

(1993) 01 MAD CK 0027
In the Madras High Court
Case No : Criminal A. No. 1159 of 1986

Palani	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 07-01-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 161, 201, 302, 376

Citation : (1993) 2 ALT(Cri) 586 : (1993) CriLJ 1679

Hon'ble Judges : K.M. Natarajan, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Mr. V. Vijayakumar for Mr. K.N. Basha, for the Appellant; Mr. S. Shanmughavelayutham, Assistant Public Prosecutor, for the Respondent

Judgement

K.M. Natarajan, J.—The accused in S.C. No. 15 of 1986 on the file of the learned Sessions Judge, Chinglepet, has preferred this appeal

challenging the legality and correctness of the conviction under S. 302, I.P.C. and sentence of imprisonment for life, conviction under S. 376,

I.P.C. and sentence of rigorous imprisonment for ten years and also the conviction under S. 201, I.P.C. and sentence of rigorous imprisonment for

three years. The sentences were directed to run concurrently. The appellant was tried for all the above charges on the allegation that on 8-11-1984

at about 8.00 a.m. in the bush lying in the reserve forest at Mannur, the accused Palani committed rape on Sangunthala and during the course of

the same transaction he caused the death of Sangunthala by tightening her neck with her saree and threw the body in the bush in order to screen

the offence of murder. To substantiate the above charges, the prosecution has examined P.Ws. 1 to 13 filed Exs. P1 to P43 and marked M.Os. 1

to 23.

2. The case of the prosecution as disclosed from the oral and documentary evidence can be briefly stated as follows :

P.W. 1 is the elder sister of the deceased. The deceased married the younger brother of the husband of P.W. 1. Both of them became widows.

Thereafter P.W. 1 and the deceased were living together with their respective children in the same house at Mannur village. The deceased

Sangunthala after the death of her husband, was doing coolie work for sometime. P.W. 1 owns one acre of land. Two years prior to the

occurrence, the deceased was employed in the Noon Meal Centre at Ayakulathur as Aaya on a monthly salary of Rs. 60/-. P.W. 2 is employed as

Balasevika in the said Noon Meal Centre. P.W. 3 is one of the Supervisors in the said Noon Meal Centre. The said Noon Meal Centre was under

the control of Sriperumbudur Panchayath Union. The deceased used to go to the Noon Meal Centre everyday through a foot path leading from

Mannur to Ayakulathur. She used to leave the house at 7.00 a.m. and sometime, she used to take the meal and return about 3.00 p.m. or 4.00

p.m. on the same day.

3. On the date of occurrence viz., on 8-11-1984 the deceased took food in M.O. 6 tiffin box and kari kuzhambu (sauce) in M.O. 8 horlicks

bottle, putting both of them in a plastic wire bag M.O. 6 and left the house at about 7.00 a.m. On that day, she was proceeding to the Noon Meal

Centre through the usual pathway. She was wearing the plastic chappals M.O. 4 series, M.O. 1 saree, blouse M.O. 2 and skirt M.O. 3 and

Aluminium Bangles M.O. 5 series. She took M.O. 9 bottle with her for the purpose of purchasing oil and a polythene cover M.O. 10 to protect

her body in case of any rain. At the time of leaving the house she informed P.W. 1 that she would go to the Panchayath Union Office,

Sriperumbudur, to receive salary and if time permits, she would return on the same day; otherwise she would come on the next day after attending

her work in the Noon Meal Centre.

4. It is the further case of the prosecution that the deceased did not attend the Noon Meal Centre on 8-11-1984 and 9-11-1984. Entries with

regard to her absence on those two dates were made in the Visitors" Book, Ex. P3 by the Village Sevak. The relevant entry made in Ex. P3 book

was marked as Ex. P4. Since the deceased did not return till the evening of 9-11-1984 (Friday), P.W. 1 sent her son Venkatesan to the Noon

Meal Centre to find out the deceased. Accordingly, Venkatesan went there and enquired P.W. 2. Thereafter he returned and informed P.W. 1 that

the deceased did not attend the Noon Meal Centre on 8-11-1984 and 9-11-1984. Thereupon P.W. 1 along with another went to the Noon Meal

Centre and enquired P.W. 2 about the deceased and learnt that the deceased did not attend the Noon Meal Centre on both the said dates (viz., 8-

