

CASE NO.:
Appeal (crl.) 1501 of 2003

PETITIONER:
Parmananda Pegu

RESPONDENT:
State of Assam

DATE OF JUDGMENT: 02/09/2004

BENCH:
P. VENKATARAMA REDDI & B.P. SINGH

JUDGMENT:
J U D G M E N T

P. VENKATARAMA REDDI, J.

The appellant Paramananda Pegu along with Jitu Pegu were charged under Sections 365 and 302 IPC for abducting and killing two minor boys, namely, Robindra Taid and Keshav Taid, aged 6 and 10 years respectively on June 28, 1999. After trial, they were convicted and sentenced to death by the Sessions Judge, Dhemaji by his judgment dated 04.03.2002. On appeal the High Court confirmed the conviction and sentence. This appeal has been preferred by Parmananda Pegu only. It appears that the other convict Jitu Pegu is absconding. As per the prosecution case, the victim boys were initially kidnapped / abducted with a view to demand ransom from their relatives but when the accused suspected that the villagers were approaching in search of the boys, the accused decided to kill them.

The genesis of the case began with a report which was lodged with Gogamukh Police Post on the morning of June 29, 1999 by Basanti Taid (P.W.5), the mother of Robindra. She stated that her son Robindra and her husband's brother's son by name Keshav who was residing with her, could not be traced since 5.30 P.M. of the previous day despite a search made and that on the morning of the following day, the dead body of Keshav was found in a stream beneath a damaged boat but her son Robindra was still untraceable. Investigation was then taken up by Sub-Inspector of Police (P.W.29). He recovered the dead body of Keshav at the place pointed out by P.W.5 and others. He then conducted inquest on the dead body of Keshav and prepared a report to which PWs 17 and 18 were signatories. The body was sent to Dhemaji Civil Hospital on the same day i.e. 29.6.1999 for postmortem examination. The postmortem of the body of Keshav revealed that he was strangled to death.

The prosecution case then runs as follows:

By interrogating the friends of the victim boys who were playing with them in the evening of 28th June, 1999, the I.O. suspected Jitu, who by then left the village Baligaon. Having got information on the next day that he was at village Majuli, PW22 arrested and interrogated him. Jitu narrated that he, the appellant Parmananda and four others formed themselves into a group named as "All Assam Tiger Force" and kidnapped and murdered the boys. The I.O. then arrested the appellant and others named by Jitu on 1.7.1999 itself. Pursuant to the disclosure made by Jitu and on being led by him, PW22 recovered the dead body of Robindra on 01.07.1999 from the mud embankment at a

bamboo grove. PWs 17 and 18 witnessed the same. Accused Jitu also took the police and other villagers to the place from where the body of Keshav was recovered. On 4.7.1999, Jitu led the I.O. and others to the place where the silver chain of deceased Robindra was hidden. The silver chain was identified by PW5 as one worn by Robindra and the same was seized in the presence of PW4 and others. On 4.7.1999, the accused, at the instance of the police, recreated the scene of crime in the presence of Shri C.R. Das, Executive Magistrate (who died and could not be examined) and other villagers viz. PWs 25, 28 and 29. This was treated as extra-judicial confession. The post mortem of the dead body of Robindra was done by the Senior Medical Officer on 2.7.1999\027PW23. He found the dead body in a decomposed state. Rigor mortis was absent. Eyes bulged out and got damaged. The tongue was in a protruded position and mouth was half open. There was no vivid wound or bruise over the skin. There was no ligature mark over the body. Due to decomposition simple abrasions could not be found. On internal examination he found fracture in the mid part of the parietal bones and the blood clot on the mid part of the upper surface of the brain. The Medical Officer opined that the cause of death was the head injury. The accused were produced before the Addl. Chief Judicial Magistrate Dhemaaji (P.W.22) for recording the confessional statement. The Magistrate, after following the due procedure, recorded the confession of each of the two accused. However, the other four persons, who were produced, declined to make the confession. The confessional statement of Jitu Pegu is as follows:

