

The State Vs. Mohanlal and anr.

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Court : Rajasthan

Decided On : Apr-11-1955

Reported in : AIR1958Raj338; 1958CriLJ1540

Judge : D.S. Dave and; I.N. Modi, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 423; [Evidence Act, 1872](#) - Sections 3, 30 and 114; [Indian Penal Code \(IPC\), 1860](#) - Sections 201, 300 and 302

Appeal No. : Criminal Appeal Nos. 103 and 117 of 1953 and 63 of 1954

Appellant : The State

Respondent : Mohanlal and anr.

Advocate for Pet/Ap. : Ramrakh, Amicus curiae for Munnalal,; Vishinlal, Adv. for Appellant (Mohanlal) and;

Judgement :

I.N. Modi, J.

1. These are three appeals and are directed against a judgment of the Sessions Judge, Pali, by which he acquitted Munnalal and Mohanlal under Section 302 I. P. C. and certain other offences, and convicted Munnalal under Sections 411 & 201, I. P. C. and Mohanlal I under Section 411 and sentenced them to various terms of

rigorous imprisonment and fine. Appeal No. 103 of 1953 has been filed by Munnalal from Jail, appeal No. 117 of 1953 by Mohanlal through counsel against their convictions and sentences; and appeal No. 63 has been filed by the State and the contention is that the trial Judge should have convicted both the accused under Section 302 and not acquitted them thereunder. As all the appeals arise out of the same trial we propose to decide them by one judgment.

2. The material facts are these. The deceased Bhallaram as also his wife Mst. Godawari are alleged to have been murdered on the night between the 2nd and the 3rd August, 1951. They lived in a house in the town of Pali. Bhallaram was a man of substance and did money-lending business on the security of gold and silver ornaments. The accused Munnalal lived in the same house as that of Bhallaram but in the lower storey thereof, and carried on business of polishing gold and silver ornaments. The accused Mohanlal -- a tailor -- carried on a tailoring shop nearby, opposite to Bhallaram's house.

It is said that there was a staircase connecting the shop of Munnalal with the living apartments of Bhallaram, closed by a wooden plank which could be pushed aside without difficulty. The prosecution case is that on the night between the 2nd and the 3rd August, 1951, Munnalal and Mohanlal stabbed Bhallaram and his wife with a knife or a dasher, and broke open his boxes etc. and took away gold and silver ornaments and gold mohars and cash worth about Rs. 28,000/-. It is said that in the early morning of the 3rd August, 1951, both of them went to one Nyaria Usman P. W. 21 and asked him to melt some silver ornaments.

As Usman said that that would take a few hours and as the accused were in a hurry, they said that they would sell them rather than waste time, and thereupon Usman purchased some of these ornaments for a sum of Rs. 1400/-. As Usman had not all the money with himself, he raised part of it by pledging some of these ornaments with one Paharsingh, Munim of Lakmi Chand. It was then settled between the accused that Munnalal should proceed to Palanpur, and Mohanlal is said to have hired a tonga of one Gani P. W. 23 for the purpose and Munnalal left Pali by the morning train at about 10 a. m. Mohanlal remained behind and was to follow and meet Munnalal at the Marwar Jn. Railway Station. Munnalal thereafter

changed his mind and instead of waiting for Mohanlal, proceeded to Bombay. He reached Bombay Central Station at about 7 a. m. on 4-8-1951.

As he was alighting at the station, he created some suspicion in the mind of constable Onkar Vaman P. W. 2 who belonged to the Bombay Central Police Station and was on duty. Onkar Vaman interrogated Munnalal and his suspicions were confirmed. He looked into the bag which Munnalal was carrying. Munnalal lost his nerve and offered to bribe Vaman, and this left no doubt in Vaman's mind that the former was carrying stolen property. Vaman thereupon took him to his superior officer Sub-Inspector Nikam P. W. 1, and made a report Ex. P. 37 which is the real first information report. It was found that Munnalal was carrying on his person and in the bag ornaments of the value of Rs. 21,500/- approximately, and from certain disclosures made by him, it appeared that he and his friend Mohanlal, the other accused, had committed house breaking with, respect to the house of one Bhallaram son of Nathaji of Pali and they Bhallaram and his wife had also been murdered by them. Munnalal further promised to point out the house at Pali in which the dead bodies lay.