11-1984 and 9-11-1984). She conveyed the entire message to her neighbour Ram Reddy who sent some persons to the houses of P.W. 1's

relatives to know whether the deceased had come there. One Balaram Reddy who is the husband of the sister in law of P.W. 1 came to the house

of P.W. 1 on Sunday, 11-11-1984. Then P.W. 1, her neighbour Ram Reddy and her sister-in-law's husband Balaram Reddy proceeded to the

Panchayath Union Office of Sriperumbudur on Monday (12-11-1984) and they enquired P.W. 3 about the deceased. On enquiry they came to

know that the deceased did not attend the Noon Meal Centre on Thursday and Friday. Then, they sent Ex. P1 Report to the Commissioner of

Sriperumbudur Panchayath Union Office. P.W. 3 also gave a report Ex. P5 to the Commissioner of Sriperumbudur Panchayath Union Office.

5. P.W. 4 is the Forest Guard attached to Mannur Reserve Forest. On 22-11-1984 at about 12 noon, he was making a visit in the said forest.

Then, on the north of boundary stone No. 12, he noticed M.O. 1 saree in the bush. When he went nearer he felt a bad smell. He also noticed bone

pieces of human being at that place. When he went further nearer inside the noticed M.O. 2 Jacket, M.O. 3 Skirt M.O. 4 a pair of chappals,

M.O. 5 series Aluminium Bangles, M.O. 6 a plastic wire bag, M.O. 7 Aluminium tiffin box, M.O. 8 Horlicks bottle with sauce, M.O. 9 oil bottle,

M.O. 10 Polythene sheet and skull M.O. 13. He also noticed a lock of hair lying separately. Thereupon, he went to the Village Administrative

Officer P.W. 5 and gave a report Ex. P6. On receipt of the said report Ex. P6, the Village Administrative Officer P.W. 5, Thalayari and some of

the villagers went along with P.W. 4 to the bush and saw the skull and other material objects. P.W. 1 who also came there identified that M.Os. 1

to 3 belong to her sister (the deceased) who took them while she left the house on 8-11-1984 morning. She stated that her sister the deceased

was wearing M.O. 4 chappals and M.O. 5 Aluminium Bangles and she took M.O. 6 plastic wire bag, M.O. 7 aluminium tiffin box, M.O. 8

Horlicks bottle with sauce, M.O. 9 oil bottle and M.O. 10 polythene sheet. Thereupon she gave a statement Ex. P2 to P.W. 5. On receipt of the

said statement P.W. 5 prepared detailed report Ex. P7 and sent it along with Exs. P2 and P6 to the Sriperumbudur Police Station. He remained at

the bush with P.W. 4 Forest Guard and a Thalayari. P.W. 12 the Inspector of Police, Sriperumbudur on receipt of Exs. P2, P6 and P7 from P.W.

5 registered a case in Crime No. 683 of 1984 under the head "suspicious death" and prepared the First Information Report with copies and sent

them to the Judicial Magistrate, Poonamallee and to the Inspector of Police. Sriperumbudur. Thereupon he came to the Mannur Reserve Forest

and noticed M.Os. 1 to 10 and M.O. 13 and arranged a Guard to keep watch over the scene place.

6. P.W. 13, the Inspector of Police, Sriperumbudur on receipt of the copy of the First Information Report at 8.30 a.m. on 22-11-1984 from P.W.

12, sent a message to Kancheepuram and sent for P.W. 9 photographer to take photographs of the same and also the scientific expert to come

and inspect the scene place. On 23-11-1984, he gave a requisition Ex. P. 14 to the Medical Officer to conduct autopsy at the scene place. He

reached the reserve forest at about 10.00 p.m. P.Ws. 5 and 6 were there. He inspected the scene place and prepared the observation mahazar

Ex. P8 attested by P.W. 5 and another. He also drew a rough sketch Ex. P. 42, P.W. 9 took photographs of the skull and the bones lying in the

scene place. Then, the scientific expert seized the blood stained earth M.O. 16 and sample earth M.O. 17.

7. P.W. 7 Dr. Ramani Deva Irakkam came to the scene place and conducted autopsy on the skull M.O. 13 and bone pieces lying there.

Thereupon the Medical Officer himself took M.O. 13 and the bone pieces for chemical analysis. The lock of hair was left there.

