KALI RAM

v.

STATE OF HIMACHAL PRADESH

September 24, 1973

[H. R. KHANNA, A. ALAGIRISWAMI AND R. S. SARKARIA, JJ.]

Criminal trial—Burden of proof—Benefit of doubt—Principles governing.

Code of Criminal Procedure, 1898 (*5 of* 1898)—S. 162—*Scope of.*

One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist the court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal. [733 H; 734 A-C]

Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases where the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of doubt. Of course, the doubt regarding the guilt of the accused should be reasonable, it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. As mentioned by this Court in the case of *State of Punjab* v. *Jagir Singh,* (Crl. A. No. 7 of 1972 d/ August 6, 1973) a criminal trial is not liked a fairy tale wherein one is free to give flight to one's imagination and phantasy. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused the courts should not at the same time reject evidence which is *ex facie* trustworthy or grounds which are fanciful or in the nature of conjectures. [734—G—H; 735 A—D]

It needs all the same to be re-emphasised that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from the accused. The courts would not be justified in withholding the benefit because the acquittal might have an impact upon the law and order situation or create adverse reaction in society or amongst those members of the society who believe the accused to be guilty. The guilt of the accused has to be

A adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record. Indeed, the courts have hardly any other yardstick or material to adjudge the guilt of the person arranged as accused. It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequence of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. [735D—F; H]

B *Shivaji Sahabrao Bobade & anr.* v. *State of Maharashtra,* Cr. A. No. 26 of 1970 dated 27-8-73, referred to.

The appellant was convicted under s. 302, Indian Penal Code and sentenced to death. The High Court maintained the conviction and sentence. The High Court relied on three pieces of evidence *viz.*; (i) evidence of a witness which was recorded by the police over two months after the occurrence; (ii) the letter written by the accused to the Deputy Commissioner making a confession and (iii) the confession made to S.R. who incorporated this in a letter to the Station C House Officer.

Allowing the appeal to this Court,

HELD : that the judgment of the trial court and the High Court had to be set aside and the accused acquitted. [736F]

(1) If a witness professed to know about a gravely incriminating circumstance against a person accused of the offence of murder and the witness kept silent for over two months regarding the said incriminating circumstance against D the accused, his statement relating to the incriminating circumstances, in the absence of any cogent reason, was bound to lose most of its value. [730 B-C]

(2) The fact that no action was taken on the letter till it was taken into possession by the police, the incongruity of the portion of the letter relating to confession and the circumstances in which the accused is stated to have got the letter written—all these make it unsafe to act upon the confession incorporated in the letter. [730H]

E (3) The letter which was addressed by SR to the Station House Officer was in the nature of narration of what, according to SR, he had been told by the accused. Such a letter would constitute a statement for the purpose of s. 162, Cr.P.C. The prohibition contained in s. 162, Cr.P.C. relates to all statements made during the course of an investigation. The prohibition relating to the use of a statement made to a police officer during the course of an investigation could not be set at naught by the police officer not himself recording the statement of a person but having it in the form of a communication addressed by a person concerned to the police officer. If a statement made by a person F to a police officer in the course of an investigation is inadmissible except for the purpose mentioned in s. 162, the same would be true of a letter containing narration of facts addressed by a person to a police officer during the course of an investigation. It is not permissible to circumvent the prohibition contained in s. 162 by the investigating officer obtaining a written statement of a person instead of the investigating officer himself recording that statement. The restriction placed by s. 162 on the use of statement made during the course of investigation is in general terms. There is nothing in the section to show that the investigation must relate to any particular accused before a statement G to the police pertaining to that accused can be held to be inadmissible. The letter is, therefore, inadmissible in evidence. [732C—E; G]

Sita Ram v. *State of Uttar Pradesh,* [1966] Supp. S.C.R. 165 held inapplicable.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 22 of 1973.

H Appeal by special leave from the judgment and order dated the 13th July 1972 of the High Court of Himachal Pradesh at Simla in Criminal Appeal No. 31 of 1970 and Murder Reference No. 21 of 1970.