Thereupon Sub Inspector Nikam started for Pali. On arrival there on the evening of 5-8-1951, he immediately contacted the police officers at Pali and lodged a report Ex. P-47 in the police station Pali at 10 P. M. which has been treated as the first information report, and it is said that Munnalal took them, to the deceased Bhallaram's house, and there the lock of the house was broken open and the dead bodies of Bhallaram and his wife Godavari were found in a room on the first floor, which was also locked.

The corpses were highly decomposed and bore stabbed wounds on the stomach. Mohanlal was arrested, and certain recoveries, which are not of a very material character, were made from him. The dead bodies of Bhallaram and his wife were subjected to a post-mortem examination by Dr. Ramesh Chandra P. W. 10, and he was of the opinion that both of them had received a number of stab wounds in their stomachs and the injuries must have caused instantaneous death. On 18-8-1951, Mohanlal made a confession before the Sub-Divisional Magistrate, Pali to the effect that he and Munnalal had murdered Bhallaram and his wife, and

removed all the gold and silver jewellery and cash and currency notes and that Munnalal had given him only Rs. 350/- and taken away the rest himself.

On 21-8-1951, Munnalal also made a confession before the same Magistrate. In this confession he stated that on the night of 2-8-1951, Mohan had come to his shop and he woke him (Munnalal) up. Mohanlal said that he had murdered Bhallaram and his wife and that he had removed all his jewellery etc. but Munnalal should not say anything about that to any one and Mohan would give him half of what he had stolen. The day dawned shortly afterwards, and they both went to Nyaria Usman and sold 900 tolas of silver for Rs. 1400/-.

Munnalal admits to have taken this sum and then they went to Mohan's shop and the latter brought a tonga. He left for the station but Mohan did not come. Mohan had given him all the ornaments and said that he should proceed to Palanpur and dispose of them there and give half of the sale proceeds to Mohan. Munnalal then says that he was seized by greed and instead of going to Palanpur he proceeded to Bombay.

He further states that as soon as he was getting down at the Bombay station, he was arrested by the police and he gave out the whole story. He finally said that as he was under the influence of greed he did not disclose the fact of murder to anyone. In due course the police challaned both accused in the court of the Sub Divisional Magistrate, Pali, under Sections 457, 392, 397 and 302 and 201, I. P. C., by whom the accused were committed to the court of the Sessions Judge, Pali. The learned Sessions Judge has acquitted both of them under Section 302, I. P. C. and convicted them as already stated above.

3. Munnalal's defence is on the same lines as disclosed in his confession dated 21-8-1951. He admits to have been living as a tenant in Bhallaram's shop on Rs. 10/- p. m. and also that there was a staircase leading to Bhallaram's from that shop. He, however, denied to have taken any part in the murder of Bhallaram and his wife and laid the entire blame on Mohanlal's shoulders. He further admits that he and Mohan went to Usman early next morning, although here again he desires it to be believed that it was Mohan who took him there. They had received a sum of Rs. 1400/- in lieu of the silver ornaments sold to Usman, and Munnalal admits

