

(1995) 08 DEL CK 0045

In the Delhi High Court

Case No : Criminal Appeal No. 130/91

Virender Kumar Yadav and Mukhtiar Yadav alias Mukho Yadav
alias Raju

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-08-1995

Acts Referred:

Citation : (1996) CriLJ 231 : (1995) 60 DLT 391 : (1995) 34 DRJ 360

Hon'ble Judges : P.K. Bahri, J;J.B. Goel, J

Bench : Division Bench

**Advocate : Sandeep Sethi, Baljeet Singh Dhir and Ms. Kanwal Inder Kaur Dhir,
for the Appellant; Sanjeev Khanna, for the Respondent**

Judgement

P.K. Bhari, J.—Virender Kumar Yadav and Mukhtiar Yadav alias Mukho Yadav alias Raju have been convicted of offences punishable u/s 302 read with Section 34 of the Indian Penal Code (for short "IPC") and u/s 201 read with Section 34 of the IPC by an Additional Sessions Judge, Delhi, vide his judgment dated August 28, 1991 and by subsequent order of the even date they have been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 500/- each and in default to undergo rigorous imprisonment for one month each for the first count and have been also sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 500 each and in default to undergo rigorous imprisonment for one month each on the second count. They have come up in appeal challenging their convictions and sentences.

2. Facts of the case, in brief, are that Ashok since deceased. PW 6 Gogan Yadav and PW 7 Rajinder had come to Delhi for earning their livelihood from their village Sakra Paharpur. P. O. Simribak Tungar Pur, District Saharsa (Bihar). Ashok was working as a labourer in Connaught Place area whereas PW 6 and PW 7 were playing "rickshaws at the relevant time. It is alleged that on September 14, 1987, Ashok had come to visit PW 7 and he along with Parmeshwar had come to bus stand to see off Ashok who was to go to his place, there the appellants are

stated to have met Ashok and Ashok accompanied them for witnessing a movie. Virender Yadav appellant had told at that time that Ashok would stay with him for one or two days and thereafter they had gone towards Ajanta Cinema. The story further proceeds that Virender Yadav appellant had come to the place of PW 7 at about 9.30 PM in Kachha Tihar and after sometime Mukho-appellant as well as Ashok arrived and they took their meals with him and thereafter appellants took Ashok saying that they would be now seeing a night show.

3. On September 16, 1987, it is alleged that PW 6 and PW 7 in routine had started from their house for plying their rickshaws that they reached near Beriwalla Bagh and found a crowd collected at that spot and police was also present and a dead body was recovered from the well and the same was of Ashok PW 6 and PW 7 did not come forward to identify the said dead body and they had proceeded towards Subhash Nagar where they were met by the appellants and they noticed some scratches on Virender Yadav's (appellant) neck and on query about Ashok Virender told them that both the appellants had murdered Ashok as Ashok used to harass them and they threatened PW 6 and PW 7 if they informed the police they would be dealt with in the same manner as they had dealt with Ashok.

4. The prosecution version further proceeds that Dev Narain PW 9, real brother of Ashok, got information at his village from one Bachan Tati, resident of the same village who was also working in Delhi and had come back to the village that his brother Ashok had been murdered and his dead body had been recovered by the police and that appellants were involved in the commission of the said murder. He came to Delhi on October 17, 1987, and identified his brother Ashok from the photographs which were taken of the aforesaid, dead body by the police when the dead body was recovered and he gave a statement to the police. It is further the case of the prosecution that on October 22, 1987, there took place a Panchayat (i.e. a gathering of the villagers in the aforesaid village) where both the appellants and appellant's relations were present and both the appellants made extra-judicial confession of having murdered Ashok and some of the persons, who were present in that Panchayat, have appeared in witness box and they are PW 1 Gohal Mandal, PW 2 Udai Narain Rai (Pradhan of the Village Panchayat), PW 5 Harish Chander, PW 6 Gogan Yadav and PW 8 Rajeshwar Yadav alias Raj Kumar, who had also scribed a Panchanama Ex. PW 1/ A in which this extra judicial confession of the appellants was recorded and which was signed by all these witnesses and PW 9 Dev Narain Yadav, brother of the deceased. This panchanama came to be handed over to the police by Dev Narain vide recovery memo Ex. PW 9/B on November 18, 1987, but it appears that by mistake wrong year had been mentioned in the recovery memo showing to have been executed on November 18, 1988.

