii) the interrogation was made in the presence of many persons, and (iii) the interrogation was regarding the discovery of the handle of the knife of which the blade was found lying near the dead body. There was thus no evidence on the record to justify the finding of the High' Court that the respondent was interrogated for several hours and that his disclosure statement was involuntary so as to attract section 24 of the Evidence Act. As it is, the evidence on the record was sufficient to show that the statement was not only voluntary but it fell within the purview of section 27 of the Evidence Act in as much as the "fact discovered" was the place from which the various articles were produced by the respondent and his knowledge of it. As the information given by the respondent related to that important fact, it was clearly admissible under section 27 of the Evidence Act. Moreover the actual recovery of the currency notes, the ring and the purse in pursuance of the information given by the respondent, and at his instance, was sufficient guarantee of the truth of that information and it could safely have been relied upon by the High Court. The High Court misread the evidence on the record in taking a contrary view. The disclosure statement led to the recovery of clothes in bag Ex. P. 8 and a shoe underneath the cotton 'sticks' in the kiln near the 'phirni' of village Khankhanwali vide memorandum Ex. P.O. Then there was the recovery of a bundle of currency notes of the value of Rs. 4142/- on top of which was the currency note Ex. P. 10 of Rs. 100/- which was suspected to have some fingerprints, the ring Ex. P. 1 bearing the initials of Nishan Chand, and the purse Ex. P. 9 containing the library card of R.S.D. College, Ferozepur, with the address of the respondent. All these were found tied in a handkerchief which was dug out by the respondent at a place near the water lift in the middle of the way leading from village Khankhanwali vide memorandum Ex. P.R. The High Court brushed aside all this highly incriminating evidence simply on the ground that the respondent had stated (in his statement under section 313 Cr.P.C.) that the purse was taken by the Sub-Inspector at the time of his arrest and he had obtained Rs. 4000/- from his relations on the pretext that he would get him discharged but later on fastened a false case on him. The High Court went on to say that it was highly doubtful if the respondent would have buried such a big amount of money and the ring in a field situated in another village when he could have concealed them in the land or building of his maternal-uncle in village Roranwali. The High Court lost sight of the fact that while on one side there was the testimony on oath which was subjected to cross-examination on the other there was the bare statement of the accused. The High Court could not reasonably have doubted the recoveries simply because the property was found buried in a field in another village and not in the land or building of his maternal uncle. As is obvious, the reasoning of the High Court was nothing more than a conjecture, for which there was no evidence or justification. The respondent was anxious to hide the ill gotten property as soon as possible, and the fact that it was recovered in pursuance of his in- formation under section 27 of the Evidence Act, and at his instance, by his digging out the place where it lay buried, was quite sufficient to prove the genuineness of the recovery. It appears that as the High Court had reached the conclusion that the information under section 27 was involuntary and was not admissible in

evidence, it did not find it possible to attach any importance to the recovery of the articles in pursuance of that information. The High Court has disbelieved the statements of Mohan Lal (P.W. 5) father of the deceased, and Kartar Singh (P.W. 17) goldsmith of Lambi, that ring Ex. P. 1 belonged to the deceased. The statement of Mohan Lal has been disbelieved on the ground that he did not know the name of the person who prepared it, he could not tell the date of its preparation, he did not identify the ring at attest identification and he did not state in the first information report that his son Nishan Chand was wearing the ring. We have gone through the evidence and it appears that the High Court did not read it correctly. Mohan Lal has stated that the ring was got prepared by his son Nishan Chand in village Lambi two or four months before the incident. He was not therefore in a position to name the goldsmith or to give the date of its preparation. The ring was not put up for test identification and there was therefore no evidence to show that Mohan Lal did not identify it "from the other rings of the same kind". As regards the omission from the first information report of the fact regarding the wearing of the ring by Nishan Chand, the High Court did not take into consideration that part of Mohan Lal's statement where he had stated that as his wife did not tell him that Nishan Chand was wearing the ring, he could not mention that fact in the report. Moreover his wife did not accompany him to the police station.

