
(1991) 04 CAL CK 0051
In the Calcutta High Court
Case No : Criminal Appeal No. 289 of 1990

Gopal Majhi and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 24-04-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1992) 1 CALLT 116

Hon'ble Judges : Monoranjan Mallick, J; Manabendra Nath Roy, J

Bench : Division Bench

Advocate : S.D. Banerjee, Balai Roy, Sekhar Bose, Lalit Datta and Lalit Kumar Maiti, for the Appellant; Sarojesh Mukherjee, Public Prosecutor and Subhasis Roy, for the Respondent

Judgement

Monoranjan Mallick, J.—This is an appeal filed by the four appellants who have been convicted Under Sections 302/34 I.P.C. and sentenced to imprisonment for life and also to pay a fine of Rs. 2000/- each in default to suffer further R.I. for a period of six months by the Ld. Addl. Sessions Judge, 6th Court, Midnapore in S.T. Case No. VIII of November, 1989.

2. The prosecution case is as follows :-

P.W. 1, Nema Charan Bera lodged an F.I.R. to Debra P.S. in the District of Midnapore on 20.9.87 alleging that his niece Rekharani was married to accused Gopal Majhi, son of Late accused Balai Majhi and Srimati Majhi, about six years prior to the lodging of the above information. Sometime after such marriage, the parents-in-law and the husband of Rekharani used to torture her both physically and mentally. Tuhin Kanti Bera, the younger brother of Rekharani had gone to the house of Rekharani's father-in-law to witness a fair which was going at that Village, On that very day on which the F.I.R. was lodged Tuhin rushed to their house at about 8-30 A.M. and reported that Rekharani was being assaulted by

Gopal her husband after a quarrel and that her mother-in-law, sister-in-law and her brother-in-law namely the husband of the sister-in-law were also quarrelling with Rekharani. On receiving the said information the informant along with her elder brother Badal Chandra Bera (P.W.12), father of Rekharani rushed to the house of her father-in-law. On going there they, however, found that the assault had stopped. But they came to learn from Rekharani that her husband assaulted her with a piece of wood without any reason. On being assured that there would be no further quarrel or assault they returned home. At about 1 p.m. Gobinda, a younger brother of the accused Gopal came to their house and reported that Rekharani had committed suicide by setting fire to her body. On getting this information the informant rushed to the house of father-in-law of Rekharani. On going there they found the dead body of Rekharani lying on the first floor verandah of the house with face down. The wearing apparels and practically the entire body were charred. The informant found that the villagers as well as the people from the adjoining villages had assembled there. The people assembled there interrogated the accused persons namely, Gopal, his mother Srimati, his sister Karunabala and Shyamsundar, the husband of Karunabala. All of them confessed before the people assembled there that being perturbed by the unhappy incident that took place in the morning Rekharani went to the first floor room and was lying on a cot. The accused Gopal being infuriated by her conduct again started assaulting her and Rekharani ran out of the room came to the verandah in front of the said room and fell unconscious. Then the accused Gopal tied her hands with a rope and accused Shyamsundar tied her feet with another rope. The accused Srimati and Karuna wrapped a synthetic saree on the person of Rekharani, poured kerosene oil and set her on fire.

3. The F.I.R. also disclosed that after that the neighbours came and tried to extinguish the fire by pouring water but in the meantime Rekharani had already expired. On the basis of the above information police started investigation, sent the dead body for post mortem examination and on investigation submitted charge-sheet against the accused persons Under Sections 302/34 and also other Sections.

4. On the case being committed to the Court of Sessions, the learned Judge on consideration of the materials on record have framed charge against these four accused-appellants Under Sections 302/34 I.P.C. and u/s 201/34 and 498A I.P.C. and against the accused Balai Majhi Under Sections 302/109 I.P.C.

5. In order to prove the charge against the accused persons the prosecution has in all examined twenty witnesses. The F.I.R., Seizure list etc. have been proved as documentary evidence.

6. The defence case, has made out from the suggestions given to the different witnesses in cross-examination as well as from the statements of the accused persons on being examined u/s 313 Cr. P.C. is that while Rekharani was preparing Kajal with the help of a lamp her georgette saree accidentally caught fire and she was burnt to death and none of the accused persons was in any way

responsible for her death.