5. PW 10 Dharam Pal and PW 11 Mohinder Singh were employed as watchmen in Beriwalla Bagh by the Delhi Development Authority and on the morning of September 16, 1987, they had noticed the dead body lying in the well and they

informed their higher officers and also the police and the police had taken out the dead body from that well and also lifted the blood and blood stained earth vide recovery memo Ex. PW 10/A. A pant and a pair of chappal were also found lying at some distance from the well which were also converted into sealed parcel and taken into possession. Appellant-Virender was arrested in presence of Dharam Pal PW 10 on Nov. 20, 1987 and it appears that a confessional statement made to the police was exhibited as PW 10/B and a pointing out memo of the said well was exhibited as PW 10/C which were not admissible in evidence as the well was very well known to the police when they had recovered the dead body and the confessional statement of Virender which had not led to any discovery of any material fact was totally inadmissible in evidence. There appears to be a tendency in the lower courts to exhibit the confessional statements, made by the accused to the police, during the trial which is not in accordance with law because Section 27 of the Evidence Act permits only that portion of the disclosure statement of the accused made to the police admissible which leads to recovery of any material fact. The trial courts should not exhibit any document which is inadmissible in evidence and strictly comply with the provisions of Section 27 of the Evidence Act while recording the evidence.

6. PW 12 S. I. Amrit Lal on receiving the information as per daily diary report, copy Ex. PW 12A, had reached the said well in Beriwalla Bagh on September 16, 1987 and had got recovered the dead body from that well and had recorded the statement of PW 11 and as the circumstances disclosed commission of murder of the said dead body, he made his endorsement on the statement of Mohinder Singh and got registered a case u/s 302, IPC. He had prepared the inquest papers Ex. PW/12C and also the sketch Ex. PW/12B and had sent the dead body for post-mortem vide application Ex. PW12/E. PW13 Narinder Kumar, Photographer, had taken the photographs of the said dead body. Ex. PW13/A1 to A12 are the negatives and photographs are Exs. PW13/B1 to 7 and Exs. PW4/A to C.

7. It appears that dead body could not be got identified and was handed over to Sewa Samiti which cremated the same. The post-mortem was carried out by PW 21 Dr. L. T. Ramani on September 17, 1987, at about 10 a.m. and he found two incised wounds on the neck and some abrasions and he opined as per his post-mortem report Ex. PW 21/A that injuries were ante-mortem and injuries in the neck were caused by sharp edged weapon and injury No. 1 was sufficient to cause death in the ordinary course of nature and death had occurred due to haemorrhage and shock and time of the death was about 40 hrs which will take us to the date September 15, 1987, at about 6 p.m. Efforts were made for getting the dead body identified by issuing hue and cry notices, publishing posters having the photographs of the deceased and also locating the tailor which had stitched the same pant (sic) without any success. It is not necessary to refer to the witnesses who made all these efforts.

8. The prosecution case against the appellants is based on extra judicial

confessions allegedly made by the appellants firstly to PW 6 and PW 7 on the date the dead body was recovered and secondly to the Panchayat which had gathered in the village on October 22, 1987 and reliance is also placed on the factum of Ashok being last seen in the company of the appellants by PW 7. Before we discuss the evidence led in the case in support of the charges against the appellant, we may deal with a legal plea raised by Mr. Sandeep Sethi, the learned counsel who was engaged as amicus Curiae to represent appellant Virender Kumar Yadav that no conviction can be based only on proof of extra judicial confessions of the appellants. He has urged that extra judicial confessions of an accused are not legal evidence on the basis of which conviction can be brought home to the accused. He has, contended that extra judicial confessions, can only be used by the court after the court had on the basis of other cogent legal evidence led in the case come to the conclusion that appellants are guilty of the offence charged with beyond any reasonable shadow of doubt and thereafter to have assurance to the said finding being arrived at the court can take resort to the extra judicial confessions of the accused proved in the case.

