NET RAJ SINGH

v.

STATE OF M.P.

DECEMBER 19, 1996

[DR. A.S. ANAND AND K.T. THOMAS, JJ.]

Evidence Act, 1872 : Sections 101 to 111, 114—Burden of proof—Presumptions—Rule and effect of.

Section 114 Illustration (a)—Presumption—Drawing of—Possession of silver todal within two days of dacoity—No evidence to show accused concealed it nor was he in possession of any other stolen property involved in dacoity—Held : Possessor of stolen article could be a thief himself or only a receiver of stolen property—When robbery (or dacoity) and murder formed part of same transaction, court could draw a presumption that the possessor was the murderer also—In the circumstances of the case it would not be sound to draw a presumption beyond accused being receiver of stolen property—Penal Code, 1860, Ss. 396 and 411.

The appellant was convicted of dacoity with murder under Section 396 of the Indian Penal Code, 1860 and was sentenced to death by the Sessions Court. The High Court confirmed the conviction but reduced the sentence to imprisonment for life. Hence this appeal.

According to the prosecution, the deceased and her brother accompanied their father on a journey to a village. As they reached the jungle area five persons stopped them. One of them, who was armed with a gun, shot at the father and snatched a bag containing jewellery from him. Another in the gang, who too had a gun, demanded the deceased to surrender her ornaments. When the deceased refused to do so, the armed men shot her dead and grabed her ornaments. A First Information Statement was lodged and two days after the occurrence of the incident a silver *todal* (ornament) belonging to the father was recovered from the appellant. The appellant was immediately arrested.

The question before this Court, in the light of concurrent findings of the courts below, was whether a presumption under illustration (a) to Section 114 of the Evidence Act, 1872 could legally have been drawn against

A that appellant for dacoity and murder on the strength of his possessing one of the stolen articles two days after the occurrence.

Allowing the appeal, this Court

HELD : 1.1. No doubt the illustration is only an example or at the
B utmost is a guideline. Nonetheless the illustration has a logical basis. Section 114 of the Evidence Act, 1872 helps the court in deciding on whom is the burden of proof in certain situations. A presumption on facts is to be raised to assist the court for determining as to the burden of proof in a set of circumstances. As the court can draw certain inferences either on
C the basis of cumulative conclusion of circumstances or on a single circumstance the court would be in a position to fix up the responsibility on one or the other party in the case with the burden to reverse such inferred presumptions. [379-H; 380-B]

1.2. Illustration (a) to Section 114 of the Evidence Act, 1872 indicates
D two stages for a presumption. First is that the possessor could be the thief himself and the second is that the possessor could have been only a receiver of the stolen property with the requisite knowledge. Apparently, the former is of aggravated degree and the latter is of a lesser degree. If possession of the stolen article with the accused alone is established in
E evidence, it is a difficult task for the court to choose between the two stages of presumption envisaged in the illustration. The nature of possession of the articles, the place or mode of concealment, the manner in which they were dealt with by the accused, the length of the intervening period, the number of stolen articles possessed by him are all factors which would assist the court in drawing a presumption that the possessor was the thief
F himself. Similarly, if the possession is associated with any other indication or incriminating circumstance there may be justification for drawing the more aggravated presumption. In a case where robbery (or dacoity) and murder are so interconnected with each other as to become integral parts of the transaction, the court can go to the extent of drawing the presumption that the possessor was the murderer also. [380-B-F]
G

1.3. In the present case the appellant was found in possession of silver *todal*, not immediately after the murder, but within two days of the dacoity. He was found openly moving about with the ornament keeping it on his person. There is quite a variation in the evidence as to whether the
H silver *todals* were on the person of the deceased, as deposed to by her

mother, when she left with her father or whether the father had the same throughout, as evidenced by the story put up by the prosecution. Whatever that be, there is no evidence to show that he concealed it, nor was in possession of any other stolen property involved in the dacoity. On the facts and circumstances of this case, it would not be sound to draw a presumption beyond the appellant being a receiver of the stolen property with the requisite knowledge. [381-E-H]

Ayodhya Singh **v.** *State of Rajasthan,* **AIR (1972) SC 250;** *Kali Ram* **v.** *State of H.P.,* **AIR (1973) SC 2173;** *Baiju* **v.** *State of M.P.,* **AIR (1983) SC 522 and** *Earabhadrappa* **v.** *State of Karnataka,* **AIR (1983) SC 446, relied on.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 617 of 1992.

From the Judgment and Order dated 18.1.91 of the Madhya Pradesh High Court in Crl.A. No. 1048 of 1990.