7. The learned Trial Judge on considering the prosecution and on hearing the arguments made by the Ld. Public Prosecutor and the defence Advocate has found these four appellants guilty Under Sections 302/34 I.P.C. but acquitted them of the charge Under Sections 201/34 and 498A I.P.C. and also acquitted accused Balai Majhi of the charge Under Sections 302/109 I.P.C. On convicting the accused Under Sections 302/34 I.P.C. and upon hearing the accused persons on the question of sentence the Ld. Trial Judge sentenced each of them to imprisonment for life and also a fine of Rs. 2000/- each and in default to six months R.I. each.

8. Being aggrieved by and dissatisfied with the above conviction and sentence the appellants have preferred this appeal.

It is submitted on behalf of the appellants that the conviction and sentence being bad and illegal is liable to be set aside, that the prosecution sought to adduce two types of evidence to prove the guilt of the accused, namely, the alleged confession of the accused and the circumstantial evidence, but the Ld. Court below failed to take into consideration that neither the circumstantial evidence was complete or conclusive nor was the alleged confession worthy of credence and was also inadmissible in evidence, that from the evidence of the witnesses there is no narration of confessional statement regarding the incident and the guilt of the four accused persons excepting that of Gopal and that the statement allegedly made by Gopal was contrary to the evidence of the witnesses, that the Learned Trial Judge ought to have held that the confessional statement if any, made by the accused was the result of threat and coercion of the members of a violent mob which had encircled the accused persons just after the occurrence and even assaulted them physically, that neither accused Shyamsundar nor the accused Karunabala was arrested by police from the alleged place of occurrence but from their own house far off from the alleged place of occurrence on the next day of the incident and as such, it was not possible for them to make any such alleged confession as stated by the witnesses, that the Ld. Trial Judge should not have placed any reliance on the so-called confession which were not only cryptic but also contradictory in nature, that the Ld. Trial Judge has failed to appreciate that the principles enunciated in the decisions cited by the defence regarding extra-judicial confession is applicable in the facts and circumstances of the present case and the Ld. Trial Judge misconceived the said principle and misdirected himself in trying to distinguish the present case from the facts of the reported decisions that the acquittal of the accused persons of the charge u/s 498A I.P.C. cuts at the very root of the prosecution case and it goes to show that the accused persons had no motive or reason to commit the murder and that the facts and circumstances appearing in the evidence would go to show that the death was due to accidental fire and that an attempt was made by the accused persons to save her life by extinguishing the fire.

9. It is also contended that the examination of the appellant u/s 313 Cr. P.C. was

defective and prejudicial as it did not offer to the appellants full and complete opportunity of explaining away the facts and circumstances allegedly appearing against them from evidence.

10. The Learned Public Prosecutor, High Court has contested the appeal on behalf of the State. It is contended that regard being had to the circumstances in which the dead body was found as well as the report of the post mortem Doctor the death of Rekharani being either accidental or suicidal have been completely ruled out that the fact that the death was nothing but homicidal and the accused persons being the husband, mother-in-law, brother-in-law and sister-in-law and the place where the death had taken place render sufficient circumstantial evidence regarding the complicity of the accused persons in the offence of murder and that these incriminatory circumstances together with the extra-judicial confession made by the accused persons before the villagers immediately after the incident were sufficient proof that it is the accused persons who committed the murder of Rekharani in furtherance of the common intention of them all firstly by assaulting her and then when she became unconscious as a result of such assault setting her with fire and the Ld. Trial Judge was perfectly justified in holding that the prosecution has been able to bring the charge Under Sections 302/34 I.P.C. against all the accused persons beyond all reasonable doubt and in the circumstances the conviction and sentence passed against the accused appellants should not be interfered within appeal.

11. The first point for decision is whether the deceased Rekharani died on 20.9.87 accidentally or whether she was murdered. The defence as is sought to be made out through the cross-examination of some other prosecution witnesses and also through the evidence of some of the prosecution witnesses who have been declared hostile as well as the statement made by the accused u/s 313 Cr. P.C. is that Rekharani at about the time of the occurrence was preparing Kajal with the help of a lamp and her georgette saree accidentally caught fire and even though her mother-in-law and her brothers-in-law who were at about that time inside the residence tried to extinguish the fire by covering her with quilt and the neighbours also were trying to extinguish the fire by pouring water but Rekharani was burnt to death.