"As early as in March this year, we, some youths, sat in a meeting in a field to start an organization, "Assam Tiger Force" by name. Those other than me were Paramananda, Kanta Pegu, Kanuram Pegu, Ajanti Pegu, Kirtinath Doley and Bhuban Nath. The organization started. I was the Secretary. Kanta Pegu was the President. That very day we decided at the meeting to kidnap Rebat Khanikar's son for ransom. All of us together we tried thrice, but could not kidnap the boy. Later we decided to kidnap Keshab Taid and Rabindra Taid, two minor boys of our village, for ransom. On 28/6/99 I sent for Keshab and Bhaiti (Rabin). I had engaged Prasanta, Manjit and Harekrishna of our village for the purpose. They (Keshab and Rabin) were playing. Then I took them to a jamu tree, saying that I would give them Jamu. It was then around 5.30. I detained Keshab and Rabin against their will and rebuked the rest three away. Keshab and Bhaiti wanted to leave, but I enticed them to stay on. Thereafter I called Parama Pegu in. We sat down there for a while. Then we learnt that the villagers were searching for the boys. Then I and Parama decided to kill the boys. Accordingly we tied Keshab's hands up and gagged him with paddy straw. Then we strangled him to death and threw the body into the nearby water. We then placed a boat on the body in overturned position. Parama took Bhaiti (Rabin) along and strangled him to death not far away. He threw the body to the 'dhap' (a raised ground along a boundary of a yard\027as per Translator) in the bamboo grove. Then we left the place. On Wednesday I went to Barpamua in Majuli where the police arrested me."

The confessional statement of appellant Parmananda Pegu is as follows:

"In March this year I and some youths sat in a meeting in a field to start an organization, "Assam Tiger Force" by name. The organization was started. I, Ajit Pegu, Kantaram Pegu, Mahananda Pegu, Kirtinath Doley and Sadananada Pegu were there in the organization. Jitu Pegu, was the Secretary of the organization. Kanta Pegu was the President. In that meeting we decided to kidnap Rebat Khanikar's son for ransom. We tried thrice to kidnap that boy, but failed. Then we decided that we would kidnap Keshab and Rabin alias Bhaiti of our village for a ransom. Accordingly Jitu brought Keshab and Rabin along to a jamu tree. Jitu called me. Reaching there I found Rabin and Keshab there. There we sat down. Leaving them there, we were searching for a place (to hide the boys). But after a little while we heard the noise of a crowd. Then we decided that we would kill the boys. The rest of our organization had not turned up. I took Bhaiti (Rabin) to a bamboo grove to kill him there. Jitu took the older boy, Keshab, to kill. I killed Bhaiti by strangling and left the body on the 'dhap' in the bamboo grove. Thereafter I came home. In the morning on 30.6.99 the police arrested me."

In the course of examination under Section 313 Cr.P.C. the two accused retracted from the confession made earlier and took the stand that it was not voluntary and they were tortured and tutored by the police. Both the accused examined themselves as defence witnesses to depose that the confession was not voluntarily made and that they were innocent. The appellant further stated that a false statement was given by Jitu Pegu implicating him in the murder. The High Court analysed the incriminating circumstances against the accused as follows:

1. The accused and the deceased were last seen together on 28-6-1999 at about 5 p.m. as stated by prosecution witnesses.
2. Recovery of silver chain of deceased\027Robindra Taid by PW29 and others from the place where the accused kept (silver chain) (Material Ext.1) which was being worn by the deceased-Robindra.
3. Accused-Jitu Pegu fled away to Majuli.
4. Confessional statement made by the accused.
5. Extra Judicial Confession made by the accused before PWs 25, 28 & 29 and some others.
6. Recovery of dead body of deceased-Robindra at the instance of the accused Jitu Pegu.
7. Opinion of Medical Officers (PWs 23 & 24).

We shall examine whether any of the circumstances could be pressed into service in judging the complicity of the appellant in the crime.

The last seen evidence is the first and foremost circumstance that has been relied upon by the High Court.

However, we find no evidence that the victim boys were in the company of the appellant on the evening of 28.6.1999. PWs 1 to 3 categorically stated that it was Jitu Pegu who coaxed them to bring the boys Robindra and Keshav and detained them with him and quipped to PWs 1 to 3 that they would be returning by a different route later. It was Jitu Pegu who allegedly gave them threat not to reveal it to others. Nowhere the name of the appellant was mentioned. On the other hand, all of them stated that they did not know the other accused namely the appellant herein.

