Supreme Court of India
Geejaganda Somaiah vs State Of Karnataka on 12 March, 2007
Author: . A Pasayat
Bench: Dr. Arijit Pasayat, Lokeshwar Singh Panta

CASE NO.:
Appeal (crl.) 311 of 2007

PETITIONER:
GEEJAGANDA SOMAIAH

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT: 12/03/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:

JUDGMENT Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment rendered by a Division Bench of the Karnataka High Court dismissing the appeal filed by the appellant questioning correctness of the conviction recorded by the Fast Track Court. The said Court found the appellant guilty of offence punishable under Section 302 of the India Penal Code, 1860 (in short the 'IPC') and sentenced him to undergo imprisonment for life and to pay a fine of Rs.8,000/- with default stipulation.'

3. Background facts in a nutshell are as follows:

One Chengapa (hereinafter referred to as the 'deceased'), his wife Smt. Baby Chengappa (PW-1), the accused and most of the witnesses are the residents of Garvale village. There is no much dispute that the accused and the deceased were related. According to the prosecution the Geejaganda family to which the accused and the deceased belong owned nearly 348 acres of land. Out of the same, donation of about 48 acres, was made and the remaining area was with the family. There were six sharers in the said Geejaganda family. The said six sharers were in possession of the respective portion of the remaining area. The deceased was claiming equitable partition and share in family land which was opposed by the accused and this resulted in ultimate murder of the deceased Chengappa on 23.9.1995 at 8.00 p.m. It is relevant to note that there is no much dispute that on 21.9.1995 i.e. two days before the incident, the Revenue Inspector had visited and inspected the family lands on the request made by the deceased for having equitable partition. On 23.9.1995 in the morning the deceased left the house informing his wife PW-1, that he is going to Madapura to meet the Revenue Inspector. At that time, he was wearing one HMT Watch, gold ring with inscription "GDC", a gold chain and a sum of Rs.2,500/-. He informed PW-1 that he may return in the evening and if he does not, he will come back on the next day morning. Since the deceased did not come back

even in the morning of 24.9.1995, PW-1 went to the coffee land to attend the work and on the way on Thakeri-Garvale Road, saw the dead body of her husband lying by the side of the road with injuries on his person. On seeing it she went back to the house and informed the incident to her children and all the family members came back to the place. By then the police who had received incomplete information also arrived at the spot and after recording the statement of PW-1 and treating the same as first information report, registered a case in Crime No.215/1995 for the offence punishable under Section 302 IPC read with Section 34 IPC against the two accused persons including the appellant-accused no.1 and investigation was taken up.

4. After registration of the case the mandatory procedures like holding of mahazar, drawing up of inquest proceedings were conducted. Statements of witnesses were recorded and search for the accused was carried out. On the same day, i.e., on 24.9.1995, accused no.1 voluntarily appeared before the Investigating Officer and surrendered. He was taken into custody and interrogated and from his voluntary statement, the permissible portion marked as Ex.P-14 was recorded. On the basis of the voluntary statement, gold chain, ring belonging to the deceased and the weapon alleged to have been used in the crime in question were discovered from the house of the accused no.1. Those were seized along with the bloodstained clothes which were subjected to forensic science examination. On receipt of all the reports including F.S.L., autopsy, serologist and on completion of the investigation, charge sheet was filed against the accused persons for the offence punishable under Section 302 read with Section 34 of the IPC.

5. In order to establish its accusations the prosecution examined 16 witnesses. The accused persons pleaded innocence and stated that because of enmity they have been falsely implicated.

6. The Trial Court on consideration of the evidence on record found the appellant guilty. However, the co-accused was given the benefit of doubt and order of acquittal was recorded.

7. The entire case of the prosecution revolves around the evidence which is circumstantial in nature, as there were no eye witnesses to the actual assault. The circumstances relied upon by the prosecution are:

(i) Motive;

(ii) Last seen together'

(iii) Discovery/recovery of the golden ornaments by the deceased and the murder weapon seized from the house of the accused no.1 along with the bloodstained clothes of the accused no.1; and lastly

(iv) absence of any explanation by the accused no.1.

8. The High Court found that the circumstances were conclusive to prove guilt of the accused and, therefore, confirmed the conviction and the sentence by dismissing the appeal.

