

(1995) 11 AP CK 0012

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 389 of 1995

Chandraiahgari Ananthareddi and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 15-11-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Evidence Act, 1872 — Section 24, 25, 26, 27, 3

Penal Code, 1860 (IPC) — Section 201, 300, 302, 34

Citation : (1996) 1 ALT(Cri) 489 : (1996) 2 APLJ 180 : (1996) 1 APLJ 180 :
(1996) CriLJ 2109

Hon'ble Judges : S.V. Maruthi, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : C. Padmanabha Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

N.Y. Hanumanthappa, J.—This appeal is preferred by A.1 to A.3 in S.C. No. 121/93 on the file of the Additional Sessions Judge, Nizamabad assailing the conviction of A. 1 and A.2 for the offence u/s 302 r/w 34 I.P.C. and sentence to undergo imprisonment for life and to pay a fine of Rs. 500-00 in default to suffer S.I. for six months; conviction of A. 1 and A.2 for the offence u/s 201 r/w 34 I.P.C., and sentence to undergo R.I., for two years and also to pay a fine of Rs. 500-00 in default to suffer S.I. for six months; and conviction of A.3 for the offence u/s 302 r/w 109 I.P.C., and sentence to undergo imprisonment for life and to pay a fine of Rs. 500-00, in default to suffer S.I. for six months. All the sentences were directed to run concurrently.

2. The gravamen of the charge against the accused is that on 4-12-1991 in the evening at the outskirts of Ramayampet village, A.1 and A.2 committed murder of one Junkanti Narasimha Reddy (hereinafter referred to as "the deceased") at the instigation of A.3 to A.5 by inflicting injuries with an axe and further it is alleged that A.1 and A.2 caused disappearance of evidence by burning the face of the deceased.

3. The case of the prosecution is that the deceased was the husband of P.W. 10 and P.W. 4 is the father-in-law of the deceased. P.W. 11 is the brother-in-law of deceased. A.1 is the brother-in-law of A.3. A.5 is the eldest sister of the deceased. A.3 is the husband of A.5. The deceased married P.W. 10 about four years prior to the incident. A.3 married the sister of the deceased. The deceased informed P.W. 10 that A.3 threatened to kill him because of land disputes. A.1 and A.2 went to the house of P.W. 10 and enquired about the deceased and they talked with the deceased regarding the sale of motor. A.1, A.2 and the deceased had left the house and returned to P.W. 10's house at midnight and the deceased was in a drunken condition. On the following morning, it is alleged that A.1 and A.2 again went to the house of P.W. 10 and took the deceased along with them. After two days, P.W. 10 learnt about a dead body lying at the outskirts of the village. P.W. 10 went there and found the dead body of the deceased with burns completely.

4. On 5-12-1991 at about 8 a.m. while P.W. 1 and 3, village servants were at Grain Panchayat office, P.W. 2 went to them and informed them that he had noticed a dead body of a male person near the tank bund. Then P.W. 1, P.W. 3 and others went to the spot and noticed the dead body. Thereafter P.W. 1 orally reported the matter to the police.

5. On 5-12-1991 at 2 p.m. P.W. 8, Assistant Sub-Inspector of Bhiknoor Police Station, received a complaint from P.W. 1 which is Ex. P.1, P.W. 8 registered it as Crime No. 141/91 u/s 302 I.P.C., and Ex. P.9 is the F.I.R. P.W. 18 sent the copies of F.I.R., to all concerned and then went to the scene of offence conducted inquest over the dead body of the deceased in the presence of P.Ws. 13 and 14. Ex. P.6 is the inquest panchanama. He seized the clothes on the dead body and also the blood stained clothes. P.W. 18 conducted the panchanama of the scene of offence in the presence of mediators and Ex. P.5 is the report. P.W. 18 examined P.Ws. 1, 2, and others and recorded their statements. He sent the dead body for postmortem examination to Government Hospital, Kamareddy.

6. On 6-12-1991 at 8 a.m. the Deputy Civil Surgeon, Kama Reddy conducted autopsy over the dead body of the deceased. Ex. P.10 is the postmortem certificate. According to the Doctor, the cause of death is due to severe shock and haemorrhage as a result of multiple injuries. The postmortem report is filed by P.W. 19, the Investigating Officer, on the ground that the doctor who conducted the autopsy had an attack of paralysis and was not able to move about.

