

(1998) 11 AP CK 0039
In the Andhra Pradesh High Court
Case No : Criminal A No. 730 of 1997

Madamanchi Sreenivasa Rao

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 24-11-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161(3), 174
Penal Code, 1860 (IPC) — Section 201, 302, 304, 45, 47

Citation : (1999) 1 ALD 601 : (1999) 1 ALD(Cri) 312 : (1999) 1 ALT(Cri) 198

Hon'ble Judges : B. Subhashan Reddy, J; A. Hanumanthu, J

Bench : Division Bench

Advocate : M/s. C. Padmanabha Reddy for C. Praveen Kumar, for the Appellant;
Public Prosecutor, for the Respondent

Judgement

A. Hanumanthu, J.—The sole accused-Madamanchi Srinivasa Rao in SC No.490 of 1993 on the file of the III Additional Sessions Judge, Guntur, is the appellant herein. He was tried for the offences punishable under Sections 364, 302 and 201 IPC. The substance of the charges against the accused is that on 11-11-1991 the accused kidnapped one Kalluri Prashant aged about 13 years, caused his death by tying a nylon rope around his neck and then by keeping the dead body in a gunny bag, threw the same in the branch canal with an intention of screening the said offence.

2. The case of the Prosecution, in brief, is as follows:

(I) The deceased-Prashant is the son and the accused is the son-in-law of PW1. The accused married the daughter of PW1 about one year three months prior to the date of the incident i.e., 11-11-1991. The accused is a native of Abbineniguntapalem, but he was residing at Yedlapadu since three months prior to 11-11-1991. PWs. 1, 3, to 9 are also residents of Yedlapadu. There is a police station at Yedlapadu. There is also Mandal Praja Parishal Office at Yedlapadu. PW2 is a native of Korusola village which is a neighbouring village to Yedlapadu village but he admits in his cross-examination that he was also residing at

Yedlapadu during that time.

(II) On coming over to Yedlapadu the accused and his wife used to reside in the house of PW17 who is the father-in-law of PW1. The accused was cultivating three acres of land given to his wife towards pasupukunkama and another six acres of land belonging to PW17. PW1 belongs to Congress Party and he was also President of village Congress Committee. He was a big ryot in that village having sixteen acres of land. The deceased-Prashant was studying 8th Class at the time of his death.

(III) The prosecution case is based on circumstantial evidence. The circumstances relied on by the prosecution are as follows:

(i) On 11-11-1991 at about 5-00 or 5-30 p.m. the deceased requested PW3 who was his classmate to come along with him for a movie but PW3 expressed that he was not having money and the deceased told him that his brother-in-law has given money to him.

(ii) At about 7.15 p.m. while PW4-the milk tester working in the Milk Society at Yedlapadu and his Secretary-Sambasiva Rao were at the Milk Centre, they noticed the accused and the deceased going on a cycle towards Medara Community House and the deceased at that time was sitting on the back seat of the cycle.

(iii) At about 7-30 p.m. P\\V7 the proprietor of Coffee Hotel at Yedlapadu village served tiffin and coffee to the accused and the deceased when they visited his hotel and after taking tiffin the accused sent the deceased to movie and went away on his cycle again at 9-30 p.m. the accused came to the Hotel of PW7, took water and was standing there. After the first show of Cinema was over, the deceased came to the hotel of PW7 and joined the accused and both of them went away.

(iv) At about 9-00 or 9-30 p.m. PW5 a quarry worker while he was returning from Madigapalli after engaging coolies saw the accused and the deceased and the accused was having a gunny bag in his hands and when accosted the accused informed PW5 that they were going for watering the fields and both of them went towards Sagar Canal.

(v) At about 10-00 p.m. while PW2-a shepherd was taking sheep through Pedanandipadu canal bund towards Yedlapadu which is his mother-in-law's place saw the deceased sitting on the canal bund and another person was found answering the calls of nature nearby and when PW2 accosted the person who was answering the calls of nature that he is the son-in-law of PW1. On being questioned by PW2 where they were going at that time the accused replied that they were proceeding to the field for watering.

