
(2013) 06 BOM CK 0119
In the Bombay High Court
Case No : Criminal Appeal No. 1324 of 2007

Dashrath Dada Salunkhe

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-06-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2013) 4 ABR 1001 : (2013) ALLMR(Cri) 2798 : (2013) 3 BomCR(Cri) 607

Hon'ble Judges : V.K. Tahilramani, J;P.D. Kode, J

Bench : Division Bench

Advocate : Rahul S. Kate holding for . Pankaj Deokar, for the Appellant; P.S. Hingorani, Learned APP, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Kode, J.—The appeal is directed against the judgment and order dated 20th January, 2007 passed by the learned Additional Sessions Judge, Malashiras, convicting the appellant for committing murder of his wife-Vimal @ Anita on 28th July, 2005 and for causing disappearance of the evidence of said offence for screening himself from the legal punishment. By the said judgment, the appellant was sentenced to suffer imprisonment for life and to pay a fine of Rs. 1,000/-, and in default of payment of fine, to suffer R.I. for one month for the offence of murder and was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-, and in default of payment of fine, to suffer R.I. for one month for the offence u/s 201 of Indian Penal Code. The learned Judge also ordered running of substantive sentences of imprisonment concurrently. According to the prosecution, Vimal, the daughter of first informant PW-5 Sampat and PW-7 Sushila Gaikwad residents of Village Gursale, had married appellant about 13 years prior to 2005. The couple residing at Mandve had two daughters namely PW-1 Tejshri @ Jija of age 11 years, Komal of age 7 years and one son Suraj of age 9 years.

1.1 The appellant since 2-3 years prior to 2005 started harassing and assaulting Vimal by suspecting of Vimal having illicit relations with PW-6 Dhanaji Salunkhe. He drove her out of house. Vimal returned to village Gursale and informed such happenings to her parents and brother-in-law Kailash Tawade. They convinced and sent her back to matrimonial home.

1.2 About a year prior to incident in-question, the appellant assaulted Vimal and by threatening to kill drove her out of house. Vimal alongwith children returned and stayed at the house of PW5. PW-5 took her to Natepute Police Station and lodged the complaint. The appellant was arrested. Vimal also filed an application with PW-9 PSI Minakshi Pethe attached to District Women Atrocities Prevention Cell, Solapur. The appellant was summoned for reconciliation. After conciliation as recorded in Exh.41, Vimal returned to the house of the appellant for a period of four months. Complainant PW-5 during the said period visited her on 5-6 occasions. Vimal then reported that there was no change in behaviour of the appellant and he continued to ill-treat and harass her by suspecting her chastity. PW-5 tried to convince the appellant, but he failed to change his behaviour.

1.3 On Thursday, i.e., 28th July, 2005, a phone call was received by PW-5 from his brother-in-law Ramdas Salunkhe at the house of his cousin Gulab M. Gaikwad that Vimal has abandoned the house in midnight at about 1.00 a.m. and her whereabouts were not known. PW-5 alongwith his brother-in-law Kailash Taware rushed to the house of Vimal. The appellant, his brother Nana and grandchildren were at the house. On inquiry, the appellant told that Vimal left at about 1.00 a.m. and he was searching her. PW-5, after making search for Vimal with his relatives at different places, returned to the house of the appellant. PW-5 apprised him that Vimal was not found inspite of search made at all places, and hence, the appellant should disclose the truth.

1.4 Thereon at about 20.00 hours, the appellant disclosed them that as behaviour of Vimal was not proper and she was not bothering for him and was having illicit relationship, he killed her in midnight at 1.00 a.m. by throttling her neck, nose and mouth and threw her corpse in the Well of Maruti Salunkhe.

1.5 PW-5 alongwith relatives accompanying him rushed at said Well. PW-5 with the assistance of the persons tried to locate Vimal in well which was full of water by means of branches of tree in torch light. In said process, her corpse came up due to entangling of her saree with branches of tree used for locating it. Manohar Gaikwad and Ashok Sawant took out her corpse and kept it by the side of Well.

1.6 PW-5 immediately, i.e., on 29th July, 2005 at about 6.15 hours lodged the complaint Exh.25 with Nate-Pute Police Station against the appellant for murdering Vimal upon suspicion of her character and for throwing her corpse in the well situated in the field of Maruti Salunkhe. PHC Shri Kokate on Station House duty registered the Crime No. 47 of 2005 against the appellant for the offence under Sections 302 and 201 of I.P.C.