that Mohan had given the entire sum to him. Mohan further gave gold ornaments to Munnalal so that the latter might dispose of them and they might share the sale proceeds. This accused pretends to have protested when Mohan told him that he had secured the ornaments by murdering Bhallaram and his wife and to have gone to the length of throwing away the ornaments delivered to him. Thereupon he says that Mohan told him to be patient and that he was also following him whereupon he boarded the tonga which Mohan had brought for him and left Pali by the 10 O' clock train. Munnalal then further admits that instead of proceeding to Palanpur as arranged between him and Mohanlal, he proceeded to Bombay, and then confirms all what has been alleged by the prosecution except that he denies that he ever told the Sub Inspector of the Bombay Police that he knew where the dead bodies were lying or that he had given discovery thereof. So far as Mohan is concerned, he has denied his complicity in the crime and he has categorically stated that he had nothing to do with it. As regards the recovery of Rs. 382/-made from his house, his case is that it was his own money. Another recovery made from him was a gold 'Bore' (Head ornament) and his defence was also that it belonged to his wife. He further denied to have produced any dagger as alleged by the prosecution. Finally he contended that the police had extracted a confession from him by torture and undue pressure and that that was not a true statement at all.

4. The prosecution produced forty-two witnesses in all to prove their case. The learned Sessions Judge has come to the conclusion that this evidence was not sufficient to bring the guilt home to either of the accused so far as Section 302, I. P. C. was concerned. It has been strenuously contended before us on behalf of the State that the learned trial Judge has failed to attach due importance to certain important factors in the case and that if he had done so he would not have come to the conclusion to which he did so far as the accused Munnalal was concerned. We may at once point out here that the learned Deputy Government Advocate did not seriously press this appeal with respect to the acquittal of Mohanlal under Section 302. It has been, on the other hand, contended that the convictions of both the appellants are entirely wrong and that they should be acquitted. In these circumstances we propose to address ourselves to the appeal by the State first.

5. There is no doubt whatsoever that so far as Munnalal is concerned, he was clearly found in possession of a good deal of valuable property belonging to the deceased Bhallaram and his wife when he was arrested by the Bombay police on the morning of 4-8-1951. Munnalal himself has admitted this recovery, and if any independent proof in that connection were necessary, the evidence of P. W. 1 Nikam, P. W. 2 Onkar Vaman and P. W. 3 Karbari, a Motbir, in whose presence the recoveries were made at Bombay furnishes more than ample proof in that regard. Then there is the confession of Munnalal, and that has never been retracted by him, as the learned Sessions Judge seems to have wrongly supposed, which supports the factum of recovery.

It also appears from this confession that Munnalal knew that the property belonged to Bhallaram. Apart from that there is overwhelming evidence on the record (which has not at all been questioned before us) coming forth from the owners of the various pieces of jewellery which shows that these belonged to them and they identified them to be their property and which they stated they had pawned with the deceased Bhallaram. These goods form the bulk of the property recovered from Munnalal (See the statements of P. Ws. 11, 19, 27, 28, 29, 33, 34, 38, 39, 40 and 41).

Therefore, the connection of the property with Bhallaram is fully established and admits of no doubt or dispute whatsoever, Munnalal's case, however, is that he got the property from Mohanlal and that it was Mohanlal who had murdered Bhallaram and his wife and removed all the jewellery and cash and notes etc. and passed them on to him and that he himself had no hand in their murder. Now, admittedly there is no direct evidence connecting Munnalal with the murder of the deceased. The question, however, is whether the circumstantial evidence produced in the case is of such a type that it is possible to come to the conclusion beyond all mariner of doubt that he is the murderer. We are quite mindful of the fact that the trial court has come to the conclusion that the evidence led by the prosecution in the case is not of a character on the basis whereof Munnalal could be held guilty of murder.

The initial presumption of innocence, therefore, stands reinforced. At the same time, we must point out that there is nothing to prevent us in law from convicting the accused for murder if upon a careful review of such evidence as has been led in the case we are able to come to the conclusion that the crime with which this accused stands charged is explicable on the hypothesis of his guilt and in no other reasonable manner. (See *Sheo Swamp v. Emperor*, AIR 1934 PC 227 (2) (A) and *Prandas v. State*, AIR 1954 SC 36CB)). Bearing these principles in mind, we find it impossible to accept Munnalal's explanation that assuming that Mohanlal was a murderer and had stolen away the property of Bhallaram, he should have entrusted it all to Munnalal in the manner in which he has alleged to have done.

