Matru Alias Girish Chandra vs State Of Utttar Pradesh on 3 March, 1971

Equivalent citations: 1971 AIR 1050, 1971 SCR (3) 914, AIR 1971 SUPREME COURT 1050, 1971 3 SCR 914, 1971 CURLJ 545, (1971) 2 SC CRI R 532

Author: I.D. Dua

Bench: I.D. Dua, P. Jaganmohan Reddy

PETITIONER:
MATRU alias GIRISH CHANDRA

Vs.

RESPONDENT:
STATE OF UTTTAR PRADESH

DATE OF JUDGMENT03/03/1971

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
REDDY, P. JAGANMOHAN

CITATION:
1971 AIR 1050 1971 SCR (3) 914
1971 SCC (2) 75

ACT:
Circumstantial evidence-- Weight of.

HEADNOTE:
The appellant and two others were charged with the offences of murder of a woman and her three year old son by brutally stabbing them, and theft of cash and ornaments from the house of the deceased. The offences were alleged to have been committed between 10 and 11 a.m.
About six months prior to the occurrence there was a quarrel between the deceased and the wife of the appellant who was the next door neighbor during which the deceased received an injury. The deceased wrote about this incident to her father. On the day of the occurrence when the husband of the deceased received information of the murder he rushed home from his shop and gave information of the occurrence to

the police at about 12.40 p.m. but, as he did not suspect anyone, he merely, mentioned the circumstances in which he had come to know of the murder. The appellant was with him till the time when the First Information Report was lodged. Next morning one person informed the husband of the deceased that he had seen the appellant and two unknown persons entering the house of the deceased at about 10 or 10.30 a.m. on the previous day and another person gave the information that about 11.00 a.m. he had seen the appellant and two other persons coming out of his house. The husband of the deceased passed on the information to the police. By that time the appellant had disappeared. Three days later, he was appellant handed. On search of his person a spectacle case containing a pair of spectacles and a gold ring were recovered from the folds of his dhoti. The Sessions- Judge found the appellant guilty of murder and the High Court confirmed the conviction. The other two accused were acquitted.

On appeal to this Court,

HELD : The cumulative effect of circumstantial evidence in the present case falls short of the test required for sustaining a conviction. When proof of guilt depended solely on circumstantial evidence, it was incumbent on the courts to properly consider and scruitinise all the material factors and circumstances for determining whether the chain of circumstantial evidence is so complete as to lead to the only conclusion of guilt. [928 F-H]

(1) Normally this Court does not go into evidence and appraise it for itself in criminal appeals under Art. 136 of the Constitution, because, the Article does not confer a right of appeal. It merely clothes this Court with discretionary Power to scrutinise and go into the evidence in special circumstances in order to satisfy itself that injustice has not been done. In the present case the exceptional features were that it was a case of cir- cumstantial evidence, the identification of the stolen articles was unsatisfactory, and the other two accused who had been charged along with the appellant, had been acquitted. [919 F-G]

(2) (a) The husband of the deceased himself did not think that the appellant was inimical towards the deceased and he did not suspect him

915

of complicity in the murder. The alleged altercation between the deceased and the appellant's wife did not leave any serious impact on the mind of the husband of the deceased, and the appellant's admitted presence in the house of the deceased till the lodging of the F.I.R. indicated that relations between them were not hostile or unfriendly. [921 D-F]

(b) The letter written by the deceased to her father about the quarrels does not prima facie fall within the purview of S. 32, Indian Evidence Act. But even if this letter

were held to be admissible the motive which it Suggested was not of such a strong and impelling nature as to induce the murder of the deceased and her infant child. [927 H, 928 A-B]

(3) (a) It is unbelievable that the appellant and his companions entered the house of the deceased for the purpose of committing murder and theft in broad day light when persons who knew him were likely to see him entering the house. The movements and behavior of the appellant did not show any abnormality. On the contrary, the behavior and conduct of the appellant, Judged by normal standards, was not suggestive of his involvement in such a heinous crime. In the absence of direct evidence this consideration could not be ruled out as irrelevant. [922 A-B, D-E, G-H]