The second circumstance is also relatable to the first accused Jitu Pegu only. The recovery of silver chain of Robindra was at the instance of Jitu Pegu, but not the appellant. The seizure list dated 4.7.1999 relating to silver chain is Ex.1. It was prepared by the I.O.\027PW29 and witnessed by late Shri C.R. Das, Executive Magistrate and PWs 4 & 6. It is evident from the said document that the silver chain was found and seized at the place shown by the accused Jitu Pegu. The name of the appellant does not figure in that document. PW4, who is the witness for the seizure, stated: "in our presence, Jitu Pegu told the Magistrate that he had kept the chain. The police seized the chain". PW4 further stated that he did not know the other accused. This is what PW6 deposed: "on the way back with the police party, Jitu Pegu recovered a silver chain in the yard of Padma Nath Doley (PW4) where he had thrown it and handed it over to the police. The police seized the silver chain. Ex.1 is the seizure list and Ex.1(ii) is my signature. M.Ex.1 is the silver chain. The silver chain belonged to Robindra". Thus, the finding of High Court with regard to the second piece of circumstantial evidence, insofar as the appellant is concerned, is clearly unsustainable. The third circumstance ex-facie does not apply to the appellant because it was Jitu Pegu only who absconded after the incident.

The fourth and fifth circumstances are the confessional statement and extra-judicial confession which we shall advert to later.

As regards circumstance No.6 i.e. recovery of dead body of Robindra at the instance of Jitu Pegu, the appellant is not in the picture. The High Court also stated so. Almost all prosecution witnesses viz., PWs 17, 14, 27, 12 & 8 stated that the body of Robindra was recovered at the instance of Jitu Pegu and Jitu Pegu led the police to the bamboo grove. No one connected Parmanand to the recovery of the dead body of any of the victim boys. Even the I.O.(PW29) categorically stated "as shown by Jitu Pegu, I found Robindra Taid's body in a ditch in a bamboo grove and held inquest over it". However, we have referred to the other evidence on record only to steer clear of the doubt created by the statement in the inquest report that gives an impression that both Jitu Pegu and Parmanand led the police and those present at the inquest to the place where the dead body was found. But such statement cannot be true having regard to the clear evidence of PWs 17 and 29 on this point.

We shall now proceed to consider the circumstance No. 5 i.e. extra judicial confession. This extra judicial confession, according to the prosecution, consists of the narration of incidents on the crucial day by recreating the crime scenario in the presence of the Executive Magistrate (who was not examined on account of his death) and PWs 25, 26 & 28. The High Court having held in the first sentence of paragraph 11 that "the extra judicial confession which was made in the presence of the police as stated by PWs 25, 28

& 29 was inadmissible in evidence in view of the provisions of Sections 25 & 26 of the Evidence Act", proceeded to say in the second sentence as follows:

"In this case, we find that the accused persons had also made extra judicial confession before PW22 and subsequently, there was a verification of the said confession, when the accused in presence of the above witnesses\027PWs 28 and 29 had shown the place, where the incident took place and reconstructed the scene of occurrence by pointing the place and the manner in which the incident took place."

The High Court proceeded on the wrong premise that there was an extra judicial confession before PW22 (Additional C.J.M). The High Court overlooked the fact that the confession recorded on 6.7.1999 by PW22 was a judicial confession and PW22 did not come into the picture at any time prior to that. Obviously, the High Court laboured under the wrong impression that the Magistrate in whose presence the scene was recreated was PW22 whereas the alleged extra judicial confession was in the presence of the Executive Magistrate who could not be examined. The High Court fell into an error of fact in thinking that there were two extra judicial confessions, one in the presence of PWs 25, 28 & 29 (I.O.) and another in the presence of PWs 22, 28 & 29. Notwithstanding this error committed by the High Court, we have to consider whether the extra judicial confession sought to be relied by the prosecution can be acted upon. Section 26 of the Indian Evidence Act enjoins: "no confession made by any person while he is in the custody of a police officer, unless it be made in the immediate presence of the Magistrate, shall be proved as against such person". The question is whether the alleged confession made by the appellant before the Executive Magistrate and other witnesses namely PWs 25, 26 & 28 in the course of recreating the crime scenario could be given any weight. First of all, it must be noted that the prosecution has not filed any notes or record of proceedings kept by the deceased Executive Magistrate. No explanation is forthcoming for not producing the same though it is an official document which was accessible to the prosecution. PWs 25, 26 and 28 claimed that at the instance of the police they accompanied the two accused, the Executive Magistrate and the I.O. to various places shown by the accused and they heard the accused including the present appellant confessing to the murder. Their evidence, however, does not inspire confidence that it is credible. PW 25 said in his cross examination that they were kept at some distance away from the accused and the Executive Magistrate and the police had questioned the two accused. If the said three witnesses were called for the specific purpose of hearing the confession, if any, made by the accused, they would not have remained at a distance. It appears that the exercise of recreation of the incidents relating to crime was primarily meant to be taken note of by the Executive Magistrate. Though PWs 25, 26 and 28 might have accompanied them, there is a doubt whether they were within the hearing distance from the accused and whether they did really hear what the accused had said. Otherwise there was no scope for PW 26 deposing that Parmanand confessed to the effect that he carried Keshav some 200 meters south west of the Jamun tree and it was there that he had killed Keshav and put the body beneath the boat in a canal. Thus the confession attributable to Jitu Pegu, as per the prosecution

