SUPREME COURT OF INDIA

Sahadevan & Ors.

Vs.

State of Tamil Nadu Respondent

Crl.A.No.1405 of 2008

(A.K.Patnaik,Swatanter Kumar,JJ.)

08.05.2012

JUDGMENT

Swatanter Kumar,J.

1. The present appeal is directed against the judgment of the High Court dated 27th September, 2006 vide which the High Court affirmed the judgment of conviction and order of sentence dated 31st December, 2003 passed by the Trial Court.

2. The prosecution case is that Smt. Kamalal, PW-2 was married to one Yoganandan @ Loganathan, the deceased. The accused No.1, Chandran is the brother of Kamalal (PW2). accused No.2, Sahadevan, and accused No. 3, Arul Murugan, were the friends of accused No.1. PW2 was being ill-treated by Loganathan, her husband. Being her brother, accused No.1 thought that if he murdered Loganathan, life of his sister would be peaceful. Thus, accused No.1 and his friends (the other two accused) entered into a criminal conspiracy to commit murder of Loganathan. According to PW-5, Karuppuswamy, when he was talking to one Chinnaswamy at a three star hotel near the Neruparichal bus stand at about 10 p.m. on 9th July, 2002, he saw Sahadevan driving a TVS moped in Povmmanayakkampallayam road, while two other persons were sitting as pillion riders. The vehicle was proceeding towards west. After a while, one of them came back and again went in the same direction on the same vehicle. PW-4, then saw the deceased, Yoganandan and accused No.1 going in the same direction on the TVS moped at about 2 p.m. Again after some time, accused No.2 alone came back on the moped. On 10th July, 2002, at around 8.30 a.m., PW-3, Rajendran, saw a dead body in the Pommanayakkanpallam Road, whereupon he went to PW-1, the Administrative Officer and informed him of that fact. PW-1, upon receiving this information, went to the spot and saw the dead body. He then went to the Perumanallur Police Station and made a complaint, Ext.P-1, to the Sub-Inspector of Police, Ganesan, PW-8.

3. Upon receipt of the complaint, the police registered a case being Crime No.150 of 2002 for an offence under Section 302 of the Indian Penal Code, 1860 (for short the IPC) against unknown accused. The Investigating Officer, PW-9, proceeded to the scene of occurrence. There he prepared observation Mahazar, Ext.P-2 and took photographs of the dead body.

4. Between 3 p.m. to 6 p.m., he conducted inquest over the dead body in the presence of Panchayatdars and witnesses and prepared the inquest report, Ext.P-13. The Senior Civil Assistant Surgeon, PW7, attached to the Thirupur Government Hospital, after receiving the requisite information and the body, performed autopsy on the body of the deceased. She noted the injuries on the body of the deceased and issued the post-mortem certificate, Ext. P-10, expressing the opinion that the deceased would have died 27 to 28 hours prior to autopsy.

5. It is further the case of the prosecution that on 14th July, 2002, when PW-6, Muthurathinam, President of Kanakampalayam Panchayat was in his office along with one Shanmugasundaram, all the above-named three accused came to his office and told him that deceased Loganathan was the brother-in- law of accused No.1 and on account of family problem between accused No.1 and the deceased, they murdered Loganathan by strangulating him and after putting kerosene on him, set the body of the deceased afire. The statements made by the accused were reduced to writing by PW-6 and after obtaining their signatures and putting his own signature thereon he handed over the report, Ext. P-4, to the Police Station along with the custody of the accused whereupon PW-9, the Investigating Officer arrested all the accused persons.

6. PW9, on the basis of the confessional statements, Ext.P-5 to P-7, recovered MO-6 (TVS moped TN 38 7344), MO-7 (bottle smelling of kerosene) and MO-8 (matchbox). PW-9 then sent the MOs for forensic examination along with Ext. P-15, the requisition therefore. Subsequently, PW-9 was relieved of his duties and PW-10 completed the investigation of the case and filed the charge sheet against all the three accused under Section 120B and Section 302 IPC. All the accused were tried in accordance with law.