Shashank Shekhar (A.C.) for the Appellant.

U.N. Bachawat. Prashant Kumar and Uma Nath Singh for the Respondent.

The Judgment of the Court was delivered by

THOMAS, J. The appellant was convicted of dacoity with murder and was sentenced to death by the Sessions Court. On appeal before the High Court of Madhya Pradesh, the conviction was upheld but the sentence was reduced to imprisonment for life. He has filed this appeal by special leave. The question which has narrowed down in this appeal, in the light of concurrent findings on facts by the two courts, is whether a presumption could legally have been drawn against the appellant for dacoity and murder on the strength of his possessing one of the stolen article two days after the occurrence.

For considering the aforesaid crucial point, we may set but, briefly, the facts : On 11.10.1988, one Sunder Lal (PW-8) was proceeding from his village (Nagar Deori) on horse back to Kercani Village (Madhya Pradesh) with a herd of pigs, his twelve year old son Lathi Ram (PW-10) and twenty year old daughter (Laxshmibai) were also accompanying him

A on foot. As they reached the jungle area (Godarvada Dehat) five persons emerged from the interior and stopped the passengers. One of the five, who was armed with a gun, pointed the weapon on the chest of Sunder Lal (PW-8) and demanded him to surrender all his money and jewellery. Sunder Lal dismounted from the horseback, but suddenly the gunman fired a shot at him which struck him on his loins resulting in the pellets perforat-
B ing into his panis and perineum region and then the assailants snatched a bag containing jewellery from the victim, besides grabbing his wrist watch and the cash from him. Another person in the gang, who too had a gun, demanded Laxmi Bai to surrender her Karghona (an ornament). When she began to cry, the armed man shot her dead and grabbed her ornaments.
C Sunder Lal (PW-8) managed to stand up and genuflucted before the marauders. One of them revealed their identity as disciples of Gobind Das-so saying he threatened him with the butt end of the gun on his chest, Sunder Lal (PW-8) slumed down again. In the meanwhile the little boy (Lakhi Ram) managed to escape from the ken of the dacoits. After they
D left the scene with the booty Sunder Lal tottered up and with the help of his little son Lakhi Ram, mounted on his horse returned to his village leaving the corpse of his daughter Laxmi Bai lying inside the jungle.

Sunder Lal (PW-8) accompanied by some others when to Dhooma Police Station and lodged a first information statement on the same evening
E (5.25 p.m.). But the police, it appears, remained lethargic though they were kind enough to ambulance Sunder Lal to Jabalpur Medical College Hospital.

According to the police version they got some information on
F 13.10.1988 about the clanestine movements of a person with a country gun hovering around Bhilai Market. PW-15 (Assistant Sub-Inspector of Dhangaur Police Station) rushed to the places with a posse of police and found the appellant (Netraj) and one Ganpat being trussed up by the local people. Assistant Sub-Inspector made a search of the person of Ganpat first and recovered a country gun, five cartridges and some other articles
G including ornaments. When appellant was searched a silver todal (an ornament) was recovered. Both of them were arrested at the spot. Later police could trace out four other persons and they too were nabbed.

After completion of investigation police chargesheeted six persons
H including the appellant and Ganpat for offences under Section 396 Indian

Penal Code and Section 27 of Arms Act. But one of the six accused remained absconding and hence the trial was held against the other five persons including the appellant. Sessions Court convicted Ganpat and this appellant or Sector 396 I.P.C. and Section 27 of the Arms Act and sentenced them to death while the other three were acquitted. High Court of Madhya Pradesh acquitted appellant of the offences under Section 27 of the Arms Act and confirmed the conviction under Section 396 I.P.C. High Court, however, reduced the sentence to life imprisonment as for both the convicted persons.

This appeal is only by Netraj and hence was need not refer to the evidence pertaining to Ganpat.

The only evidence against Netraj is that police recovered the silver todal from him or 13.10.1988. Both the courts found that the silver todal recovered from him belonged to Sunder Lal and was in his possession during ill-fated journey destinated to Kerpani. In this appeal, we would proceed on the basis of the fact concluded by both courts that the silver todal was a stolen article and the same was found in the possession of appellant Netraj on 13.10.1988.

Learned Senior Counsel Shri Bachawat, who argued for the State of Madhya Pradesh submitted that conviction of appellant of the offence under Section 396 IPC is liable to be confirmed on the aforesaid solitary incriminating circumstance against him. Learned senior counsel contended that illustration (a) to Section 114 of the evidence Act can well be pressed into service for drawing a presumption against the appellant. The said illustration reads thus :

> "That court may presume that a man who is in the possession of stolen goods soon after the theft as either the thief or has received the goods knowing them to be stolen, unless he can account for his possession."