1.7 PW-10 API Arun Sawant carrying the investigation drew spot panchanama,

inquest panchanama, forwarded the corpse of Anita @ Vimal to Rural Hospital, Natepute for autopsy and recorded statements of the witnesses. PW-8 Dr. Pankaj Date attached with said Hospital carried out autopsy and gave advance cause of death Certificate (Exh.35) and postmortem Notes (Exh.34) giving cause of death "asphyxia, secondary to suffocation (smothering) with head injury". On the very day, PW-10 arrested the appellant.

1.8. PW-10 on 30th July, 2005, as a sequel to the statement made by the appellant leading to the discovery and seizure of broken bangle of the deceased fallen at the spot of the offence, seized it from the field to which appellant had led them by drawing memorandum statement Exh.19 and seizure panchanama Exh.19A. PW10 at the conclusion of the investigation, charge-sheeted the appellant for commission of the offences under Sections 302 and 201 of I.P.C..

2. The appellant pleaded not guilty to the charge (Exh.2) for such offences framed against him by the Court of Sessions at Malshiras after the case was committed to said Court by the Committal Court.

3. The prosecution examined in all 10 witnesses in support of prosecution case. The defence of the appellant was that of total denial and false implication. The appellant examined DW-1 Mahesh Bhange, the Headmaster of Ratnaprabha Devi Mohite Patil High School at Mandve to bring on record that PW-1 was regularly attending the school in the month June and July 2005 and Certificate Exh.54 to such effect is issued by him.

4. The trial Court after assessing the prosecution evidence came to the conclusion that the prosecution has established that Anita @ Vimal having met with homicidal death and the appellant having committed her murder and thrown her corpse for destroying the evidence of said murder in the well and thereby the appellant having committed the offences under Sections 302 and 201 of I.P.C. In consonance with such finding arrived, the trial Court convicted the appellant and sentenced him as narrated earlier.

5. Thoughtful considerations were given by us to the submissions advanced by both the sides and record of the case was carefully examined in order to ascertain the merit therein.

6. The perusal of the judgment appealed and so also glance at the evidence adduced by the prosecution reveals that there was no eye-witnesses for crime in question and conviction is based upon the circumstantial evidence. Hence, it is necessary to consider the evidence adduced to ascertain whether by said evidence, the prosecution has established the circumstances as concluded by the trial Court for ultimately coming to the conclusion of the said circumstances leading to inescapable conclusion about the guilt of the appellant.

7. Such a course is absolutely necessary in view of legal position settled by plethora of the decisions of the Apex Court that, in the cases resting upon the circumstantial evidence, firstly, it is necessary to ascertain whether a particular

circumstance relied has been duly established by cogent and convincing evidence and whether circumstances such established after taking into consideration within themselves form a complete chain leading to sole conclusion of the guilt of the appellant. In said decisions, it is also ruled that in event of a particular circumstance being not established by cogent and convincing evidence, then the same is required to be left out of the consideration and cannot be taken into account for determining whether the circumstantial evidence adduced forms the complete chain as observed earlier.

8. In the said process considering 1st circumstance of deceased having met homicidal death, the evidence of PW-8 Dr. Date reveals that on 29th July, 2005 while attached with Rural Hospital, Natepute as Medical officer, he had performed autopsy upon the corpse of Vimal @ Anita brought by police constable Mr. Markad at about 8.00 a.m. It reveals that on the same day, he had performed autopsy in between 9.00 a.m. and 10.00 a.m. and during external examination, he had noticed in all ante-mortem 10 abrasions and two contusions on the corpse at the locations and of the dimensions as described in detail by him in column No. 17 of P.M. Notes. It reveals that according to PW8 the cause of death of Vimal was "asphyxia, secondary suffocation (smothering) with head injury". It also reveals of PW8 having vouched for correctness of Postmortem Notes Exh.34 prepared by him of the said postmortem examination.

8.1 The evidence of PW-8 further reveals that during internal examination of Thorax, he found froath and congested blood stains in larynx, tracheas and bronchi with lungs congested and containing froath. It reveals that he had found heamorrhage in bucal cavity. It reveals that the symptoms as noted by PW8 in column Nos. 20 and 21 of the P.M. Notes were indicating that the death was caused due to smothering and he had given advance Certificate of cause of death Exh.35 accordingly.

8.2 It reveals that to rule out the possibility of the death due to poisoning, PW8 had preserved and handed over viscera sample in the sealed condition to police and C.A. Report Exh.36 received by PW8 of the said sample indicated that no poison was found in the viscera analysis. It further reveals that hence the cause of death given by PW8 in Postmortem Notes was the final.