Yogeshwar Prasad, for the appellant. A

H. R. Khanna and *M. N. Shroff,* for the respondent.

The Judgment of the Court was delivered by

KHANNA, J. Kali Ram (40) was tried in the court of Sessions Judge Simla & Sirmur Districts for an offence under section 302 Indian Penal Code for causing the death of Dhianu (60) and the latter's daughter Nanti (40). Charge was also framed against the accused under section 392 read with section 397 Indian Penal Code for having at the time of the occurrence committed robbery. The learned Sessions Judge convicted the accused under section 302 Indian Penal Code and sentenced him to death. On appeal and reference, the High Court of Himachal Pradesh affirmed the conviction and the sentence of death. The accused thereafter came up to this Court in appeal by special leave. B C

The prosecution case is that Dhianu deceased was suffering from leprosy. This disease had resulted in partially destroying the hands and feet of Dhianu. For about a couple of months before the present occurrence, Nanti, daughter of Dhianu, had been staying with him in his house in village Amrahi. There was no other house near the house of Dhianu. Dhianu did business of money lending on the security of ornaments. D

The accused, it is stated, is a previous convict having been convicted in cases under sections 380, 454 and 457 Indian Penal Code in the years, 1955, 1957, 1960, 1962 and 1963. He was sentenced to undergo various terms of imprisonment in those cases. The last sentence of imprisonment undergone by the accused was from December 17, 1963 to November 7, 1967 on which day he was released from Central Jail Nahan. On August 1, 1968 the police presented a challan against the accused under section 110 of the Code of Criminal Procedure in the court of District Magistrate Nahan. Notice under section 112 of the Code of Criminal Procedure was then issued to the accused. It was served upon him for September 16, 1968. As the notice was not received back, the District Magistrate adjourned the case to October 16, 1968 and thereafter to November 6, 1968. E F

On 13 Asuj, which corresponds to September 28, 1968, it is stated, the accused went at evening time to the shop of Parma Nand (PW 14) in village Paliara, at a distance of three or four miles from the house of Dhianu. The accused spent the night with Parma Nand. On the morning of 14 Asuj, corresponding to September 29, 1968, the accused gave Rs. 18 to Parma Nand for purchase of liquor and fish. Fish was thereafter purchased by Parma Nand. The accused and Parma Nand took liquor and fish on the evening of 14 Asuj. The accused then told Parma Nand that he had to meet Dhianu of village Amrahi and that Parma Nand should serve the evening meals to him. After taking his meals, the accused left for the house of Dhianu deceased. The way to village Amrahi of Dhianu was shown to the G H

A

accused by Parma Nand. At about mid-night hour on that night the accused shouted to Parma Nand from outside the shop. Parma Nand asked the accused to come in but the latter replied that he had some work. The accused thereafter went away.

Dhianu deceased had two nephews, Hira Singh (PW 1) and Mehru (PW 10), who lived in village Lohara at a distance of half a B mile from the house of Dhianu. On October 1, 1968 Mehru went to a Gharat (flour grinding place). On the way back Mehru did not see the cattle of Dhianu grazing in the field. On reaching home, Mehru told his brother Hira Singh that he had not seen Dhianu's cattle. Hira Singh and Mehru then went to the house of Dhianu and found Dhianu and Nanti lying murdered in the courtyard of their house. The dead bodies were covered with cloth. On removing the cloth, Hira Singh C and Mehru noticed injuries on the heads of Dhianu and Nanti. The bodies were in a state of decomposition. The door of the residential room was open and the goods were lying scattered. Hira Singh informed PW 31 Udey Singh, Pradhan of the Gram Panchyat about what he had seen. On the advice of the Pradhan, Hira Singh went with village chowkidar to police station Renuka, at a distance of six miles from the place of occurrence, and lodged there report PA at 1 a.m. D on October 2, 1968. On the following morning ASI Mohd. Sardar (PW 49) accompanied by Hira Singh arrived at the place of occurrence. Sub Inspector Attar Singh, who was away from the police station at the time the report was lodged at the police station, on learning of the occurrence also reached the place of occurrence at about 9 a.m. on October 2, 1968. Sub Inspector Attar Singh prepared E inquest reports PB and PC relating to the dead bodies of Dhianu and Nanti. The dead bodies were thereafter sent to Civil Hospital Renuka where post mortem examination was performed by Dr. N. C. Jain (PW 43) on October 3, 1968.