(b)The appellant's conduct in absconding does not necessarily lead to the inference of a guilty mind. Even an innocent person may feel panicky and try to evade arrest when wrongly suspected of a grave crime. Normally courts are disinclined to attach much importance to the act of absconding. of the accused, treating it as a very small item in the evidence for sustaining conviction. [928 B-D]

(4) The evidence 'regarding the recovery of the articles from the appellant's possession at the time of his arrest was not acceptable without proper corroboration from a more disinterested and dependable source. Also, the ring said to have been recovered was of a common design and easily available. [926 A-C]

(5) The identification of the ring was also unsatisfactory. Identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is-proceeding on right lines. [192O F-G, 926 G-H]

In the present case, although the articles were recovered three days after the occurrence the test identification was held by the Magistrate nearly four months later. The reason for the delay was suggested that similar articles had to be procured for mixing up with the articles recovered; ,but in fact the delayed identification had been held in a highly unsatisfactory manner, in that the articles mixed up were dissimilar. [926 C-D]

(6) The weapon with which the crime was committed was not recovered, and, no stains of blood were noticed by anyone on the, appellants clothes even though he was with the husband of the deceased right up to the lodging of the F.I.R. and even accompanied him for that purpose. [928 E-F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 165 of 1968.

Appeal by special leave from the judgment and order dated February 8 1968 of the Allahabad High Court in Criminal Appeal No. 2305 of 1965.

A. S. R. Chari J. P. Goyal and G. S. Chatterjee, for the appellant.

O. P. Rana, for the respondent.

The Judgment of the Court was delivered by Dua, J. In this appeal by special leave the appellant Matru alias Girish Chandra challenges his conviction under S. 302 read with s. 34, I.P.C. and under S. 382, I.P.C. For the former offence he was sentenced to imprisonment for life and for the latter to rigorous imprisonment for four years. Both the sentences were directed to ran 'concurrently. The appellant, along with Mohar Singh and Saheb Singh were committed to the court of Sessions for trial for offences under ss. 302/34, I.P.C. for the murder of Smt. Omwati, wife of Ram Chander (P.W. 1) and of their three years old son Sua Lal and under s. 382, I.P.C. for committing theft of cash, armaments and other things from the house of the deceased. The offences were alleged to have been committed on May 29, 1964 between 10 and II a.m. in the township of Shamsabad.

The appellant and the deceased were admittedly next door neighbors in Mohalla Chaukhanda at the relevant-time. Rain Chandra had two sons, the elder one Ramji being six years old. On the day of occurrence at about 9 a.m. Ram Chandra left his house for his shop about three, furlongs away, leaving behind in the house his wife and two sons. About an hour later Omwati sent the elder son to the shop with some food for his father. A few minutes later Ram Chandra sent to his house some vegetables through his servant. After sometime his servant returned to the shop and informed Ram Chandra that his wife was lying in the house in pool of blood. After calling his nephew to look after the shop Ram Chandra immediately went to his house and found his wife lying dead in the courtyard near the well whereas his 3 year old son Sua Lal was lying dead in a room close to the courtyard. The box inside the room also appeared to have been opened and its contents pilfered. Some gold and silver omaments which his deceased wife was wearing that morning were found missing. Information of the occurrence was lodged at the police station Shamsabad at about 12.40 in the afternoon. But as he did not suspect anyone he merely stated the circumstances in which he came to know of the occurrence and found his wife and child dead in the house. It was stated in the report that Rs. 200/- in cash and three ornaments including a ring had been taken away by the miscreants. Matru, appellant, who was the next door neighbour came to Ram Chandra's house before the first information report was lodged and remained with him till the report was made to the police. The investigating officer found blood at both the places where the two dead bodies were lying. The blood-stained and unstained earth was collected and sealed. Next morning it appears Chhotey Lal (P.W. 2) and Nathu Lal (P.W. 10) went to see Ram Chandra between 6, and 7 a.m. Chhotey Lal informed him that he (Chhotey Lal) had seen Matra and two unknown persons entering Ram Chandra's house at about 10 or 10.30 a.m. on the previous day and Nathu Lal gave him the information that at about 11 a.m. on the day of the occurrence he had seen Matru and. two other persons coming out of his house. These witnesses at that time did not attach any importance to the three persons entering and after some time coming out of Ram Chandra's house. However, later when they leamt about the double murder in Ram Chandra's house between 1 0 and II a.m. they thought that they should tell Ram Chandra what they had seen on the morning of May 29 at about

the time of the occurrence.