8.3 After careful perusal of the answers brought on record during the cross-examination of PW-8, we do not find any material brought on the record for dislodging the cause of death given by him. We are of such opinion as the perusal does reveal that except bringing on record error committed by him regarding mentioning date of receiving the body at 10.00 p.m. on 28th July, 2005 instead of 29th July, 2005 at 10.00 p.m. and the external injury Nos. 2 to 12 mentioned by him were not noted in Inquest panchanama by the police, no other significant material was brought on record.

8.4 The mentioning of wrong date is apparently mistake committed by PW8 probably due to the incident in-question having occurred in the intervening night

of 28th and 29th July, 2005. Similarly, considering the nature of injury Nos. 2 to 12, i.e., ten abrasions and one contusion, it is difficult to perceive that non mentioning of such injuries in inquest can be said to be affecting core of his evidence and particularly when said injuries had not resulted in causing death. Additionally, the possibility of injury No. 1, i.e., head injury being possible while jumping into the well in event of head coming into contact with hard and rough substance was brought on record also cannot be given any undue importance due to it being not probability. Needless to add, the fact of corpse being found in the well is duly established by the prosecution evidence, which we have referred hereinafter. Still non-finding of water in the lungs of the deceased clearly indicates of death having not occurred due to such injury and in turn rules out the possibility tried to be suggested on behalf of the defence. Even for the sake of argument considering the possibility tried to be canvassed that deceased while jumping in the well for committing the suicide having sustained such injuries, we find it extremely difficult that still death could have occurred due to such head injury. We are of such opinion as hardly any medical evidence has surfaced on record that instantaneous death could have been ensued due to such injury and particularly within a fraction of second within which body would have reached the water level after jumping in the well.

8.5 Resultantly, the careful scrutiny of the evidence of PW-8 and the cause of death given by him having remained unshattered leads to the conclusion of the prosecution having proved the death of deceased having occurred due to the smothering resulting into the asphyxia. Needless to add, thus we do not find any error on part of trial Court in arriving at such finding for detail reasons recorded in paragraph Nos. 12 to 13 of the impugned judgment.

9. Now considering the main prosecution evidence related with other circumstances closely connecting the appellant with the crime in-question, it is necessary to scrutinise the evidence of PW-1 Tejshri, the daughter of the said couple, who was present in the house of the appellant in the night in-question. The learned counsel for the appellant tried to assail her evidence by urging that PW-1 being a child witness, it would be highly unsafe to rely upon her testimony. It was thrust of the learned counsel for the appellant that it would be unsafe to rely upon the evidence of child witness without there being corroboration for the same. It was urged that the child witnesses due to young age are prone to be imaginative and/or prone to be tutored, it would be unsafe to place implicit reliance upon their testimony. Having regard to such submission, we find it is necessary to recapitulate the legal position regarding the evidence of such witnesses.

10. In said context, the reference to the decision in case of State of M.P. Vs. Ramesh and Another, , rightly pointed out by the learned APP, reveals that in the said case after considering the law prevailing regarding the evidence of such witnesses in para Nos. 7 to 13, the Apex Court was pleased to observe in para no. 14 to the effect.

14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child had been tutored or not, can be drawn from the contents of his deposition."

11. On the aforesaid backdrop now scrutinizing the evidence of PW-1 Tejashri @ Jija, we find that due care was taken by the learned Additional Sessions Judge to ascertain whether she was understanding sanctity of an oath by putting her questions. The deposition reveals that the learned Sessions Judge has found that she was not understanding the sanctity of the oath and as such has not administered oath to her. The perusal of her deposition reveals that in initial part she deposed about number of members of her family and place of their residence at which they were residing. She also deposed of appellant picking up quarrel with the deceased and causing physical violence to her. She deposed that on 2-3 occasions the appellant had driven her, her brother, sister and the deceased out of house and they stayed at the house of the parents of the deceased at village Gursale. She deposed that about three months prior to occurring of incident in question, they were residing at village Mandve. We find that apart from oath being not administered to her, all her said evidence is cogent, convincing and so also consistent with the prosecution case narrated earlier and embodied mainly in the complaint Exh.25 filed by PW-5.