Munnalal's confession, to our mind, is partially true and does not disclose the whole truth. He seems to have taken good care to have said just as much as, according to his estimate of things, would explain his possession of property belonging to Bhallaram, but no more, and it is here that he seems to have indulged in falsehoods. Munnalal has been living in the same house as that of Bhallaram. There is a way leading from Munnalal's shop to Bhallaram's apartments. The crime was committed in the night under conditions of secrecy. Bhallaram must have slept after bolting the door of his house and could not have left it open, and there was an easy passage to his apartments from the way leading through Munnalal's shop. We must also bear in mind that Bhallaram's house was locked from outside and so also was the entrance to Munnalal's shop when the police came on the spot on 5-8-1951.

It is also admitted by Munnalal that out of the property which he received from Mohanlal and which belonged to Bhallaram, Munnalal (In company with (Mohanlal)) went to sell a part of it to Nyaria Usman. It is that the silver ornaments sold to Usman were melted into silver and, therefore, they could not be identified in that shape to belong to Bhallaram; nevertheless Munnalal's own admission in this connection appears to us to make any proof of identification unnecessary so far as he is concerned. Then, Munnalal leaves Pali on the 3rd August and is arrested at Bombay on the 4th morning.

He had jewellery belonging to Bhallaram in his possession at the time of his arrest. When we consider all these facts and circumstances along with the recovery of jewellery belonging to Bhallaram being found in possession of Munnalal almost immediately after his murder, it is impossible to come to any other conclusion than that of his complicity in the murder. The learned Sessions Judge has himself held this recovery fully established against Munnalal; but what he seems to have missed, in our opinion, is the time factor between the death of Bhallaram and the recovery of the jewellery, and it is this failure to appreciate the time factor in its correct perspective which appears to us to have led to a grave failure of justice in the present case.

The case would have certainly assumed a different aspect if the jewellery found in the possession of Munnalal were recovered from him after some delay, and in that case the recovery would have been doubtful as any evidence of murder. But it is highly remarkable in the present case that soon after Bhallaram's murder, a huge quantity of jewellery belonging to him is found in the possession of Munnalal. The lower court has indeed come to the conclusion that the latter was a receiver of the stolen property; but that, in our opinion, is not the correct conclusion to which the facts unmistakably point. Munnalal in these circumstances must explain how he came by Bhallaram's property. An explanation has been given by him, namely, that he got it from Mohanlal.

But that explanation carries not the slightest conviction with us. As already pointed out by us, the story that Mohanlal committed the murder and stole the jewellery and thereafter let it go out of his hands in the manner Munnalal would have us believe seems to us to be altogether fantastic.

In these circumstances, a strong presumption under Section 114, Illustration (a) of the Evidence Act arises. It is well settled that in cases where murder and robbery form part of a transaction, recent and inexplicable possession of stolen property, while it would be presumptive evidence on a charge of theft Or robbery or of receiving stolen property, would similarly be evidence on a charge of murder (See *Ramprashad Makundram v. The Crown*, AIR 1949 Nag 277 (C). In re *Venkataswami*, AIR 1950 Mad 309 (D), *Emperor v. Mayadhar Pothal*, AIR 1939

Pat 577 (E)). Thus in *Tulsiram v. State*, AIR 1954 SC 1 (F), Kania C. J. laid down that

'If ornaments or things of the deceased are found in the possession of a person soon after the murder, a presumption of guilt may be permitted. But if several months expire in the interval, the presumption may not be permitted to be drawn having regard to the circumstances of the case'.