It is said that about six months prior to the occurrence relations between Omwati and the wife-of Matru, appellant, had become strained. One of Matru's daughter was married and the other was of marriageable age but both were living with their parents. Omwati suspected that some 'people used frequently to visit Matru's house without any cogent reason and also gave currency to this fact. Matru's wife naturally resented this. About six months prior to, the occurrence an incident is stated to have taken place which gave rise to a quarrel between the two women. Matru's wife threw a stone which struck Omwati on her head. Ram Chandra did not attach much importance to this incident considering it to a matter of common occurrence amongst womenfolk. Later, however, Omwati seems to have told her husband that she had been threatened by Matru's wife with dire consequences. Ram Chandra advised his wife not to have anything to do with Matru's wife. After the occurrence, the appellant, it appears, remained in his house till the inquest was over but thereafter he seems to have disappeared. On receiving in- formation about Matru and his two companions going into his house and coming out a short while later round about the time of the occurrence, Ram Chandra informed the investigating officer what he had been told by Chhotey Lal and Nathu Lal. The Sub-Inspector searched the appellant's house at about 9 a.m. on May 30, but he was not found there, nor was any incriminating thing found in the house. A search for the appellant was made but he could not be traced till three days later. On June 1, when the investigating officer learnt that Matru was likely to go to his village to see his children he was apprehended and on search of his person a spectacle case containing a pair of spectacles and a gold ring was recovered from the folds of his dhoti. Complicity of Mohar Singh because known to the police on Matru's interrogation. But Mohar Singh could not be arrested till September 13, 1964. When arrested, he offered to recover a shawl, one of ,the stolen properties, which he had sold to Darbarilal (P.W. 17) for Rs. 70/-. The shawl was accordingly recovered at Mohar Singh's instance from Darbarilal. Saheb Singh was also arrested on suspicion. The Sessions Judge found the appellant guilty of murder and also of an offence under S. 382, I.P.C. Since there was no evidence of specific part played by the appellant the extreme penalty was not imposed on him. As observed earlier under S. 382, I.P.C. he was sentenced to four years rigorous imprisonment. Mohar Singh was, acquitted of the offence under S. 302/ 34, I.P.C. as also of the offence under S. 382, I.P.C. He was, however, convinced for an offence under S. 411, I.P.C. and sentenced to rigorous imprisonment for two years. Saheb Singh was given benefit of doubt and acquitted. The only evidence against Saheb Singh was that of his by Nathu Lal (P.W. 10) which was not corroborated by any other evidence and identification alone in the circumstances was considered unsafe for convicting him. Both the convicts appealed to the High Court. That Court came to the conclusion that Matru had a motive to commit the crime and that Chhotey Lal (P.W. 2) and Nathu Lal (P.W. 10) were reliable witnesses and that the investigation was neither tainted nor unfair to the accused. The statement of Ram Chandra (P.W. 1), husband of the deceased, and his conduct throughout also appeared to be quite strains forward. The ring, which had been recovered from Matru's possession at the time of his arrest was held to be the one which the deceased was wearing when her husband left the house in the morning of the occurrence.This was considered to be a very incriminating circumstance. All these circumstances taken along with the fact that Matru had absconded were held to connect the appellant with the crime beyond reasonable doubt. Mohar Singh, from whose possession nothing had been recovered was given benefit of doubt and acquitted. The recovery of the shawl from Darbarilal in the absence of any writing was not considered to be

incriminating enough to justify Mohar Singh's conviction because it did not exclude reasonable doubt about his innocence.

