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is corroborated by Madan Lal who states that all the three accused said that the money had been subscribed by them jointly and requested him to accept the same and get the case withdrawn. The case of Gian Chand does not stand on any different footing from that of the other appellants.

The convictions and sentences are confirmed and the appeal will stand rejected.

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WASIM KHAN
v.
THE STATE OF UTTAR PRADESH.

[B. P. SINHA, JAFER IMAM and CHANDRASEKHARA AIYAR, JJ.]

Possession, recent and unexplained of stolen goods—Presumptive evidence against prisoner not only of robbery but of murder as well.

The appellant was sentenced to death for the murder of one R and also sentenced to seven years rigorous imprisonment for having robbed the murdered man of his goods. It was established by the evidence on the record that the deceased, a shop-keeper of village Jarwal had gone to Lucknow to purchase goods for his shop. On his return journey he got down from the train at about 10 p.m. He had with him a box, a *balti*, a gunni bag and a *jhola* and other things. He engaged the appellant's cart to take him and his goods to his village. Two other persons also got on to the cart. Neither the deceased, nor the articles which were with him nor the cart reached Jarwal. In the morning the body of the deceased was found near a bridge in the vicinity of Jarwal. During investigation on the fourth day after the occurrence the appellant gave the key of his *kothri* to the police and from the kothri, a *dhoti*, a box, a *balti*, a *chadar*, a gunny bag and a *jhola* were recovered which were identified as belonging to the deceased. A big knife was also recovered from the *kothri* which the appellant disowned but could not explain how it was found in his home. The appellant on examination before the Sessions Judge under s. 342 of the Code of Criminal Procedure stated that the deceased asked him to take his goods in the cart at about 10 p.m. when he got down at the Railway Station. Two other men were also in the cart who got down at the Sugar Mill gate near the Railway Station. At Raduayan Bridge three men enquired if the deceased was in the cart. The deceased responded and got down from the cart asking the appellant to halt his cart near Jarwal Bazar Bridge where he waited for the deceased up to

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4 a.m. but he did not turn up. Not knowing the house of the deceased he took the dead man's goods to his own house as his buffaloes were very hungry. He stated further that he had handed over all the articles of the deceased person to the police which he had locked in the *kothri*.

Held, that recent and unexplained possession of the stolen property while it would be presumptive evidence against a prisoner on the charge of robbery would similarly be evidence against him on the charge of murder. All the facts which tell against the appellants especially his conduct indicating consciousness of guilt, point equally to the conclusion that he was guilty as well of the murder as of the robbery.

The Emperor v. *Sheikh Neamatulla* ([1913] 17 C.W.N. 1077), *Queen-Empress* v. *Sami and Another* ([1890] I.L.R. 13 Mad. 426), *Emperor* v. *Chintamoni Shahu* (A.I.R. 1930 Cal. 379), *In re Guli Venkataswami* (A.I.R. 1950 Mad. 309), and *Ramprashad Mukundram Rajput* v. *The Crown* (A.I.R. 1949 Nag. 277), referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 24 of 1956.

On appeal by special leave from the judgment and order dated the 26th September 1955 of the Allahabad High Court (Lucknow Bench) in Criminal Appeal No. 195 of 1955 and Capital Sentence No. 17 of 1955 arising out of the judgment and order dated the 11th April 1955 of the Court of the Sessions Judge at Bahraich in Criminal S.T. No. 9 of 1955.

D. R. Prem, for the appellant.

K. B. Asthana and *C. P. Lal*, for the respondent.

1956. March 12. The Judgment of the Court was delivered by

IMAM J.—The appellant was sentenced to death for the murder of one Ram Dularey. He was also sentenced to seven years' rigorous imprisonment for having robbed the murdered man of his goods. He was tried along with two other persons, who were acquitted, by the Sessions Judge of Bahraich. All the four assessors, who attended the trial, were of the opinion that the appellant was guilty. The High Court of Allahabad affirmed the conviction and the sentence and this appeal is by special leave.