12. The Learned Public Prosecutor appearing for the State has urged before us that the Learned Trial Judge rightly held that the death of Rekharani was neither accidental nor suicidal but homicidal. He points out that the evidence of the Doctor who held post mortem examination would clearly belie the story of the appellants that the death of Rekharani was a result of a fire which was accidental. He draws our attention to the evidence of Doctor who held post mortem examination namely P.W. 13, Dr. Madan Mohan Das who found not only that the body of the victim was severely burnt but on dissection he found clotted blood present in the peritoneal cavity and also found lacerated injury over right lobe of the liver about 2" x 1". As the whole body was completely charred, no external injury could be detected, Mr. Mukherjee points out that the death,

according to the Doctor, was due to shock and haemorrhage due to liver injury and also as the entire body was burnt which was ante mortem in nature. He also points out that the Doctor has clearly opined that the liver injury found was sufficient to cause death in ordinary course of nature and the burn injury by itself was also sufficient to cause the death in the ordinary course of nature. On considering all the relevant evidence including that of P.W. 13 Dr. Madan Mohan Das, we are of the view that the defence suggestion as to how the victim could get liver injury is too improbable to accept. In the circumstances we are in full agreement with the submission made by the Learned Public Prosecutor that the prosecution has succeeded in proving that the death of Rekharani was neither accidental nor suicidal but it was homicidal. So we are convinced that Rekharani was murdered. The Learned Trial Judge has convicted the accused-appellants mainly on the basis of the extra-judicial confession made by them before P.W. 1 the informant and other co-villagers immediately after the occurrence and also the basis of the circumstances revealed in the evidence which according to him clearly established that the death of Rekharani was not at all accidental but homicidal.

13. On behalf of the appellant it is urged that the circumstantial evidence alone was not sufficient to establish the guilt of the accused persons, that the learned Trial Judge having acquitted the accused persons of the charge of Section 498A I.P.C. has clearly held that the prosecution failed to prove the charge that Rekharani was subjected to cruel treatment in her in-law's house, that therefore there could be no motive for the murder, that so far as accused appellants other than Gopal are concerned the evidence of the witnesses on the face of it did not disclose as to what actual words were uttered by Srimati, Shyamsundar and Karunabala before the witnesses that the series of Supreme Court decisions have taken the view that the extra-judicial confession in order to be admissible the exact words used to make the confession have to be reproduced in evidence, that the evidence of the two Witnesses, namely P.W. 1 Nema Chand Bera and P.W. 14 Paresh Nath Pandit who have been examined by the prosecution to prove the alleged extra-judicial confession have only indicated in their evidence that after Gopal made the confession, the three other accused made the similar confession disclosing the individual part played by them in the offence corroborating the statement made by the accused Gopal and that evidence of those two witnesses regarding the extra-judicial confession alleged to be made by Gopal cannot also be held to be trust worthy and cannot be reliable regard being had to the test laid down by the Supreme Court regarding the reliability of extra-judicial confession which according to Supreme Court is a weak type of evidence and needs thorough scrutiny.

14. So far as the motive for murder we are of the view that the Learned Trial Judge did not reject the testimony of the informant, the younger brother of deceased P.W. 2 Tuhin Bera and the father of the deceased P.W. 12 Badal Chandra Bera. Their evidence clearly establish that on the morning of the date of occurrence accused Gopal and other accused quarreled with Rekharani and Gopal

actually assaulted Rekharani and P.W. 2 Tuhin went to his house to report the incident and P.W. 1 Nema Chand Bera and P.W. 12 Badal came to the father-in-law's house of Rekha but by that time the assault had stopped and they got the assurance that the assault would not be repeated. Therefore, we are unable to hold that prosecution could not ascribe any motive for the offence.

15. There is no doubt that the murder of Rekharani was committed in their in-law's house and the inmates of the house would be the persons who were last seen alive with Rekharani. But in this case the prosecution did not implicate all the inmates of the house. At least two younger brothers-in-law of Rekharani were not charged with the offence, Moreover, two of the accused being Shyamsundar and Karuna were not normal inmates of the house and both of them in their examinations u/s 313 Cr. P.C. claimed to have been in their house at the time of alleged occurrence. Therefore, strong evidence is necessary to establish the guilt of these accused persons.