In this Court it was strongly argued on behalf of the appel- lant Matru that the circumstantial evidence does not establish his complicity in the offence charged. The Police investigation was also assailed and it was submitted that identification of the articles alleged to have been stolen and later recovered was not of much value because the articles alleged to have been recovered were commonly available and had no distinguishing marks of identification Objection was also raised to the admissibility of Ex. Ka-4, a letter Written by the deceased to her father in which reference was made to injury received by her as a result of a brick thrown by Matru's wife. This ground was not included in the original memorandum of appeal dated May 1, 1968 presented in this Court but permission to raise this ground was sought by means of an application dated July 25, 1968 which was allowed by this Court while granting special leave. It was contended that this letter was inadmissible in evidence as it did not contain any statement relating to the cause of Omwati's death or to the circumstances of the transaction which resulted in her death. According to the argument this letter did not fall within the purview of any of the clauses of s. 32, Indian Evidence Act under which-alone it could be hold admissible in evidence. Shri Chari also submitted that the other two co-accused having been acquitted, s. 34, I.P.C. became inapplicable to the case of the appellant and his conviction under s. 302 read with s. 34, I.P.C. must be held to be con- trary to law. For this submission-he relied on Prabhu Babaji Navle v. State of Bombay.(1) Finally counsel argued on the authority of Hanumant v. State of M.P.(2) that in case of circumstantial evidence the circumstances from which the conclusion of guilt is to be drawn should be fully. established and all the established facts should be consistent only with the hypothesis of the guilt of the accused. In the present case the circumstantial evidence is not of conclusive nature and tendency, said Shri Chari. Normally this Court doe& not go into the evidence and appraise it for itself in criminal appeals under Art. 136 of the Constitution because this Article does not confer a right of appeal on a party. It merely clothes this Court with discretionary power to scrutinise and go into the evidence in special circumstances in order to satisfy itself that substantial and grave injustice has not been done. In the case before us we are persuaded to go into the evidence because of several exceptional features. It was a case of circumstantial evidence and the two accused who had been charged along with the appellant under s. 302 read with s. 34, I.P.C. were acquitted. The appellant a neighbdur of the deceased, remained With her husband at the place of occurrence till the report was made to the police on the day of the-murder. Indeed, he accompanied Ram Chandra for lodging the report. The question of admissibility and value of Ex. Ka-4 and the probative value of the identification proceedings of the articles alleged to have been stolen and recovered were also seriously canvassed at the Bar. And apart from the argument that the circumstantial evidence on (1) A.1 R,1956 S.C.51.

(2) [1952] S.C.R. 1091.

the record does not exclude reasonable possibility of the appellants innocence, the further question was raised that if these two pieces of evidence, namely Ex. Ka-4 and the identification of the, articles were to be ignored then there was absolutely no evidence on which a serious argument about the appellant's guilt-could be founded. Now, the deceased Omwati and her infant son were undoubtedly both murdered at about IO or 1 1 on the morning of May 29, 1964. Ram Chandra Gupta, the

husband of Omwati had no reason to suspect Matru, appellant, (his neighbour) of this crime. In the F.I.R. Ex. Ka.-IO no one was named as a sus- pect and only the following articles of property were stated to be missing :,

1. Gold chain weighing about 3 tolas, plain twisted design worth Rs. 375/-

2. One pair of gold jhumki together with kundal weighing 1 1/2 tolas worth, Rs. 1501-;

3. One gold ring longitudinal design weighing 1/2 tola worth Rs. 75/-. this was stated to have been worn by the deceased; and