7. We may notice here that in their statement under Section 313 Cr.PC, the accused persons denied the incident, including the alleged extra- judicial confession made by them and also stated that they were falsely implicated in the case. However, all the three accused chose not to lead any defense. Finally, the prosecution examined as many as 10 witnesses and produced on record the documentary evidence. The trial Court vide its judgment dated 31st December, 2003 acquitted all the accused for an offence under Section 120B IPC, however, it convicted all the three accused under Section 302 IPC and awarded them sentence of imprisonment for

life and fine of Rs. 5,000/-, in default thereof, to undergo rigorous imprisonment for six months.

8. Aggrieved from the judgment of the trial court, the accused preferred an appeal before the High Court which came to be dismissed vide order dated 27th September, 2006 resulting in the filing of the present appeal.

9. Accused No.2, Sahadevan and accused No.3, Arul Murugan have preferred the present appeal. Accused No.1, Chandran has not filed any appeal.

10. The learned counsel appearing for these two appellants has advanced the following arguments while impugning the judgment under appeal :-

> "i) The case of the prosecution is solely based upon the extra-judicial confession, which confession is neither reliable nor has been recorded in accordance with law. This extra-judicial confession cannot form the basis of conviction of the appellants since it has no corroboration and when examined in light of the settled principles of law, it is inconsequential, thus, the accused are entitled to the benefit of doubt.
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> ii) In the present case, there is neither any eye-witness nor the prosecution has proved the complete chain of circumstances. The courts have erred in applying the theory of last seen together to return the finding of conviction against the accused. There being no direct evidence of involvement of the appellants in the commission of the crime, the theory of last seen together could not be of any assistance to the case of the prosecution.
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> iii) The recoveries alleged to have been made in furtherance to the confessional statements of the accused are inadmissible in evidence and, in any case, the objects recovered have no link with the commission of the crime and as such, it would be impermissible in law to use these recoveries against the accused for sustaining their conviction.
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> iv) The courts have failed to appreciate the medical and other evidence placed on record in its correct perspective. There are serious contradictions in the medical and ocular evidence, as regards the time of the death of the deceased. Once, the time of death of deceased is not established, the whole story of the prosecution falls to the ground.
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> v) According to the learned counsel for the appellants, an extra-judicial confession, besides being inadmissible, is also a very weak piece of evidence and in a case of

circumstantial evidence like the present, one cannot form a valid basis for returning the finding of guilt against the accused."

11. To the contra, the learned counsel appearing for the State argued that the extra-judicial confession in the present case is admissible as it is duly corroborated by other prosecution evidence, and thus, the courts are fully justified in convicting the accused. It is also contended that the present case is of circumstantial evidence and the prosecution has succeeded in establishing every circumstance of the chain of events that would fully support the view that the accused is guilty of the offence. The court while dealing with the judgment under appeal, upon proper appreciation of evidence, thus, has come to the right conclusion.

12. There is no doubt that in the present case, there is no eye-witness. It is a case based upon circumstantial evidence. In case of circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. Furthermore, in case of circumstantial evidence, where the prosecution relies upon an extra-judicial confession, the court has to examine the same with a greater degree of care and caution. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a Sahadevan & Anr vs State of T.Nadu on 8 May, 2012 conviction on an extra- judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra- judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

13. Now, we may examine some judgments of this Court dealing with this aspect.

14. In *Balwinder Singh v. State of Punjab*[1]this Court stated the principle that an extra-judicial confession, by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.

15. In *Pakkirisamy v. State of T.N*[2]the Court held that it is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.

16. Again in *Kavita v. State of T.N*[3]the Court stated the dictum that there is no doubt that conviction can be based on extrajudicial confession, but it is well settled that in the very

nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon veracity of the witnesses to whom it is made.

17. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in the case of *State of Rajasthan v. Raja Ram*[4]stated the principle that an extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The Court, further expressed the view that such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of 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 of attributing an untruthful statement to the accused.

18. In the case of *Aloke Nath Dutta v. State of W.B*[5]the Court, while holding the placing of reliance on extra-judicial confession by the lower courts in absence of other corroborating material, as unjustified, observed:

> "Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration. XXX XXX . A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof.