Certain facts have been proved beyond all doubt. Indeed, the most important of them are admitted by the appellant in his statement under section 342 of the Code of Criminal Procedure when examined in the Court of Sessions. It has been established by the evidence in the case that the deceased Ram Dularey, a shop-keeper of Jarwal, had gone to Lucknow to purchase goods for his shop. On his return journey, he got down from the train at Jarwal Road Station on the 2nd of July, 1954, at about 9-30 p.m. He had with him articles consisting of a box, a *balti*, a gunny bag, *jholas* and other things. Shortly thereafter, he engaged the appellant's cart to take him and his goods to his village. Two other persons also got on to the cart. The appellant was driving the cart. Neither the deceased nor the articles, which were with him, nor the cart ever reached Jarwal. In the morning, Ram Dularey's body was found near a bridge in close vicinity of Jarwal. Information was sent to the police who commenced investigation and their enquiries led them to the appellant, who was arrested on the 6th of July, 1954. The appellant gave the key of his *kothri* to the police with which it was opened. From the *kothri* numerous articles were recovered, including a big knife Ex. 20 with blood-stains, a *dhoti* Ex. 3, a box Ex. 9, a *balti* Ex. 1, a *chadar* Ex. 2, a gunny bag Ex. 13 and a *jhola* Ex. 24. It is not necessary to give the details of the other articles recovered. The knife was sent to the Chemical Examiner along with the *dhoti*. Although minute blood-stains were detected on the knife, they were not sufficient to enable a comparison in a blood group test. No blood was discovered on the *dhoti*. The *dhoti* Ex. 3, the box Ex. 9, the *balti* Ex. 1, the *chadar* Ex. 2, the gunny bag Ex. 13 and the *jhola* Ex. 24 have been identified as belonging to the deceased Ram Dularey.

When examined under section 342 of the Code of Criminal Procedure by the Sessions Judge, the appellant stated that the deceased Ram Dularey had asked him to take his goods in his cart and it was agreed that Rs. 2 would be paid as the fare. The appellant

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took the deceased on his cart with his goods including the box Ex. 9. Two other men were also in the cart who got down at the Sugar Mill gate at the Railway Station. At the Raduayan Bridge three men enquired if Ram Dularey was in the cart. Ram Dularey responded and got down from the cart asking the appellant to halt his cart at Jarwal Bazar Bridge, where he waited for the deceased until 4 a.m., but the deceased did not turn up. As the appellant did not know the house of the deceased in Jarwal Bazar, he took the dead man's goods in his cart to his own house as his buffaloes were very hungry. To the question as to whether any article of the deceased was recovered from his house by the police, the appellant stated that he handed over to the police all the property of the deceased which he had locked in the *kothri*. He asserted that he had told the people in his village as well as the *Mukhia* that he would hand over the property to its owner when he came to take it. Concerning the knife, he disowned its ownership and could not say how it came to be found in his house. So far as the *dhoti* Ex. 3 is concerned, the appellant claimed it as his.

On behalf of the appellant, it was urged that the evidence in the case was insufficient to establish any of the charges framed against him. In the alternative, it was suggested, that as the co-accused of the appellant had been acquitted the latter could not be convicted of the offence of murder by the application of the provisions of section 34 of the Indian Penal Code in the absence of proof that any act of his caused the death of Ram Dularey. It was also submitted that no question was put by the Sessions Judge to the appellant when he was examined under section 342 of the Code of Criminal Procedure concerning the act of murder or robbery.

We have examined the statement of the appellant recorded under section 342 of the Code of Criminal Procedure by the Sessions Judge. At the very commencement of the record of that statement, the Sessions Judge read out the appellant's statement under section 342 of the Code of Criminal Procedure before

the Committing Magistrate and enquired whether it was correct, to which the appellant replied in the affirmative. The statement of the appellant before the Magistrate is admissible under section 287 of the Code of Criminal Procedure. The Magistrate pointedly asked the appellant as to whether he along with the other accused murdered Ram Dularey and had taken his property to which the appellant replied in the negative. It was not necessary for the Sessions Judge to specifically repeat the same when the appellant admitted his statement before the Committing Magistrate as correct when read out to him. Apart from this, when the statement of the appellant to the Sessions Judge is read as a whole, it clearly shows that the appellant knew what the accusation against him was and he offered an explanation for the disappearance of Ram Dularey from his cart and for his possession of the deceased's goods. There is no justification for supposing that there had been any prejudice caused to the appellant on account of improper or insufficient recording of his statement by the Sessions Judge under section 342 of the Code of Criminal Procedure.