4. Currency notes worth Rs. 200/- stated to have, been in the box.

It may here be pointed out that when P.W. I Ram Chandra came into the witness box he attempted to prove Ex. Ka-3, a supplementary list of missing articles which list, he said, had been handed over to the investigating officer soon after the preparation of the inquest report. The production of this list was objected to and though the trial court relied on it, the High Court ruled it out as hit by s. 162, Cr. P.C. The position, therefore, remains that the description of the ring in the F.I.R. is the only description we have on the record and also that there is no mention of the spectacle case and the spectacles in the F.I.R. Suspicion fell on the appellant only when Chhotey Lal, barber (P.W. 2) and Nathu Lal (P.W. 10) saw Ram Chandra on the following morning (May 30, 1964) and informed him of what they had separately seen on the morning of the 29th at about the time of the alleged murder. What they conveyed to Ram Chandra has already been noticed by us. It was on the basis of this information that Ram Chandra is said to have informed the investigating officer about his suspicion against the appellant. The recovery of the articles, even if the evidence of these two witnesses is believed, would have a material bearing on the case because if the recovery proceedings of the articles said to have been recovered 92 1 from the appellant's possession does not inspire confidence and it is not possible to hold beyond reasonable doubt that these were the very articles found missing from the house of the deceased, then it may be extremely difficult to sustain the appellant's conviction on the prosecution evidence. In this connection particular importance attaches to the ring stated to have been worn by the deceased because if that ring is not proved to be the same which is alleged to have been worn by the deceased Omwati at the time of her murder then no inference would seem to arise against the appellant. The prosecution case against the appellant is mainly sought to be established by the evidence of P.W. 2 and P.W. 10 and by the evidence relating to the recovery from the appellant of the, articles alleged to belong to the deceased supported by the evidence of motive on the part of the appellant for committing this crime 'and corroborated by the appellant's alleged conduct in trying to mislead Ram Chandra and the investigating officer and' finally by disappearing after the lodging of the F.I.R. The trial court, as also the High Court, both relied on these four pieces.. of evidence for convicting the appellant.

To begin with it is notworthy that Ram Chandra himself does. not seem to have thought that the appellant was inimical towards. the deceased and he did not suspect the appellant of complicity in the murder. According to his own testimony it was only after Chhotey Lal (P.W. 2) and Nathu Lal (P.W.

10), had informed him about what they had seen on the morning of May 29, that he recollected that about five or six months prior to the occurrence there was an altercation between Omwati and the appellant's wife. This would clearly indicate that the alleged altercation had not left any serious impact on the mind of Ram Chandra and theapperant's admitted presence in the house of Ram Chandra till' the lodging of the F.I.R. indicates that relations between Ram Chandra and the appellant were not openly hostile or unfriendly. The evidence of P.W. 2 shows that the appellant and two other persons came out of the appellant's house and entered the house of Ram Chandra on the morning of May 29, and the evidence of P.W. 10 shows that the appellant and two otherpersons came out of Ram Chandra's house and entered that of the appellant on the same morning a little later. This evidencehaving been believed by the two courts below may- be accepted. But so far as the question of time when these two witnesses saw the appellant and two other persons going. into and coming out of Ram Chandra's house is concerned they seem to have given the time from their impression Ram Chandra (P.W. 1) does not say that P.W. 2 and P.W. 10 had told him on the morning of May 30 that when they saw the appellant and his two com-

panions on May 29, they had a Potli with them. It also seems somewhat unbelievable that the appellant with his companions should have entered the house of Ram Chandra with the pur,Pose of committing murder and theft in broad daylight particularly when P.W. 2, a barber who knew him and lives about one furlong away from his house had actually seen him. It is un.likely that the appellant should have failed to notice P.W. 2. It is in the evidence of P.W. 2 that the, appellant and his companions came out of the appellant's house and entered that of Ram Chandra when the witness called out the name of Panditji meaning thereby Puttulal Pandit. Again, if the appellant and his two companions had committed the gruesome murder of Omwati and Sualal (Omwati aged 25 years had 4 incised wounds, 3 in the neck and one in the abdominal cavity and :Sualal, 3 years old, had three incised wounds on his neck and one on his right wrist) within half ;In hour and had also stolen the articles including a ring, a gold kundal, jhumki and silver iori worn by the deceased on her person and also broken open a box and removed therefrom a shawl and Rs. 200/- within a short span of half an hour as alleged by the prosecution, then it is somewhat surprising that 'their movements and behaviour should not have reflected any abnormality. At least Nathu Lal does not seem to have noticed any abnormal behaviour which Would excite his suspicion. Now, the appellant and his companions were seen by P.W. 2 and P.W. 10, broadly speaking, between 1 0 and 1 1 in the morning. We would give these two witnesses a margin for their inaccuracy in regard to the time as deposed by them in the witness box. P.W. 2, it may be reCalled, gives the time as between 10 and 10.30 a.m. when he saw the appellant and his companions and. P.W. 10 gives the time between 10.30 and 11 a.m. when he saw them coming out of the house of P.W. 1. The F.I.R. was lodged at 12.40 p.in. which means that Ram Chandra (P.W. 1) must have arrived at his house a little earlier. The appellant, according to P.W. 1, had been with him when the F.I. Report was got written at his house and he went along with P.W. 1 for lodging the said report. The behaviour and conduct of the appellant, judged by normal standards, is not suggestive of his involvement in such heinous crime, unless he was an experienced criminal (of which there is no suggestion) with extraordinary balance of mind and a disciplined control over his senses and faculties. In the absence of any direct evidence this consideration cannot be completely ruled out as irrelevant when weighing the circumstantial evidence in a case like the present.