9. This proposition of law urged by the learned counsel really was shocking because we thought that the law stands well settled that conviction of an accused can be based on the basis of extra judicial confession if the same is proved on the record beyond reasonable doubt and the same is trustworthy and creditworthy. As a matter of prudence the courts do look forward to some corroborative evidence before bringing home the offence to the accused on the basis of extra judicial confession but the conviction of an accused solely based on credible trustworthy evidence led to prove extra judicial confession of the accused is not illegal.

10. However, Mr. Sandeep Sethi, the learned counsel for the appellant-Virender Kumar Yadav had made reference to the law laid down by the highest court in the case of Chandrakant Chimanlal Desai Vs. State of Gujarat, . This judgment is delivered by three Hon"ble Judges of the Supreme Court. It has quoted in para 5 certain observations of the Supreme Court given in the case of Kashmira Singh Vs. State of Madhya Pradesh, which are to the following effect :

"The confession of an accused person is not evidence in the ordinary sense of the term as defined in Section 3. It cannot be made the foundation of a conviction and can only be used in support of other evidence. The proper way is first to marshal the evidence against the accused excluding the confession altogether from consideration and see whether if it is believed a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

11. In the said case the High Court had based its finding on the basis of the extra judicial confessional statements of the accused and then had sought for some corroboration and finding some corroboration in material particulars the charge was brought home to the accused. The Supreme Court, however, held that :

"As held in the decision cited above, only if on such consideration on the evidence available, other than the confession a conviction can safely be based then only the confession could be used to support that belief or conclusion."

12. It appears that the quotation which has been culled out from the case of Kashmira Singh (supra) is taken from the head note of the said judgment. We have perused the judgment delivered in the case of Kashmira Singh (supra). It appears that no such observations appears in the body of the judgment and the head note not on the face of it in consonance with the law laid down in the body of the judgment. The Court in that case was considering whether the confession of a co-accused can be the basis for bringing home the offence to another accused. So, referring to Section 30 of the Evidence Act and other provisions of the Evidence Act particularly Section 114 Illustration (b), Section 133 of the Indian Evidence Act, the court held that the confession, of a co-accused is not a substantive evidence against another accused and the court has to examine other evidence in order to bring home the offence to the accused beyond any shadow of reasonable doubt and in order to have assurance about its finding the court can then rely upon the confession of a co-accused.

13. The learned counsel for the State Shri Sanjeev Khanna, who looked into the case law, has brought to our notice all important judgments of the Supreme Court delivered earlier which make the legal proposition very clear admitting of no two opinions that extra judicial confession of an accused is substantive piece of evidence and conviction of an accused in a proper case can be based on such an extra judicial confession if the same is proved beyond shadow of reasonable doubt and the evidence led to prove such extra judicial confession is trustworthy and creditworthy. Although the rule of prudence sometime requires that court may seek corroboration from other evidence before bringing home the offence on the basis of extra judicial confession.

14. In the case of Thimma and Thimma Raju Vs. State of Mysore, , the judgment delivered by three Hon''ble judges of the Supreme Court, it was clearly laid down in para 9 of the judgment that an unambiguous confession if admissible in evidence and free from suspicion suggesting its falsity is a valuable piece of evidence which possesses a high probative force because it emanates directly from the person committing the offence. But in the process of proof of an alleged confession the court has to be satisfied that it is voluntary, it does not appear to be the result of inducement, threat or promise as contemplated by Section 24 of the Indian Evidence Act and the surrounding circumstances do not indicate that it is inspired by some improper or collateral consideration suggesting that it may not be true. In the said case the offence was brought home to the accused on the basis of the confession of the accused which was proved beyond any shadow

of doubt in the case.