The case of the prosecution further is that on November 22, 1968 at 9.15 a.m. Kedar Nath (PW 2), who was in those days a clerk in Government High School, Tikri Dasakna, went to the shop F of one Mulak Raj for buying some goods. Near that shop Kedar Nath saw the accused, who was having a gun with him. The accused called Kedar Nath and asked him to write a letter on his behalf to the Deputy Commissioner. Mulak Raj then told Kedar Nath that the accused was a dangerous man and that Kedar Nath should write the letter as desired by the accused. Kedar Nath then told the accused that he had to go to the school and that he would write the letter after G taking the permission of the Head Master. The accused thereupon remarked that the Head Master was nobody and that the accused would shoot him. Kedar Nath was at that time carrying a notebook. At the dictation of the accused, Kedar Nath wrote a 22-page letter on behalf of the accused addressed to the Deputy Commissioner Nahan. In the course of that letter, the accused referred to the previous cases in which he had been convicted as well as to the proceedings H under section 110 of the Code of Criminal Procedure pending against him. According to the accused, he had been directed by police Sub Inspector to report twice at the police station. The accused, however, told the Sub Inspector that it was difficult for him to do so. The

accused tried to meet the Deputy Commissioner at Nahan and the Chief Minister of Himahcal Pradesh at Simla but could not do so. The accused felt that as he had no money and no one would be prepared to stand surety for him, he would have to go to jail. It was also mentioned by the accused that he had murdered Dhianu and Nanti because the accused had been told that Dhianu had Rs. 30,000 to 40,000 with him. After getting letter PD written from Kedar Nath, the accused appended his signature to it. The accused further told Kedar Nath not to disclose the matter to any one and that otherwise he would kill him (Kedar Nath). The accused thereafter went to the post office and sent the letter by registered post to the Deputy Commissioner Nahan. The said letter was received in the office of the Deputy Commissioner Nahan on November 27, 1968. No action was taken on that letter.

On November 28, 1968, it is alleged, the accused met Sahi Ram (PW 46). Sahi Ram is the son of the Lambardar of village Shalahan. Sahi Ram told the accused not to commit thefts. The accused then told Sahi Ram that after being released from jail, he had been involved in a case under section 110 of the Code of Criminal Procedure. As the accused felt that no one would stand surety for him and as he would have again to go to jail for two or three years, he decided to commit such an offence as would bring money for his children. The accused added that he had learnt that Dhianu was a rich man and that the accused had committed the murder of Dhianu and his daughter. According further to the confession made by the accused to Sahi Ram, the accused was served meals by Nanti and Dhianu when he went to their house. After Dhianu and Nanti had gone to sleep, the accused got up from his bed and thought of committing theft of the goods. Feeling then began to weigh with the accused that Dhianu, who was suffering from leprosy, would die of hunger. This circumstance induced the accused to kill Dhianu. Accordingly, the accused gave blows to Dhianu with a dhangra. Nanti then got up and, on seeing the injuries of Dhianu, she became unconscious. The accused then went inside the house of Dhianu and picked up a sword. With that sword, he gave further blows on the head and neck of Dhianu. He also gave blows with the sword to Nanti. It was further stated by the accused that he found Rs. 180 in cash and silver ware weighing about two or three kilograms. Sahi Ram then wrote letter PEEE dated November 28, 1968 to the Station House Officer of police station Renuka wherein Sahi Ram apprised the Station House Officer of the extra judicial confession made by accused to Sahi Ram, as mentioned above. Letter PEEE was received at the police station on December 2, 1968. Sub Inspector Budh Ram (PW 50) then recorded the statement of Sahi Ram. On December 20, 1968 Sub Inspector Attar Singh on receipt of information went to village Minus. On the night between December 20-21, 1968 the Sub Inspector surrounded a hotel wherein the accused was stated to be present in village Minus. The accused was arrested early on the morning of December 21, 1968 from that hotel. A gun, dhangra P9, currency notes of the value of Rs. 684 and some other articles were taken into possession from the accused.