19. Accepting the admissibility of the extra-judicial confession, the Court in the case of *Sansar Chand v. State of Rajasthan*[6]held that :-

> "There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide *Thimma and Thimma Raju v. State of Mysore, Mulk Raj* v. *State of U.P., Sivakumar v. State (SCC paras 40 and 41 : AIR paras 41 & 42), Shiva Karam Payaswami Tewari v. State of Maharashtra and Mohd. Azad v. State of W.B.]* In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was

voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872. Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Court in the case of *Rameshbhai Chandubhai Rathod v. State of Gujarat*[8] held as under :

It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless, the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true.

20. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. [Ref. *Sk. Yusuf v. State of W.B*[9]*and Pancho v. State of Haryana*[9]

21. Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extra- judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused. The Principles

"i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

ii) It should be made voluntarily and should be truthful.

iii) It should inspire confidence.

iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

vi) Such statement essentially has to be proved like any other fact and in accordance with law."

22. Having stated the principles which may be kept in mind by the court while examining the acceptability and evidentiary value of the extra- judicial confession, we may now refer to the extra-judicial confession, Ext. P-4, in the case before us. This extra-judicial confession is alleged to have been made by all the three accused to one Muthurathinam, PW-6 The said Ext. P-4 reads as under:-

"I am the president of Kanakampalayam today the 14.7.2002 at 9.30 in the morning, when I was at my office along with loclite Shanmugasundaram, a person named Chandran aged 36 son of Muthu and resident of Navakarai, Pooluvapatti along with Sahadevan aged 27 s/o Pannerselvam having a furniture by name Sri Priya agencies at Boyampalayam Sri Nagar and one Arul Murugan aged 23 s/o Krishnan, belonging to Dindugal and going to printing work by staying at pandian nagar came to my office saying that he along with his friends Sahadevan and Arulmurugan, on 08-07-02 his sisters husband Yoganathan @ Logananthan who was without going to work and nor looking after the family and was loitering hereunder an no way to look after his sister Kamalal and her children and more tortures from her husband and confessed to her that her husband without going any work, he is simply loitering hereunder and tried to him to separate her from her husband. Hence elimination is better than separation and said his sisters life would be, peaceful, he along with his friends Sahadevan and Arulmurugan executed a friendly call to him and told him that they would promised him a job at Tirupur. After 10 p.m. in the night, when there was no traunt on the Neruperchial Bommanaichenpalayam mud road Sahadevan in his moped with Loganathan sit and also made Arul Murugan to sit along with and asked to halt at certain place and again Sahadevan came in moped and he along with kerosene and match box and went there and parked the moped and were all 4 of them talking enticing Loganathan with getting him a job at Tirupur he with the towel which was kept ready put around Loganathans neck and he strangled by holding one end of the towel and Arulmurugan strangling by the other end of the towel. Mean while Sahadevan bought how Loganathans face and hand and started face and since due to strangulation Loganathan fainted and fell into the east side of the ditch and suddenly and Chandran took kerosene and matchbox from moped cover which was kept ready, in order to avoid identity burnt him and killed him and after that they all 3 took the moped and they went to Sahadevan house and parked the vehicle and the same night they went out of station and a return to Tirupur only yesterday. They came to know that the police are after then they came to my house today and told me what happened

Shanmugasundram recorded the above averments of Chandran after that bringing all 3 to you and present them before you."

23. As per the case of the prosecution, the deceased was murdered on 9th 10th July, 2002. The body of the deceased was taken into custody by the police on 10th July, 2002 itself. The accused persons were residents of the same village and there is nothing on record to show that the Police made any serious attempt to search and arrest them. The Investigating Officers, PW-9 and PW-10, have not stated in their statements that the accused persons were absconding. Four days later, on 14th July, 2002, the accused persons are alleged to have gone to the office of PW-6 to make the confession of having murdered the brother-in-law of accused No.1. Ext. P-4 is addressed to the police inspector. If the accused were to make such a statement to the police itself, then what was the need for them to first go to PW-6. However, an explanation is advanced on behalf of the State that the accused only signed the statement and it was PW-6 who then handed over Ext. P-4 to the police, along with the custody of the accused persons.

24. Further, Ext. P-4 is stated to have been made by the accused persons to PW-6, in the presence of Shanmugasundaram. The said person, for reasons best known to the prosecution, has not been examined by the prosecution to prove the recording of Ext. P-4 and to provide greater credence to this document.