Again in *Sunderlal v. State of M. P.*, AIR 1954 SC 28 (G), the facts were that both the accused and the deceased were seen together shortly before the murder. Immediately after the murder, the accused went to a dealer with gold half 'Mohar' and certain silver ornaments and offered to sell them to him. The dealer accepted the pledge in respect of the ornaments but did not purchase the gold 'Mohar'. The accused then went to a goldsmith and sold the Mohar to him, which was melted by the goldsmith into a gold bar. The silver ornaments were identified as those which were habitually worn by the deceased. It was held that as the ornaments were established to be the ornaments worn by the deceased, and the accused was not in a position to give any satisfactory explanation as to how he came to be in possession of the same on the very same day on which the alleged murder was committed, the circumstantial evidence was sufficient to hold the accused responsible for the murder of the deceased. The facts of the case in hand are more or less similar to the case cited.

Yet another case to which we may refer, with respect, is *Ram Bharose v. State of U. P.*, AIR 1954 SC 704 (H). Their Lordships of the Supreme Court distinguished an earlier case (*Criminal Appeal No. 99 of 1952 (SC)(I)*) and observed that the appellant had disappeared from his house even before 7-30 a. m. and when he was brought back under arrest, he produced the articles from the bhusha kothri and, therefore, he should have got possession of the articles before he left the house and as the inquests were made shortly after dawn, it was difficult to accept the view contended for by the appellant that he might have been merely a receiver of the stolen property.

The law seems to us, therefore, to be well settled at this date that where murder and robbery are proved to have been integral parts of a certain transaction, the

presumption that can be drawn from the possession of the property may, consistent with all the facts proved in the case, be that the person to whom such possession was traced not only committed the theft thereof but also committed the murder which forms part of the same transaction as theft.

It must of course be established that, before any such presumption can be drawn, the primary thing to be proved is that the accused had no satisfactory explanation to offer for his possession of such jewellery, and it may further be pointed out that where the accused offers an explanation the burden of proving the truth of that explanation affirmatively does not rest on the accused and the burden still rests on the Prosecution to prove that the explanation is not true.

We are of opinion that the explanation furnished by the accused of his possession of the deceased's jewellery is palpably false and, therefore, in our opinion, in view of the surrounding circumstances of the case, the correct conclusion to come to is not merely that the accused was guilty of receiving the stolen property but that he was the murderer.

6. The conclusion at which we have arrived above is, in our opinion, further supported by the circumstances that the dead bodies of Bhallaram and his wife were discovered in consequence of the information furnished to Nikam Sub Inspector of Police, Bombay, by Munnalal himself. The finding arrived at by the learned Sessions Judge in this connection is that the fact of recovery of the dead bodies is not inadmissible against the accused Munnalal. We are not quite clear as to what the learned Judge means by this; but apparently we take it that he was not prepared to disbelieve the prosecution version that the recovery of the corpses was proved to have been made at the instance of the accused Munnalal.

It is unfortunate that there is no specific reference to the statement made by Munnalal Ex. P-46 in P. W. Nikam's deposition in court. We may point out here that a good deal of what was recorded in Ex. P-46 is inadmissible but, leaving that apart, a certain portion thereof would have been perfectly admissible as indicating the information relating to the discovery of the dead bodies in Pali. Even if we leave Ex. P-46 out of consideration, we find that in Ex. P-47 the so-called first information report, Nikam stated that Munnalal promised to point out the house in

which the dead bodies were lying and that, therefore, he went to Pali with the accused in custody and broke open the locks of the house pointed out by Munnalal with the help of the Pali Police.

He further stated that the house was situate near Gol Nimbra on the main road and that after going up-stairs, they found two bodies one of a male and the other of a female lying in one room. When this witness was examined at the trial, he proved Ex. P-47 and he further stated that the dead bodies were recovered upon the information given by the accused Munnalal. Reading Ex. P-47 and the deposition of this witness together, we have no hesitation in coming to the conclusion that the information given by Munnalal as to the whereabouts of the dead bodies was perfectly admissible against him when the same were round subsequently in Bhallaram's house as pointed out by Munnalal.