8. P.W. 13 conducted inquest at the scene place before M.O. 13 was taken by P.W. 7 and examined P.Ws. 1, 4, 5 and others. Ex. P. 14 is the

inquest report prepared by him. He seized M.Os. 1 to 10 M.O. 16 - the blood stained earth and M.O. 17 the sample earth were gathered by

P.W. 13 under Ex. P9 mahazar, attested by P.W. 5 and another. He examined P.W. 2 at Ayakulathur and P.W. 6 who was assisting P.W. 7

during the post-mortem. On 24-11-1984 he examined P.W. 3. He seized M.O. 11 pass book and M.O. 12 photograph of the deceased from

P.W. 1 under a cover of mahazar Ex. P. 10 attested by P.W. 5 and another. P.W. 13 examined P.W. 5 and others on that day. He further

examined P.W. 1. On 27-11-1984 he examined P.W. 7 Dr. Ramani Deva Irakkam who conducted autopsy. He gave a requisition Ex. P. 28 to

the Judicial Second Class Magistrate to send the seized articles M.Os. 1 to 13 and 16 and 17 for chemical analysis. P.W. 11 the Head clerk

attached to the Judicial Second Class Magistrate's Court, deposited about sending of all the above articles for chemical examination, after the

receipt of Ex. P. 28.

9. P.W. 13 also gave a requisition Ex. P. 17 to P.W. 7, the Doctor who conducted the post-mortem to send the skull M.O. 13 and other bone

pieces taken from the reserve forest to the Department of Forensic Medicine, Madras Medical College, Madras to find out whether they relate to

a male or a female and whether there was any fracture in the bone. He also sent Ex. P. 12 photograph to enable them to make a comparison in

accordance with superimposition test.

10. On 19-1-1985 at about 8.45 a.m. P.W. 13 received Ex. P11 message from P.W. 5 to the effect that the accused was in his custody.

Thereupon P.W. 13 noted the message in the General Diary maintained in the Police Station and went to Mannur along with the Sub-Inspector

and others. He reached the office of P.W. 5 at about 9.15 a.m. P.W. 5 entrusted the accused to the custody of P.W. 13. The accused gave a

voluntary confession statement which was reduced into writing. It was attested by P.W. 5 and the Thalayari. P.W. 4 was also present at that time.

The admissible portions of the statement are marked as Exs. P. 12 and P. 13, whereunder the accused stated that he would show the bush where

the dead body was thrown, if he had been taken by them. P.W. 13 and others were taken by the accused inside the forest and the accused

showed them a bush. According to P.W. 13, it was only in that place M.O. 13 skull and bones were found lying P.W. 13 was also taken to other

places, where the accused admitted having committed other offence. Thereupon the accused was brought to Sriperumbudur Police Station and

P.W. 13 altered the offence into one u/s 302 I.P.C. and sent express report Ex. P3

to the Judicial Second Class Magistrate, Poonamallee and the copies of the said express report were forwarded to the higher officials. He once again examined P.W. 5 and the Thalayari Sundararajan. On 20-

1-1985 he gave a requisition Ex. P. 23 to the Magistrate to record the confession of the accused under S. 164 of the Criminal P.C.

11. P.W. 10 is the Judicial Second Class Magistrate No. I, Saidapet. His evidence is that in pursuance of the requisition received from P.W. 13 he

sent a requisition Ex. P. 23 to the Sub-Jail, Poonamallee directing the jail authorities to produce the accused before him on 23-1-1985.

Accordingly, the accused was produced before him on 23-1-1985 at about 11.30 a.m. Thereupon he put necessary questions to the accused in

accordance with law and recorded his answers. Ex. P. 24 is the proceedings that took place on that day. P.W. 10 would state that neither Police

officials nor anybody else were present at that time. He would further state that he had taken necessary precaution in that regard and that his.

Assistant and Peon alone were present inside the Court Hall. From the answers given by the accused, he came to know that the accused was

willing to give a confession voluntarily. Thereupon he directed the accused to be kept in a separate cell and to be produced before him on the next

day. Accordingly, the accused was produced before him on 24-1-1985 at 12.15 p.m. He would further state that after taking all the necessary

precaution and after making necessary warnings and after fully satisfying with the answers given by the accused, he came to know that the accused

was willing to give judicial confession on his own volition and recorded the statement as given by the accused which is marked as Ex. P. 26. P.W.

10 appended Ex. P. 27 certificate Ex. P. 25 is the proceedings of the second day.