7. On 6-12-1991 P.W. 19 C.I. of Police, Kama Reddy took up investigation. P.Ws 10 and 11 identified the dead body of the deceased at the hospital. P.W. 19 examined P.Ws. 4 to 9 and others and recorded their statements.

8. On 3-1-1992 it is alleged that A.2 went to the office of P.W. 15, M.R.O., Bhikanoor and is alleged to have made an extra judicial confession before P.W. 15 and accordingly P.W. 15 recorded the statements Ex. P.7 is the statement. On

3-1-1992, P.W. 19 on information from P.W. 15 proceeded to M.R.O. office and brought A. 2 to Police Station. P.W. 19 recorded the statement in the presence of P.Ws. 16 and 17 and on the basis of confession, P.W. 19 arrested A.3 to A.5. P.W. 19 recorded the confessional statement of A. 1 who was in the house of A.3 and seized M.O. 1 in the presence of P.Ws. 16 and 17. P.W. 19 remanded all the accused to the judicial custody. The successor of P.W. 19 filed the charge-sheet. The plea of the accused is one of denial.

9. In support of its case, the prosecution has examined P.Ws. 1 to 20 and marked Exs. P.1 to P.10 and Ex. D.1 is marked on behalf of the defence. P.Ws. 5 to 7, 16 and 17 did not support the prosecution case and they were treated hostile by the prosecution.

10. According to the prosecution, P.W. 2 was a person who saw the dead body of the deceased and the same was informed to P.Ws. 1 and 3 who were sitting at the Gram Panchayat Officer. Then they went to the scene of offence and saw the dead body and thereafter went to the Police Station and informed the same to the police. P.W. 4, father-in-law of the deceased, stated that there was ill-will between the accused and the deceased in respect of the lands. P.Ws. 5 to 7 were treated hostile. P.W. 8, a servant in a hotel at Kamareddy, stated that during 1991 A.1 stayed in the hotel. P.W. 9, a tailor who stitched the clothes of the deceased, has identified the clothes on the body of the deceased. P.W. 10 is the wife of the deceased who not only identified the deceased but also deposed that a few days before the incident A. 1 and A.2 came to her house and took the deceased along with them. P.W. 11, the brother of P.W. 10, is the person who identified the dead body. P.W. 12 is the mediator to the observation report Ex. P.5. P.Ws. 13 and 14 are the inquest panchayatdars. P.W. 15, M.R.O., who, according to the prosecution, recorded the confession of A.2 Ex. P.7. P.W. 16 is the panch for the confession of A.1 for recovery of axe which was not sent to chemical examiner and P.W. 17 is a panch witness for recovery of M.Os. 1 and 2 from A. 1. But these witnesses were treated hostile. P.W. 18, Assistant Sub-Inspector, is the person who registered the crime. P.W. 19 Inspector of Police who took up investigation and laid to charge-sheet. P.W. 20 is the S.I. of Police who assisted the Circle Inspector. The prosecution also relied upon Ex. P.1 complaint; Ex. P.2 to 4 are the statements under 161 Cr.P.C., of P.Ws. 5 to 7 respectively; Ex. P.5 scene of offence panchanama; Ex. P.6 inquest panchanama; Ex. P.7 extra-judicial confession of A.2; Ex. p.8 confessional panchanama of A.1; Ex. P.9 FIR., and Ex. P.10 post-mortem examination report. On de fence side, Ex. D.1 the portion of Section 161 Cr.P.C., statement of P.W. 11 is marked. M.O. 1 is the axe and M.O. 2 is the Bajaj Scooter.

11. The case is completely based on circumstantial evidence. The trial Court, taking into consideration the statement of P.W. 10 who, according to prosecution, deposed that A. 1 and A.2 came to her house and with them deceased went out and confessional statement of A.2 made at Ex. P.7, found that death of the deceased was a murder. By making use of the circumstantial evidence and the

extra Judicial confession though made against all the five accused, the learned Sessions Judge found only A.1 to A.3 responsible for causing death of the deceased and accordingly convicted and sentenced them as stated above. Aggrieved by the same, they preferred this appeal.