11.1 The material part of her evidence reveals that on the day of incident, she attended the school alongwith her brother and sister and returned to the house by 5.00 p.m. She deposed of the appellant having returned from weekly Bazar of Natepute. She deposed that after cooking food the deceased took lessons of her sister Komal. She deposed that all of them including the appellant took dinner at about 9.00 p.m. and thereafter she studied for about 45 minutes and thereafter they all went to bed. Her evidence shows that at about 12.45 a.m., her sister Komal woke-up saying "mummy-mummy" and thereby she awakened. PW-1 then found that the appellant and the deceased were not in the bed. She alongwith Komal came out and shouted for mother. Significantly enough, she deposed that the appellant came from the side of water reservoir and he said that he was returning after attending the nature's call of defecation. Upon their query regarding the deceased, the appellant responded that the deceased might have been for attending nature's call of defecation.

11.2 The evidence shows that as the chappals of the deceased were at the said place, PW-1 inquired as to how deceased would have gone without wearing chappal and how the chappals are lying at the house. Thereon, the appellant told that he would go outside to search the deceased. Her evidence shows that the

appellant returned home at about 2.00 a.m. The appellant thereafter left the Vasti saying that he would go to the Vasti of Janardhan Salunkhe to ascertain whether the deceased had been to said place. PW-1 and Komal waited in the house for his return and after his return they all went to the bed.

11.3 Further part of the evidence of PW-1 reveals that in the morning at 6.00 a.m., they woke-up. The appellant after having the Tea prepared by PW-1 left the house saying that he would go to the police station. It reveals that PW-1, her sister Komal and Suraj came to the house of their parental uncle Nana at Salunkhe Vasti and stayed for whole day. The further part of her deposition reveals that they were taken to Gursale village by her maternal uncle Navnath Gaikwad in the evening hours and thereafter received the information about the appellant having throttled the deceased and thrown her body in the well.

11.4 After careful perusal of the answers given by PW-1 during the lengthy cross-examination, we are unable to persuade ourselves that the answers given by her were not rational due to her age factor. Similarly, we also do not find that in any manner the main core of her testimony, i.e., the parts highlighted hereinabove were shattered, muchless even shaken by any circumstance brought on record. Thus upon close scrutiny, we do not find any element in her evidence denoting that she has not told the truth or that she had given the deposition due to tutoring.

11.5 Now considering the reasoning recorded by the trial Court regarding her evidence in paragraph Nos. 17 to 21 of judgment, we find that during it, the trial Court had duly taken into consideration of the above referred facets of the evidence of PW-1 and so also that her statement was recorded by the police after three days. For the cogent reasons given, the trial Court concluded that the same was not indicative of herself being tutored. After considering the evidence of PW-1 as a whole, we do not find any error committed by the trial Court in reaching to said finding and accepting her evidence.

11.6 Similarly, even accepting the evidence of DW-1 Headmaster that she had regularly attended the School and considering the Certificate given by him, we are unable to accept that the same shows unnatural conduct on part of PW-1 in attending the School. As a matter of fact, the said submission was canvassed upon presupposition that the evidence of DW-1 reveals even after the death of her mother, PW-1 attended the School. After considering the evidence of DW-1 as a whole, we neither find that any such facets has been established by said evidence, nor any such inference can be drawn on the basis of the recitals from his evidence that in the month of June and July 2005 PW-1 had regularly attended the School.

11.7 Similarly, considering the age of PW-1, we do not find any substance in the criticism advanced that herself not informing the persons in other houses from her Vasti about the happening or disclosing the same till her statement was recorded by police shows any unnatural conduct on her part. As a matter of fact,

visualising situation then prevailing it is difficult to accept that any elderly person would have either questioned her or she would have told about event witnessed by her. As a net result of the aforesaid discussion, we find that through the evidence of PW-1, the prosecution has definitely establishes 2nd circumstance, i.e., the appellant possessing the motive for the commission of crime in-question, 3rd circumstance - the deceased was last seen alive in the company of the appellant in the house in the relevant night when the inmates of the house went to bed, 4th circumstance - at about 1.00 a.m. in the mid-night, the deceased and the appellant were found missing from the house, 5th circumstance - the appellant alone returned from the Tank side when PW-1 and her sister Komal had been out of the house and shouted, 6th circumstance - the appellant upon inquiry made by PW-1, falsely pretended of himself as well as the deceased had been for attending nature's call of defecation and 7th circumstance - the appellant was unable to explain lying of the chappals of the deceased in the house inspite of herself being not in the house.