(vi) At about 10-00 p.m. while PW6-a resident of Yedlapadu returning home after seeing the first show Cinema he heard shrill cry from a distance of 50 yards from the burial ground.

(IV) As the deceased was missing from the evening of 11-11-1991 PWs. 1, 9 and others searched for the deceased. On 12-11-1991 at 8-00 p.m. PW1 lodged a complaint, Ex.P1, in the police station at Yedlapadu. PW12 the Head Constable registered Ex.P1 as Crime No.112 of 1991 as boy missing case and issued the FIR, Ex.P6. On 13-11-1991 at 11-00 a.m. PW1 received an anonymous letter (Ex.P3) to the effect that his son was kidnapped, that he should pay Rupees one lakh at Nagarjuna Hotel and that amount should be paid before 20-11-1991 and the same should not be revealed to the police and if he failed to comply with this, his son would be killed. It is further mentioned in that letter (Ex.P3) that he had not helped in the motor theft case. On the same day i.e., 13-11-1991 PW1 again went to the police station and informed P\\V12-the Head Constable about the receipt of the anonymous letter, Ex.P3, and gave a copy of the same to him.

(V) On 14-11-1991 at 11-00 a.m. PW1 came to know that the dead body of his deceased son was floating in the canal near Karachola village. PWs. 1, 9 and others went there and identified the dead body as that of his deceased son. At about 1-00 p.m. on the same day i.e., 14-11-1991 PWs. 1 and 9 went to the police station and presented another report, Ex.P2, to PW12 and PW12 altered the Section of law in the Crime No.112 of 1991 into Section 174 Cr.P.C. and issued the altered FIR, Ex.P7. PW1 also handed over the anonymous letter Ex.P3 to PW12. PW12 visited the scene of offence and brought the dead body, removed it with the help of the villagers and conducted inquest over the dead body of the deceased in the presence of mediators PW11 and others. Ex.P5 is the inquest report. PW12 after inquest sent the dead body to the Government Hospital, Chilakalurupet for post-mortem examination.

(VI) On 15-11-1991 at 1-30 p.m. the Medical Officer, Government Hospital, Chilakalurupet (PW10) conducted autopsy over the dead body of the deceased and issued post-mortem certificate Ex.P4. PW10 found swelling on the neck on the right side and 1 c.m. wide and 6 c.m. long rope mark on the front of the neck and also continuously around the neck. On dissection PW10 found the following injuries:

- (i) Subcutaneous congestion in the neck.
- (ii) Edges of the rope mark showed petechial haemorrhages and congestion.
- (iii) Fracture of hyoid bone on both sides.
- (iv) Larynx and trachea congestion with profuse mucous discharge.

PW10 opined that all the injuries found on the dead body were ante-mortem in nature. As regards the cause of death PW10 opined that the deceased would appear to have died due to asphyxia and shock, due to strangulation and death might have occurred three to five days prior to post-mortem examination.

(VII) On 16-11-1991 PW13 the Sub-Inspector of Police having taken charge of Yedlapadu Police Station took up further investigation in this case. On 17-11-1991 after receiving the post-mortem certificate, Ex.P4, PW13 altered the

Section of law into Sections 302, 364 and 201 IPC and issued the altered express FIR Ex.P8. The Inspector of Police-PW16 took up further investigation in this case. He made local enquiries about the suspected persons i.e., Patan Khaza, B. Nageswara Rao in the village Yedlapadu and found them absconding. He traced out suspect Mahaboob Bhasha and another suspect John Peera and examined their complicity.