15. It is now settled by the Supreme Court that a judgment delivered by a Bench of larger judges cannot be overruled or dissented from by any subsequent judgment delivered by same number of judges or lesser number of judges. It is only subsequent judgment delivered by a Bench comprising of larger number of judges that it can set aside or differed with the judgment given by a Bench comprising of lesser number of judges.

16. In Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., , a Constitution Bench has clearly laid down this law that it is in order to guard against the possibility of inconsistent decisions of points of law by different Division Benches that the rule has been evolved in order to promote consistency and certainty in the development of the law and its contemporary status that the statement of law by a Division Bench is considered binding on a Division Bench of the same or lesser number of judges. It was held in para 29 as follows :-

"We are of the opinion that pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of judges and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court."

17. Same proposition of law has been laid down in the recent judgment of the Supreme Court in the case of Indian Oil Corporation Ltd. Vs. Municipal Corporation and Another, . It appears that judgment delivered in the case of Thimma (supra) was not brought to the notice of the Hon"ble Judges who decided the case of Chanderkant (supra). In view of the law laid down by the Constitution Bench in the case of Raghubir Singh (supra) the law laid down in the case of Thimma (supra) is binding on this court and not the law laid down in the case of Chanderkant (supra) because the latter judgment could not possibly overrule or differ with the law laid down in the case of Thimma as the said judgment is delivered by three Hon"ble Judges.

18. In Piara Singh and Others Vs. State of Punjab, it was held that the law does not require that evidence of extra judicial confession should in all cases be corroborated. Where the extra judicial confession was proved by an independent witness, who was a responsible officer and who bore no animus against the accused, there was hardly any justification for the Sessions Judge to disbelieve such evidence. In the State of U.P. Vs. M.K. Anthony, the law was again reiterated in para 15 that there is neither any rule of law or of prudence that evidence furnished by extra judicial confession cannot be relied upon unless corroborated by some other credible evidence. The law laid down in the case of Piara Singh (supra) was relied upon and was approved in the following words at page 500; of Cri LJ :

"It thus appears that extra judicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extra-judicial

confession comes from the mouth of witness/witnesses who appear to be unbiased not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it then after subjecting the evidence of the witness to a rigorous test, on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon."

19. In Madan Gopal Kakkad Vs. Naval Dubey and Another, the same principle of law was laid down. So, we hold that conviction of a particular accused can be brought home on the basis of trustworthy and creditworthy evidence which may prove the extrajudicial confession without seeking any corroboration in peculiar facts of a particular case.

20. Now coming to the evidence first, we have to examine whether the extra judicial confession alleged to have been made to PW 6 & PW 7 on September 16, 1987, has been proved beyond any shadow of reasonable doubt or not. The learned counsel for the State has contended that PW 6 & PW 7 have no enmity with the appellants and were known to Ashok in similar manner as the appellants were known to him and they should be treated as completely reliable witnesses who have deposed in Court that both the appellants had made extra-judicial confession to them when confronted on that day and they admitted that they had committed the murder of Ashok and they had also held out threats to the said witnesses not to inform any one and keeping in view the lower strata of life from which these two witnesses come Court should not disbelieve them on the ground that they had not come forward either to identify the dead body of Ashok when it was recovered from the well although they were present there nor from the fact that they did not later on soon after the confession was made to them inform the police or the relations of the deceased.

21. On the other hand, Shri Sethi and Shri Dhir, the two counsel who appeared for the appellants, vehemently argued that the conduct of these two witnesses was absolutely unnatural and no Explanation has been given by these two witnesses as to why they did not come forward to identify the dead of Ashok when it was recovered from the well and they had not given any Explanation as to why they had not taken steps to atleast inform body the deceased by writing some letter about the murder of Ashok and involvement of the two appellants for the said murder. They have urged that it has not been brought on record that the appellants were any desperate characters who could have overawed the two witnesses in order to prevent them from informing anyone about their

involvement in the commission of this ghastly murder of Ashok. They have also pointed out to some discrepancies appearing in the statements of these two witnesses as to when in fact they had gone to the village and informed the relations of the deceased.