9. In support of the appeal leaned counsel for the appellant submitted that the factual scenario as projected by the prosecution does not establish the guilt of the accused and the circumstances highlighted by the prosecution to establish its case does not present a complete chain of circumstances to warrant any interference of guilty.

10. Learned counsel for the respondent on the other hand supported the judgment of the High Court affirming that the judgment of the Trial Court.

11. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan, AIR (1977) SC 1063, Eradu v. State of Hyderabad, AIR (1956) SC 316, Earabhadrappa v. State of Karnataka, AIR (1983) SC 446, State of U.P. v. Sukhbasi, AIR (1985) SC 1224, Balwinder Singh v. State of Punjab, AIR (1987) SC 350, and Ashok Kumar Chatterjee v. State of M.P. ,AIR (1989) SC 1890. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab AIR (1954 )SC 621 it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

We may also make a reference to a decision of this Court in C. Chenga Reddy v. State of A.P., (1996) 10 SCC 193, wherein it has been observed thus:

"21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

In Padala Veera Reddy v. State of A.P. AIR (1990) SC 79, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence

should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

In State of U.P. v. Ashok Kumar Srivastava (1992) Crl. LJ 1104, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

12. Sir Alfred Wills in his admirable book `Wills' Circumstantial Evidence' (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

13. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

In Hanumant Govind Nargundkar v. State of M.P. AIR (1952) SC 343, it was observed thus:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra, AIR (1984) SC 1622, Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in the prosecution cannot be cured by a false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

14. Some of the circumstances which need to be highlighted are recovery of the gold ornaments of the deceased as well as the weapon used in the crime. The bloodstained clothes of the appellant were also seized. Prosecution has relied on the evidence of PWs 6 and 12 to establish its stand about the recovery. PW-6, the goldsmith who was called for testing and weighing gold ornaments. He admitted that he accompanied police officer for recovery of the ornaments from the accused but resiled from certain parts of the statement made during investigation. PW-12 specifically stated that the appellant led the police and the mahazar witness for discovery of the articles namely, gold chain MO 10, bloodstained clothes i.e. MO 14 of the accused. These are along with clothes were sent for forensic examination. The evidence of FSL Officer and his report equally established that the bloodstains were there. Section 114 of the Indian Evidence Act, 1872 (in short 'Evidence Act') has also application. As held by this Court in J.P. Anand v. D.G. Baffna, AIR (2002) SC 141, and Ezhil and Ors. v. State of Tamil Nadu, AIR (2002) SC 2017, in the absence of explanation of the accused as to legitimate or origin of their possession of articles belonging to the deceased, keeping in view of the time within which the murder was supposed to have been committed and the body found and the articles recovered from the possession of the accused an inference can be can be safely drawn that not only the accused was in possessions of those articles belonging to the deceased but also committed murder of the deceased. The articles belonging to the deceased were in possession of the accused who had voluntarily disclosed and as such presumption under Section 114 of the Evidence Act was clearly applicable.

15. The most important circumstance for the prosecution in the case is the disclosure statements of the accused persons and recoveries of the stolen property, blood stained shirt and weapon of offence consequent upon such statements. The admissibility of the statements made by the accused persons to the police is challenged on twin grounds, i.e., (i) factually no such statement was made, and (ii) the statement made was inadmissible in evidence.

Section 25 of the Evidence Act mandates that no confession made to a police officer shall be proved as against a person accused of an offence. Similarly Section 26 of the Evidence Act provides that confession by the accused person while in custody of police cannot be proved against him. However, to the aforesaid rule of Sections 25 to 26 of the Evidence Act, there is an exception carved out by Section 27 the Evidence Act providing that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact

thereby discovered, may be proved. Section 27 is a proviso to Sections 25 and 26. Such statements are generally termed as disclosure statements leading to the discovery of facts which are presumably in the exclusive knowledge of the maker. Section 27 appears to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly it can be safely allowed to be given in evidence.

As the Section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 the Evidence Act.

16. The position of law in relation to Section 27 of the Evidence Act was elaborately made clear by Sir John Beaumont in Pulukuri Kottaya and Ors. v. Emperor, AIR (1947) PC 87, wherein it was held:

"Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police Officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown has argued that in such a case the 'fact discovered' is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to S.26, added by S.27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the

accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are admissible since they do not relate to the discovery of the knife in the house of the informant."