(VIII) On 27-11-1991 at 10-00 a.m. while P\\V1, his wife and his daughter (wife of the accused) and PW9 were in the house of PW1 the accused came to them and confessed that he killed the deceased and requested PW1 to send his daughter (wife of the accused) as he wanted to leave the village. Immediately PWs.1 and 9 rushed to the police station and informed the same to the Sub-Inspector of Police, PW13 who in turn informed the same to the Circle Inspector of Police, PW16, by V.H.F. set. Immediately PW16 went to the police station at Yedlapadu and examined PWs.1 and 9. Thereafter, he left the police station along with the Sub-Inspector of Police, PW13, PWs.1 and 9 went to the house of PW1 and they did not find the accused there PWs.16 and 13 searched for the accused and on information they went to Boyapalem and secured the presence of PW14 and arrested the accused at about 5-30 p.m. On being questioned, the accused made a confessional statement-Ex.P9 (admissible portion) that he murdered the deceased with a nylon rope and that posted the anonymous letter at Chilakalurupet and that he would show the nylon rope if he is accompanied. The accused led the police and PW14 to the house of PW17 at 8-00 p.m. and produced a nylon rope (M.O.1) measuring 7 feet which was tied to a cycle carriage. PW16 seized the same under a panchanama, Ex.P10, in the presence of PW14. Thereafter the accused was taken to Chilakalurupet Police Station. In the Police Station PW16 obtained specimen hand-writing of the accused and the transcript letter of Ex.P3 in the presence of mediators, PW14 and another and Exs.P13 to P15 are the said specimen hand-writing of the accused.

(IX) On -28-11-1991 PW16 sent the accused to the Government Hospital for treatment as he was suffering with pain. On 14-12-1991 PW 17 produced an account book, Ex.P22, before PW16 stating that it was maintained by the accused for the agricultural accounts and it is in the hand-writing of the accused. PW16 forwarded Exs.P13 to P15 and Ex.P22 for comparison with Ex.P3 along with his letter of advice-Ex.P23. PW15-the hand-writing expert compared the writings in Exs.P13 to P15 with the writing in Ex.P3 (anonymous letter) and gave his opinion that all are in the hand-writing of a single person. Ex.P16 is the opinion of the hand-writing expert and Ex.P17 is the reasons given by him for coming to such conclusion.

(X) PW13-the Sub-Inspector of Police secured the presence of PWs.2, 5, 6 and 7 on 2-12-1991 and examined them and recorded their statements. PW 16 after completing the investigation laid the charge-sheet against the accused.

3. The plea of the accused is one of denial. He did not choose to examine any defence witnesses on his behalf but contradictions in the statements of PWs.1, 3,

7 and 9 recorded u/s 161(3) Cr.P.C. have been marked as Exs.DI to D7.

4. The learned Sessions Judge accepted the testimony of PWs.2, 4, 5, 6, and 7 and held that the deceased was found in the company of the accused on the fateful night of 11-11-1991. The learned trial Judge also accepted the testimony of PWs.1 and 9 with regard to the extra judicial confession made by the accused. The learned Sessions Judge also accepting the testimony of handwriting expert, PW15, held that Ex.P3-the anonymous letter was written and sent by the accused. Thus, on a consideration of the entire evidence on record, the learned trial Judge held that all the incriminating circumstances have been established against the accused pointing out the guilt of the accused for the murder of the deceased-Prashant, therefore, the learned trial Judge found the accused guilty of the offences punishable under Sections 364, 302, and 201 IPC and convicted him of the said offences and sentenced him to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.500/- and in default to suffer simple imprisonment for one month for the offence punishable u/s 364 IPC, sentenced him to imprisonment for life and to pay a fine of Rs.500/- and in default to suffer simple imprisonment for one month for the offence punishable u/s 302 IPC and sentenced him to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.500/- for the offence punishable under Section 201 IPC. The trial Judge also ordered that substantive sentences shall run concurrently.

5. Challenging the said conviction and sentences imposed on him, the accused has come up with this appeal.

6. Sri C. Padmanabha Reddy, learned senior Counsel appearing for the appellant-accused, urged firstly that PWs.2 to 7 are planted witnesses and they have been pressed into service to implicate this accused and the fact that they were examined only on 2-12-1991 at a belated stage is proof positive that they were not true witnesses and the trial Court erred in relying on the testimony of those witnesses. Secondly the trial Court committed error in accepting the testimony of PWs. 1 and 9 with regard to the alleged extra judicial confession said to have been made by the accused with regard to the commission of offence in this case and the accused in all probability would not have chosen PW1 to confess his guilt as the latter happened to be the father of the deceased; thirdly the trial Court committed error in coming to the conclusion that the accused is the author and scribe of Ex.P3 based on the report of the hand-writing expert, PW15 for the reason that there is nothing on record to show that the entries in Ex.P22 the account book are in the hand-writing of the accused; fourthly that the prosecution failed to establish any motive for the accused to commit the murder of the deceased as he could not gain anything by such act; fifthly the investigation done in this case is also perfunctory as the Investigating Officer had been carried away by the alleged extra judicial confession said to have been made by the accused and no investigation has been done with regard to the complicity of the suspects in the case of theft of electric motor belonging to maternal aunt's son of PW17 of which the mention is made in the anonymous