12. Now considering the evidence of PW-3 Ashok Bagal who had acted as a panch for Inquest Panchanama Exh.21, we find that through his evidence the prosecution has duly established that the dead body of Anita @ Vimal was taken out from the well in the field of Maruti Salunkhe with injury on forehead and blood oozing from nostrils and mouth.

12.1 Similarly, through the evidence of PW-3 the prosecution has also established that on the earlier day in the evening time he had been to the house of the appellant and father of deceased, i.e., PW-5, his brother Vilas, one Kailash and others were present and they were asking the appellant as to what has really happened. It reveals that then the appellant had made extra judicial confession to them that he had throttled the deceased and threw her body in the well of Maruti Salunkhe, i.e., the 8th circumstance against the appellant. His further evidence is confined to themselves rushing to the said well and taking out the corpse of deceased out of the well by using branches of tree.

12.2 The learned counsel for the appellant urged that the conduct of PW-3 brought on record that he has not immediately rushed to the police station after hearing the disclosure denotes his unnatural conduct. We are unable to agree with said submission as his evidence reveals that after hearing the disclosure all of them including the father of the deceased had rushed to the well for searching body of the deceased. Same is the case regarding further submission canvassed that PW-3 having not told the police about the disclosure - extra judicial confession made by the appellant at the time of inquest panchanama. We do not find any force in said submission after taking into consideration, the events occurred on the relevant day. Needless to add, the said inquest panchanama was recorded, after PW-5 had lodged detail Complaint amongst other narrating extra-judicial confession made by the appellant.

12.3 In the context of evidence of PW-3, the submission was also canvassed that the law regarding extra-judicial confession is very much settled to the effect that

it is a weak type of evidence and the conviction cannot be fastened alone on the basis of such evidence. We are unable to agree with said submission in view of the observations made by the Apex Court in the case of Sahadevan and another Vs. State of Tamil Nadu, to the effect:

14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

(emphasised supplied)

12.4 In light of the aforesaid observation, we are unable to give any credence to such submission canvassed by learned counsel for the appellant. Further more we are of such considered opinion as the perusal of the evidence of PW-3 clearly reveals that his evidence inspires confidence due to not disclosing any blemishes or reason for animous against the appellant. Further more considering the circumstances in which said extra-judicial confession was made by the appellant and the person to whom it was predominantly made, we find absolutely no merit in the submission canvassed. Needless to add that as discussed in the further part of the judgment, we have found from the evidence of PW-5 that in fact such a confession was then made by the appellant.

13. Now before considering the further circumstance, we find that the evidence of panch PW-3 considered alongwith inquest panchanama Exh.21 reveals that during the inquest, deceased was found wearing eight green colour glass bangles in right hand and sixteen in left hand. On said backdrop, the reference to the evidence of PW-2 Sanjay Pawar and relevant part of the evidence of PW-10 API Sawant reveals that the appellant while in custody of the police on 30th July, 2005 had made a statement that he would show the spot where the broken pieces of bangles were lying and PW-10 had recorded said statement by drawing memorandum vide Exh.19. It further reveals that thereafter the appellant had led PW-2, another panch and the police to the place in the field. At the said place, pieces of broken glass bangles of green colour were found and seized by the police by drawing seizure panchanama Exh.19A. The evidence of PW-2 and PW-10 considered in the light of said panchanama reveals that green colour bangles were found at the spot shown by the appellant. Without making detail dilation, it can be safely said that by said cogent evidence prosecution has established that the broken green colour glass bangles of the deceased were lying at the place, which was shown by the appellant as a scene of offence.

13.1 The learned counsel for the appellant tried to assail the said evidence by

pointing out that no bloodstains were found at said place shown by the appellant. We do not find any substance in said submission after considering the nature of the injuries sustained by the deceased. Needless to add, such injuries sustained militates against expecting finding of the blood at the said place at which offence is said to have been committed. Thus by the said evidence, the prosecution has established 9th circumstance from the chain of circumstances against the appellant, i.e., the appellant was having knowledge of the place at which the offence was committed.

14. Now considering the evidence of PW-4 Sachin Pawar alongwith scene of offence panchanama Exh.10 of the well in which the corpse of the deceased was found and so also the relevant part of the evidence of PW-5, the father of the deceased and the relevant part of the evidence of PW-10, the said evidence also supports the prosecution case regarding the corpse of the deceased being found in the well situated in the field of Maruti Salunkhe. After careful scrutiny of the said part of the evidence of the concerned witnesses, we do not found their such evidence was shattered in defence. The fact of finding of corpse in the said well is the 10th circumstance established by the prosecution against the appellant. The said circumstance additionally corroborates the matters stated in the extra judicial confession made by the appellant and thereby assures truthfulness of the said extra-judicial confession and consequently of 8th circumstance.