22. We find that conduct of these two witnesses has not been natural. At the time they claim to be present when the dead body was recovered, there was no occasion for them to just slip away from the spot because some police was present and not to identify the dead body. After all Ashok belonged to their village and was very much known to them and as claimed by PW 7 Ashok had visited them on September 14, 1987 and had taken meals with him. If that was the close relationship between Ashok and PW 7, there could be no earthly reason for PW 6 & PW 7 not to come forward and identify the dead body as that of Ashok if they were present at the time the dead body was recovered. Mere fact that they had not been shown to be having any animus against the appellants, in our view, is not sufficient for us to believe their statement. It is evident from the record that they came to give their statements to the police only on October 25, 1987 when the Investigating Officer visited that village and before that date on October 22, 1987, already a Panchayat had been held which had given a finding of their own that the two appellants were guilty of the murder of Ashok. If we peruse the Panchnama in question we find that it has been clearly recorded that Panchayat had come to the decision that both the appellants were guilty of murder of Ashok and thereafter it had been recorded that the appellants had voluntarily admitted their guilt. May be the villagers have convinced themselves by some material in coming to the conclusion that the appellants were murderers of Ashok and that could be the reason for them to come forward as witnesses against the appellants and also persuade PW 6 & PW 7 to give statement to the police implicating the appellants. The human mind is quite complex and it is not possible to fathom as to why people act in a particular manner in similar circumstances and act in a different manner, may be the circumstances be the same.

23. It is significant to mention that Gogan Yadav PW 6 deposed that four persons of the same village were living with him at the relevant time where the appellants were living and still they had not informed about the complicity of the appellants for the murder of Ashok to said co-villagers. He has deposed that he gave the information to Ashok's brother after one month of reaching the village. It means that he had gone to the village soon after the occurrence but had not informed Ashok's brother or father about the involvement of the appellants in the murder of Ashok. He has not given any Explanation as to why he took one month to inform Ashok's brother about this matter. If he had come to Delhi, according to him about 30-40 days prior to the murder of Ashok and he had gone to the village after one month of the occurrence, it means that he was in village in middle of September 1987 but according to him, till middle of October 1987 he remained mum. It is not possible to give any credence to statement of such a witness who remains silent for such a long period when the fear of the

appellants was no longer working on his mind and still he failed to inform the relations of Ashok about the death of Ashok or of the involvement of the appellants in the murder of Ashok. It is only on October 17, 1987, that Ashok's brother had come to Delhi and then identified the dead body of his brother. Ashok's brother does not say that he got the information from PW 6 or PW 7. He has named another person for getting the information about the murder of Ashok in Delhi and complicity of appellants in that murder. That witness had not been examined by the prosecution.

24. Similarly Rajinder Yadav PW 7 in the examination-in-chief categorically stated that he was alone when that extra-judicial confession was made by Virender-appellant but he was allowed to be cross-examined by the Public Prosecutor and then he went out to admit all the facts which had come out in the testimony of PW 6. In cross-examination he admitted that he had gone to his village after two or four days of having seen the dead body of Ashok and immediately on reaching the village had informed Ashok's father that his son had been killed. If this has been the truthful statement there could be no earthly reason as to why the dead body remained unidentified till October 17, 1987. In case this witness had given the information to Ashok's father soon after reaching the village it is not possible to believe that Ashok's father and brother would not have rushed to Delhi to identify the dead body of Ashok. So, this witness appears to be having no regard for truth. He claims to have recorded the dates September 14, 1995 and September 16, 1987, in his diary, but no such diary had been taken into possession by the police or brought by him in Court. He had stated that he remembered the dates because he had recorded them in a diary. This part of the statement also appears to be unnatural. It is pertinent to mention that Ashok's brother had given the statement to police on October 17, 1987 and in Court he does not say that either PW 6 or PW 7 had informed him about the appellants being the culprits and his having disclosed this fact to the police in his statement recorded on October 17, 1987.

25. There has also appeared discrepancies as to what extra-judicial confession was made by the two appellants to PW 6 & PW 7. Before we refer to these contradictions, we may notice the law as to how the extra-judicial confession should be proved in a particular case.