16. We are, however, convinced that when it is established that the murder of the wife had been committed in her in-law's house the members of the family would strongly be suspected to be the perpetrators of the crime. But suspicion is not proof. When all the inmates were not implicated in the murder and only two of them were not ordinary residents of the house we would require some strong proof to implicate all the accused persons in the offence of murder. But it has been rightly pointed out by the learned Advocate for the Appellant that so far as Shrimati, Karuna and Shyamsundar are concerned the witnesses who have sought to prove the extra-judicial confession did not disclose in their evidence as to what exact words were used by each of them in making such confession before them. But without such evidence regarding exact words used by them the evidence regarding such extra-judicial confession loses its probative value. The Supreme Court in *Kishore Chand Vs. State of Himachal Pradesh*, *Heramba Brahma and Another Vs. State of Assam*, *Rahim Beg and Another Vs. State of U.P.*, and *Sahoo Vs. State of Uttar Pradesh*, and the Division Bench of Kerala High Court in the recent decision in *Heramba Brahma and Another Vs. State of Assam*, clearly held that the exact words used by accused have to be established in evidence in order to rely on such extra-judicial confession.

17. There is admittedly no evidence in this case as to what exact words the three accused persons, namely Shrimati, Shyamsundar and Karuna Bala made to the co-villagers immediately after the occurrence. It is true that Gopal in his alleged confession implicated them in the offence. But the confession of co-accused alone cannot form basis of conviction. Therefore, the conviction of three accused persons which cannot but be established except by the extra-judicial confession made by them cannot be upheld and must be set aside. So far as Gopal is concerned the evidence of the prosecution however disclosed in detail as to how Rekharani was murdered by him along with the other accused persons. The Learned Trial Judge has set out in his judgment the exact words made by accused Gopal to P.W. 1 and P.W. 14. The Learned Trial Judge has also found that

P.W. 3 Jagadish Chandra Adak who has been declared hostile has also in his evidence clearly stated as to what exact words Gopal made to the co-villagers. As he did not support the prosecution story wholly he was declared hostile. But it is now well settled by the Supreme Court in several decisions specially in Bhagwan Singh Vs. The State of Haryana, and AIR 1976 SC 296 that the evidence of a hostile witness so far as it is corroborated by other prosecution witness can be relied upon by the Prosecution and such evidence cannot be wholly discarded.

18. The Learned Trial Judge has however found some discrepancies in such statement of the witnesses as regards actual words used by Gopal and he has rightly pointed out that those are minor in nature. So there is no doubt that there is extra-judicial confession of Gopal and if the same be held to be genuine and reliable then the conviction of Gopal can be upheld by us. Let us now discuss the law laid down by Supreme Court regarding weight to be attached to extra-judicial confession and the test to be satisfied before it can be relied upon.

19. On behalf of the appellants three decisions of the Supreme Court reported in Sahoo Vs. State of Uttar Pradesh, Heramba Brahma and Another Vs. State of Assam, Kishore Chand Vs. State of Himachal Pradesh, and a Division Bench judgment of Kerala High Court of 1991 Cr. LJ 570 have been referred to, to submit that the Supreme Court has clearly held that extra-judicial confession is a weak type of evidence, that until and unless the Court is satisfied that it is free from suspicion and suggestion of its falsity that it is a voluntary one and does not appear to be result of inducement, threat or promise envisaged u/s 24 nor was it brought about in suspicious circumstances to circumvent Sections 25 and 26 of the Evidence Act it cannot be relied upon. It is also submitted that such extra-judicial confession if found to be voluntary can be relied upon by the Court along with other evidence on record. But according to the Learned Advocate for the appellants the facts and circumstances disclosed do not rule out the possibility of such evidence regarding extra-judicial confession to be concocted for the purpose of implicating the accused person falsely, that even if such confession was made the fact that the co-villagers detained Gopal along with other accused persons and assaulted all the accused persons it cannot be held to be voluntary and that the only independent witness being P.W. 14 examined on behalf of the prosecution cannot be held to be trustworthy as he was examined by the police about three months after the date of occurrence. It is also submitted that the accused Gopal Mondal in his examination u/s 313 Cr. P.C. was not specifically confronted about his making alleged extra-judicial confession. It is, therefore, contended on behalf of the appellants that even the conviction of the accused-appellant Gopal cannot be sustained because the prosecution evidence as regards the alleged confession is not free from suspicion and suggestion of its falsity.

20. In Sahoo Vs. State of Uttar Pradesh, , the Supreme Court was considering as to whether soliloquy of the accused not meant to be communicated to others

could be treated as extra-judicial confession and as to whether what weight was to be attached to it. The following observation of the Supreme Court at para 6 reads as follows :-

"There is a clear distinction between the admissibility of an evidence and the weight to be attached to it. A confessional soliloquy is a direct piece of evidence. It may be an expression of conflict of emotion ; an argument to find excuse or justification for his act ; a conscious effort to stifle the pricked conscience ; or a penitent or remorseful act of exaggeration of his part in the crime. The tone may be soft and low ; the words may be confused ; they may be capable of conflicting interpretations depending" on witnesses, whether they are biased or honest, intelligent or ignorant, imaginative or prosaic, as the case may be. They are, generally mutterings of a confused mind. Before accepting such evidence, it must be established by cogent evidence what were the exact words used by the accused. Even if so much was established prudence and justice require that such evidence cannot be made the sole ground of conviction, but may be used only as a corroborative piece of evidence".