No doubt the illustration is only an example or at the utmost it is a guideline. Nonetheless the illustration has a logical basis. Section 114 of the Evidence Act helps the court in deciding on whom is the burden of proof in certain situations. A presumption on facts is drawn to assist the court for determining as to the burden of proof in a set of circumstances.

A As the court can draw certain inferences either on the basis of cumulative conclusion of circumstance or on single circumstances the court would be in a position to fix up the responsibility on one of the other party in the case with the burden to reverse such inferred presumption.

B Illustration (a) indicates two stages for a presumption. First is that the possessor could be the thief himself and the second is that the possessor would have been only a receiver of the stolen property with the requisite knowledge. Accordingly, the former is of aggravated degree and the latter is of a lesser degree. If possession of stolen article with the accused alone is established in evidence it is a difficult task for the court C to choose between the two stages of presumption envisaged in the illustration. The nature of possession of the articles, the place of mode of concealment, the manner in which they were dealt with by the accused, the length of the intervening period, the number of stolen articles possessed by him are all factors which would assist the court in drawing a D presumption that the possessor was the thief himself. Similarly, if the possession is associated with any other indication or incriminating circumstance there may as justification for drawing the more aggravated presumption. In a case where robbery (or) dacoity and murder are so inter connected with each other as to become integral parts of same transac- E tion, the court can go to the extent of drawing the presumption that the possessor was the murderer also.

In *Ayodhya Singh* v. *State of Rajasthan,* AIR (1972) SC 2501 speaking for a Bench of three Judges, Justice Khanna, J. pointed out that the extent F of presumption, in a case where it is established that the accused was in possession of stolen goods, would depend upon the facts and circumstances of the particular case and no hard and fast rule can be laid down in that regard. Their lordships were dealing with a case in which a good number of stolen articles were recovered from the house of the prisoner as well as from his person and also from a graveyard few days later G pursuant to disclosure statements elcited from the prisoner. On the facts even at interval of 17 days between the theft and recovery of the articles was not considered sufficient to desist from concurring with the presumption drawn by the courts below that the prisoner was guilty of the offence or theft. Another bench of three Judges considered this position in *Kali* H *Ram* v. *State of Himchal Pradesh,* AIR (1973) SC 2773 where two persons

were murdered and their ornaments were pawned by the accused with a banker. It was observed that no hard and fast rule can be laid down. Human behaviour is so complex that room must be left for play in the Courts. It is not possible to formulate a series of exact propositions and confine human behaviour within straitjackers. The raw material here is far too complex to be susceptible of precise and exact and exact propositions for exactness here is a fake in *Bairy* v. *State of Madhya Pradesh,* AIR (1978) SC 522 this Court considered a case or murder of two inmates of a house coupled with burglary in which a transistor, a wrist watch, two gold ornaments, a torch light, several sarees and shirts were stolen - when accused was arrested police recovered those articles from his house on the strength of a statement made by him. This Court found certain other circumstances and concluded that the possession of all those articles with the accused when counted along with the other circumstances would justify the presumption that accused is not only the burglar but also the murderer of the inmates of the house. In *Earaphaprappa* v. *State of Karnataka,* AIR (1983) S.C. 446 this Court observed that "the question as to what amounts to recent possession of stolen property 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."

Here the appellant Net Raj was found in possession of silver todal, not immediately after the murder, but within and two days of the dacoity. He was found openly moving about with the ornament keeping it on his person. There is quite a variation in the evidence as to whether the silver todals were on the person of the deceased, as deposed to by her mother, when she left with her father or whether father had the same throughout, as evidenced by the story put up by the prosecution. Whatever that be, there is no evidence to show that he concealed it, nor was he in possession of any other stolen property involved in the dacoity. Could he have come in possession of it from one of the dacoits? Is it not possible that he would have received it from someone else? We are of the opinion that, on the facts and circumstances of this case, it would not be sound to draw a presumption beyond his being a receiver of the stolen property with the requisite knowledge.

We, therefore, allow this appeal and set aside the conviction and sentence passed on the appellant Net Raj under Section 396 of the Indian

A Penal Code. We alter his conviction to Section 411 of the I.P.C. and sentence him to rigorous imprisonment for three years. Needless it is to say that if he had already completed the aforesaid period of imprisonment he shall be released forthwith if he is not required in any other case.

V.S.S. Appeal allowed.

B