25. Moreover, in their statement under Section 313 CrPC, the accused have denied the very execution of Ext. P-4. In order to examine the veracity of this document, the court essentially has to find out the correctness and corroboration of the facts stated in Ext. P-4 by other prosecution evidence. In Ext. P-4, it is stated that the deceased ill-treated his wife, PW-2, Kamalal and that was the motive and, in fact, essentially the cause for the accused to murder the deceased. The whole emphasis is upon the bitter relationship between the husband and wife. The very basis of Ext. P-4 falls to the ground when one peruses the statement of Kamalal, PW- 2.In her statement, she has stated that her husband was employed in a rolling mill and that there was no dispute between them. Further, she has categorically stated that she had never stated anything with regard to dispute between her husband and accused No.1 to the police and that there was no property dispute amongst them. Upon this, this witness was declared hostile by the prosecution with the leave of the court. Even in her cross-examination, nothing could be brought out to establish the fact of alleged cruelties inflicted by the deceased upon her and there being any dispute between them.

26. An attempt has been made on behalf of the prosecution to support its case by the statements of PW-4 and PW-5. PW-4 stated that he had seen Loganathan, who used to live opposite his house, going on a moped along with his wifes brother Chandran at about 2

Oclock in the afternoon. After knowing that there was a corpse lying at Nereuperichel, he went and saw the dead body. It was that of Loganathan.

27. PW5 also deposed that on 9th July, 2002, at about 10.00 p.m., he had seen three persons going in a moped towards Bommanaickanpalayam road. After sometime, only one person returned on the moped and again went towards west. Thereafter, those three persons returned. He stated that he could not identify those three persons, if he saw them. Out of the three, he knew only one person who drove the moped and that was accused No.2, Sahadevan. Next day, upon hearing the news that there was a corpse lying, he went and saw it. Since the face of the corpse was burnt, he could not identify him.

28. The statement of these two witnesses is at variance with Exhibit P4 and hardly finds corroboration from other prosecution evidence and also suffers from discrepancies. Thus, the contents of Exhibit P4 are belied by the prosecution evidences itself and, therefore, it is not safe for the Court to rely upon such extra-judicial confession. The various factors mentioned above bring out serious deficiencies in the veracity, credence and evidentiary value of Exhibit P4. For the afore-recorded reasoning, we must disturb the finding of guilt recorded by the Trial Court while substantially relying upon Exhibit P4 as, in our opinion, Exhibit P4 has to be ruled out from the zone of consideration, which we hereby do.

29. The courts below, the Trial Court in particular, have laid some emphasis on the theory of last seen, while finding the accused guilty of the offence. As far as PW5 is concerned, he says that he only saw three persons going on the moped and he could not identify these persons. PW4 stated that he had seen the deceased going on a moped with Chandran at about 2.00 oclock in the afternoon. The time lag between the time at which this witness saw the accused and the deceased together and when the body of the deceased was found on the next day is considerably long. According to PW4, he could identify Loganathan while, according to PW5, the face of the deceased was burnt and, therefore, he could not identify him. Moreover, according to the doctor, PW7, the deceased had died about 27 to 28 hours before the autopsy. The autopsy, was admittedly, performed upon the deceased on 10th of July, at about 2 oclock. That implies that the deceased would have died sometime during the morning of 9th July, while according to PW4, he had seen the deceased along with Chandran after 2 p.m. on 9th July, 2002.

30. With the development of law, the theory of last seen has become a definite tool in the hands of the prosecution to establish the guilt of the accused. This concept is also accepted in various judgments of this Court. The Court has taken the consistent view that where the only circumstantial evidence taken resort to by the prosecution is that the accused and deceased were last seen together, it may raise suspicion but it is not independently sufficient to lead to

a finding of guilt. In *Arjun Marik v. State of Bihar*[10]this Court took the view that the where the appellant was alleged to have gone to the house of one Sitaram in the evening of 19th July, 1985 and had stayed in the night at the house of deceased Sitaram, the evidence was very shaky and inconclusive. Even if it was accepted that they were there, it would, at best, amount to be the evidence of the appellants having been last seen together with the deceased. The Court further observed that it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record a finding that it is consistent only with the hypothesis of guilt of the accused and, therefore, no conviction, on that basis alone, can be founded.