letter-Ex.P3 and that the Investigating Officer did not take the specimen hand-writings of those suspects; sixthly that in the anonymous letter-Ex.P3 the deadline for payment of ransom amount of Rs.1 lakh by PW1 was fixed as 20-11-1991 and, therefore, the deceased could not have been murdered on the night of 11-11-1991 itself and the Investigating Officer also did not proceed with the investigation to verify the allegations in Ex.P3; lastly the learned senior Counsel for the appellant further submits that as the case is based on circumstantial evidence the prosecution failed to establish that in all probability the crime was committed by the accused and the accused alone and as such the accused is entitled for benefit of doubt.

7. The learned Additional Public Prosecutor, on the other hand, submitted his arguments in support of the impugned Judgment.

8. At the outset, it may be stated that there was no challenge before the trial Court as well as before us on behalf of the appellant-accused that the deceased-Prashant died due to strangulation during the intervening night of 11-11-1991 and 12-11-1991. It is, therefore, needless to refer the evidence of the Medical Officer-PW10 who held autopsy over the dead body of the deceased on 15-11-1991 and issued the post-mortem certificate, Ex.P4. We have gone through the evidence of PW10 and his report, Ex.P4 and see on hesitation in holding that Prashant died due to asphyxia caused by strangulation.

9. We have carefully considered the submissions urged on behalf of the appellant-accused and, in our considered opinion, each one of them deserves to be accepted.

10. Admittedly, there are no eyewitnesses to the occurrence in this case. The entire prosecution case is based on circumstantial evidence. The law regarding the circumstantial evidence is well settled. When the case rests upon the circumstantial evidence, such evidence must satisfy three tests: 1) the circumstances from which the inference of guilt is sought to be drawn must cogently and firmly established; 2) those circumstances should be of definite tendency unerringly pointing towards the guilt of the accused; 3) the circumstances, taken cumulatively, should form a chain so complete, that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused, but should be inconsistent with his innocence. (Vide *Gambhir Vs. State of Maharashtra*, . In cases where only circumstantial evidence is available, at the outset, one considers the motive and opportunity to commit the crime by the accused, if the evidence on record shows that the accused having a strong motive had the opportunity of committing the crime and the established circumstances on record considered along-with the explanation, if any, of the accused, exclude the reasonable possibility of anyone else being the real culprit then the chain of

evidence can be considered to be so complete as to show that within all human probability the crime must have been committed by the accused.

11. In the instant case, the prosecution has not attributed any motive much less strong motive for the accused to kill his own brother-in-law. After going through the evidence of PW1-the father of the deceased, we do not find any whisper in his testimony with regard to the motive for the accused to kill his son (PW1). On the other hand, PW17-the father-in-law of PW1 admits in his cross-examination that the accused would not get any property on the death of the deceased. Thus, we are satisfied that the accused had no motive to murder the deceased.