12. Sri Padmanabha Reddy, learned counsel for the appellants, contended that the convictions and sentences ordered by the learned Sessions Judge are unsustainable as they suffer from illegalities. According to him when the prosecution case is based on circumstantial evidence, the Court should have found out whether the circumstances explained are sufficient to connect the accused to the charges levelled against them. It is unsafe to base a conviction on extra judicial confession as was done by the learned Sessions-Judge in the instant case for the reason that extra judicial confession is a weakest piece of evidence and that conviction cannot be based unless corroborated by circumstantial evidence. Even to base a conviction on extra judicial confession, the same shall be free from suspicion and such statement shall be made within a reasonable time. In the absence of any explanation for making extra-judicial confession after a considerable period, the same cannot be accepted for the reason that much water might have flown during the period, which gives rise to a doubt that prosecution fabricated the story in order to circumvent the rigour imposed under Sections 25 and 26 of the Indian Evidence Act, which may hamper the case of the accused in certain circumstances. If really the accused had committed the offence by murdering the deceased, no explanation forthcoming as to why P.W. 10 was silent in not making the complaint. The so called theory of recovery is guile artificial. Therefore, all the circumstances if put together, do not form a complete chain so as to come to conclusion that the death of the deceased must have been caused by the accused and none else. Since every circumstance is beset with doubt or suspicion, the same should not have been a basis for conviction. To support his contentions, the learned counsel also placed reliance on some of the decisions. Thus urging he sought that the appeal be allowed by setting aside the convictions and sentences inflicted upon the accused.

13. As an answer to the above contentions, the learned Public Prosecutor argued that the countenance raised by the learned counsel for the appellants have no force in the eye of law. According to him the entire evidence was assessed properly and based the convictions and sentence on such established facts. The circumstances explained proved beyond all reasonable doubt that the murder of the deceased was by these accused. When there was confession by accused themselves, there was no other go for the trial Court but to accept the same and convict the accused. Mere delay in lodging the complaint is not sufficient to disbelieve the prosecution case. When confession was made before a responsible officer, it is incorrect to hold that such a confession statement has a make believe one made with an intention to escape from the clutches of Sections 25 and 26 of the Evidence Act. According to the learned Public Prosecutor, if totality of circumstances are considered with a dispassionate mind and compared the said

circumstances to the confession statement of the accused, the conclusions reached by the learned Sessions Judge cannot be said to be incorrect or untenable. It is his further contention that merely because P.W. 10 is the wife of the deceased, her evidence cannot be discarded on the ground that she is an interested witness in the absence of any enmity between herself and the accused. Thus arguing he sought that the appeal be dismissed.

14. A perusal of the evidence and the judgment, it is clear that the prosecution has tried to establish its case by urging the Court below to appreciate two circumstances, namely, (1) the circumstantial evidence that led the deceased to leave his house; confession of A. 1 and A.2; after some days finding the dead body by P.W. 2 and so as by P.Ws. 1 and 3, and (2) extra judicial confession as confessed by A. 1 and A.2 particularly A.1 at Ex. P.7 made before the M.R.O. P.W. 15. In the absence of eye witness to the incident, the conviction can be based on the circumstances explained by the prosecution leading to the cause of death of the deceased are proved. In this case the chain of events narrated by the prosecution regarding the death of the deceased are probable and reasonable and without any doubt of suspicion or doubt. What principles should govern to accept the circumstantial evidence, the Supreme Court has laid down the same in number of decisions.

Though it is ordinarily believed that when a person is accused of committing murder of another, the fact that the accused and the deceased were last seen together in company of each other and the failure of the accused to satisfactorily account for the disappearance of the deceased is considered a circumstance of an incriminating character. But that itself is not sufficient unless the same is established beyond reasonable doubt that accused must have caused the death of the deceased as held by the Supreme Court in *Lakhanpal Vs. State of Madhya Pradesh*,). While interpreting the scope of Section 3 of Evidence Act Circumstantial Evidence, when insufficient to prove guilt-the Supreme Court held :

"In prosecution for offence of murder the mere fact that the accused and the deceased (the real brother of the accused) were together in the field prior to the occurrence does not by itself lead to irresistible inference that the accused must have murdered the deceased."