31. Even in the case of *State of Karnataka v. M.V. Mahesh*[11]this Court held that merely being last seen together is not enough. What has to be established in a case of this nature is definite evidence to indicate that the deceased had been done to death of which the respondent is or must be aware as also proximate to the time of being last seen together. No such clinching evidence is put forth. It is no doubt true that even in the absence corpus delicti it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the Court.

32. In the case of *State of U.P. v. Satish*[12]this Court had stated that the principle of last seen comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

33. Undoubtedly, the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. But this theory should be applied while taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.

34. The statement of PW5 does not indicate the time as to when he had seen the deceased and with which of the accused. He expressed inability to even identify them. PW4 though claims to have seen them but has given a time which itself is doubtful. Even this cannot be stated with certainty that at that particular time the deceased was alive or dead.

35. In light of the abovementioned contradictions and the uncertainty of evidence, we are unable to sustain the view taken by the High Court that on the theory of last seen, the accused can be convicted. This fact is uncorroborated and suffers from apparent contradictions and discrepancies as well.

Recovery

36 PW9, the Investigating Officer, after arresting accused No.2, Sahadevan, recorded his statement. The accused stated that he had hidden kerosene bottle, a match box and TVS Moped bearing No.50 TN 38 7344 and could get them recovered. He also stated that Chandran had taken him on that moped. In furtherance to this statement of this accused and in presence of the witnesses at about 2.45 hours, the Investigating Officer recovered and seized MO6, the TVS moped, MO7, bottle with kerosene odour and MO8, match box. In his entire deposition, this witness had not stated that these were the articles which were used by the accused persons in the commission of the crime.

37. It was expected of the prosecution to establish a connection between the articles recovered and the incident or the crime, as alleged to have been committed. According to the prosecution, kerosene oil was poured over the deceased and he was set on fire. No kerosene was found on the body of the deceased or on the belongings, i.e., clothing, chappal etc. of the deceased. The witness to the confession statement, Shanmugasundram, was not examined. PW6 admitted before the Court that he did not see the house of the accused, Sahadevan. In the case of *State of Rajasthan v. Bhup Singh*[13]this Court observed the following as the conditions prescribed in Section 27 of the Indian Evidence Act, 1872 for unwrapping the cover of ban against admissibility of statement of accused to police (1) a fact should have been discovered in consequence of the information received from the accused; (2) he should have been accused of an offence; (3) he should have been in the custody of a police officer when he supplied the information; (4) the fact so discovered should have been deposed to by the witness. The Court observed that if these conditions are satisfied, that part of the information given by the accused which led to such recovery gets denuded of the wrapper of prohibition and it becomes admissible in evidence.

38. In the present case, the recoveries have been effected upon the statement of the accused under Section 27 of the Evidence Act. These recoveries, in our view, were made in furtherance to the statement of the accused who were in police custody and in presence of independent witnesses. It may be that one of them had not been examined but that, by itself, shall not vitiate the recovery or make the articles inadmissible in evidence. The aspect which the Court has to consider in the present case is whether these recoveries have been made in accordance with law and whether they are admissible in evidence or not and most importantly the link with and effect of the same vis-a-vis the commission of the crime. According to the post mortem report Ext.P-10 as well as the forensic report Ext.P-22, kerosene or its smell was neither found on the body nor the belongings of the deceased and, therefore, it creates a little doubt as to whether the recovered items were at all and actually used in the commission of crime. However, as far as TVS moped, MO-6 is concerned, there

is sufficient evidence to show that it was used by the accused but the other contradictions and discrepancies noted above overshadow this evidence and give advantage to the accused.