case, has been attributed to the appellant Parmanand as if Parmanand had killed Keshav and concealed the dead body beneath the boat. It is not the prosecution case that Parmanand had confessed of having killed Keshav. Thus PW 26 completely contradicts PW 25. The reason perhaps is that none of them heard the accused clearly while they were allegedly narrating the incident to the Executive Magistrate. Further, according to PW 25, the police also took part in questioning the accused along with the Executive Magistrate. The Deputy Superintendent of Police was also present on that occasion. In these circumstances a serious doubt arises as to the voluntariness of the confession said to have been made in the presence of the Executive Magistrate and others. After PW 26 made a somersault of the prosecution case, PW 28 had taken care to tell the story consistent with the prosecution version. He stated that Parmanand (appellant) made a confession of having strangled Robindra and placed the body in a ditch. In fact, there was no strangulation as per the medical evidence. If so it is doubtful whether PW 28 or the other two witnesses did at all hear the appellant making the confession. We have, therefore, no option but to discard the evidence of PWs 25, 26 and 28 speaking to the alleged confession made by the appellant in their presence and in the presence of the Executive Magistrate. The High Court readily assumed that the confession was made in the presence of PWs 25 and 28 (PW 26 having been omitted by the High Court) without critical analysis and evaluation of the evidence.

The medical evidence is the last circumstance purportedly relied upon by the High Court. We are unable to understand how the High Court has put the medical evidence against the appellant. The medical evidence does not support the prosecution version of strangulation of Robindra Taid. We shall elaborate this aspect in the course of discussion of the next point.

The foremost amongst the factors that are sought to be relied upon by the prosecution is the retracted confession of the appellant recorded under Section 164 Cr.P.C. The confession has been extracted supra in verbatim. Before acting on a confession made before a Judicial Magistrate in terms of Section 164, the Court must be satisfied first that the procedural requirements laid down in Sub-sections (2) to (4) are complied with. These are salutary safeguards to ensure that the confession is made voluntarily by the accused after being apprised of the implications of making such confession. Looking at the confessional statement (Ext.8) coupled with the evidence of PW 22, the then Addl. Chief Judicial Magistrate, Dhemaji, we have no doubt in our mind that the procedural requirements have been fulfilled. Inter alia, PW 22 deposed that after cautioning the accused that the confessional statement, if made, will be used in evidence against them, he gave three hours time for reflection during which the accused were kept in a room attached to the Court in the immediate presence of an office peon. PW22 further stated that it appeared to him that the accused made the statement voluntarily. A memorandum as required by sub-Section (4) was also recorded. Thus the first requirement for acting on a confession is satisfied but that is not the end of the matter. The Court, called upon to consider the evidence against the accused, should still see whether there are any circumstances appearing from the record which may cast a doubt on the voluntary nature of the confession. The endeavor of the Court should be to apply its mind to the question whether the accused was free from threat, duress or inducement at the time of making the

confession. In doing so, the Court should bear in mind, the principle enunciated in Pyare Lal vs. State of Rajasthan [(1963) Supp.1 SCR 689] that under Section 24 of the Evidence Act, a stringent rule of proof as to the existence of threat, duress or inducement should not be applied and a prima facie opinion based on evidence and circumstances may be adopted as the standard laid down. To put it in other words, "on the evidence and the circumstances in a particular case it may appear to the Court that there was a threat, inducement or promise, though the said fact is not strictly proved".