Similar view has been reiterated by the Supreme Court in the case of *Inderjit Singh and another Vs. State of Punjab*, as follows :

"Penal Code (1860), S. 300 - Murder-Circumstantial evidence - No direct evidence to connect accused with crime - No enmity between accused and deceased - Sole circumstance that deceased was last seen in company of accused Not sufficient to convict accused"

The principles which govern the appreciation of circumstantial evidence in case based on circumstantial evidence, the Supreme Court in the case of *Pohalya Motya Valvi Vs. State of Maharashtra*, , held as follows :

"It is common ground that there is no direct evidence implicating the appellant. Prosecution case rests on circumstantial evidence. As the case depends on circumstantial evidence, at the outset the well-established principles governing the appreciation of evidence in a case dependent upon circumstantial evidence may be borne in mind. Briefly, the principles are that each circumstance relied upon by the prosecution must be established by cogent, succinct and reliable evidence; that the circumstance relied upon must be such as cannot be explained on any hypothesis except the guilt of the accused. In other words, the circumstances must be of an incriminating character. All the proved circumstances must provide a complete chain no link of which must be missing and they must unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence."

This position has been further explained by the Supreme Court in *Kishore Chand Vs. State of Himachal Pradesh*, wherein it was observed :

"in a case of circumstantial evidence, all the circumstances from which the conclusion of the guilt is to be drawn should be fully and cogently established. All the facts so established should be consistent only with the hypothesis of the guilt of the accused. The proved circumstances should be of a conclusive nature and definite tendency, unerringly pointing towards the guilt of the accused. They should be such as to exclude every hypothesis but the one proposed to be proved. The circumstances must be satisfactorily established and the proved circumstances must bring home the offences to the accused beyond all reasonable doubt. It is not necessary that each circumstance by itself be conclusive but cumulatively must form unbroken chain of events leading to the proof of the guilt of the accused. If those circumstances of some of them can be explained by any of the reasonable hypothesis then the accused must have the benefit of that hypothesis. In assessing the evidence imaginary possibilities have no role to play. What is to be considered are ordinary human probabilities. In other words when there is no direct witness to the commission of murder and the case rests entirely on circumstantial evidence, the circumstances relied on must be fully established. The chain of events furnished by the circumstances should be so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused. If any of the circumstances proved in a case are consistent with the innocence of the accused or the chain of the continuity of the circumstances is broken, the accused is entitled to the benefit of doubt. In assessing the evidence to find these principles, it is necessary to distinguish between facts which may be called primary or basic facts on one hand and inference of facts to be drawn from them, on the other. In regard to the proof of basic facts or primary facts, there is no scope for the application of the doctrine of benefit of doubt. The Court has to consider the evidence and decide whether the evidence proves a particular fact or not. Whether that fact leads to the inference of the guilt of the accused or not is another aspect and in dealing with this aspect of the problem, the doctrine of benefit would apply and in inference of guilt can be drawn only if the proved facts are inconsistent with the

innocence of the accused and are consistent only with his guilt. There is a long distance between may be true and must be true. The prosecution has to travel all the way to establish fully all the chain of events which should be consistent only with hypothesis of the guilt of the accused and those circumstances should be of conclusive nature and tendency and they should be such as to exclude all hypothesis but the one proposed to be proved by the prosecution. In other words, there must be a chain of evidence so far consistent and 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 probability the act must have been done by the accused and the accused alone."

In the case of Sarbir Singh Vs. State of Punjab,) the above position has been further reiterated by the Supreme Court in the following terms (Para 6 of Cri LJ.

"It is said that men lie but circumstances do not. Under the circumstances prevailing in the society today, it is not true in many cases. Sometimes the circumstances which are sought to be proved against the accused for the purpose of establishing the charge are planted by the elements hostile to the accused who find out witnesses to fill up the gaps in the chain of circumstances. In countries having sophisticated modes of investigation, every trace left behind by the culprit can be followed and pursued immediately. Unfortunately it is not available in many parts of this country. That is why Courts have insisted (i) the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established; (ii) all the facts so established should be consistent only with the hypothesis of the guilt of the accused and should be such as to exclude every hypothesis but the one sought to be proved; (iii) the circumstances should be of a conclusive nature; and (iv) the chain of evidence should not have any reasonable ground for a conclusion consistent with the innocence of the accused."