This takes us to the recovery of the alleged stolen articles from the appellant and their identification. The main evidence of recovery consists of the statements of Head Constable- Ahibaran Singh (P.W. 5) and of Nathu (P.W. 10) and the recovery memo Ex. Ka-1 dated June 1, 1964. P.W. 5 has. deposed in his examination-in-chief that he did not know the appellant. According to him, an approver had informed him at about 7 p.m. on June 1, that the appellant would be coming to his house that evening to meet his children. At about 7.30 p.m.,: P.W. 5 along with Bankey, Nathu, Dilasa and two constables sat near Bankey's house waiting for the appellant. It was the approver who pointed out the appellant, whereupon, on being. interrogated by the witness, the appellant tried to run away. He was, however, apprehended. In the course of this process the appellant received some injuries. Now, the person described as the approver has not been produced as a witness and indeed even his identity has not been disclosed. It is noteworthy that there is no mention of any approver anywhere else on the record. What is still more intriguing is that even though Nathu was not previously known to the witness, within half an hour of the information about the appellant's expected visit to his house P.W. 5 managed to collect Nathu and two other persons for arresting him. The statement made by P.W. 5 in this connection makes interesting reading. He said:

> "I received information through an approver at about 7 P.M. that he shall come home to meet his children from the jungle of Imadpur by night. At this I sat near the house of Bankey by the side of the passage, alongwith Bankey, Nathu, Dilasa and two constables. Matru, accused present in court came from the side of Imadpur at about 7.30 O'clock. The approver pointed him out. On being interrogated by me, he took to his heels. I caught him after surrounding and causing slight injuries to him, When I duly searched his person in presence of the witnesses, the case Ex. 3, was recovered from the right plant of the dhoti which he was Wearing. On opening it, the spectacles, Ex. 2 and ring Ex. I were found in it. I prepared their memo, Ex. Ka-1 correctly at that spot immediately and obtained the signatures and thumb impressions of the witnesses over it. I sealed the, articles there after sewing them in cloth..... Before the arrest of Matru, I and the witnesses had searched each other's persons."

In cross-examination it was elicited from him:

> "The approver had not told me that he was carrying articles also with him. I took the witnesses for help. I did not recognise him also. Imadpur might be about half a mile from the place where I arrested him. I did not make people, sit on any other way. I sat on that very way. I took Nathu with me while he was coming out of a temple in Mauza Jatpura. I took Bankey from Bazar Kalan and Dilasa from Mauza Jatpura. I had not told the witnesses that there was possibility of article s being recovered from him. I did not know Nathu from before. I might have seen him. I did not know that his name was Nathu. Matru was at a distance of about ten paces towards the South of me when I saw him for the first time. He was coming from the western side."