12. ""P.W. 7 was the Assistant Surgeon at Government Hospital at Sriperumbudur who conducted autopsy as per the requisition given by P.W. 13

at the spot at 12.15 p.m. on 23-11-1984. According to her, on inspecting the spot the following bones were found scattered over an area of

about half a kilometre in Mannur Reserve Forest :

1. Skull-full shape without mandible and has right upper molar 3 Nos. Canine 1 No. and left upper molar 2 Nos.

2. Right Humerus.

3. Left forearm bones (radius and ulnar) with remnants of hand.

4. Bones of left lower limb (complete set) with remnants.
5. Bones of the right lower limb with remnants of the right foot.
6. Right iliac bone.
7. Lower dorsum lumber vertebrae with remnants of sacrum.
8. Hair of scalp plaited.
9. Left side scapula with clavicle intact.
10. Right scapula remnants.
11. Mandible with two molars on the right side and two molars on the left side.
12. Remnant of the left humerus.
13. Right ulnar and radius remnant.
14. Ribs twelve numbers.

P.W. 8 the Additional Professor of Forensic Department. Madras Medical College, Madras received the following bones from Sriperumbudur

Assistant Surgeon P.W. 7 for examination and report :

1. Skull with mandible which articulate with skull bone.
2. Frontal and parietal eminences prominent.
3. Glabella and supra orbital ridges and Zygomatic arch less prominent.

Age above 18 years.

Basis sphenoid and basiciput sutured fused.

The list of bones is marked as Ex. P. 16 and the question is marked as Ex. P. 17. She gave her report that on examination she was of the opinion

that the bones late to the sex female. Ex. P. 18 is her opinion (P. 8). As per Ex. P. 19 the age of the female was about 30 to 40 years. Thereupon,

the skull M.O. 13 was sent to Forensic Science Laboratory for superimposition with photograph of the lady M.O. 12 together with the requisition

Ex. P. 20.

13. P.W. 13 examined P.W. 8 on 28-6-1985. He also recorded further statement of P.W. 7 on that day. He examined the photographer on 29-

6-1985. Further, he seized Ex. P. 1 complaint given by P.W. 1 to the Panchayat Union office from P.Ws. 5 & 3 as well as Ex. P5 given by P.W.

3. He examined the Block Development Officer. After completing the investigation P.W. 13 laid the charge-sheet on 4-9-1984 under sections

302, 376 and 201 I.P.C.

14. When the accused was questioned with regard to the incriminating circumstances and pieces of evidence the totally denied as prosecution

evidence. He also denied having given the statement before the Magistrate P.W. 10. He would further state that since his parents were detained in

the police station and ill-treated the gave the confession statement to P.W. 10 and that he not committed any offence. He denied that he gave any

extra judicial confession to P.W. 5 or any confession statement to P.W. 13. No witness was examined on his side.

15. Learned trial Judge after taking into consideration the oral and documentary evidence and for the reasons assigned in his Judgment came to the

conclusion that the prosecution has proved the guilt of the appellant in respect of all the three charges and consequently convicted and sentenced

him as stated in the opening paragraph of this Judgment. Hence the present appeal.

16. Mr. M. Vijayakumar, learned counsel representing Mr. K. N. Basha, learned counsel for the appellant took us through the recorded evidence

and made various submissions. According to the learned counsel the conviction is solely based on the uncorroborated retracted judicial confession

and that too the said confession is not a voluntary one and further the alleged extra judicial confession is stated to have been given to P.Ws. 4 and

5 which is also retracted. The learned counsel for the appellant submitted that no reliance can be placed on the alleged extra judicial confession,

and even otherwise the said extra judicial confession is a weak piece of evidence and since it is retracted there is absolutely no material whatsoever

to corroborate the same and no conviction can be given on that basis. He would further submit that the corpus delicti is also not available to fix the

identity of the deceased and also the cause of the death. According to the learned counsel there is absolutely no evidence to connect the accused-

appellant with the crime and that the conviction is not sustainable.

17. Per contra learned Public Prosecutor would submit that even though the corpus delicti is not available, the conviction can be sustained in the

basis of the extra judicial confession even though it is not corroborated by any material particulars since the said extra judicial confession was made

to the Village Administrative Officer P.W. 5 and P.W. 4 was the forest Officer

against whom nothing was suggested to depose falsely against the accused. The point that arises for consideration in this appeal is whether the prosecution has proved the guilt of the accused in respect of all the three charges beyond all reasonable doubt.