In *Heramba Brahma and Another Vs. State of Assam*, the Supreme Court relying on its earlier decision in AIR 1973 SC 1595 has held that when the evidence of the extra-judicial confession was unworthy of belief it cannot be taken into corroborate any other evidence. In that decision the accused persons are alleged to have made confession to an under trial in jail awaiting trial for dacoity and the High Court accepted the evidence of extra-judicial confession without examining the credential of the witness, without ascertaining the words used and without following the Supreme Court decision of *Rahim Beg and Another Vs. State of U.P.*, , that an extra-judicial confession must pass the test of reproduction of exact words, reason or motive for confession and persons selected on whom the confidence is reposed.

21. In the Supreme Court decision of AIR 1990 SC the following observation has been made as regards weight to be attached to an extra-judicial confession. The observation of the Supreme Court at para 7 at Page 2145 is reproduced below :-

"An unambiguous extra-judicial confession possesses a high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of its-falsity. But in the process of the proof of the alleged confession the Court has to be satisfied that it is a voluntary one and does not appear to be the result of inducement, threat or promise envisaged u/s 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26 of the Evidence Act. Therefore, the Court has to look into the surrounding circumstances and to find whether the extra-judicial confession is not inspired by any improper or collateral consideration of circumvention of the law suggesting that it may not be true one. For this purpose the Court must scrutinised all the relevant facts such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made and finally the actual words used by the

accused. Extra-judicial confession if found to be voluntary can be relied upon by the Court along with other evidence on record. Therefore, even the extra-judicial confession will also have to be proved like any other fact. The value of the evidence as to the confession depends upon the veracity of the witness to whom it is made and the circumstances in which it came to be made and the actual words used by the accused".

22. The Division Bench of Kerala High Court in 1991 Cr. LJ 570 Heramba Brahma and Another Vs. State of Assam, has held that when the witness was not stating the exact words used by the accused their evidence is improbable and unnatural.

23. On behalf of the learned Public Prosecutor, the decision reported in State of U.P. Vs. M.K. Anthony, was cited where it has been observed that even though the evidence of extra-judicial confession is a weak piece of evidence but if the evidence about it comes from the mouth of witness/witnesses we appear to be unbiased, not even remotely inimical to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime then after subjecting the evidence of the witness to the rigorous test on the touch tone of reliability, if it passes the test, the extra-judicial confession can be accepted and can be the basis of a conviction.

24. Before deciding whether the extra-judicial confession alleged to be made by the accused Gopal Majhi as genuine and reliable we would dispose of the submission made by Mr. Balai Roy appearing on behalf of the appellant that as attention of Gopal has not been properly drawn to the prosecution evidence as regards the alleged extra-judicial confession in the examination u/s 313 Cr. P.C. the prosecution cannot rely on such evidences to prove the charge against the said accused Gopal. We have carefully considered the examination of accused Gopal Majhi u/s 313 Cr. P.C. as recorded by the Learned Addl. Sessions Judge, Midnapore. On considering such examinations of the accused as recorded in page 62 of the Paper Book we are satisfied that the attention of the accused Gopal to the relevant evidence as regards the alleged extra-judicial confession made before P.W. 1 and the local public was drawn by the Ld. Trial Judge and there does not appear to be such serious lapse in such examination of the accused u/s 313 Cr. P.C. for us to discard such evidence on the ground of the error in conducting examination of the accused u/s 313 Cr. P.C. by the Learned Trial Judge. We would now decide as to whether Learned Trial Judge was justified in holding that extra-judicial confession made by accused Gopal was reliable.