A The case of the prosecution further is that silver ornaments and other articles belonging to Dhianu and Nanti deceased, as well as some ornaments which had been left with Dhianu as security for the money lent by him were pawned by the accused to various persons after this occurrence. Those ornaments and articles were after the arrest of the accused recovered at the instance of the accused from the persons B with whom they had been pawned. After the recovery of the ornaments, Shri Malhotra magistrate on being moved by the police, mixed the recovered ornaments with some other ornaments. Salkoo, husband of Nanti deceased, and one Zalmu identified the recovered ornaments as those which were with the two deceased persons.

The accused in his statement under section 342 of the Code of C Criminal Procedure denied the various allegations made against him. It was denied by the accused that he had stayed with Parma Nand PW at his shop and that he had gone from that shop towards the house of Dhianu deceased. It was also denied by the accused that he had got letter PD written from Kedar Nath PW or that he had sent the same to the Deputy Commissioner. The accused further denied having made any confession to Sahi Ram. It was also denied by the D accused that any ornaments had been recovered at his instance. The prosecution allegation about the recovery of dhangra from him was likewise denied by the accused. According to the accused, Sahi Ram PW and two others were engaged with him in doing the business of opium smuggling. Sahi Ram and one other person misappropriated goods worth Rs. 5000 whereupon there was a dispute between the accused and Sahi Ram. The accused added that he had been falsely E implicated in this case at the instance of Sahi Ram.

The trial court held that document PD wherein the accused had made a confession about his having murdered Dhianu and Nanti had been voluntarily got written by the accused. It was further held that the accused had made an oral confession about his guilt to Sahi Ram PW. The prosecution allegation that the ornaments belonging to the F deceased persons were found in possession of the accused and had been pawned by him was also accepted by the trial court. It was also held by the trial court that the accused had stayed at the shop of Parma Nand in village Paliara on the day preceding the occurrence and that he had gone from that shop towards the house of the deceased. The evidence of Parma Nand that the accused had shouted to him from outside the shop at mid-night hour and that he had there- G after gone away was not accepted by the trial court.

On appeal and reference, the High Court upheld the finding of the trial court with regard to the confession of the accused contained in letter PD. The High Court also agreed with the trial court that the accused had made confession to Sahi Ram as contained in Sahi Ram's letter PEEE. The High Court further upheld the findings of the trial court regarding the stay of the accused with Parma Nand H before the occurrence. The High Court agreed with the trial court that the evidence of Parma Nand regarding the shout of the accused at mid-night hour from outside the shop could not be accepted. The

High Court, however, disagreed with the trial court regarding its finding about the possession of silver ornaments belonging to the two deceased persons by the accused after the occurrence. As regards the recovery of dhangra, the High Court held that the same was not shown to have been recovered from the possession of the accused.

In appeal before us, Mr. Yogeshwar Prasad has assailed the findings of the High Court on the basis of which the High Court arrived at the conclusion of the guilt of the accused. It has been urged that the evidence adduced in support of those findings is intrinsically unconvincing and it is not safe to base the conviction of the accused on a capital charge upon such evidence. As against that, Mr. Khanna on behalf of the State has supported the findings of the High Court and has urged that no case has been made for interference with those findings.