39. Now, we would deal with the contention of the appellant that the prosecution has not been able to establish even the time of death of the deceased. According to the prosecution, the deceased had been murdered on 9th July, 2002 at about 11 p.m. but according to the post mortem report Exhibit P10, the deceased was murdered on 10th July, 2002, i.e. between 10 and 11 a.m. The post mortem report was recorded on 11th July, 2002 at 2.00 p.m. stating that the deceased was murdered before 27 to 28 hours. Absence of kerosene oil on the body of the deceased and articles taken into custody from the body of the deceased, the contradictions in the statement of the witnesses, the fact that PW2 has not supported the case of the prosecution and PW5 not being able to even identify the accused, lend support to the arguments raised on behalf of the accused and create a dent in the story of the prosecution. Not on any single ground, as discussed above, but in view of the cumulative effect of the above discussion on all the aspects, we are unable to sustain the judgment of the High Court. In our opinion, the prosecution has failed to prove its case beyond reasonable doubt.

40. In view of our above discussion, the last question for consideration of the Court is as to what order, if any, is required to be made against the non-appealing accused, i.e., accused No.1, Chandran. From the prosecution evidence, it is clear that some role had been specifically assigned to the accused Chandran. He is the brother-in-law of the deceased and is stated to have been last seen taking the deceased on the moped where after the deceased never returned. In normal circumstances, the obvious result would be to leave the non-appealing accused to undergo the punishment awarded to him in accordance with law. But, where the Court finds that the entire case of the prosecution suffers from material contradictions, the most crucial evidence is not reliable, there are definite and material flaws in the case of the prosecution and the Police has failed to discharge its duties at different steps, in that event, it will be difficult for this Court to leave the non-appealing accused to his fate. Under the Indian criminal jurisprudence, an accused is presumed to be innocent until proven guilty and his liberty can be curtailed by putting him under imprisonment by due process of law only. If the entire case of the prosecution has been found to be unreliable and the prosecution, as a whole, has not been able to prove its case beyond reasonable doubt, then the benefit should accrue to all the accused persons and not merely to the accused who have preferred an appeal against the judgment of conviction. In the case of *Raja Ram v. State of Madhya Pradesh*[14]this Court extended the benefit of conversion of sentence to all the accused, from that under Section 302 IPC to one under Section 304 IPC, including the non-appealing accused. The Court held that in its opinion, the case of the non-appealing accused was not really distinguisbable from other accused persons and it was appropriate that benefit of the judgment should also be extended to the non-appealing accused, Ram Sahai, in

that case. Again, in the case of *Bijoy Singh v. State of Bihar*[15]this Court clearly stated the principle that it has set up a judicial precedent that where on evaluation of the case, the Court reaches the conclusion that no conviction of any accused is possible the benefit of that decision must be extended to the co-accused, similarly situated, though he has not challenged the order by way of an appeal. In the case of *Pawan Kumar v. State of Haryana*[16]while referring to the myth of the salutary powers exercisable by the Court under Article 142 of the Constitution for doing complete justice to the parties, the Court opined that powers under Article 136 of the Constitution can be exercised by it even suo motu and that the right to personal liberty guaranteed to the citizens, as enshrined under Article 21 of the Constitution, would be a factor which can be considered by the Court in granting such reliefs. The Court held as under :

> "Apart from the salutary powers exercisable by this Court under Article 142 of the Constitution for doing complete justice to the parties, the powers under Article 136 of the Constitution can be exercised by it in favour of a party even suo motu when the Court is satisfied that compelling grounds for its exercise exist but it should be used very sparingly with caution and circumspection inasmuch as only the rarest of rare cases. One of such grounds may be, as it exists like in the present case, where this Court while considering appeal of one of the accused comes to the conclusion that conviction of appealing as well as non-appealing accused both was unwarranted. Upon the aforesaid conclusion arrived at by the Apex Court of the land, further detention of the non-appealing accused, by virtue of the judgment rendered by the High Court upholding his conviction, being without any authority of law, infringes upon the right to personal liberty guaranteed to the citizen as enshrined under Article 21 of the Constitution. In our view, in cases akin to the present one, where there is either a flagrant violation of mandatory provision of any statute or any provision of the Constitution, it is not that this Court has a discretion to exercise its suo motu power but a duty is enjoined upon it to exercise the same by setting right the illegality in the judgment of the High Court as it is well settled that illegality should not be allowed to be perpetuated and failure by this Court to interfere with the same would amount to allowing the illegality to be perpetuated. In view of the foregoing discussion, we are of the opinion that accused Balwinder Singh alias Binder is also entitled to be extended the same benefit which we are granting in favour of the appellant. Similar view has also been expressed by this Court in the cases of *Madhu v. State of Kerala*[17]*and Gurucharan Kumar v. State of Rajasthan*[18]"