12. The three circumstances relied upon by the prosecution to connect the accused with the alleged offence, as seen from the impugned Judgment, are 1) the deceased was last seen in the company of the accused; 2) the accused is the author of the anonymous letter, Ex.P3, sent to PW1 seeking a ransom sum of Rs.1 lakh and 3) the extra judicial confession alleged to have made by the accused before PWs.1 and 9 on 27-11-1991. As regards to the first circumstance the trial Court accepted the testimony of PWs.2 to 7. PW3 was said to have seen the deceased at about 5-00 or 5-30 p.m. on 11-11-1991 when the latter requested him to accompany him for a movie and that PW3 expressed that he was not having money and that the deceased informed him that the accused has given him money. PW4 is said to have seen the accused and the deceased going on a bicycle at about 7-15 p.m. while PW7 served coffee and tiffin to the deceased and the accused in his hotel at 7-30 p.m. and that again PW7 saw the deceased and the accused going away from his hotel at about 9-30 p.m. PW5 was said to have seen the accused and the deceased at about 9-00 or 9-30 p.m. on the way to the field while PW2 saw the deceased and the accused at about 10-00 p.m. on pedanandipadu canal bund. PW6 of course has not seen the accused in the company of the deceased on that night but he deposed that at about 10-00 p.m. he heard a shrill cry at a distance of 50 yards from burial ground while he was reluming home and that shrill cry was that of a female. After going through the evidence of these witnesses, we are at a loss to understand how the trial Court accepted the testimony of these witnesses without examining the credibility of these witnesses in the light of the other circumstances in this case. Admittedly, PWs. 1, 3 to 7 are the residents of Yedlapadu where there is also a police station. PW2 claims that he is a native of Karuchola village but he admits in his cross-examination that he was also residing in Yedlapadu which is his mother-in-law's place during that period. Admittedly, all these witnesses were examined by the Sub-Inspector of Police, PW13, only on 2-12-1991 i.e., after a lapse of more than twenty days from the time when the deceased was last seen in the company of the accused. It is not their case that they were not available in the village from 12-11-1991. They admit that they knew that the deceased was missing from the house of PW1 since the evening of 11-11-1991. If really they had witnessed the deceased in the company of the accused on that night in all human probability they would have informed PW1 about that fact. The fact that they did not inform PW1 and

the fact that they were examined at a belated stage i.e., on 2-12-1991 are strong circumstances, to disbelieve their testimony and, in fact, we have no hesitation to accept the contention of the learned senior Counsel appearing for the appellant-accused that they are planted witnesses. Therefore, we have no hesitation, to say that the testimony of these witnesses is not worthy of credence and as such we reject the same. Further, as observed by the Supreme Court, the only circumstance that the deceased was last seen in the company of the accused is not sufficient to convict the accused vide *Inderjit Singh and another Vs. State of Punjab*, . In *Lakhan Pal v. State of Madhya Pradesh*, AIR 1979 SC 1620, Their Lordships of the Supreme Court held thus:

"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 itself lead to irresistible inference that the accused must have murdered the deceased".

13. The next circumstantial evidence relied on by the prosecution is that the anonymous letter, Ex.P3, received by PW1 demanding to pay a ransom amount of Rs.1 lakh for the release of his son-deceased, was found to be in the hand-writing of the accused when the same was compared with the transcript letters obtained from the accused during the course of investigation and on comparison with the entries in the account book, Ex.P22, which was produced by PW17 before the Investigating Officer. PW15 is the hand-writing expert who compared the said hand-writing and gave his opinion EX.P16 and Ex.PI7 is the reasons given by PW15 for coming to such an opinion. Bxs.P13 to P15 are the transcribed letters obtained from the accused during the course of investigation. But the trial Judge relying on the decision in the *Sundaramma (died) and Others Vs. Harijan Yellaiah and Others*, , held that Exs.PI 3 to P15 which were obtained from the accused during the course of investigation are inadmissible in evidence and therefore the learned Judge did not give any weight to the opinion of PW15 with regard to the comparison of those documents Exs.P13 to P15 with Ex.P3. As regards the report of PW15 with regard to entries in Ex.P22 with Ex.P23 the trial Judge accepted the same and held that Ex.P3 was written by the accused himself. Ex.P22-accounts book was said to have been produced by PW17 before the Investigating Officer, P16 on 14-12-1991 and he seized the same and sent it to PW15 for comparison with Ex.P3. Ex.P22 is alleged to have been maintained by the accused while he stayed with PW17 with regard to the amounts he had spent for the household purposes and agricultural purpose. Admittedly, the entries in Ex.P22 are from 1 -8-1980 onwards. But in the same book the entries in page No. 107 are dated 10-11 -1991 i.e., one day prior to the incident in this case. The entries at page No. 120 are for the months of June, August and October, 1991. In the absence of positive evidence that the entries at pages No. 107 and 120 in Ex.P22 are in the hand-writing of the accused, they cannot be taken as the standard and admitted handwriting of the accused for comparison with the entries in Ex.P3. We should not forget, in this context, the fact that the accused joined the house of PW 17 just about three months prior to the incident