It cannot be disputed that Dhianu and Nanti were the victims of a murderous assault. Dr. Jain, who performed the post mortem examination on the two dead bodies, found the following two injuries on the body of Dhianu :

> "Injury (1) A sharp wound injury over the left side of the skull. Injury over the scalp is running from outer angle of the left eye to the middle of the forehead, reaching ½" above the hair line. The whole socket of the left eye is ruptured, frontal bone and part of the parietal bone are completely fractured around the course of the wound. Wound is 5½" broad and 1½" above the left eye. Scalp and skull is completely separated from the line of wound due to decomposition. Whole cranial cavity is seen through the wound. Whole of brain matter and meninges have sloughed out. Eye ball is also eaten up.
>
> (2) A sharp wound over the forehead running from the bridge of the nose going towards the right frontal prominence. Wound is 4½" long tapering at both the ends and ½" wide in the centre of the wound. Margins are even. Bones around the wound are completely fractured. Maggots from the wound coming and going out. The rest of the parts of the body were normal except that they were in a state as described above."

The following three injuries were found on the body of Nanti :

> "A sharp wound over the scalp, starting from forehead on right side ½" from upper margin of middle of right eye to the right parietal bone on the same side. Wound is ending near the middle of parietal bone. Wound is 7½" long and tapering at both the ends. Wound is ½" apart at the prominence of the right frontal bone. Skull underneath the wound is completely fractured. Due to this injury, whole inner bones of right eye and bones of the bridge of nose is completely fractured. Pieces of bones are clearly seen in the hollow of the skull. And one can nicely peep into

A the hollow of skull by making wound apart by fingers. Margins of the wound are even.

(2) A sharp cut wound of 8" size starting from 1½" above the middle of left eye having a semilunar shape, reaching to the most prominent part of the occipital bone. Wound is tapering at both the ends, margins are even. B Scalp and skull is completely apart. Skull during the course of wound is completely fractured and depressed at the places.

(3) Neck injury. A deep sharp wound starting from the right angle of the mandible to the middle of the neck and reaching to ½" short of laryngeal prominence, wound is 2½" deep at the angle of the mandible and tapering towards the middle of neck. C All underlying structures, nerves, arteries, veins are cut, laryngeal prominence is also fractured. Wound is 3" long and ½" broad."

According to Dr. Jain, the injuries on the bodies of Dhianu and Nanti had been caused with a heavy sharp weapon. The injuries were sufficient in the ordinary course of nature to cause death.

D The case of the prosecution is that the injuries to Dhianu and Nanti deceased were caused by the accused. The accused has, however, denied this allegation. In order to bring the charge home to the accused, the prosecution led evidence on a number of points. The High Court accepted the prosecution allegation in this respect and based its conclusion upon the following three pieces of evidence :

(1) The evidence of Parma Nand that the accused had E stayed with him on September 29, 1968 and had on the evening of that day proceeded towards the house of Dhianu deceased after he had been shown the way by Parma Nand.

(2) The confession of the accused contained in letter PD.

(3) The extra judicial confession made by the accused F to Sahi Ram incorported in letter PEEE.

We may first deal with the deposition of Parma Nand (PW 14). The deposition consists of three parts. The first part relates to the stay of the accused with Parma Nand at his shop in village Paliara on September 28 and 29, 1968 when some fish and liquor are stated to have been taken by the accused and Parma Nand. This part of the G deposition relates to an innocuous circumstance and hardly connects the accused with the crime. The second part of the deposition is to the effect that the accused on the evening of September 29, 1968 told Parma Nand that he had to go to the house of Dhianu and that Parma Nand showed at the instance of the accused the way which leads to the house of Dhianu at a distance of three or four miles from the shop of Parma Nand. We find it difficult to H accept this part of the deposition of Parma Nand. Parma Nand admits that he came to know of the murder of Dhianu and Nanti about four days after those persons were found to have been murdered. It would, therefore, follow that Parma Nand came to know of