18. After hearing the argument of the learned counsel appearing for the appellant and after going through the materials available before us we find

that the conviction of the appellant is based on the judicial confession Ex. P. 26 made by the accused to P.W. 10, the Judicial Magistrate,

Poonamallee and the extra judicial confession made by the accused to P.W. 5 in the presence of P.W. 4, the Forest Officer. Now we have to see

how far the conviction can be sustained on the basis of the two confessions which were retracted by the accused during trial. This is a case where

the deceased who was employed as Aaya in the Noon Meal Centre and who used to pass through the forest everyday was found missing from 8-

11-1984 and in respect of the same report has been given by her sister to P.W. 3 after searching for her. Thereafter for the first time on 22-11-

1984 P.W. 4 the Forest Guard noticed M.Os. 1 to 3 the clothes and other articles of the deceased lying scattered inside the bush in the forest and

M.O. 13 skull besides bone pieces and in respect of the same, he reported the matter to P.W. 5. Subsequently, the villagers including P.W. 1

came along with P.W. 5 and others to the forest and those articles were identified by P.W. 1 as that of the deceased, and P.W. 1 stated that they

were worn by the deceased at the time when she left the house. P.W. 1 also had given a complaint to the said effect and in respect of the same, the

Village Administrative Officer P.W. 5 made a report to the Sub-Inspector of Police, Sriperumbudur P.W. 12, by whom a case u/s (sic) 683 of

1984 was registered under the head ""suspicious death"". Thereupon nothing was done till 19-1-1985. Only on 19-1-1985 P.W. 4 is stated to have

noticed the accused inside the forest near a bush in some other places at the premises known as Othaipulliyamaram (Single tamarind tree) Paguthi.

On suspicion P.W. 4 enquired him and came to know that the accused belongs to Athivakkum and on making search, he found that the accused

was having M.O. 14 iron rod and M.O. 15 series key bunch and thereupon he took him to the Village Administrative Officer and entrusted him

along with those M.Os. 14 and 15. It is stated that at that time he is stated to

have made extra judicial confession about the commission of the said offence and on the basis of the same P.W. 11 reduced the said confession into writing as Ex. P. 11 and sent the same to P.W. 13 Inspector of Police and thereupon P.W. 13 came there and arrested him and after arrest the accused was said to have made a voluntary confession and the same was reduced into writing admissible portions of which were marked as Exs. P 12 and P13 in which he is said to have stated that if he was taken he would show the place where the dead body was thrown. Subsequently, P.W. 13 made a requisition on 20-1-1985 to the Judicial Magistrate P.W. 10 to record the judicial confession and accordingly, the Judicial Magistrate P.W. 10 on 24-1-1985 after observing all the necessary formalities recorded the judicial confession of the accused which was marked as Ex. P26. It was only on the basis of this judicial confession as well as the extra judicial confession which was subsequently retracted, the appellant was convicted. Now let us consider how far the judicial confession can be relied-upon for convicting the accused. Ex.P. 26 is the judicial confession recorded by P.W. 10 the Second Class Judicial Magistrate, Saidapet from the accused. Learned counsel appearing for the appellant vehemently argued that even in Ex.P. 26 the accused had specifically stated that after he was arrested, he was detained in the police station for 14 days and he was taken to various places in order to recover the articles which were pledged by him and from that it is clear that the accused after he was apprehended, was detained in the police lock up for 14 days. These pledged articles referred to by him have nothing to do with this case. Learned counsel argued that the judicial confession has got to be taken as whole and if once the entire judicial confession is taken as the basis for the conviction of the accused certainly, it is clear from the said confession itself that the accused was kept in the prolonged custody for about 14 days before the requisition was given to record the judicial confession and the judicial confession was recorded by the Magistrate. It is clear according to learned counsel that it is not a voluntary confession given by the accused and on that ground no reliance could be placed on the said judicial confession. In this connection, learned counsel for the appellant drew our attention to the statement of the accused recorded u/s 313 of the Criminal P.C., whereunder he would state that his

parents were kept in the police station and that on account of the threat exercised by the police on him, he had to other alternative except to give

the statement before P.W. 10. To the same effect questions were put to the Investigating Officer P.W. 13 and he also denied it. In this connection,

learned counsel appearing for the appellant also invited our attention to the decision reported in Hari Ram Vs. State, wherein the Jammu and

Kashmir High Court has held as follows :

That makes it clear that the accused remained in the custody of the police for a long time before the was produced for getting his confessional

statement recorded by the Magistrate. The delay caused in the production of the accused before the Magistrate has nowhere been explained by

the prosecution. This circumstances is sufficient to stamp the confession as involuntary regard being had to the view taken by their Lordships of the

Supreme Court in the case reported as in Nathu Vs. State of Uttar Pradesh, that prolonged police custody immediately preceding the making of

the confession is sufficient, unless it is properly explained to stamp it as involuntary.

