Gulab Chand vs State Of Madhya Pradesh on 28 March, 1995

Equivalent citations: AIR 1995 SUPREME COURT 1598, 1995 (3) SCC 574, 1995 AIR SCW 2504, (1995) 2 EASTCRIC 369, (1995) JAB LJ 501, (1995) 3 SCJ 35, (1996) SC CR R 12, 1995 CRILR(SC MAH GUJ) 409, (1995) 3 SCR 27 (SC), (1995) 2 CHANDCRIC 106, (1995) MAD LJ(CRI) 699, (1995) 2 ALLCRILR 445, (1996) 1 MADLW(CRI) 3, (1995) 3 RECCRIR 134, 1995 CALCRILR 310, 1995 CRILR(SC&MP) 409, (1995) 2 CRIMES 188, 1995 SCC (CRI) 552, (1995) 5 JT 373 (SC)

Author: G.N. Ray

Bench: G.N. Ray

CASE NO.:
Appeal (crl.) 140-140A of 1984

PETITIONER:
GULAB CHAND

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 28/03/1995

BENCH:
G.N. RAY & FAIZAN UDDIN

JUDGMENT:

JUDGMENT 1995 (3) SCR 27 The following Order of the Court was delivered :

This appeal is directed against the judgment of the Division Bench of Madhya Pradesh High Court at Jabalpur dated 29th November, 1985 in Criminal Appeals 326 and 327 of 1980. Criminal Appeal No. 326/80 was preferred by the State of Madhya Pradesh against the accused Gulab Chand and 7 other accused. Criminal Appeal No. 327/80 was preferred by the State of Madhya Pradesh against Gulab Chand and Durga. It may be stated that both the appeals were preferred against the Judgment dated 7th December, 1979 passed by the learned Sessions Judge, Jabalpur in Sessions Trial No. 147/79. In the said Sessions Trial, Gulab Chand was accused No. 1 and Durga was accused No. 3. Gulab Chand, Durga and other six persons stood charged under Section 120-B of the Indian Penal Code for entering into a criminal conspiracy in order to commit murder of Kapuriyabai and robbery of her ornaments on or about 23rd April, 1979 in the village Bhakarwara. The accused Gulab Chand, Durga and

> Parsoo were charged under Section 302, 394 and 397 of Indian Penal Code for having committed the murder of Kapuriyabai in committing the robbery on the intervening night between 23-24 April, 1979. The learned Sessions Judge, however, acquitted all the aforesaid persons under Section 120-B of the Indian Penal Code and the accused Gulab Chand and Parsoo were also acquitted of the offences punishable under Section 302, 394 and 397 of Indian Penal Code. But the trial court convicted Gulab Chand and Durga for the offence punishable under Section 380 of the Indian Penal Code and they were sentenced to suffer rigorous imprisonment for 3 years.

As aforesaid, the State of Madhya Pradesh preferred the aforesaid appeals before the Madhya Pradesh High Court and by the impugned judgment of the Madhya Pradesh High Court allowed both the said appeals in part and convicted the accused Gulab Chand under Section 302, 394 and 397 of Indian Penal Code and sentenced him to suffer rigorous imprisonment for life under Section 302 and rigorous imprisonment for 7 years for the other offences. It was directed that both the sentences would run concurrently. So far as the accused Durga was concerned, his conviction under Section 380 of Indian Penal Code was set aside and he was convicted under Section 411 of Indian Penal Code. But the sentence of 3 years' rigorous imprisonment was maintained with a fine of Rs. 2,000, in default to suffer further imprisonment for 9 months. The appeal by the State against all the other accused directed against their acquittal under Section 120B of Indian Penal Code was dismissed by the High Court and the appeal against acquittal of Parsoo and Durga for the offences punish-able under Sections 302, 394 and Section 397 of Indian Penal Code was also dismissed. Against the order of conviction and sentence passed by the High Court, accused No. l Gulab Chand has preferred the instant appeals No. 140-140A/84.

The learned counsel Mr. Amtiaz Ahmed, appearing as amicus curie for the appellant Gulab Chand has submitted that there is no evidence worthy of credence to establish the crime of murder and dacoity by Gulab Chand for which his conviction under Section 302, 392 and 397 of the Indian Penal Code is warranted. In the absence of any convincing evidence, the learned Sessions Judge had acquitted the appellant of the charge under Sections 302, 394 and 397 of the Indian Penal Code. He has submitted that appellant's case was that the ornaments stated to have been recovered either from his possession or from the shop, belonged to him and the members of his family. Unfortunately, such case has not been accepted either by the learned trial court or by the High Court. But for possession of such ornaments even if stolen, no conviction under Section 320, 394 and 397 of the Indian Penal Code can be based. The learned Sessions Judge was fully justified in convicting the appellant under Section 380 of the Indian Penal Code and there was no occasion to interfere with the well reasoned judgment of the learned Sessions Judge. The learned counsel for the appellant has also submitted that no motive for dacoity or murdering the deceased has been established by leading convincing evidence. The decision rendered by the High Court lies more on surmise than on facts proved beyond reasonable doubt. It has been submitted that in a case for conviction on account of circumstantial evidence, the evidence must be very clear and specific so that the entire chain of events justifying complicity of the accused is clearly established to such an extent that irresistible conclusion about the guilt of the accused can be safely drawn. The learned appellant has submitted that possession of stolen articles ipso facto does not warrant a conclusion that such stolen articles were received only by committing robbery and murder, as alleged by the

prosecution. He has, therefore, submitted that there has been gross miscarriage of justice so far as the appellant is concerned and this appeal should be allowed and the impugned order of conviction passed against the appellant should be set aside.

We have considered the judgment passed by the learned Sessions Judge and also by the High Court and we have been taken through the evidences adduced in this case. It has been established in the instant case that the appellant Gulab Chand was taken into custody on 27th April, 1979 by the police and when the police searched his house with the key supplied by the accused, a musical instrument called Banjo was found in his room and from inside the said instrument, the police seized golden Tabij (Article 10), two pair of Jhumkas (Article 11), Shrinagaridan (Article 9), silver bangles (Art. 7), one brass Bungari (Art. 21) and currency notes worth Rs. 1200. It has also been established in this case that on the information given by the said accused, the police seized certain silver ornaments from PW. 12. Balram from his shop at Jabalpur and it has been established that the accused sold the said ornaments to Balram and signed in the register maintained by Balram in proof of selling the said ornaments. It has also been established by cogent evidence that the said ornaments belonged to the deceased. It may be stated that 29th May, 1979, a test identification Parade was held in which the recovered ornaments were duly identified as belonging to the deceased by Durgaprasad and other witnesses. 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 Santhanakrishnan 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 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 read along with 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 later decision of this Court in Earabharappa v. State of Karnataka, [1983] 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

is 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 where 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. We therefore do not find any reason to interfere with the impugned decision of the High Court and accordingly this appeal fails and is dismissed.

The appellant has been released on bail. He should be taken into custody to undergo the sentence.