Now, considering the fact that it was only at about 7 p.m. that the approver had informed P.W. 5 that the appellant was coming to 'his house and at 7.30 p.m. the arrest was actually made, it seems to be somewhat surprising that he should have within that short time collected Nathu, whom he did

not know before, Bankey and Dilasa from various places and come to the spot in time for ,effecting the appellant's arrest and search. Bankey and Dilasa have also not been produced as witnesses. Nathu, who has appeared as P.W. 10, has stated in his examination-in-chief about the arrest and search of the appellant in the following words:

> "On the fourth day of murder, i.e., after a gap of two days at about 7 p.m. the Head constable took me, Bankey and others with him. One person was keeping his face covered. He asked me to accompany him saying that he had to arrest a man. He had taken Dilasa as well. We sat in moballa Tikuriya near the house of Bankey. We searched the persons of the cons- tables and Head Constable. We searched the persons of us all. A little later, Matru accused, present in court came from the western side. The person who was with us pointed out that he was Matru. Matru started running away. At this the Head Constable and the constables caught hold of him. They gave him one or two danda blows while trying to catch him. When his person was searched, a case for keeping spectacles, containing a pair of spectacles and a gold ring, was recovered from the right phant of Matru accused. All these things were sewn in cloth and sealed on the spot. Memo was prepared there on the spot. It was read ,out. My thumb impression was also obtained. (Ex. Ka-1 read over) Yes. These very contents were read. ,out (Shown Ex. 1-3 says) Now, I shall not be able to identify the articles as to whether they are the same or some other. It happened long ago."

P.W. 16, Jamuna Prasad, retired police constable is another witness who claims to have been present at the time when Matru was arrested. He was at that time posted as a constable at P. S. Shamsabad. In examination-in-chief he said nothing about the appellant's arrest or the recovery of the articles) from him. It was only in cross-examination that he &-posed that he was with P.W. 5 at the time of the appellant's arrest and after arresting him the party returned to the police station at about 8 or 8.30 p.m. His version is:-

> "Diwanji (presumably referring to P.W. 5) had a talk with one person in my presence. After that he asked me to go along with him. So I accompanied him. We met- Bankey witness in Kalan Bazar. I cannot tell whether Bankey has got some shop or not or if he has got it, where is it ? We met Nathu near the Maria. After arresting Matroo, we returned to the Police Station at about 8 or 8.30 O'clock in the evening."

He has, however, given no details of the articles recovered nor about the appellant's search. The testimony of these witnesses is far from impressive and the story of recovery is difficult to accept on its face value. The memo of recovery is Ex. Ka-1. It purports to have been prepared at 7.30 p.m. on June 1, 1964. According to it on Matru's search, a spectacle case containing "a spectacle and a gold ring as per description given below corresponding to the case as offence no. 67 under sections 302/380, I.P.C. was recovered from the right side of the phent of his dhoti." The description of the articles recovered, according to this memo, is

1. One spectacle case of black colour, having dark blue colour inside;

2. One spectacle, having brown frame., white glasses, not circular, half frame;

3. One gold ring, longitudinal deSign, having green enamel with lengthwise, with red and blue flowery design on the enamel. The ring is somewhat bent.

It is signed by Head Constable, Ahibaran Singh and attested by Bankey, Dilasa and Nathu. It does not mention the place where the search was effected though the memo is stated to have been prepared in a shop without giving- any particulars of the shop. This memo does not materially add to the oral testimony of recovery. This is all the evidence of recovery of the articles. We do not find it safe on this evidence to hold that the articles mentioned in Ex. Ka-1 were recovered from the appellant Possession at the time of his arrest on June 1, 1964 at 7.30 p.m. Neither P.W. 5, the investigating H. C. nor Nathu, (P.W. 10) can be considered to be witnesses on whom implicit reliance can be placed without proper corroboration from a more disinterested and dependable source. Having not been impressed by the evidence of recovery, the identification test of the articles can be of little help to the prosecution, though even on that point the prosecution evidence is equally uninspiring. Identification tests, it may be pointed out, do not constitute substantive evidence. Such tests are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on right lines. Now, although the articles are stated to have been recovered on June 1, the test identification was held by Shri Jwala Prasad Srivastava, Magistrate, on October 23, 1964. The reason for this delay as suggested is that similar articles had to be procured for mixing up with the articles recovered. But the manner in which this delayed identification has been held in this case is highly un- satisfactory. Jwala Prasad Srivastava, Magistrate, First Class,, who had conducted the test identification appeared as P.W. 21, in his examination-in-chief he said:

> "Even before the dates for identification proceedings were fixed but the identification could not be conducted because similar articles had not been received. The articles were opened and shown to the contractor once so that correct articles could be brought. On 13-7-64 he made an application that the articles should be shown to him. The articles must have been shown to him within some days after that. The date must have been mentioned there but that order sheet is missing. Even then I took a precaution that none except the Contractor and the court mohair should see the articles. Just after showing the articles to the contractor, I got the same sealed in the court room in my presence.
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> In cross-examination he said :
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> "The khol (case) Ex. 3 was old. Out of the khols which were mixed, one or two were perhaps new. That too was 'Similar (dissimilar ?) but the dissimilarity was not so much, that I ought to have noted it (shown paper No. 49/147 of S.C. File) Yes, this note is mine.
>
> 'The case of the spectacle is old one whereas the mixed cases were new' (marked Ex. Kha

> 19). The counsel for the accused persons moved an application on the same day after the identification proceedings. I had, read it. The allegations regarding the ring, were not correct. So I did not note them in my order. The order sheet of some particular dates regarding the identification proceedings, were preserved ?

The same has been found. The order sheet of two dates has been found. Out of them, one bears the signature of my predecessor. I recognise the same. (marked Ex. Kha 21). The other one does not bear the signature of any one. I do not remember exactly who presented the application Ex. Kha 11. Perhaps it was moved but the contractor's man. That man used to come frequently. Marginal note on Ex. Ka- 11 shown. That encircled in red pencil and (marked X) I do not recognise the same. I cannot tell who made this entry and when. At present I cannot tell on which date the articles were shown. I did not find any such entry in the record which could tell on which date the articles were shown to the contractor. Only the word "allowed" is written with the date 13-7-64.....

articles before me. I do not remember his name. I can only recognise him by face. It is quite wrong that on 1-9-64 these articles were brought to the court and were shown to the witnesses. I do not remember orally on which date these articles were taken out from the malkhana. It is wrong to say that all the articles which were to be mixed, were dissimilar. Only the cases of the spectacles were somewhat new.

The statement of this witness reveals the unsatisfactory manner' of dealing with the test identification. We are unable to place any reliance on these proceedings. This takes us to the question of motive. We have already noticed that the altercation between the deceased Omwati and the appellant's wife does not seem to have been taken seriously by either party. The proceedings under s. 107, Cr. P. C. to which a reference has been made were started by Ram Chandra against the appellant after the occurrence in question and, therefore, they are not relevant on the question of motive for the present offence of murder. The appellant's counsel questioned the admissibility of Ex. Ka- 4, the letter said to have been written by the deceased to her father, on the ground that it did not fall within the purvi ew of s. 32, Indian Evidence Act. The objection appears prima facie on plain reading of the section to possess L1100 SUP CI/71 merit. But even if this letter were to be held admissible we are not satisfied that the motive which this letter suggests is of strong and impelling nature so as to induce the murder of Omwati and her infant child. The motive suggested by this letter, coupled with the testimony of P.W. 2 and P.W. 10, may at best give rise only to a suspicion against the appellant; but suspicion however strong cannot take the place of roof.

The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime; such is the instinct of self-Preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the 'accused. In the present case the appellant was with Ram Chandra till the F.I.R.

was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence.

One other circumstance which on the facts of this case also deserves notice is the non-recovery of the weapon of offence and the fact that no stains of blood were noticed by any one on the appellant's clothes even though he was with Ram Chandra right upto the loding of the F.I.R. and even accompanied him for that purpose. The courts below seem to us to have failed to take into consideration all the relevant facts and circumstances of the case. As proof of the appellant's guilt depended solely on circumstantial evidence it was incumbent on the courts below to properly consider and scrutinise all the material factors and circumstances for determining whether the chain of circumstantial evidence is so complete as to lead to the only conclusion of the appellant's guilt. In our view, the cumulative effect of the circumstantial evidence in this case falls far short of the test required for sustaining conviction. We are, therefore, constrained to allow this appeal, set aside the appellant's conviction and acquit him.

V.P.S. Appeal allowed.