15. Now considering the remaining part of the evidence of PW-5, we find that he has deposed more so upon the lines of matters stated in the first information Report Exh.25 lodged by him. Without reproducing his evidence in detail, it can be said that the said evidence amongst other reveal the appellant having started harassing the deceased after 10-12 years of the marriage. It reveals that he was suspecting the character of the deceased. He has deposed in detail regarding the acts committed by the appellant prior to the incident, i.e., driving deceased and her children out of the house. The efforts made by him for resolving the dispute the appellant initially accepting the advice of the panchayat, but having continued to harass the deceased. His evidence also reveals that one year prior to the incident due to such happening deceased and children had returned to his house and deceased was required to lodge a complaint against the appellant. It also discloses that the deceased was also required to approach the Women Welfare Center at Solapur. The events occurred at the said place, the settlement occurred, deceased having disclosed regarding reason for such behaviour of the appellant being due to himself suspecting her chastity etc. His further part of the evidence reveals regarding the receipt of a message, himself being to a place of the appellant and appellant then having pretended of deceased having abandoned the house and the appellant searching for her.

15.1 Further more the most important part of his evidence reveals about extra-judicial confession made by the appellant to him, his brother and others after they had asked him to tell the truth when they were unable to trace out the deceased after making search for her at the places of the relatives. His evidence

also reveals that thereafter themselves having trace out the deceased from the well situated in the field of Maruti Salunkhe, and himself lodging the complaint etc.

15.2 After careful scrutiny of the evidence of PW-5, we are unable to find any embellishment in his evidence. On the contrary, we find that his evidence is not only found corroborated by the complaint lodged by him, but also by the evidence of PW-1 to some extent and so also by the evidence of PW-4 and PW-3 regarding the extra-judicial confession made by the appellant.

15.3 The learned counsel for the appellant tried to assail his evidence by pointing out that PW-5 during his evidence admitted that the father of the appellant had died four months prior to the incident. The learned counsel thereafter by drawing our attention to the admission given by PW1 during cross-examination that during the lifetime of the father of the appellant, the appellant had not beaten deceased urged that the story of the appellant beating and harassing the deceased was concocted for falsely implicating him. We find it difficult to give much credence to said submission, which is predominantly based upon such an admission given by the child witness, i.e., PW-1 under the stress of the cross-examination. Apart from that, even giving concession regarding the period since which the appellant harassing/beating the deceased, the core of the testimony of both the witnesses regarding the factum of harassment and beating is not found shaken during the cross-examination.

15.4 The learned counsel for the appellant by making similar submission as made regarding the evidence of PW-3 tried to assail the prosecution case of the appellant having made extra-judicial confession. It was canvassed that the said story is inherently improbable. For the same reasons for which, we have not accepted such submission qua the evidence of PW-3, we are unable to accept the submission that such evidence of PW-5 is liable to be discarded. PW-5 being the close relative, i.e., the father-in-law of the appellant the fact of the appellant having made extra-judicial confession to him and others when they had questioned him after they were unable to trace out the deceased, in our opinion cannot be said to be an improbable feature. Similarly, considering the reason for which the confession are made, i.e., outburst of a culprit for dis-burdening himself from the burden of ghastly act occurred at his hand, we do not find any merit in the submission that making of such extra-judicial confession by the appellant is inherently improbable.

15.5 We are of such opinion as the evidence on record duly reveals that PW-5 and others had been to the house of the appellant upon receipt of a message of deceased having abandoned the house in the midnight and even the appellant has reiterated occurring of such happening. The said persons had thereafter made hectic search for the deceased and thereafter the appellant is said to have made the said extra-judicial confession. All the said events clearly reveal that all of them were behind him for tracing the deceased. Hence, considering the said events in the proper perspective, we do not find any element of improbability of

the appellant then having made confession. We are of such a view as the said events also denotes that he was then left with no alternative but to tell the truth.

15.6 The learned counsel also tried to canvass that though PW-5 have deposed the presence of Manohar and others at the time of making the extra-judicial confession, non-examination of such persons and relying upon the evidence of interested witness like PW-5 smacks concoction. It was urged that on said count an adverse inference is liable to be drawn against the prosecution for suppressing the most material evidence. It was urged that on the said count such evidence of PW-5 deserves to be discarded.