26. In *Mulk Raj v. The State of U.P.* AIR 1959 902 : 1959 Cri LJ 1219 a judgment given by three Hon'ble Judges, it was held that an extra-judicial confession if voluntary can be relied upon by the Court along with other evidence in convicting the accused and the confession will have to be proved just like any other fact and the value of the evidence as to the confession just like any other evidence depends upon the veracity of the witness to whom it is made. It was further emphasized that the Court requires the witness killed to give the actual words used by the accused as nearly as possible but it is not an invariable rule that the Court should not accept the evidence, if not the actual words but the substance were given.

27. In *Kishore Chand Vs. State of Himachal Pradesh*, the same principle was laid down. It was emphasized that actual words used by the accused in making the confession should be invariably proved. In *Baldev Raj Vs. State of Haryana*, it was held that it is true that the Court requires the witnesses to give actual words used by the accused as nearly as possible but it is not an invariable rule that Court should not accept the evidence, if not the actual words but the substance were given.

28. PW 6 while referring to meeting the appellants on that day on Subhash Nagar Road, deposed that on his query from Virender-appellant as to whether he had killed Ashok and on Rajinder mentioning that Virender had taken away Ashok from his room on September 14, 1987, Virender extended the threat by uttering the words "that in case their names were mentioned, they would meet with the same treatment as was given to Ashok Yadav." In Hindi the words recorded were as follows :

"YADI HAMARA NAM BOLEGA TO VOHI HAL KAR DENGE ZO ASHOK YADAV KA KIYA"

He does not say that the appellant-Mukho had made any confessional statement at that time. On the other hand, PW 7, who initially had not even mentioned about his companion PW 6 on that particular day, had deposed that on reaching the Bus Stand Subhash Nagar on that day he found Virender-appellant present and on enquiring from him as to Ashok who was with him from September 14, 1987, how he had been killed. Virender threatened him and he deposed that Mukho was also present at that time and he himself was alone. When he was allowed to be cross-examined by the prosecutor, he gave additional facts by mentioning that Virender had, on his query, told that he Along with Mukho had murdered Ashok because Ashok used to come and harass them. If we peruse the testimony of these two witnesses, we find that there is lot of variation as to what appellant-virender uttered while giving the threat. There is no consistent testimony of these two witnesses as to what in substance appellant-Virender had stated. Both the witnesses do not refer to any extra-judicial confession made by Mukho, the other appellant. The words which PW 6 attributes to Virender are not even referred to in any manner whatsoever by PW 7. Even though in cross-examination by the prosecutor he gave affirmative replies to almost all the questions put to him by the prosecutor but even the prosecutor had not put the same words as given by PW 6 attributable to any of the appellants.

29. The learned counsel for the State has contended that these two witnesses had come from village and are rustic who have no sense of time and other sophisticated matters and thus due allowance ought to be given to the statement made by such witnesses. He has placed reliance on *Shivnath Singh v. State of U.P.*, (1994) SCC 563 : AIR 1994 SCW 2611. In the said case the witnesses belonged to a village and had not been able to give any correct estimate of time. It was held that such deficiencies are not material appearing in the statements of rustic witnesses having no sense of time. The question before us is as to what

they heard from the mouth of the appellants on that crucial date.

30. It is also significant to mention that PW 6 had not mentioned that the appellants had given any reason for killing Ashok whereas PW 7 deposed that Virender stated that they have killed Ashok as Ashok was harassing them. Again there is variation between the statements of the two material witnesses. It is not to be forgotten that PW 7 initially had not admitted the presence of PW 6 when he met the two appellants but later on when subjected to cross-examination by the prosecution, he toed the line of the prosecution and parrot like affirmed the questions put to him in leading form by the prosecutor. The facts and circumstances in this case show that these two witnesses were very much reluctant to come forward to give any sort of version to the authorities or to even the relations of the deceased. Till October 25, 1987, they remained almost quiet and even though they had reached their village yet they did not even care to inform relations of Ashok that Ashok had died in mysterious circumstances in Delhi what to say of their revealing the material facts to them about appellants being perpetrators of this crime. In view of these clear deficiencies in the statements of these two witnesses, it would not be, in our view, safe to place any implicit faith in the statements of these two witnesses that appellants, in fact, had made any extra judicial confession before them. There could be no occasion for the appellants to confess the crime before these two witnesses.