41. It is very difficult to set any universal principle which could be applied to all cases irrespective of the facts, circumstances and the findings returned by the Court of competent jurisdiction. It will always depend upon the facts and circumstances of a given case. Where

the Court finds that the prosecution evidence suffers from serious contradictions, is unreliable, is ex facie neither cogent nor true and the prosecution has failed to discharge the established onus of proving the guilt of the accused beyond reasonable doubt, the Court will be well within its jurisdiction to return the finding of acquittal and even suo moto extend the benefit to a non-appealing accused as well, more so, where the Court even disbelieves the very occurrence of the crime itself. Of course, the role attributed to each of the accused and other attendant circumstances would be relevant considerations for the Court to apply its discretion judiciously. There can be varied reasons for a non-appealing accused in not approaching the appellate Court. If, for compelling and inevitable reasons, like lack of finances, absence of any person to pursue his remedy and lack of proper assistance in the jail, an accused is unable to file appeal, then it would amount to denial of access to justice to such accused. The concept of fair trial would take within its ambit the right to be heard by the appellate Court. It is hardly possible to believe that an accused would, out of choice, give up his right to appeal, especially in a crime where a sentence of imprisonment for life is prescribed and awarded. Fairness in the administration of justice system and access to justice would be the relevant considerations for this Court to examine whether a non-appealing accused could or could not be extended the benefit of the judgment of acquittal. The access to justice is an essential feature of administration of justice. This is applicable with enhanced rigour to the criminal jurisprudence. Where the court disbelieves the entire incident of the occurrence or where the role of the accused who has not appealed is identical to that of the other appealing accused or where the ends of justice demand, the Court would not hesitate and, in fact, is duty bound, to dispense justice in accordance with law. The powers of this Court, in terms of Articles 136 and 142 on the one hand and the rights of an accused under Article 21 of the Constitution on the other, are wide enough to deliver complete justice to the parties. These powers are incapable of being curtailed by such technical aspects which would not help in attainment of justice in the opinion of the Court. In light of the above principles, this Court is required to consider the effect of these judgments on the case of the non-appealing accused in the present case.

42. In the present case, accused No.1, Chandran had been attributed the same role as the other two accused. All the accused were stated to have murdered the deceased and burnt his body. It was a case of circumstantial evidence where not only has the prosecution failed to prove all the facts and events to complete the chain of events pointing only towards the guilt of the accused but there are also definite discrepancies in the case of the prosecution, contradictions between the statements of Sahadevan & Anr vs State Of T.Nadu on 8 May, 2012the material witnesses and the most important piece of prosecution evidence, the extra- judicial confession, Exhibit P4, is found entirely unreliable, not worthy of credence as well as the

facts recorded in Exhibit P4 stand disproved by another prosecution witness herself, i.e., PW-2, who, in fact, has lost her husband.

43. For the reasons afore-recorded, while accepting the appeal of the accused-appellants, we also direct that the benefit of this judgment shall also stand extended to accused No.1, Chandran, who is in jail. All the accused are acquitted of the charge under Section 302 IPC. They be set at liberty forthwith.

Judgment Referred

[1]*1995 Supp. 4 SCC 0259*
[2]*(1997) 8 SCC 0158*
[3]*(1998) 6 SCC 0108*
[4]*(2003) 8 SCC 0180*
[5]*(2007) 12 SCC 0230*
[6]*(2010) 10 SCC 0604*
[7]*(2009) 5 SCC 0740*
[8]*(2011) 11 SCC 0754*
[9]*(2011) 10 SCC 0165*
[10]*1994 Supp.(2) SCC 0372*
[11]*(2003) 3 SCC 0353*
[12]*(2005) 3SCC 0114*
[13]*(1997) 10 SCC 0675*
[14]*(1994) 2 SCC 0568*
[15]*(2002) 9 SCC 0147*
[16]*(2003) 11 SCC 0241*
[17]*(2012) 2 SCC 0399*
[18]*(2003) 2 SCC 0698*