the murder of Dhianu and Nanti on or about October 4, 1968. Had the accused left for the house of Dhianu deceased on the evening of September 29, and had Parma Nand PW come to know that Dhianu and Nanti were murdered in their house, this fact must have aroused the suspicion of Parma Nand regarding the complicity of the accused. Parma Nand, however, kept quiet in the matter and did not talk of it. The statement of Parma Nand was recorded by the police on December 11, 1968. If a witness professes to know about a gravely incriminating circumstance against a person accused of the offence of murder and the witness keeps silent for over two months regarding the said incriminating circumstance against the accused, his statement relating to the incriminating circumstance, in the absence of any cogent reason, is bound to lose most of its value. No cogent reason has been shown to us as to why Parma Nand kept quiet for over two months after coming to know of the murder of Dhianu and Nanti about the fact that the accused had left for the house of the deceased shortly before the murder. We are, therefore, not prepared to place any reliance upon the second part of the deposition of Parma Nand. The third part of the deposition of Parma Nand PW pertains to the shout of the accused from outside the shop of Parma Nand at about mid-night hour on the night of occurrence. This part of the deposition has not been accepted by the trial court and the High Court and we find no valid reason to take a different view.

Coming to the confession of the accused, which is alleged to be incorporated in letter PD, we find that the question which arises for consideration is whether the letter sent by the accused to the Deputy Commissioner contained confession about his having murdered Dhianu and Nanti. The fact that a registered letter purporting to be from the accused was received in the office of the Deputy Commissioner cannot be disputed. The controversy before us has, however, ranged on the point whether the letter contained any confession regarding the murder of Dhianu and Nanti by the accused or whether that portion of the letter has been subsequently inserted. In this respect we find that letter PD is on loose leaves. It is only the first leaf of the letter which bears the stamp of the office of the Deputy Commissioner, while the remaining leaves have not been stamped. In the circumstances, it was not difficult to replace or add some other leaves. According to PW Sundar Singh, who was working as postmaster at Kurag during the relevant days, the letter addressed by the accused to the Deputy Commissioner consisted of 18 or 19 pages. Letter PD produced at the trial consists of 22 pages. PW 21 Mehta, Superintendent of Deputy Commissioner's office, has deposed that on receipt of letter PD, he read that letter. An entry was then made in the diary that letter PD related to the subject of jail dispute. Had the letter addressed by the accused to the Deputy Commissioner contained confession about a double murder committed by the accused, it is difficult to believe that the Superintendent of Deputy Commissioner's office would have after reading the letter kept quiet and not brought it to the notice of the authorities concerned. The fact that no action was taken on the letter till it was taken into possession by the police on January 1,

A

1969 lends support to the contention that letter PD did not contain the confession. The portion of the letter relating to the confession is also somewhat incongruous with the entire tenor and context of the letter. The letter appears to have been sent by the accused to the Deputy Commissioner to show that after his release from jail in 1967, the accused had turned a new leaf and he wanted the Deputy Com-
B missioner to give him help and relief so that the accused might rehabilitate himself and support his family. It is not likely that a person asking for relief would make a confession that after his release from jail, he has committed two murders.

The circumstances in which the accused is stated to have got letter PD written from Kedar Nath (PW 2) are also rather peculiar.
C According to Kedar Nath, the accused compelled Kedar Nath at the point of gun to write that letter. The accused also told Kedar Nath not to disclose the contents of the letter to any one. It is not clear as to why the accused should ask Kedar Nath to keep the matter secret when he was himself, according to letter PD, making a confession about his having committed the crime of two murders. Apart from
D that, if Kedar Nath came to know on November 22, 1968 that the accused had committed the murder of Dhianu and Nanti, his failure to make any statement to the police till December 24, 1968 regarding the confession made by the accused to the witness would deprive his evidence of much of its value. We, therefore, find it difficult to act upon the confession incorporated in letter PD.

E The last piece of evidence upon which the High Court has maintained the conviction of the accused consists of the confession of the accused contained in letter PEEE sent by Sahi Ram (PW 4) to the Station House Officer Renuka. The first question which arises for consideration in respect of letter PEEE is whether it is admissible in evidence. Section 162 of the Code of Criminal Procedure reads as under :

F

> "162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence
> G under investigation at the time when such statement was made :
>
> Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permis-
> H sion of the Court, by the prosecution to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 and when any part of such statement is

so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of Section 32, clause (1) of the Indian Evidence Act, 1872, or to affect the provisions of Section 27 of that Act."