The High Court disbelieved the statement of Kartar Singh (P.W. 17) for the reason that he did not pay income-tax or sales-tax and had admitted that there was no special mark on the ring to show that it had been prepared by him. In taking that view the High Court lost sight of the fact that Kartar Singh was a goldsmith of a village like Lambi and, in the absence of the evidence to the contrary, he could not have been disbelieved merely because he did not pay income- tax or sales-tax. The statement of Kartar Singh that he prepared ring Ex. P. 1, eight or nine months before the recording of his statements at the instance of Nishan Chand, and that the inscription thereon was made under Nishan Chand's instructions, was quite clear and categorical, and could not have been rejected in the absence of evidence to the contrary. It is true that the ring did not bear any special mark to show its preparation by the witness, but the High Court did not read that part of Kartar Singh's statement where he had stated that he had started working as a goldsmith from the age of 12 years and that although he had prepared many rings, he could tell which ring was prepared by him on seeing it. there was therefore no, justification for rejecting Kartar Singh's evidence and for dubbing him as a "highly unreliable" witness.

As has been stated, the purse Ex. P.9 was also recovered at the instance of the respondent along with ring Ex. P. 1 and the currency notes and the fact of its recovery could not have been rejected merely on the basis of the respondent's statement under section 313 of the Code of Criminal Procedure that it had been taken by the Sub-Inspector from his pocket at the time of his arrest. Apart from the fact that the explanation of the respondent was quite improbable, we find that he has not found it possible to establish it by any evidence on the record. The purse was of black coloured plastic on which Government College, Mukhtsar, was written in Punjabi and English and it contained a library card of R.S.D. College, Ferozepur. on which the address of the respondent was written in English. The fact that the purse was found tied in the same handkerchief along with the ring Ex. P. 1 and the currency notes, could leave no room for doubt that it belonged to the respondent and all the recovered articles were in his possession soon after the incident.

As has been stated, the bundle of currency notes, which was recovered at the instance of the respondent contained the hundred rupee currency note (Ex. P. 10) No. AD 53007632 with fingerprints thereon. The High Court rejected that important piece of evidence on the ground that Balbir Singh (P. W. 7) did not state that the currency note had fingerprints, it was not explained why the currency note was not sent to the Finger Print Bureau immediately why it was sent there after the arrest of the respondent alongwith his specimen impressions, and also because there was no proof that the specimen fingerprint impressions were of the respondent and there was no evidence to show on what date they were taken. The High Court has once again made a reference to the statement of the respondent under section 313 of the Code of Criminal Procedure that the Police took his fingerprint impressions on the currency note while be was in police custody, and rejected the report (Ex. P. BB) of the Director Finger Print Bureau, Phillaur. We have gone through the statement of Balbir Singh (P.W. 7) and we find that he has clearly stated that "one currency note contains fingerprint marks". The High Court therefore misread the evidence in this respect also. The other reason about not sending the currency note to the Finger Print Bureau until after the arrest of the respondent, is equally untenable because the High Court lost sight of the fact that the currency note was recovered on June 23, 1974, only after the arrest of the respondent, and there was nothing wrong if it was sent alongwith his specimen fingerprints which had necessarily to be obtained by making an application to a magistrate.

The specimen impressions Ex. PF/2 of the fingers of the respondent were taken by the Muktsar Magistrate on June 28, 1974. Question No. 28 was asked of the respondent whether that was so, and lie gave a categorical reply that the evidence in that respect was "correct". The High Court therefore again did not read a material part of the record in taking the contrary view. The High Court seems to have accepted the statement of the respondent that the Police took his finger impressions on the currency note while he was in Police custody, but it not only lost sight of the fact that there was no evidence to that effect, but also of the fact that the prosecution had succeeded in proving the recovery by the reliable evidence, on the record. Moreover if the Police had forcibly taken the fingerprints, none of them would have been faint or smudged or on the printed or written portion of the note.