15.7 The aforesaid submission though apparently attractive does not stand to the reason. Since at the criminal trial quality of the evidence matters and not plurality of the witnesses, merely non-examination of Manohar and the others would not warrant drawing of an adverse inference against the prosecution. In the said regard, we add that only in the event of non-examination of a witness, resulting in non unfolding of particular part of a prosecution tale remained to be unfolded, such a witness can be termed as a material witness and for his non-examination adverse inference would be liable to be drawn against the prosecution. Such being not the case regarding non-examination of Manohar and others referred by the learned counsel for the appellant, submission will not deserves any credence.

16. Lastly, with regard to submission canvassed of PW-5 being interested witness, his evidence is liable to be discarded due to there being no support to his evidence from the evidence of independent witness, the bare reference to the decision in the case of *Munigadappa Meenaiah Vs. The State of Andhra Pradesh*, page 661 reveals that while considering the law regarding partisan witness, the apex Court pointed out the following observations made in the earlier decision in a case of *Dalip Singh and Others Vs. State of Punjab*,

26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

17. The apex Court thereafter observed that the said decision was followed in cases of *Guli Chand and Others Vs. State of Rajasthan*, and *Vadivelu Thevar Vs.*

The State of Madras, . The apex Court then observed:

13. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this court as early as in Dalip Singh and Others Vs. State of Punjab, in which surprise was expressed over the impression which prevailed in the minds of the members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. It was observed:

25 We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - Rameshwar Vs. The State of Rajasthan, . We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.

18. In the same context, the Apex Court also pointed out the following observations made in the case of Masalti Vs. State of U.P., ,

14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence, but the plea that such evidence should be rejected because it partisan cannot be accepted as correct.

19. The apex Court further added that the same is the effect in the decision in cases of The State of Punjab Vs. Jagir Singh, Baljit Singh and Karam Singh, and Lehna Vs. State of Haryana, , wherein it was observed that:

19. As observed by this Court in State of Rajasthan Vs. Teja Ram and Others, , the over insistence on witnesses having no relation with the victims often results in criminal justice going awry. When any incident happens in a dwelling house or nearby, the most natural witnesses would be the inmates of that house.

20. In light of the aforesaid self-eloquent observations, we do not find any substance in the submission canvassed that evidence of PW5 is liable to rejected on the count of himself being interested witness. We are of such a view as the said evidence is predominantly related regarding harassment caused to his daughter, the result of it being her returned to his house and the further events happened after she was sent back to the house of the appellant. It also reveals the reason for which he had been to the house of the appellant. Thus considering the said event, we find it difficult to accept the submission that his evidence is

liable to be discarded for want of corroboration from the evidence of other witnesses. Apart from it, we also find that even such a corroborative evidence is adduced by the prosecution in the instant case and discussed by us hereinabove, i.e., PW3 who was present at the time of making extra-judicial confession, the corroboration afforded by the evidence of witness regarding finding of dead body in the well situated in the field of Maruti Salunkhe, finding of bangles etc. We further find that the said evidence also corroborating the matters from extra-judicial confession made by the appellant to PW5 and others would be an additional factors for accepting the evidence pertaining to the extra-judicial confession and so also the evidence of PW5.

21. In addition to the aforesaid with regard to evidence of PW5 regarding harassment caused to his deceased daughter, the prosecution has adduced the corroborative evidence in the shape of PW6 Dhanaji for corroborating the evidence of PW5 as well as in support of the prosecution case that the appellant was suspecting of the deceased having illicit relations with PW6. The bare glance at the evidence of PW6 reveals of himself having told PW5 and paternal uncle of the deceased that he was not having such relations with the deceased. It reveals that he had tried to convince the appellant that his such suspicion was unfounded and there were no such relations. After perusal of his evidence, we are unable to accept the criticism that his evidence is concocted as during cross-examination PW6 admitted that appellant had not made any suspicion before PW6. As a matter of fact, we find it difficult that considering the nature of the allegations the appellant could have indulge in the activity of expressing such suspicion before PW6. We also find that the evidence of PW6 was shattered in any manner during the cross-examination.