31. We come to the conclusion that not only the prosecution has failed to prove any consistent confession made by the appellant-Virender or appellant-Mukho in the words used by them but even no consistent substance has been proved from where it can be inferred that appellants had made any confessional statement to these two witnesses. Hence, we hold that it is not proved beyond shadow of reasonable doubt that appellants had made any confessional statement to these two witnesses.

32. Now coming to the holding of Panchayat and the Panchayat finding the appellants guilty of the offence and then recording a panchnama in which it was mentioned that appellants had also admitted their guilt, we have quite a few witnesses who had deposed to these facts. If we go by number of witnesses and the fact that those witnesses had no animus against the appellants, normally we should have been guided to put implicit faith in the statements of such witnesses, but unfortunately in the present case, there are circumstances present which throw a lot of suspicion regarding the credibility of said witnesses with regard to confession of the appellants. We have no hesitation in holding that a Panchayat had gathered in that village where perhaps a large number of villagers were present including these witnesses. There have been variation between the statement of the witnesses with regard to the number of persons present and the exact time consumed by the Panchayat in reaching the decision. We are not giving importance to those variations because they do not go to the root of the matter. According to those witnesses, the Panchayat had assembled and appellants were also present along with their relations and the Panchayat

came to the conclusion that appellants had murdered Ashok and they in their wisdom imposed a fine of Rs. 40,000/- to be paid as compensation to the widow of Ashok or transfer two bighas of land in favor of Ashok's widow and a document was prepared in this respect at the spot on October 22, 1987. They admitted that there was a Chowkidar and a Dafedar, officials living in the village and one of the witnesses admitted that both of those officials were present in such a Panchayat. These witnesses would like us to believe that appellants willingly and voluntarily and without any pressure had confessed to their crime but surprisingly on the panchnama in question neither the signatures of the appellants nor the signatures of any relations of the appellants have been obtained. This panchnama also was kept back from the police for a pretty long period. If the panchnama had been prepared on October 22, 1987, when the Panchayat was held, there is no earthly reason as to who the same was not handed over to the police when all these persons have their statements to the police on October 25, 1987. This panchnama came to be delivered to the police much belatedly by the brother of the deceased on November 18, 1987. No Explanation is given by any of the witnesses or even by the Investigating Officer as to in case this panchnama was in existence and police recorded the statements of all the material witnesses why this panchnama did not see the light of the day on that day and why the police had not seized that panchnama on October 25, 1987.

33. Rather PW 15 ASI Vijay Narain deposed that he had left Delhi for visiting the said village for investigation purposes on October 20, 1987 and remained there till October 30, 1987. If that is so, it is not understood why the statements of these PW 6 & PW 7 were not taken prior to October 25, 1987 and why there arose any necessity of holding any Panchayat when police was already present in the village. ASI Vijay Narain had remained silent with regard to the holding of the Panchayat although he is the person who took the statements of all those witnesses on October 25, 1987. It appears that this police officer must have been present when the so-called Panchayat was held and if he was present in the village it is not understood why he could not arrest the appellants if they were the guilty persons at that time. Admittedly the police had come to know the names of the appellants as suspects from the brother of Ashok on October 17, 1987. It is only because of the statement of brother of Ashok that must have prompted the police to immediately rush to the village and ASI Vijay Narain arrived in the village and remained there between the period October 20, 1987 to October 30, 1987. It is evident that he had ample time to arrest the two appellants but for reasons not known, no such arrest was made. If that is so, it is perhaps not possible to believe that appellants Were present in the village during that period so that they could have made any confession in the Panchayat, may be these villagers in their minds convinced themselves that the appellants are the culprits and they proceeded to pronounce their judgment in their rustic wisdom holding the appellants guilty of the offence of murder of Ashok but it is not possible to believe these witnesses that appellants were present in that

Panchayat and had made any extra-judicial confession willingly and voluntarily. If that had been the position, the Panchayat would not have failed to obtain signature of the appellants on the panchnama which was allegedly prepared on the day the Panchayat was held.