It will be recalled that Dr. P. K. Narang (P.W. 1) performed the post-mortem- examination on the body of Nishan Chand, and the High Court has taken the view that his evidence showed that the injuries could not have been inflicted with the knife of which Ex.P. 3 was the blade and that "possibly three types of weapons were used to cause injuries". We have gone through the statement of Dr' Narang (P.W. 1). What he has stated is that some of the injuries were caused by a sharp pointed weapon, one injury by a sharp-edged weapon and injuries Nos. 10, 11 and 12 by a blunt weapon. The witness clarified that injuries Nos. 11 and 12 could be caused by a fall, and injury No. 10 being a linear abrasion could be caused by the point of any substance. As regards the incised injuries, the witness has stated that it was not necessary that the stab wounds could have been caused by a weapon of which both the edges were sharp. The presence of those injuries could not therefore justify the inference of the High Court that they required three types of weapons. Blade (Ex.P. 3) was sent to the Chemical Examiner to the Government of Punjab and his report Ex.P. AA contains a diagram of its shape, which clearly shows that it was a peculiar blade with a pointed end as well as a sharp blade. The High Court therefore erred in holding that the injuries which were

found on the person of the deceased could not have been inflicted with a knife having Ex.P.1 as its blade. The High Court rejected the prosecution evidence for the further reason that the bicycle of the deceased, which was lying on the road, was not in a damaged condition and did not have blood stains, and also because the respondent could not have dragged the deceased alone to a distance of 50 or 60 'karams' and inflicted all the injuries with his knife. Here again, the High Court went beyond the record because it was not the case of the prosecution that the bicycle was damaged at the time of the incident, or that it was stained with blood, or that the incident took place near the place where the bicycle was found by the witnesses so as to have blood stains near it. It was also not the case of the prosecution that the respondent dragged the deceased to a distance of 50 or 60 'karams' from the road. As regards the infliction of the injuries by the respondent singly, there was no reason for the High Court to think that was not possible. Blade of the knife was recovered near the dead body of Nishan Chand, without the handle, and it is not disputed before us that it was stained with human blood. We have made a reference of the diagram of the knife and the fact that it had a pointed end and a sharp edge. Dr. Narang (P.W. 1) has stated that the first two injuries were stab wounds on the left side of the fore-head and the left temporal region, and were individually sufficient to cause death. They could be caused by a sharp pointed weapon and there was nothing to prevent a single person from inflicting one of those injuries initially and disabling the victim of his capacity to resist thereafter. It is the case of the prosecution that the deceased and the respondent were friends and were moving about on the bicycle of the deceased. 'The deceased must therefore have been caught unawares when the respondent dealt him the first fatal blow on a vital part of the body and would not have been in a position to resist him thereafter. The handle of the knife gave way, and that also showed that it was used with force.

It would thus appear that the High Court committed the aforesaid serious errors in reading the evidence on the record and very often based its findings on mere conjectures. Its finding that the prosecution had failed to "connect the accused with the commission of the crime" is quite incorrect and must be set aside".

The evidence against the respondent in this case is circumstantial. We have discussed a part of it while examining the findings of the High Court, and it will be enough to mention those facts and circumstances which have been established against the respondent beyond any doubt. It has been stated by Mohan Lal (P.W. 5) that his son Nishan Chand and the respondent had good relations with each other and that they left for Malout on June 17, 1974, together, on Nishan Chand's bicycle. This has in fact not been disputed before us. We have examined the evidence regarding the collection of at least Rs. 1523/- by Nishan Chand from Balli Singh (P.W. 11) and Budh Singh and have given our reasons for the finding that the deceased had at least that much money with him when he and the respondent met Inspector Gurdev Singh (P.W. 14) at Malout. The prosecution has in fact led its evidence to prove that the deceased bad collected Rs. 4156/- on that day, but as a matter of abundant caution we have leftout two of those collections in holding that at least Rs. 1523/- bad been collected by him. We have also made a mention of Gurdev Singh's statement that the deceased asked him to get a sum of more than Rs. 2000/- deposited in the Central Co-operative Bank at Malout in the presence of the respondent and his inability to do so. as the cash had been closed. The allegation of the prosecution that the respondent committed the murder of Nishan Chand for the purpose of robbing him of the money has been established by the fact that Rs. 4142/- were actually