in this case. PW17 alone is the competent person to speak about the entries in Ex.P22 as he was the person who had produced the same before PW16. We have gone through the deposition of PW17 with care and caution. We are of the opinion that his evidence is not worthy of credence and that this account book, Ex.P22, has been pressed into service to re-inforce the incrimination against the accused. It is no doubt true that PW17 has stated in his examination-in-chief that he informed C.I, of Police that the account book, Ex.P22, contained the hand-writing of the accused. As earlier stated, the entries in Ex.P22 are from 1-8-1980 onwards. Admittedly, all the entries in the book could not be in the handwriting of the accused for the reason as stated earlier that the accused joined the house of PW17 only about three months prior to the incident in this case. Therefore, the testimony of PW 17 that all the entries in Ex.P22 are in the hand-writing of the accused cannot be accepted. Further the admission of PW 17 in his cross-examination that "for the first time I happened to notice Ex.P22-the accounts book only the day I handed it over to the C.I. of Police, Chilakalurupet" also throws ample doubt with regard to the genuineness of Ex.P22. If really Ex.P22 was maintained by PW17 from 1-8-1980 onwards he would not have failed to notice the same in his house earlier. Therefore, we are unable to accept the prosecution version that the entries in Ex.P22 in general and the entries at pages 107 and 120 in particular relate to PW17 and that the entries at pages 107 and 120 are in the hand-writing of the accused.

14. In this context, the observations of the Supreme Court in *Frakruddin v. State of Madhya Pradesh*, reported in AIR 1967 SC 1326 are relevant and it is observed thus:

"The writing may be proved to be in the hand-writing of a particular individual by the evidence of a person familiar with the hand-writing of that individual or by the testimony of an Expert competent to the comparison of hand-writings on a scientific basis. A third method is comparison by the Court with the writing made in the presence of the Court or admitted or proved to be by the writing of the person. Both u/s 45 and Section 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it has satisfied itself on its observation that it is safe to accept the opinion whether of the expert or other witness."

To satisfy ourselves we also looked into the entries at pages 107 and 120 of Ex.P22 and compared them with the entries in Ex.P3 and we are satisfied that they do not tally with each other and as such we cannot accept the report of the hand-writing expert, PW15 and his report, Ex.P16. Therefore, we are of the firm

opinion that Ex.P3 was not written by the accused.

15. There is another aspect with respect to that anonymous letter, Ex.P3. It was received by PW1 on 13-11-1991 at 11-00 a.m. and a copy of it was handed over to PW11 on 14-11-1991. There is a demand for ransom sum of Rs.1 lakh for the release of the son of PW1 and PW1 was directed to bring that amount to Nagarjuna Hotel which is said to be at Chilakalurupet. Further the dead line granted for such payment was 20-11-1991 (though it is mentioned as 20-10-1991 which could not be correct). There is also a reference that PW1 did not help the person who wrote that letter in the earlier electric motor theft case which has been registered as crime No. 105 of 1991 and that electric motor belonged to maternal aunt's son of PW17. We are at a loss to understand why no investigation was done on this aspect. It is in the evidence of PW16 that he suspected some muslims and one B. Nageswara Rao as the culprits in this case but he did not choose to obtain from them the transcribed letter of Ex.P3 for comparison with Ex.P3 as he had done with respect to the present accused. Further, there is no explanation from the Investigating Officer why no attempt was made by him to visit Nagarjuna Hotel and make enquiries with regard to the allegations in the letter, Ex.P3. Further if really such a letter has been received and a ransom amount was demanded and the dead line till 20-11-1991 was fixed for such payment of ransom amount, the son of PW1 (deceased) would not have been murdered before expiry of the time fixed in that letter. On the other hand, admittedly, the dead body of the deceased was found floating in the canal on 14-11-1991. Thus, we are of the opinion that the investigation was not done comprehensively and the investigating officers proceeded with the assumption that the accused was the murderer in this case.