Though it is made out that the conduct of the accused or the material produced creating some suspicion in the mind of the Court as to the cause of death and the persons responsible, that itself cannot be taken to be that as a fact has been proved as held by the Supreme Court in The State of Punjab Vs. Bhajan Singh and Others, .

15. The circumstanced explained by the prosecution do not satisfy the requirements as laid down by the Supreme Court in the decisions referred to above. The second ground on which the prosecution tried to connect the accused with the offence alleged is on the basis of extra judicial confession. The extra judicial confession itself cannot be a basis for basing conviction as it is well settled that such a confession is a weakest piece of evidence. To make use of extra judicial confession, the same shall be voluntary and not brought up under suspicious circumstances. Such extra judicial confession should be free and not with any coercion and it should be made within a reasonable time. Therefore, it is relevant to extract Section 24 - 27 and 30 of the Indian Evidence Act hereunder :

"24. Confession caused by inducement, threat or promise when irrelevant in criminal proceeding :- A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

25. Confession to police officer not to be proved : No confession made to police officer, shall be proved as against a person accused of any offence.

26. Confession by accused while in custody of police not to be proved against him. No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

27. How much of information received from accused may be proved : Provided that when any fact is proved to be 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.

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence :- When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession."

17. From the understanding of the above sections, it is clear that any confession made shall not give room for suspicion. It shall be made without any coercion, without loss of time before a competent authority and in case accused is more than one, what credibility or probative value can be attached to a confession by co-accused and how it has to be made use of or taken into account in joint trial, the Supreme Court in the case of Hari Charan Kurmi and Jogia Hajam Vs. State of Bihar, has observed thus :

"As a result of the provisions contained in Section 30, Evidence Act, the confession of a co-accused has to be regarded as amounting to evidence in general a way, because whatever is considered by the Court is evidence; circumstances which are considered by the Court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the Court cannot start with the confession of a co-accused person; it must begin

with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence.

Thus, the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly, unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt".

In *The State of Punjab Vs. Bhajan Singh and Others*, while explaining the scope of Section 24 of the Evidence Act, the Supreme Court held :

"The evidence of extra judicial confession in the very nature of things is a weak piece of evidence".

In the case of *Kishore Chand Vs. State of Himachal Pradesh*, the Supreme Court held that :

"An unambiguous extra-judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of its falsity. But in the process of the proof of the alleged confession the Court has to be satisfied that it is voluntary one and does not appear to be result of inducement, threat or promise envisaged under S. 24 or was brought about in suspicious circumstances to circumvent Ss. 25 and 26. Therefore, the Court has to look into the surrounding circumstances and to find whether the extra-judicial confession is not inspired by any improper or collateral consideration or circumvention of the law suggesting that it may not be true one. For this purpose the Court must scrutinise all the relevant facts such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made and finally the actual words used by the accused. Extra-judicial confession if found to be voluntary can be relied upon by the Court along with other evidence on record. Therefore, even the extra-judicial confession will also have to be proved like any other fact. The value of the evidence as to the confession depends upon the veracity of the witness to whom it is made and the circumstances in which it came to be made and the actual words used by the accused. Sometimes it may not be possible to the witness to reproduce the actual words in which the confession was made. For that reason the law insists

on recording the statement by a Judicial Magistrate after administering all necessary warnings to the accused that it would be used as evidence against him. Section 26 provides that no confession made by any person while he is under custody of the police officer, unless it be made in the immediate presence of Magistrate, shall be proved as against such person. Therefore, the confession made by an accused person to a police officer is irrelevant by operation of S. 25 and it shall not be proved against him. Likewise, the confession made by accused while he is in the custody of the police shall not be proved against him unless it is made in the immediate presence of the Magistrate, by operation of S. 26".

In the case of Kailash Vs. State U.P, the Supreme Court held :

"Evidence Act (1 of 1872), Ss. 3, 24 - Murder - Case based on circumstantial evidence - Prosecution case mainly resting on extra-judicial confession as one of the circumstance - Accused confessing commission of alleged crime 20 days after the incident - No apparent reason found for accused to do so - Possibility deposing about the confession at the instance of Police, not ruled out - Giving of extra-judicial confession, doubtful - Prosecution failing, to establish all circumstances by independent evidence forming a complete chain - Conviction liable to be set aside".