recovered at the instance of the respondent. in pursuance of the information furnished by him in Ex. P. O. on June 23, 1974, and at his instance within two days of his arrest.

The respondent has himself admitted that he and the deceased went to village Lambi on June 17, 1974, at 7.30 a.m. and then went to Malout. Inspector Gurdev Singh (P.W. 14) has, stated that his aforesaid talk with Nishan Chand in the presence of the respondent took place when they met him at Malout after 3 p.m. on June 17, 1974. The respondent stated in the trial court that he left Nishan Chand at Malout at 10 a.m. He did not however lead any evidence to prove his contention, which has in fact been disproved by the statement of Inspector Gurdev Singh that they were together with him until some time after 3 p.m. that day. The deceased was not seen alive after he had met Inspector Gurdev Singh in the company of the respondent and the categorical statement of the Inspector Gurdev Singh that they both went away leaves no room for doubt that was the last occasion when they were, seen together. Mohan Lal (P.W. 5) has stated that neither his son Nishan Chand nor the respondent returned to the village in the evening, and the next day his son's bicycle was found lying on the "pakka" road going from Roranwali to Sikhanwala and Nishan Chand's dead body was also found nearby.

The respondent tried to take the plea, in his statement in the trial court, that he was at Ferozepur on the night of the alleged incident 'as he had gone there to meet his elder brother who was a conductor in the Punjab Roadways. He did not however lead any evidence in support of that statement. On the other hand, Sub-Inspector Harnek Singh (P.W. 19) has stated that after recording the first information report he made a search for the respondent in villages Roranwali and Khankbanwali and even stayed in village Khankhanwali for the night, He has stated further that the respondent could be arrested only on June 21, 1974, at about 8 p.m. near village Fatuekhera. The respondent has not succeeded in explaining his absence or his movements during the intervening period and has failed in his attempt to establish his presence at Ferozepur on the fateful night. A halting attempt was made by the respondent to set up the explanation that he was produced before the police on June 18, 1974, by his relation Hazra Singh, but he did not find it possible to establish it also.

We have referred to our finding that the respondent voluntarily made the disclosure statement Ex.P.O. on June 23, 1974, and Rs. 4142/- in currency notes (including currency note Ex.P. 10 having fingerprints), ring Ex.P.1 and purse Ex.P. 9 were recovered in pursuance of that information, tied in a handkerchief, when the respondent dug them out from a place near the water lift in the middle of the way going from Khankhanwali to Roranwall. The ring Ex.P.1 bore the initials of the name of the deceased and the purse Ex. P. 9 contained enough particulars to show that it belonged to the respondent and to no one else. In fact the identity of the purse, as his own property, has been admitted by the respondent in his statement in the trial court where be merely contended that the purse containing his address was taken by the Sub-Inspector from his pocket at the time of his arrest. As has been stated, he could not establish that contention, and we have no doubt that it is quite false.