On the facts proved beyond question it is clear that the last time the deceased was seen alive was in the company of the appellant and two other persons when the cart started for Jarwal and his goods were on that cart. There is, however, no evidence as to what happened in the course of the journey. Concerning that we have only the statement of the accused. The evidence next establishes that after the cart started, next morning, the 3rd of July, the dead body of Ram Dularey was found not far from Jarwal. His goods had disappeared and some of them at any rate were found in the possession of the appellant on the 6th of July.

The real question is whether the evidence in the case establishes that the appellant murdered and robbed Ram Dularey. The evidence is circumstantial. Before we deal with that evidence, it is necessary to consider how far recent possession of property of a deceased, in circumstances clearly indicating that he

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had been murdered and robbed, would suggest that not only the possessor of the property was a thief or a receiver of stolen property, but that it also indicated that he was guilty of a more aggravated crime which had connection with the theft. In the case of *The Emperor* v. *Sheikh Neamatulla*(1) Sir Lawrence Jenkins had the occasion to examine this question. After referring to section 114 of the Evidence Act, he quoted the following passage from Wills on Circumstantial Evidence:

"the possession of stolen goods recently after the loss of them, may be indicative not merely of the offence of larceny, or of receiving with guilty knowledge, but of any other more aggravated crime which has been connected with theft. This particular fact of presumption commonly forms also a material element of evidence in cases of murder; which special application of it has often been emphatically recognized".

In the case of *Queen-Empress* v. *Sami and Another*(2) at page 432, the learned Judges of the High Court observed, "Under these circumstances, and in the absence of any explanation, the presumption arises that any one who took part in the robbery also took part in the murder. In cases in which murder and robbery have been shown to form parts of one transaction, it has been held that recent and unexplained possession of the stolen property while it would be presumptive evidence against a prisoner on the charge of robbery would similarly be evidence against him on the charge of murder. All the facts which tell against the appellant, especially his conduct indicating a consciousness of guilt, point equally to the conclusion that he was guilty as well of the murder as of the robbery.....". In the case of *Emperor* v. *Chintamoni Shahu*(3), the opinion was expressed that "the possession of stolen goods recently after the loss of them may be indicative not merely of the offence of larceny or of receiving with guilty knowledge but of any other more aggravated crime which has been

(1) [1913] 17 C.W.N. 1077. (2) [1890] I.L.R. 13 Mad. 426.
(3) A.I.R. 1930 Cal. 379.

connected with the theft; this particular fact of presumption forms also a material element of evidence in the case of murder". A similar view seems to have been taken in the case of *In re Guli Venkataswamy*(1) as well as in the case of *Ramprashad Makundram Rajput* v. *The Crown*(2).

In the present case it is established beyond doubt that the deceased travelled with his goods with the appellant on his bullock cart. He should have reached his destination Jarwal in the course of the night. He never got there. Obviously, he was murdered on his way home. On the appellant's own statement, he and the deceased were alone in the cart after the other two persons had got off the cart at the Sugar Mill gate. Thereafter the deceased was never seen alive by any one. He was found murdered. The appellant was found in possession of the deceased's goods three days afterwards. The appellant made no effort to trace the whereabouts of the deceased or lodge information of his disappearance from the bullock cart. The appellant has told the court that some people called the deceased while the cart was on its journey and the deceased told him to wait for him at a certain place. He waited until 4 a.m. but the deceased never turned up. This should have aroused his suspicions and he should have informed the police or someone in authority about it. He says he informed the *Mukhia* and all the people about it. Neither the *Mukhia* nor anyone has been examined by the appellant to support his story. Reliance was placed on the statement of Iftikhar Ahmad P.W. 7, who spoke of a rumour in the village that the appellant had brought the property of a man on his cart who had gone away and that this rumour had been spread by the appellant. It is clear, however, that the witness was not speaking of this from his personal knowledge and his statement is not legal evidence. On the other hand, if really the appellant had spread such a rumour there is no adequate explanation for his failure to inform the authorities. He