17. In State of Uttar Pradesh v. Deoman Upadhyaya, AIR (1960) SC 1125, this Court held that Sections 25 and 26 were manifestly intended to hit an evil, viz., to guard against the danger of receiving in evidence testimony from tainted sources about statements made by persons accused of offences. These sections form part of a statute which codifies the law relating to the relevancy of evidence and proof of facts in judicial proceedings. The State is as much concerned with punishing offenders who may be proved guilty of committing of offences as it is concerned with protecting persons who may be compelled to give confessional statements. Section 27 renders information admissible on the ground that the discovery of a fact pursuant to a statement made by a person in custody is a guarantee of truth of the statement made by him and the legislature has chosen to make on that ground an exception to the rule prohibiting proof of such statement. The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable. In that case the High Court had acquitted the accused on the ground that his statement which lad to the recovery of gandasa, the weapon of offence was inadmissible. The accused Deoman had made a statement to hand over the gandasa which he stated to have thrown into a tank and got it recovered. The trial court convicted the accused for the offence of murder. The Full Bench of the High Court held that Section 27 of the Evidence Act which allegedly created an unjustifiable discrimination between persons in custody and persons out of custody offending Article 14 of the Constitution of India, 1950 (in short the 'Constitution') was unenforceable. After the opinion of the Full Bench a Division Bench of the Court excluded from consideration the statement made by the accused in the presence of the police officer and held that the story of the accused having borrowed a gandasa on the day of occurrence was unreliable. The accused was acquitted but at the instance of the State of U.P., the High Court granted a certificate to file the appeal in this Court. This Court did not agree with the position of law settled by the High Court and decided to proceed to review the evidence in the light of that statement in so far as it distinctly related to the fact thereby discovery being admissible. Dealing with the conclusions arrived at by the High Court and on the facts of the case, this Court observed:

"The High Court was of the view that the mere fetching of the gandasa from its hiding place did not establish that Deoman himself had put it in the tank, and an inference could legitimately be raised that somebody else had placed it in the tank, or that Deoman had seen someone placing that gandasa in the tank or that someone had told him about the gandasa lying in the tank. But for reasons already set out the information given by Deoman is provable in so far as it distinctly relates to the fact thereby discovered; and his statement that he had thrown the gandasa in the tank is

information which distinctly relates to the discovery of the gandasa. Discovery from its place of hiding, at the instance of Deoman of the gandasa stained with human blood in the light of the admission by him that he had thrown it in the tank in which it was found therefore acquires significance, and destroys the theories suggested by the High Court."

In Mohmed Inayatullah v. The State of Maharashtra, AIR (1976) SC 483 it was held that expression 'fact discovered' includes not only the physical object produced but also place from which it is produced and the knowledge of the accused as to that. Interpreting the words of Section "so much of the information" as relates distinctly to the fact thereby discovered, the Court held that the word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of proveable information. The phrase "distinctly" relates "to the fact thereby discovered". The phrase refers to that part of information supplied by the accused which is the direct cause of discovery of a fact. The rest of the information has to be excluded.

In Earabhadrappa alias Krishnappa v. State of Karnataka, [1983] 2 SCR 552, it was held that for the applicability of section 27 of the Evidence Act two conditions are pre-requisite, viz., (i) information must be such as has caused discovery of the fact, and (ii) the information must 'relate distinctly' to the fact discovered. Under Section 27 only so much of the information as distinctly relates to the fact really thereby discovered, is admissible. While deciding the applicability of Section 27 of the Evidence Act, the Court has also to keep in mind the nature of presumption under Illustration (a) to (s) of Section 114 of the Evidence Act. The Court can, therefore, presume the existence of a fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relations to the facts of the particular case. In that case one of the circumstance relied upon by the prosecution against the accused was that on being arrested after a year of the incident, the accused made a statement before the police leading to the recovery of some of the gold ornaments of the deceased and her six silk sarees, from different places which were identified by the witness as belonging to the deceased. In that context the court observed:

"There is no controversy that the statement made by the appellant Ex.P-35 is admissible under S.27 of the Evidence Act. Under S.27 only so much of the information as distinctly relates to the facts really thereby discovered is admissible. The word 'fact means some concrete or material fact to which the information directly relates."