As regards the recovery of Rs. 4142/-, all that the respondent could contend was that after his arrest the Sub- Inspector asked his relations to give him Rs. 4000/- on the pretext that he would get him

discharged from the case, and that his relations contributed the amount and handed it over to the Sub-Inspector who later on "foisted the amount on me to implicate me falsely in this case." Apart from the fact that the respondent has not led any evidence to prove his contention, we find that the prosecution has succeeded in proving beyond doubt that the hundred rupee currency note No. AD 53007632, which was on the top of all the currency notes which were recovered at the instance of the respondent, bore fingerprints at least one of which has been found to be of the respondent and of no one else. We have given our reasons for rejecting the statement of the respondent that the police got his finger impression on the currency not,.- while he was in custody at the police station. The respondent was an educated man who was employed as the Secretary of the local Co-operative Society and who had an influential maternal uncle. The, police could not therefore have obtained his fingerprints in the manner alleged by him and the respondent would have resisted, any such attempt to create irrebuttable evidence against him of a serious charge, like murder and he or his uncle would have exposed it immediately.

We have examined the evidence of the prosecution regarding the taking of specimen fingerprints of the respondent, their comparison and examination with the fingerprint on the currency note by the Director, Finger Print, Bureau, Phillaur, and his report Ex. P. BB. As the impression mark A on the currency note was partly smudged and partly on the design and the printed writing, it was photographically enlarged along with the right middle finger impression of the respondent, and the two photographic enlargements were marked A/A and 1/1 respectively. The Director has given the opinion that the photographically enlarged impression marked A/A was "partly smudged but, otherwise, it is comparable and there exist sufficient (not less than 8) points of similarity i.e. matching ridge characteristic details in their identical sequence, without any discordances, between its comparable portion and the corresponding portion of the photographically enlarged right middle finger impression of Ajit Singh marked 1/1." The Director has further stated that he had graphically shown the 8 points of similarity "in their same form and position" and had indicated the "nature, direction and sequence of each point" in it's relevant circle. He has expressed the categorical opinion that so many points of similarity could not be found to occur in impressions of different thumbs and fingers and that they were therefore "identical" or were "of one and the same person." There were other impressions also on the currency notes, but they were either sufficiently smudged and partly interfered with by the design and the printed matter or were sufficiently faint and were rejected as unfit for comparison.

Nothing- substantial has been urged to challenge the opinion of the, Director of the Finger Print Bureau, and all that has been argued is that as there were only,, 8; points, of similarity, there was not enough basic for the expert's opinion about the identity of the fingerprints. Reference in, this connection has, been made to B. L. Saxena's. fixation of Handwriting, Disputed Documents, Finger Prints, Foot Print.$ and Detection, of Foregeries", 1968 edition, page 247, Walter R. Scott's "Fingerprint Mechanics" page 62, and, M. K Mehta's "The Identification of Thumb Impressions and, the Cross- Examination of Finger Print Experts" 2nd edition page 28.We have gone through these books but they do not really support the argument of- the learned counsel for the respondent. While referring to the old practice of looking for a minimum of 12 identical characteristic details, Saxena has admitted that the modern view is that six points of similarity of pattern are sufficient to establish the identity of the, fingerprints. Walter Scott has stated that "as a matter of practice, most

experts who work with fingerprints constantly satisfy themselves as to identity with eight or even six points of identity. Mehta has also stated that in the case of blurred impressions the view of some of the Indian experts is that if there were three identical points, they would be sufficient to prove the identity. There is no gainsaying the fact that a majority of fingerprints found at crime scene or crime articles are partially smudged, and it is for the experienced and skilled fingerprint expert to say whether a mark is usable as fingerprint evidence. Similarly it is for a competent technician to examine and give his opinion whether the identity can be established, and if so whether that can be done on eight or even less identical characteristics in an appropriate case. As has been pointed out, the opinion of the Director of the Finger Print Bureau in this case is clear and categorical and has been supported by adequate reasons. We have therefore no hesitation in accepting it as correct.

It will be recalled that the explanation of the respondent about the recovery of Rs. 4142/- from his purse Ex. P. 9 is quite unsatisfactory. He has not found it possible to give any explanation why the deceased's ring Ex. P. 1 was found tied with those articles in his handkerchief. We have no doubt that the recovery of these articles is a strong piece, of circumstantial evidence against him.