(1) A.I.R. 1950 Mad. 309. (2) A.I.R. 1949 Nag. 277.

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knew he was in possession of a large number of articles belonging to the man who had hired his cart but had disappeared in very strange circumstances. In addition, there is no explanation for his possession of a big blood-stained knife, a weapon which if used against the deceased, could have caused the injuries found on him. It is true that the blood stains were minute and have not been established to be of human blood. The appellant, however, denied that the knife belonged to him, and has not explained as to how it came to be in his possession. It is impossible to believe his story that he waited until 4 a.m. for the deceased to return. The cart had started from Jarwal Road Station at about 10 p.m. It could not have been more than a couple of hours later that the deceased left the cart. To wait from that time until 4 a.m. at a place not far from Jarwal itself appears to be a fantastic story. It is true that none of the clothes of the appellant were found to be blood-stained, as they should have been, if he had participated in the murder, having regard to the nature of the injuries on the deceased. These clothes were not seized until the 6th July, some three days later, and the appellant could have removed all traces of blood stains from his clothing in that time.

The appellant was convicted of the offences of murder and robbery by the Sessions Judge by the application of section 34 of the Indian Penal Code. The charge framed, however, was one of murder and robbery and there was no mention of these offences having been committed in the furtherance of a common intention. The High Court, however, found that the appellant along with two others committed these offences and they shared in the goods robbed. On this finding, even if the co-accused of the appellant were acquitted, the appellant could be convicted by the application of the provisions of section 34 of the Indian Penal Code. The charge framed against the appellant was for murder and robbery and the only question to be decided was whether the evidence was sufficient to support such a charge or did it merely establish offences less grave in nature. We think it

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was and are satisfied that it establishes the offences of murder and robbery against the appellant and not merely the minor offence of robbery or theft. It is impossible to accept the submission that the evidence does not establish any offence having been committed by the appellant.

Having regard to what is established in the case and the principles deducible from the cases cited, we are satisfied that the appellant has been rightly convicted of the offences of murder and robbery. The appeal is accordingly dismissed.

SHAMBU NATH MEHRA
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THE STATE OF AJMER.

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[VIVIAN BOSE and CHANDRASEKHARA AIYAR JJ.]

Burden of proof—Proof of facts within especial knowledge—Facts equally within the knowledge of the prosecution and the accused, if "especially within the knowledge" of the accused—Illustration, Scope of—Indian Evidence Act (I of 1872), s. 106, Illustration (b).

The appellant was put up for trial under s. 420 of the Indian Penal Code and s. 5(2) of the Prevention of Corruption Act of 1947 for obtaining a total sum of Rs. 23-12-0 from the Government as T.A., being second class railway fares for two journeys, one from Ajmer to Abu Road and the other from Ajmer to Reengus, without having actually paid the said fares. The prosecution proved from the railway books and registers that no such second class tickets were issued at Ajmer on the relevant dates and the same witness who proved this also proved that tickets were not always issued and the passengers could pay the fare in the train and if the second class was fully booked, no further tickets were issued till the train arrived, in which case passengers sometimes bought third class or inter-class tickets and thereafter paid the difference to the guard of the train, if they could find second class accommodation on the arrival of the train. There was no proof that one or other of those courses were not followed by the appellant and the prosecution instead of proving the absence of any such payments, in the same way as it had proved the non-issue of second class tickets, relied on Illustration (b) to s. 106 of the Evidence Act and contended that it was for the appellant to prove that he had actually paid the second class fares.