In State of Maharashtra v. Damu, S/o Gopinath Shinde & Ors., JT (2000) 5 SC 575 has held that the Section 27 the Evidence Act was based on the doctrine of confirmation by subsequent events and giving the section actual and expanding meanings, held:

"The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the

admissible portion to the minimum. It is now well settled that recovery of an object is not discovery of a fact as envisaged in section. The decision of the Privy Council in Pulukuri Kottaya v. Emperor, AIR (1947) PC 67, is the most quoted authority for supporting the interpretation that the 'fact discovered' envisaged in the section embraces the place from which the object was produced; the knowledge of the accused as to it, but the information given must relate distinctly to that effect."

18. Besides Section 27 the Evidence Act, the courts can draw presumptions under Section 114, Illustrations (a) and Section 106 of the Evidence Act. In Gulab Chand v. State of M.P. AIR (1995) SC 1598, where ornaments of the deceased were recovered from the possession of the accused immediately after the occurrence, this Court held:

"It is true 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 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 circumstances. It has also been indicated 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 to draw an inference that the person in possession of the stolen property had committed the murder. A note of caution has been given by this Court by indicating that suspicion should not take the place of proof. It appears that the High Court in passing the impugned judgment has taken note of the said decision of this Court. But as rightly indicated by the High Court, the said decision is not applicable in the facts and circumstances of the present case. The High Court has placed reliance on the other decision of this Court rendered in Tulsiram Kanu v. State, AIR (1954) SC 1 In the said decision, this court has indicated that the presumption permitted to be drawn under Section 114, Illustration (a) of the Evidence Act has to be drawn under the 'important time factor'. If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a presumption of guilt may be permitted. But if several months had expired in the interval, the presumption cannot be permitted to be drawn having regard to the circumstances of the case. In the instant case, it has been established that immediately on the next day of the murder, the accused Gulab Chand had sold some of the ornaments belonging to the deceased and within 3-4 days the recovery of the said stolen articles was made from his house at the instance of the accused. Such close proximity of the recovery, which has been indicated by this Court as an 'important time factor', should not be lost sight of in deciding the present case. It may be indicated here that in a latter decision of this Court in Earabhadrappa v. State of Karnataka, [1993] 2 SCC 330, this Court has held that the nature of the presumption and Illustration (a) under Section 114 of the Evidence Act must depend upon the nature of evidence adduced. No fixed time-limit can be laid down to determine whether possession in the recent or otherwise and 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 cannot be said to be too long particularly when the appellant had been absconding during that period. In our view, it has been rightly held by the High Court that the accused was not affluent enough to possess the said

ornaments and from the nature of the evidence adduced in this case and from the recovery of the said articles from his possession and his dealing with the ornaments of the deceased immediately after the murder and robbery a reasonable inference of the commission of the said offence can be drawn against the appellant. Excepting an assertion that the ornaments belonged to the family of the accused which claim has been rightly discarded, no plausible explanation for lawful possession of the said ornaments immediately after the murder has been given by the accused. In the facts of this case, it appears to us that murder and robbery have been proved to have been integral parts of the same transaction and therefore the presumption arising under Illustration

(a) of Section 114 Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her ornaments."

19. In the instant case also, the 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. In the same affect are the judgments in Mukund Alias Kundu Mishra & Anr. v. State of M.P. AIR (1997) SC 2622 and Ronny Alias Ronald James Alwaris & Ors. v. State of Maharashtra, AIR (1998) SC 1251 . In the latter case the Court held:

"Apropos the recovery of articles belonging to the Ohol family from the possession of the appellants soon after the robbery and the murder of the deceased (Mr.Mohan Ohol. Mrs. Runi Ohol and Mr. Rohan Ohol) which possession has remained unexplained by the appellants the presumption under Illustration (a) of Section 114 of the Evidence Act will 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 therefore, be that the appellants and no one else had committed the three murders and the robbery."

20. These aspects were illuminatingly highlighted in Sanjay @ Kaka v. State (N.C.T. of Delhi) [2001] 3 SCC 190.

21. Above being the position, the appeal is clearly without merit, deserves dismissal which we direct.