34. We have already mentioned that this panchnama appears to have been brought into existence much later and the cat was out of the bag because it was admitted by the Pradhan that did not want to hand over the appellants to the police if they had met with the penalty imposed by the Panchayat on them. According to him, they had moved against the appellants when appellants failed to give the penalty imposed upon them. It appears that these witnesses and other residents of the village have devised their own legal method of dealing with the persons who are guilty of committing such heinous offence as murder of a co-villager which Court cannot approve. Be that as it may, all these witnesses have not in their statements referred to the words allegedly used by any of the appellants from which it could be inferred that appellants had confessed to their guilt, rather there have appeared inconsistent statements from these witnesses. Most of them saying that both the appellants admitted that they had killed Ashok but one of the witnesses deposed that only Virender admitted this fact whereas the other appellant-Mukho was not even present. These witnesses had not been able to prove as to what words were actually uttered by the two appellants or one of the appellants and they have not even given us the substance of the admissions made by the appellants or one of them. The presence of Investigating Officer in the village during that period also throws a lot of suspicion regarding the veracity of the prosecution case that the appellants had made any voluntary confessional statements in any such Panchayat.

35. The learned counsel for the State has contended that there is no suggestion even to the witnesses in cross-examination that these respectable residents of the village had any animus against the appellants so as to give false statements in Court against them. As already discussed above, it appears that the most of the residents of the said village including these witnesses had convinced themselves that appellants were the culprits and they had just decided to go against the appellants genuinely believing that they are the real culprits and it is not necessary that appellants must show that the said witnesses had any animus against them to discredit the testimony of these witnesses. When we examine the facts and circumstances, we find that in all probabilities appellants would not have been present in the village to make any extra judicial confession particularly when we do not even have any evidence with regard to the words uttered by these appellants or the substance of those words being proved in this case.

36. It appears that the learned Additional Sessions Judge has not in any depth examined the evidence in this case. He had devoted only a few words in discussing the evidence led before the Court and had given the findings against the appellants. The various deficiencies noticed by us in the case of the

prosecution have not been even referred to by the learned Additional Sessions Judge what to say of discussing those deficiencies in his judgment.

37. We conclude that it is not proved beyond any shadow of reasonable doubt that the appellants had made any confessional statements in any such Panchayat.

38. As far as evidence with regard to last seen is concerned, we have already found that PW 7 is not a reliable witness. Another person Parmeshwar, who had also allegedly last seen Ashok with the appellants but he had not been examined by the prosecution. Appellants were seen with Ashok, according to PW 7, on September 14, 1987, at 9.30 p.m. The murder of Ashok took place on September 15, 1987, in the evening. So, there was sufficient time gap in between for Ashok to have gone anywhere else. There is no evidence that Ashok continued to be with the appellants till he met his death.

39. In *Anant Bhujangrao Kulkarni Vs. State of Maharashtra*, , the only circumstance proved was that deceased was last seen alive in the company of the accused. It was held that this circumstance alone would not sufficient to bring home the offence to the accused.

40. We have already found PW 7 to be not truthful and reliable witness. So, his sole testimony that deceased Ashok was last seen with the appellants on September 14, 1987, at 9-30 p.m. cannot be wholly relied upon without there being any other corroborative evidence led by the prosecution. Even otherwise this circumstance alone would not be sufficient to bring home the offence to the appellants particularly when there has been proved no motive which could have goaded the appellants to kill Ashok.

41. In view of the above discussion, we allow this appeal and set aside the judgment and order of the Additional Sessions Judge and acquit the appellants of the charges in question and direct that they be set at liberty if not required to be detained in any other case. The order be communicated to the appellants through Superintendent (Jail).

42. Appeal allowed.