18. From the principles laid down in the above decisions, it is clear that if the accused to be connected with the offence alleged, the circumstances relied upon by the prosecution must be cogent, succinct and reliable. They shall provide a complete chain and no link should be found missing. They shall be conclusive and consistent with the hypothesis of guilt of the accused. But, from the facts narrated it is difficult to agree with the learned sessions Judge that the prosecution proved the guilt of the accused beyond reasonable doubt, on the basis of the circumstantial evidence. The circumstances explained do not point to the guilt of the accused, and on the other hand they are consistent with the innocence of the accused.

19. This being the legal position on the admissibility of extra-judicial confession, there is no explanation why A.2 was proposed to make extra-judicial confession before the Mandal Revenue Officer instead of making it before a Judicial Magistrate. One more circumstance is that A.1 made his confession statement before the police. However the Court below did not take into consideration the version of A. 1. From the facts narrated, the so called extra-judicial confession made by A.2 is not satisfying the requirements and does not make us to feel that other circumstances explained by the prosecution are probable. Basing conviction, on such evidence is unwarranted. Apart from this, even if we compare the so called extra-judicial confession made by A.2 with the evidence of P.W. 10, there is no co-relation. Further, though postmortem report was produced before the Court, its author was not produced before the Court, its author was not summoned to give evidence. If he was sick namely suffering of paralytic attack at least some one acquainted with his hand writing should have been examined. It has come in the evidence that the clothes which were found on the body of the

deceased were stitched by tailor P.W. 9. But neither those clothes were shown to the said witness nor produced before the Court. Thus, the identity of the body itself is in doubt. In the light of the circumstances which are not convincing and the inadmissibility of the extra-judicial confession, the learned Sessions Judge should have examined the case of the prosecution on the requirements of the two aspects as laid down by the Supreme Court in so many case, of them a few are cited above. In the absence of any enmity between that accused and the deceased and merely on the ground of sole circumstances that the deceased was last seen in the company of the accused, itself is not sufficient to convict the accused. This view of ours is fortified by the decision of the Supreme Court in the case of Inderjit Singh and another Vs. State of Punjab, . While delving on such circumstances. the Supreme Court :

"Penal code (1860), S. 300 - Murder - Circumstantial evidence - No direct evidence to connect accused with crime - No enmity between accused and deceased - Sole circumstance that deceased was last seen in company of accused - Not sufficient to convict accused."

20. In our view, if the evidence had appreciated dispassionately and in the right perspective by the learned Sessions Judge the conclusion would have been that prosecution failed to establish its case beyond all reasonable doubt and that therefore A.1 to A.3 were not responsible for the cause of death of the deceased. Therefore, any conviction and sentence based on incorrect findings, is arbitrary, illegal and the same deserve to be set aside. Hence the conviction and sentence ordered by the learned, Sessions Judge deserve to be set aside.

21. Circumstances explained create suspicion as to the cause of death of the deceased, but it is a well established principle of law that suspicion however strong may it be, cannot take the place of proof. The theory of socalled recovery of M.Os. looks very artificial. The evidence adduced gives rise to two opinions. It is needless to say that the one which is in favour of the accused shall be accepted. If this well settled principle of law was borne in mind while coming to conclusion, the finding of the learned Sessions Judge would have been the innocence of the accused.

22. In the result, the appeal is allowed and so the convictions and sentences of A1 and A2 for the offence u/s 302 r/w. 34 I.P.C. and sentence to undergo imprisonment for life and to pay fine of Rs. 500-00, in default to suffer S.I. for six months; conviction of A1 and A2 for the offence u/s 201 r/w. 34 I.P.C., and sentence to undergo R.I. for two years and also to pay a fine of Rs. 500/-, in default to suffer S.I., for six months; ands conviction of A3 for the offence u/s 302 r/w. 109 I.P.C., and sentence to undergo imprisonment for life and to pay a fine of Rs. 500/-, in default to suffer S.I. for six months are set aside and A1 to A3 are acquitted of all the offences. A1 to A3 shall be set at liberty forthwith, if they are not required in any other case.

23. Appeal allowed.