Bare perusal of the provision reproduced above makes it plain that the statement made by any person to a police officer in the course of an investigation cannot be used for any purpose except for the purpose of contradicting a witness, as mentioned in the proviso to sub-section (1), or for the purposes mentioned in sub-section (2) with which we are not concerned in the present case. The prohibition contained in the section relates to all statements made during the course of an investigation. Letter PEEE which was addressed by Sahi Ram to Station House Officer was in the nature of narration of what, according to Sahi Ram, he had been told by the accused. Such a letter, in our opinion, would constitute statement for the purpose of section 162 of the Code of Criminal Procedure. The prohibition relating to the use of a statement made to a police officer during the course of an investigation cannot be set at naught by the police officer not himself recording the statement of a person but having it in the form of a communication addressed by the person concerned to the police officer. If a statement made by a person to a police officer in the course of an investigation is inadmissible, except for the purposes mentioned in section 162, the same would be true of a letter containing narration of facts addressed by a person to a police officer during the course of an investigation. It is not permissible to circumvent the prohibition contained in section 162 by the investigating officer obtain a written statement of a person instead of the investigating officer himself recording that statement.

It has been argued by Mr. Khanna on behalf of the State that at the time letter PEEE was addressed by Sahi Ram to the police, no investigation had been made by the police against the accused and, as such, the aforesaid letter cannot be held to be inadmissible. This contention, in our opinion, is wholly devoid of force. The restriction placed by section 162 on the use of statement made during the course of investigation is in general terms. There is nothing in the section to show that the investigation must relate to any particular accused before a statement to the police pertaining to that accused can be held to be inadmissible.

Reference has been made by Mr. Khanna to the case of *Sita Ram* v. *State of Uttar Pradesh*(1) wherein it was held by majority that a letter addressed by the accused to a sub-inspector of police containing his confession was not inadmissible under section 25 of the Indian Evidence Act. There is nothing in the aforesaid judgment to show that the letter in question had been written during the course of the

(1) [1966] Supp. S. C. R. 265.

A investigation of the case. As such, this Court in that case did not consider the question as to whether the letter in question was inadmissible under section 162 of the Code of Criminal Procedure. As such, the State cannot derive much help from that authority.

We would, therefore, hold that letter PEEE is inadmissible in evidence.

B Although letter PEEE has been held by us to be inadmissible, we would still have to deal with the oral deposition of Sahi Ram that the accused had made a confession to him on November 28, 1968. The version of the accused in this respect is that Sahi Ram is inimical to him as he had a dispute with him because of some misappropriation committed by Sahi Ram in connection with the smuggling of opium. C According to Sahi Ram, he happened to meet the accused on November 28, 1968 when the accused made a confession to him about his having committed the murder of Dhianu and Nanti. The story about the gratuitious confession made by the accused to Sahi Ram, in our opinion, hardly inspires confidence. It is not the case of the prosecution that the police was after the accused and that the accused in that connection went to Sahi Ram to seek his help and made a confession D to him. Sahi Ram is the son of a village lambardar. It has been argued on behalf of the accused-appellant that the police, with a view to see that the crime relating to the murder of Dhianu and Nanti might not remain untraced, utilised the services of Sahi Ram for bringing in the evidence regarding the extra-judicial confession of the accused. Looking to all the circumstances we find this contention to be not devoid of all force. Mr. Khanna submits that both the trial E court and the High Court have accepted the evidence of Sahi Ram and we should not interfere with the concurrent finding in this respect. We find it difficult to accede to this submission because we find that both the trial court as well as the High Court were influenced by the fact that Ex. PEEE was admissible in evidence. As letter PEEE has been held by us to be not admissible and as we find that the statement of Sahi Ram about the extra-judicial confession is F otherwise also lacking in credence, there should not arise any difficulty in this Court disaggreeing with the above finding of the trial court and the High Court.