It was contended before us that the learned Sessions Judge was not right when he states in his judgment that the dead bodies were recovered after the arrival of the Motbirs and not before. Assuming that to be so, we are of opinion that nothing turns on this factor in the circumstances of the case. This accused had been arrested at Bombay under suspicious circumstances. He had disclosed the name of Bhalla Bam Nathaji of Pali at Bombay as the copy of the Station diary (Ex. P. 38) of the Central Railway Police Station Bombay, dated 4th August, 1951, would show.

It was that information which led the Sub Inspector of Police Nikam to come down from Bombay to Pali. In Ex. P. 47 he has stated that Munnalal offered to point out the house in which the dead bodies were lying, and this house and the dead bodies were subsequently pointed out by Munnalal. We see no reason whatsoever to doubt the testimony of Sub-Inspector Nikam on this point as obviously the Bombay Police could have possibly no animus or ill-will against the accused and, if the testimony of this officer is believed, as it should be, there is no doubt that the discovery of the dead bodies of Bhallaram and his wife was made by Munnalal.

What is of importance to bear in mind in this connection is that Munnalal should have known where the dead bodies of Bhallaram and his wife lay, and this, to our mind, is a strong factor which further strengthens us in coming to the conclusion at

which we have arrived on the strength of the recovery of a large quantity of jewellery belonging to Bhallaram from the personal possession of Munna Lal. In view of the facts and circumstances narrated above, we hold that this appeal must be allowed and the accused Munnalal held guilty of an offence under Section 302, I. P. C. So far as the sentence is concerned, as considerable time has elapsed between the commission of the murder and his conviction for if we think that it would meet the ends of justice if the lesser penalty is awarded to him.

So far as the other accused Mohanlal is concerned, we consider it sufficient to state that his acquittal under Section 302, I. P. C. by the trial court was quite proper. There is no material before us which goes to connect this accused with the murder of Bhallaram and his wife beyond all reasonable doubt, No recoveries of any importance were made from him, and further all evidence tending to show the discovery of the dead bodies by Mohanlal must be rejected because what had already been discovered at the instance of Munnalal could not have been further discovered at the instance of this accused.

The only other piece of evidence against him is his retracted confession. Learned Deputy Government Advocate has stated before us that he did not intend to rely on it, and having considered all the circumstances relating to it, we are of opinion that no reliance could properly be placed on it. In these circumstances, we uphold the acquittal of Mohanlal under Section 302, I. P. C. This disposes of the appeal by the State.

7. We next come to Munnalal's appeal. In view of the conclusions at which we have arrived above, this appeal fails in substance. We must point out, however, that as we have held Munnalal to be guilty of the substantive offence of murder under Section 302, I. P. C. his conviction under Section 201 I. P. C. cannot, in our opinion, be sustained in law. It is sufficient for us to mention that murderer by removing a dead body from a place of murder to another place cannot be held to screen himself as the person to be screened must be somebody else than the offender within the meaning of Section 201 I. P. C. It follows that Munnalal's conviction under this section must be annulled.

8. As there is no appeal before us in respect of Munna Lal's conviction under Section 411 I. P. C. by the State, nor has it been questioned on his behalf, we consider it unnecessary in the circumstances of the case to go into the question whether his conviction under Section 411 is correct.

9. It remains for us now to consider appeal No. 117 of 1953 by Mohanlal. He has been held guilty as a receiver of the stolen property under Section 411, I. P. C. The learned trial judge has considered seven piecas of evidence to convict this accused and we shall briefly deal with each one of them. The first is Mohanlal's confession under Section 164, Cr. P. C. We have already held above that this is inadmissible in evidence. This must, therefore, be excluded from consideration altogether. The next piece of evidence according to the learned trial Judge, is Munnalal's confession in so far as it implicates this accused.