Having thus reached a finding as to voluntary nature of a confession, the truth of the confession should then be tested by the Court. The fact that the confession has been made voluntarily, free from threat and inducement, can be regarded as presumptive evidence of its truth. Still, there may be circumstances to indicate that the confession cannot be true wholly or partly in which case it loses much of its evidentiary value.

In order to be assured of the truth of confession, this Court, in a series of decisions, has evolved a rule of prudence that the Court should look to corroboration from other evidence. However, there need not be corroboration in respect of each and every material particular. Broadly, there should be corroboration so that the confession taken as a whole fits into the facts proved by other evidence. In substance, the Court should have assurance from all angles that the retracted confession was, in fact, voluntary and it must have been true. The law on the subject of retracted confession has been succinctly laid down by a three Judge bench of this Court in Subramania Goundan Vs. State of Madras [(1958) SCR 428] which lays down:

"The next question is whether there is corroboration of the confession since it has been retracted. A confession of a crime by a person, who has perpetrated it, is usually the outcome of penitence and remorse and in normal circumstances is the best evidence against the maker. The question has very often arisen whether a retracted confession may form the basis of conviction if believed to be true and voluntarily made. For the purpose of arriving at this conclusion the court has to take into consideration not only the reasons given for making the confession or retracting it but the attending facts and circumstances surrounding the same. It may be remarked that there can be no absolute rule that a retracted confession cannot be acted upon unless the same is corroborated materially. It was laid down in certain cases one such being In re Kesava Pillai [ILR 53 Mad 160 : (AIR 1929 Mad 837)] (B) that if the reasons given by an accused person for retracting a confession are on the face of them false, the confession may be acted upon as it stands and without any corroboration. But the view taken by this Court on more occasions than one is that as a matter of prudence and caution which has sanctified itself into a rule of law, a retracted confession cannot be made solely the basis of conviction unless the same is corroborated one of the latest cases being Balbir Singh Vs. State of Punjab (S) AIR 1957 SC 216 (C), but it does not necessarily mean that each and every circumstance mentioned in the confession regarding the complicity of the accused

must be separately and independently corroborated nor is it essential that the corroboration must come from facts and circumstances discovered after the confession was made. It would be sufficient, in our opinion, that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession."

The learned Judges then highlighted the difference between retracted confession and the evidence of an approver or an accomplice.

"Though under Section 133 of the Evidence Act, a conviction is not illegal merely because it proceeds on the uncorroborated testimony of witnesses, illustration (b) to Section 114 lays down that a Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. In the case of such a person on his own showing he is a depraved and debased individual who having taken part in the crime tries to exculpate himself and wants to fasten the liability on another. In such circumstances it is absolutely necessary that what he has deposed must be corroborated in material particulars. In contrasting this with the statement of a person making a confession who stands on a better footing, one need only find out when there is a retraction whether the earlier statement, which was the result of remorse, repentance and contrition, was voluntary and true or not and it is with that object that corroboration is sought for. Not infrequently one is apt to fall in error in equating a retracted confession with the evidence of an accomplice and therefore it is advisable to clearly understand the distinction between the two. The standards of corroboration in the two are quite different. In the case of the person confessing who has resiled from his statement, general corroboration is sufficient while an accomplice's evidence should be corroborated in material particulars. In addition the Court must feel that the reasons given for the retraction in the case of a confession are untrue."

In Pyare Lal, supra, the same principle in regard to the evidentiary value of retracted confession has been reiterated. Subba Rao, J. speaking for a four Judge Bench, stated the legal position thus:

"\005A retracted confession may form the legal basis of a conviction if the Court is satisfied that it was true and was voluntarily made. But it has been held that a Court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only, a rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for a Court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the Court is satisfied that the

retracted confession is true and voluntarily made and has been corroborated in material particulars. \005"