Mr. Khanna on behalf of the State has also tried to assail the finding of the High Court regarding the possession of silver ornaments of the two deceased persons by the accused. In our opinion, the find- G ing of the High Court in this respect is based upon the appraisement of the evidence on record and there is no valid ground to disturb it.

Observations in a recent decision of this Court, *Shivaji Sahabrao Bobade & Anr.* v. *State of Maharashtra*(1) to which reference has been made during arguments were not intended to make a departure from the rule of the presumption of innocence of the accused and his entitle- H ment to the benefit of reasonable doubt in criminal cases. One of the cardinal principles which has always to be kept in view in our system

(1) Cr. App. Ho. 26 of 1970, decided on August 27, 1973

of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal.

Leaving aside the cases of statutory presumptions, the onus is upon the prosecution to prove the different ingredients of the offence and unless it discharges that onus, the prosecution cannot succeed. The court may, of course, presume, as mentioned in section 114 of the Indian Evidence Act, the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. The illustrations mentioned in that section, though taken from different spheres of human activity, are not exhaustive. They are based upon human experience and have to be applied in the context of the facts of each case. The illustrations are merely examples of circumstances in which certain presumptions may be made. Other presumptions of a similar kind in similar circumstances can be made under the provisions of the section itself. Whether or not a presumption can be drawn under the section in a particular case depends ultimately upon the facts and circumstances of each case. No hard and fast rule can be laid down. Human behaviour is so complex that room must be left for play in the joints. It is not possible to formulate a series of exact propositions and confine human behaviour within straitjackets. The raw material here is far too complex to be susceptible of precise and exact propositions for exactness here is a fake.

Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the

court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable : it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of *State of Punjab* v. *Jagir Singh*,(1) a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is *ex facie* trustworthy on grounds which are fanciful or in the nature of conjectures.

It needs all the same to be re-emphasised that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from the accused. The courts would not be justified in withholding that benefit because the acquittal might have an impact upon the law and order situation or create adverse reaction in society or amongst those members of the society who believe the accused to be guilty. The guilt of the accused has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record. Indeed, the courts have hardly any other yardstick or material to adjudge the guilt of the person arraigned as accused. Reference is sometimes made to the clash of public interest and that of the individual accused. The conflict in this respect, in our opinion, is more apparent than real. As observed on page 3 of the book entitled "The Accused" by J.A. Coutts 1966 Edition, "When once it is realised, however, that the public interest is limited to the conviction, not of the guilty, but of those proved guilty, so that the function of the prosecutor is limited to securing the conviction only of those who can legitimately be proved guilty, the clash of interest is seen to operate only within a very narrow limit, namely, where the evidence is such that the guilt of the accused should be established. In the case of an accused who is innocent, or whose guilt cannot be proved, the public interest and the interest of the accused alike require an acquittal."

It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more

(1) Cr. App. 7 of 1972 decided on August 6, 1973

serious and its reverberations cannot but be felt in a civilized society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expidation. Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether. It may in this connection be apposite to refer to the following observations of Sir Carleton Allen quoted on page 157 of "The Proof of Guilt" by Glanville Williams, Second Edition :

> "I dare say some sentimentalists would assent to the proposition that it is better that a thousand, or even a million, guilty persons should escape than that one innocent person should suffer; but no responsible and practical person would accept such a view. For it is obvious that if our ratio is extended indefinitely, there comes a point when the whole system of justice has broken down and society is in a state of chaos."

The fact that there has to be clear evidence of the guilt of the accused and that in the absence of that it is not possible to record a finding of his guilt was stressed by this Court in the case of *Shivaji Sahabrao Bobade & Anr.* (supra) as is clear from the following observations :

> "Certainly it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distinction between 'may be' and 'must be' is long and divides vague conjectures from sure considerations."

As a result of the above, we accept the appeal, set aside the judgments of the trial court and the High Court and acquit the accused.

P.B.R. *Appeal allowed.*