25. On behalf of the appellant it is urged that P.W. 14 Paresh Nath Pandit who is the only co-villager who has come to support the prosecution story was examined by I.O. about three months of the occurrence and that P.W. 1 Nemai Chand Bera is the highly interested witness and if the evidence of P.W. 14 Paresh Nath Pandit is discarded then there is no reliable evidence to support the story of extra-judicial confession. Reliance has been placed on two Supra Court decisions of Balakrushna Swain Vs. State of Orissa, and Satbir Vs. State of Uttar Pradesh, and it is submitted that in those decisions the Supreme Court discarded the

testimonies of witnesses when there was delay in recording the statement of eyewitness for 10 days and 17 days respectively. It is true that in this case admittedly P.W. 14 Paresh Nath Pandit was examined by I.O. about three months after the occurrence and the I.O. did not offer any explanation for such delay. However, if we were to rely on the evidence of P.W. 14 alone, then we would have wholly discarded the prosecution story regarding extra-judicial confession. We are of the view that there is sufficient evidence to prove that accused Gopal had made the extra-judicial confession apart from the evidence of P.W. 14. P.W. 1 Nemai Chand Bera has testified to that effect. He related that story in the F.I.R. lodged in the evening. There were admittedly some other witnesses to support the story of extra-judicial confession among other villagers but all of them have been declared hostile. Even then P.W. 3 Jagadish Adak, a co-villager has in his evidence clearly testified that Gopal on being questioned by the villagers made the extra-judicial confession. We have already indicated that the evidence of such hostile evidence if corroborated by other prosecution witness can be relied upon. There is nothing to show that he has any animosity with the accused Gopal. Moreover, it is clear that immediately after the incident P.W. 10 Smt. Usha Bala Majhi and P.W. 11 Madan Majhi on seeing the smoke rushed to the house of the accused persons and have testified that none of the accused persons made any attempt to extinguish the fire. In the statement u/s 313 Cr. P.C. Gopal and his mother admitted that these witnesses had actually gone to their house to extinguish the fire. It is clear from evidence that the villagers suspected foul play and kept all the accused persons detained till the arrival of the police. When P.W. 1 Nemai Chand Bera came, his evidence is that Gopal made the extra-judicial confession before the villagers. Such conduct of the accused Gopal does not appear to be at all unnatural. Being confronted by the gravity of the situation and having found that the villagers seeing that his wife had died instantaneously from burn injury and the accused persons not taking any step to prevent such injury naturally would question Gopal and in such confused state of mind it was not at all improbable for Gopal to make the clean breast of everything. So there is nothing unnatural for Gopal confessing before villagers. We have already indicated that Gopal assaulted the victim by lathi and she became unconscious on being so assaulted. This is corroborated by medical evidence of the doctor that the liver injury was so fatal that it could cause death in ordinary course of nature. So Gopal could alone is guilty of the charge of murder. So we have got corroboration of the extra-judicial confession from the medical evidence. Even though the Learned Advocate for the appellant has submitted that the villagers assaulted Gopal and other persons and that in such a case the confession was not voluntary but might have caused the result of threat and inducement. Gopal in his examination u/s 313 Cr. P. C. has not made any complaint then he was assaulted by the villagers. It is not improbable for the villagers to keep the accused persons detained till the arrival of the police. After they were satisfied from the extra-judicial confession that they had killed the victim and this step was taken so that the accused persons could not flee away. P.W. 1 Nemai, the uncle of the deceased came to the spot on being reported of the incident. He is

interested no doubt but cannot be called a chance witness.

26. We are satisfied that the extra-judicial confession made by Gopal was voluntary, that the evidence of P.W. 1 Nema, P.W. 3 Jagadish and P.W. 14 Paresh corroborating each other in material particulars is reliable. The extra-judicial confession is corroborated by medical evidence and also from the other circumstantial evidence.

27. Considering the principles laid down by the Supreme Court in the decision in the above we have no hesitation in holding that the prosecution has succeeded in proving beyond reasonable doubt that Gopal was guilty of the charge of murder of his wife. The confession of the other accused persons has already been discarded by us. The prosecution evidence clearly establishes that the part played by Gopal in assaulting his wife was alone sufficient to cause her death. So, Gopal can be convicted u/s 302 I.P.C. alone. In the result the appeal is allowed in part. The accused-appellants, Srimati Majhi, Shyam Sundar Samanta and Karuna Bala Samanta be found not guilty of the charge u/s 302/34 I.P.C. and be acquitted of the charge. The accused Gopal Majhi is convicted u/s 302 I.P.C. and the sentence passed against him by the Learned Trial Judge is hereby affirmed.

In view of the judgement passed in the appeal, appellant No. 3, Shyam Sundar Samanta and appellant No. 4, Karuna Bala Samanta are discharged from their respective Bail Bonds and the release order be issued in respect of the accused appellant No. 2 Srimati Majhi at once.

M. N. Roy.

28. I agree