By the use of the expression "corroboration of material particulars", the Court has not laid down any proposition contrary to what has been clarified in Subramania Goundan's case (supra) as regards the extent of corroboration required. The above expression does not imply that there should be meticulous examination of the entire material particulars. It is enough that there is broad corroboration in conformity with the general trend of the confession, as pointed out in Subramania Goundan's case. The decision of this Court in Chandrakant Chimanlal Desai vs. State of Gujarat [(1992) 1 SCC 473] has created some difficulty in understanding the law which is otherwise so well settled. The learned Judges imported the observations which were made in Kashmira Singh vs. State of Madhya Pradesh [AIR 1952 SC 159] in the context of evidentiary value of the confession of co-accused and applied them to the case of retracted confession. It appears that the learned Judges went by the head-note in the AIR which opens up with the sentence "The confession of an accused person\005\005\005\005" However, in the text of the judgment it is crystal clear that the entire discussion and the statement of law was only with reference to the confession of the co-accused. While clarifying that the confession of the co-accused is not evidence in the ordinary sense of the term as pointed out by the Privy Council, this Court observed in Kashmira Singh's case that such a confession cannot be made the foundation of a conviction and can only be used in support of other evidence. In Chimanlal's case, the learned Judges, after referring to the Head-note portion of the AIR 1952 SC 159, proceeded to apply the test applicable to the confession of the co-accused to a case of retracted confession. The Court observed:

"The High Court has on the other hand made this confessional statement as the basis and has then gone in search for corroboration. It concluded that the confessional statement is corroborated in material particulars by prosecution witnesses without first considering and marshalling the evidence against the accused excluding the confession altogether from consideration. 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. \005."

In view of the error in comprehending the scope of the decision in Kashmira Singh's case, the decision in Chimanlal's case falls close to the category of decisions rendered per incuriam. If followed, it would run counter to a catena of coordinate Bench decisions and the larger Bench decision in Pyare Lal Vs. State of Rajasthan supra. We may point out that in the State of Maharashtra Vs. Damu [(2000) 6 SCC 269], this Court noticed the apparent error in Chimanlal's case and observed thus:

"We may make it clear that in Kashmira Singh, this Court has rendered the ratio that confession cannot be made the foundation of conviction in the context of considering the utility of that confession as against a co-accused in view of

Section 30 of the Evidence Act. Hence the observations in that decision cannot be misapplied to cases in which confession is considered as against its maker."

Having discussed the legal position with regard to the evidentiary value of retracted confession, we shall now scrutinize the facts of the present case. On such scrutiny, we find no other corroborative factors that lend assurance to the truth of the confession. Not a single circumstance or the fact proved corroborates the facts revealed in the confession. All the circumstances relied upon by the prosecution excepting the extra judicial confession only point to the involvement of the other accused\027Jitu Pegu, but not the appellant. The extra-judicial confession has been eschewed from consideration for the reasons given supra.

The confession of the appellant has not been substantiated by any evidence on record which is in line with the confessional statement. Therefore, the corroboration even in the limited sense does not exist in the case of the appellant. What is more, the cause of death as disclosed in the confession does not fit into the opinion of the medical expert. PW23, the Senior Medical Officer at Dhemaaji Civil Hospital, who did the postmortem examination of the dead body of Robindra Taid on 2.7.1999, clearly stated that the death was caused on account of the head injury. There was no ligature mark over the body which indicates that there was no strangulation. He noticed hematoma in the middle line of scalp and a fracture in the mid part of the parietal bone. He also found blood around the mid part where the fracture was caused. There was also blood clot on the upper surface of the brain. He did not find any abnormality in other parts of the body. In the confessional statement, the appellant is alleged to have stated that he killed Robindra by strangulation, which is clearly inconsistent with medical evidence. If the confession was voluntary and the accused wanted to tell the truth out of repentance, he would have frankly said that he inflicted the injuries on the head of the victim. But, he did not give the true version of the mode of causing death. It only shows that the role of police in making him adhere to the version of strangulation in tune with what had been noted by the I.O. and presumably by the Executive Magistrate cannot be ruled out. Alternatively, it appears that the appellant faithfully repeated what the other accused stated as to the manner in which he killed Keshav. Thus, the confessional statement of the accused\027 appellant far from receiving corroboration of any sort from other circumstances, contradicts the medical evidence relating to cause of death which is an important aspect of the confession. We are therefore of the view that it is not safe to convict the appellant solely on the basis of the alleged confession which has been retracted.

Before parting with the case, we must observe that the High Court fell into a serious error in not considering the case of the appellant separately. The High Court applied the evidence relating to the other accused to the appellant. This mix up has led to miscarriage of justice.

We therefore set aside the conviction of the appellant under Sections 302 & 365 IPC and allow the appeal. The appellant shall be released forthwith from the jail, unless required in any other case.