The prosecution recovered some blood stained clothes and shoes also and led its evidence regarding the taking of the mounds, and their comparison. We do not however think it necessary to examine it as it cannot be said to be quite clear.

The recovery of the incriminating articles in pursuance of the, respondent's information is an important piece of evidence against him. As has been held by this Court in Baiju alias Bharosa v. State of Madhya Pradesh(1), the question whether a presumption should be drawn against the respondent under illustration (a) of section 114 of the Evidence Act is a matter which depends on the evidence and the circumstances of each case. The nature of the recovered articles, the, manner of their acquisition by the owner, the nature of the evidence (1) [1978] 2 SCR. 594.

3-329 SCI/78 about their identification, the manner in which the articles were, dealt with by the accused the place and the, circumstances of their recovery, the length of the intervening period and the ability or otherwise of the accused to explain the recovery, are some of those circumstances. As the ring Ex. P. 1 was made of gold and bore the initials of the deceased, and the goldsmith Kartar Singh (P.W. 17) bad established its identity, there could be no doubt whatsoever that it belonged to the deceased. It is also a matter of great significance that it was found tied in a handkerchief alongwith the other two highly incriminating articles, namely, the finger marked currency note Ex. P. 10 and the respondent's purse Ex. P. 9 about whose identity there can possibly be no reason for any doubt. The respondent knew that he would be suspected of the crime because the deceased was last seen in his company, and the fact that he buried the articles near the water lift in the middle of the way leading from Khankhanwali to his village Roranwali shows that he wanted the articles to lie there until he could feel reassured enough to dig them out. It however so happened that he was suspected from the very beginning, was arrested within four days and gave the information within the next two days which led to the dis- covery of an important fact within the meaning of section 27 of the Evidence Act. It must therefore be held that the incriminating articles were acquired by the respondent at one and the same time and that it was he and no one else who had robbed the deceased of the money and the ring and had hidden them at a place and in a manner which war,

known to him. Then there is the further fact that the respondent was unable to explain his possession of the ring and the money and did not even attempt to do so. The currency note Ex. P. 10 was found on the top of the bundle of currency 'notes of the value of Rs. 4142/-, and we have given our reasons for holding that it bore the respondent's fingerprint. It will be recalled that the deceased was undoubtedly in possession of currency notes because of the realisation he had made from the debtors of the Co-operative Society only a little while earlier, and the fact that the respondent hid the notes after tying them in a handkerchief, shows that he knew that their possessions with him would be incriminating and unexplainable. The intervening period between the loss of the money and the ring by the deceased and their recovery was not more than six days, which was quite a short period. All these facts were not only proof of robbery but were presumptive evidence of the charge of murder as well. Reference in this connection may be made to the decisions in Wasim Khan v. The State of Uttar Pradesh(1), Tulsiram Kanu v. The State,(2) Sunderlal v. The State of Madhya Pradesh(3), Alisher v. State of Uttar Pradesh (4) and Baiju alias Bharosa v. State of Madhya Pradesh, (supra). In fact it has, not been disputed before us that if the respondents possession of the incriminating articles was held proved, the circus stantial evidence against him would be sufficient to justify the trial (1) [1956] S.C.R. 191.

(2) AIR 1954 S.C. 1 (3) A.I.R. 1954 S.C. 28.

(4) [1974] 4 S.C.C. 254.

court's finding that he was guilty of the offence under section 302 for committing the murder of Nishan Chand and the offence of robbery under section 392 read with section 397 I.P.C.

For the reasons mentioned above, the appeal is allowed, the impugned judgment of the High Court is set aside and respondent Ajit Singh is convicted of the offences under sections 302 and 392/397 I.P.C. In the circumstances of the case, we think it sufficient to sentence him to imprisonment for life for the offence under section 302 and to imprisonment for seven years for the offence under section 392/397 I.P.C, Both the sentences will run concurrently.

Appeal allowed.

S.R.