22. In addition to aforesaid, we further find the prosecution has adduced corroborative evidence of PW9 PSI Minakshi Pethe attached with Dist. Women Atrocities Prevention Cell Solapur corroborating the claim staked by PW-5 of deceased having applied to the said Cell and steps taken by her regarding application Exh.40 made by the deceased to the same. Without enlisting the matters from the evidence of PW9, we find that by her evidence, prosecution has duly established of PW9 having held the meeting with the appellant for settlement of the issues in between the couple, during the meeting amongst other appellant having admitted of suspecting chastity of the deceased, herself convincing the couple and arrival settlement Exh.41. We do not find that the said evidence of PW9 was shattered in any manner during the cross-examination. Needless to add, the said evidence duly corroborates the claim staked by PW5 regarding the relevant aspect, but also establishes the appellant suspecting chastity of his wife, the differences occurred in the couple as claimed by PW5 and steps taken by the said Cell in the said respect.

23. Similarly, even the limited reference to the evidence of PW10 and particularly the initial part of his evidence reveals that by the said evidence the prosecution has duly corroborated the claim of PW5 of deceased having lodged the complaint

at Natepute Police Station and the action taken thereon by PW10. Without detailing the said evidence, it can be said that we find that the said evidence regarding the earlier events occurred in between the couple before the main incident duly corroborates such a claim staked by PW5. We also add, that we do not find that said part of the evidence of PW10 was shattered in any manner during the cross-examination.

24. Further more glance at the evidence of PW7 Sushila mother of deceased, it can be safely said that she has deposed moreso in consonance with the matters deposed by her husband PW5. Her said evidence which is apparently remained undented during the cross-examination not only corroborates the evidence of her husband but in its own turn establishes 2nd circumstance. For the same reasons, for which we had not accepted the defence criticism of the evidence of PW5 not inspiring the confidence due to himself being interested witness, we also do not find any merit in similar criticism advanced by the learned defence counsel qua the evidence of PW7.

25. Resultantly, after taking into account of the said evidence of PW5, PW1, and PW7 regarding the behaviour of the appellant towards deceased, it can be safely said that by the said evidence prosecution has clinchingly established the 2nd circumstance referred earlier of the appellant possessing motive for the crime in question.

26. Now taking into consideration the conduct of the appellant in the entire episode has established by the evidence of PW1 of firstly telling children of the deceased having gone for answering nature call and thereafter of telling PW5 and others of herself having left the house in midnight, it can be safely said that prosecution by the said evidence has established 11th circumstance of such conduct of giving false explanation on part of the appellant being consistent with the inference of guilt arising out of earlier referred 10 circumstances.

27. It addition to the aforesaid 11 circumstances, it can be safely said that the record does not indicate the appellant having given any cogent explanation for the said 11 circumstances appearing against him in the prosecution evidence. The said failure to give explanation on part of the appellant itself establishes the 12th circumstance against the appellant, i.e., failure to explain incriminating circumstance against him.

28. In the premises aforesaid, after reappraisal of entire prosecution evidence, we find that by the said evidence prosecution has established following 12 circumstances:

- (1) The deceased having met homicidal death,
- (2) The appellant possessing the motive for the commission of crime in-question;
- (3) The deceased was last seen alive in the company of the appellant in the house in the relevant night when the inmates of the house went to bed;

- (4) At about 1.00 a.m. in the mid-night, the deceased and the appellant were found missing from the house;
- (5) The appellant alone returned from the Tank side when PW-1 and her sister Komal had been out of the house and shouted;
- (6) The appellant upon inquiry made by PW-1, falsely pretended of himself as well as the deceased had been for attending nature's call of defecation;
- (7) The appellant was unable to explain lying of the chappals of the deceased in the house inspite of herself being not in the house;
- (8) The appellant had made extra judicial confession to them that he had throttled the deceased and threw her body in the well of Maruti Salunkhe;
- (9) The appellant was having knowledge of the place at which the offence was committed;
- (10) Finding of corpse in the well situated in the field of Maruti Salunkhe;
- (11) The conduct of the appellant of misleading PW5 and others by telling deceased having left the house in the midnight; And
- (12) Failure on part of the appellant to explain any of the circumstances;

29. Now taking into account the above stated 12 circumstances established by the prosecution, we find that the circumstance of the appellant making extra-judicial confession to PW5, PW3 and others by itself alone and the said circumstance considered in conjunction with the other circumstances forms a formidable complete chain leading to sole inference of the guilt of the appellant in committing murder of deceased and throwing her body in the well for destroying the evidence of the offence of murder for screening himself from the legal punishment for committing such offence. Hence, we are unable to find any fault with the trial Court in arriving to such finding and convicting and sentencing the appellant. Hence, we find the appeal preferred by the appellant san merit and dismiss the same.