This, in our opinion, cannot be evidence as such, although the court may 'take into consideration' such confession against him; and, at any rate, no conviction cart be founded upon it unless there is indepenent evidence to corroborate it. As we have already pointed out above while dealing with the appeal of Munnalal, his confession does not contain the whole truth and there are obvious traces therein of exculpating his own conduct and incriminating Mohanlal.

If therefore, as the learned Sessions Judge has stated in his judgment, there is no other reliable evidence connecting Mohan Lal with the crime with which he stands charged then we are of Opinion that it would be highly unsafe to hold him guilty on the basis of such material alone; for the rule is firmly established at this date that the confession of a co-accused uncorroborated by any other evidence cannot be alone sufficient to sustain a conviction, and although this is not a rule of law but of practice, it has acquired all the reverence of law, and this should be all the more so in a case like the present where the confessing accused does not implicate himself as fully and substantially as he does his co-accused. (See *Dr. Jainand v. Rex*, AIR 1949 All 291 (J) and *In re Malayara Seethu*, AIR 1955 Mys 27 (K)). We must, therefore, see whether there is any independent evidence o the guilt of this accused apart from Munnalal's confession.

If there is such evidence, then we may be justified in throwing into the scale the confession of the co-accused as an additional reason for believing that evidence; but if there is no such evidence, then it will not be right to found a conviction on such material by itself. The third piece of evidence against this accused is the recovery of a gold 'Bor' from his house.

We wholly agree with the reasons given by the learned Sessions Judge that this recovery is of little importance, and we do not consider it necessary to reiterate the reasons which induced him to come to that conclusion. We consider it enough to say that the Bor in question is not proved to be the stolen property and, therefore, nothing turns on this item of evidence at all. Similarly, nothing turns on the recovery of ash from the house of Mohanlal who was a tailor, and the presence of ash therein cannot have any significance. The next item is the recovery of certain cash from the house of Mohan Lal.

This also is of no consequence because it is impossible to identify coins as being part of the stolen property. Then there is the evidence of P. W. 23 Gani Tongawala who states that the accused Mohan came to hire his tonga and that he took Mohanlal and Munnalal to the Pali Railway Station about two years ago. Such evidence, in our opinion, is of too vague and insignificant a character on which to found the guilt of the accused. The next item is the evidence of P. W. 12 Lalchand, P. W. 16 Umed Singh and certain other witnesses who said that the relations of Munnalal and Mohanlal were friendly.

The same remarks more or less apply to this piece of evidence as to the previous one. Lastly, we may refer to the evidence of P. W. 21 Usman who says that Mohanlal and Munna Lal had come to him on the morning of 3-8-1951, to have certain silver ornaments converted into silver bars. The suggestion is that these ornaments were stolen from the house of Bhallaram and some of this melted silver was recovered from certain persons to whom Usman is alleged to have sold it. The difficulty about this evidence, however, is that there is precious little on this record to connect the melted silver with the stolen ornaments.

In these circumstances the learned Sessions Judge has relied on Munnaial's confessional statement alone to convict Mohan under Section 411. We are,

however, of opinion that in doing so, the learned Sessions Judge has fallen into an error because in view of the principles already referred to above, it would not be safe to found the conviction of Mohan on the confessional statement of Munnaial alone without independent corroborative evidence, particularly because Munnaial's statement bears obvious traces of manufactured version.

We, therefore, hold that the conviction of Mohanlal under Section 411, I. P. C. cannot be sustained on the material which exists on this record. We may add that the case of Mohanlal in connection with this crime is not free from suspicion, but suspicion howsoever strong cannot be made a substitute for proof. We, therefore, allow his appeal and acquit him. He is on bail and need not surrender to his bail bond.

10. The net result is that we partially allow the appeal of the State, and convict Munnaial under Section 302 I. P. C. and sentence him to transportation for life. We allow Munnaial's appeal in part and set aside his conviction and sentence under Section 201 I. P. C. We further allow the appeal of Mohanlal and acquit him and he need not surrender to his bail bond. The rest of the judgment under appeal remains intact, and we hereby affirm it.

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