16. The third circumstantial evidence relied upon by the prosecution and accepted by the trial Court is the alleged extra judicial confession said to have been made by the accused before PWs.1 and 9 and wife and daughter of PW1 on 27-11-1991. As has been observed by the Supreme Court in *The State of Punjab Vs. Bhajan Singh and Others*, , that the evidence of extra judicial confession in the very nature of things is a weak piece of evidence. In order to accept such evidence, it must be plausible and must inspire the confidence of the Court. In *Heramba Brahma and Another Vs. State of Assam*, , Their Lordships of the Supreme Court observed thus:

"We are at a loss to understand how the High Court has accepted the evidence on this extra judicial confession without examining the credentials of PW2-Bisthi Ram, without ascertaining the words used; without referring to the decision of this Court to be presently mentioned wherein it is succinctly stated that extra judicial confession to afford a piece of reliable evidence must pass the test of reproduction of exact words, the reason or motive for confession and person selected in whom confidence he deposed."

In *Jaspal Singh alias Pali and others Vs. State of Punjab*, , the Supreme Court held that it is not safe to rely on such extra judicial confession said to have been

made before a sarpanch of another village in the absence of any reasons to show as to why and how the accused had reposed such a confidence in that sarpanch as to confess their guilt before him. In State of Haryana Vs. Rajinder Singh, , the facts in that case are similar to the facts in the case on hand. In that case the husband of the deceased was tried for the offence u/s 304-B IPC (dowry death) and the prosecution relied on the alleged extra judicial confession said to have been made by the husband of the deceased said to have been made to her father in the presence of two villagers. The High Court disbelieved the making of the extra judicial confession of such an heinous crime to the father of the deceased in the presence of so many persons. The Supreme Court rightly confirmed the said observations of the High Court and observed thus:

"The High Court has, therefore, observed, rightly, that it is not acceptable that the respondent would make a confession after the heinous crime in the presence of so many persons."

17. In the instant case it is in the evidence of PWs.1 and 9 that on 27-11-1991 at 10-00 a.m. while they were in the house of PW1 along with wife and daughter of PW1 the accused came there and confessed that he killed his son and requested him to send his daughter as he wanted to leave the village Yedlapadu. In the circumstances of the case, as the deceased being the son of PW1, we are not able to accept this testimony of PWs. 1 and 9. In all probability, the accused could not have made such a confession with regard to such a heinous crime before the father of the deceased himself. Apart from it, the conduct of PWs.1 and 9 immediately after hearing such a confession from the accused is not according to human conduct. If a person makes any such a confession before a person that he had murdered his son, in all probability, the conduct of such a person would be to apprehend that man and produce him before the police station after recording his statement. In the instant case, it is no doubt PWs.1 and 9 immediately went to police station and informed PW13 about the alleged confession made before them. But they did not choose to apprehend and produce the accused before the police. PW13 also did not record the statements of PWs.1 and 9 with regard to the alleged confessional statement said to have been made by the accused before them. Further PW13-Sub-Inspector of Police did not choose to visit the house of PW1 to apprehend the accused immediately but he waited for the arrival of his Inspector-PW16 to come to the police station and thereafter they visited the house of PW1 and the accused was said to have been absconding. Further, the testimony of PWs.1 and 9 does not infuse confidence that they have been telling the truth with regard to the alleged extra judicial confession made by the accused. The testimony of PWs.1 and 9 with regard to the alleged extra judicial confession is not trustworthy to be accepted.

18. In the light of the afore-said serious infirmities in the prosecution evidence, we are of the opinion that the appellant-accused is entitled for the benefit of doubt. In the result, the appeal is allowed and the impugned Judgment and order of conviction and sentences imposed on the appellant-accused are set aside and

the appellant-accused is acquitted. The appellant-accused who is in jail be set at liberty forthwith if not required in any other case. The fine amount is ordered to be refunded to the appellant-accused if deposited already.