Learned Public Prosecutor is unable to rebut the said contention. After careful consideration of all the materials and the submissions made by the

learned counsel appearing on either side, we find much force in the contention of the learned counsel for the appellant that the judicial confession

Ex. P. 26 is not a voluntary one, but the same was obtained after a prolonged custody of the accused for more than 14 days in the police station.

Hence, we are of the view that no reliance could be placed on the basis of the judicial confession since it is not corroborate by the material

particulars. Hence, no conviction can be made on the same. Next, we have to consider the extra-judicial confession stated to have been given by

the accused to P.W. 5 in the presence of P.W. 4. As already stated, it is seen from the evidence of P.W. 4 that this accused was found in

suspicious circumstances inside the reserve forest and he was also found in possession of iron rod M.O. 14 and M.O. 15 series of key bunch and

because of the same, P.W. 4 caught hold of the accused and produced him before the Village Administrative Officer. It is stated that the after he

was produced before the Village Administrative Officer he is stated to have made an extra judicial confession to P.W. 5 in the presence of P.W. 4.

According to the evidence of P.W. 5 when he examined the accused the accused stated that his name is Palani, his father's name is Arumugham, that he belongs to Kottaiyur colony, that in Mannur Reserve Forest he committed rape of a woman and murdered her and threw the dead body in the bush, that he also, left the articles which were brought by the woman near the bush and that he ate the food which was kept in M.O. 7 tiffin box. Further, he also stated that prior to this incident, he committed rape of a woman and subsequent to that he had also committed another rape of another woman and he had also committed theft of some articles at some other place. P.W. 5 stated that he reduced the statement given by the accused into writing under Ex.P. 11 and sent it to the Police Station, Sriperumbudur. P.W. 4 only corroborated the evidence of P.W. 5 in this regard. Learned counsel for the appellant also drew our attention to Ex.P. 11 report in respect of which the extra judicial confession was made by the accused to P.W. 5 which were subsequently sent by P.W. 5 to P.W. 13, and submitted that Ex.P. 11 does not contain all these details which was spoken to by P.Ws. 4 and 5 in their evidence. In Ex.P. 11 there is absolutely no mention that the accused had thrown the dead body of the woman inside the bush and that he also left the articles which were brought by her near the bush and that he took the food which was kept in the M.O. 7 tiffin box. P.W. 13 also admitted in his evidence that P.Ws. 4 and 5 did not say even in the S. 161 Statement about all these facts. Therefore according to the learned counsel that except stating that he had committed rape of one woman and prior to this incident he had committed rape of another woman and subsequently he had also committed another rape of another woman and that he had also committed theft, there is absolutely nothing to connect the said confession with the decease in this case or about the commission of rape and murder of the deceased. According to the learned counsel the exact words of the accused in respect of the alleged extra judicial confession were not recorded or reduced into writing even according to the prosecution. Further the accused never sought any protection from the harassment of the police either from P.W. 4 or from P.W. 5 and there is absolutely no need for him to make such an extra judicial confession to strangers like P.Ws. 4 and 5. It is the admitted case of the prosecution that the accused had nothing to do with P.Ws. 4 and 5 prior to the alleged date of occurrence on which he

made the extra judicial confession. Learned counsel for the appellant also submitted that the alleged extra judicial confession is retracted and that

the accused denied having made such a confession either to P.W. 5 or to P.W. 4. He would further submit that absolutely there is no

corroboration whatsoever for this alleged extra judicial confession, which is a weak piece of evidence and on the basis of which no conviction can

be given. In pursuance of the alleged extra judicial confession given, it is stated that subsequently the accused was produced before the P.W. 13

Inspector of Police and he is stated to have recorded a statement under S. 27 of Evidence Act, the admissible portions of which are marked as

Exs. P12 and P13, which are to the effect that if he was taken to the place, he would point out the exact place where the dead body was thrown in

the bush. Significantly in pursuance of the statements made under Exs. P. 12 and P13, nothing was recorded in respect of the place which was

shown by the accused and that place is the one, where M.O. 13 skull, bone pieces and M.Os. 1 to 3 were found lying. In fact when P.W. 13 was

questioned he fairly admitted that he did not prepare anything in writing in respect of the place that was pointed out by the accused in pursuance of

Exs. P12 and P13. In this connection our attention was drawn by the learned counsel appearing for the appellant to the decisions of the Supreme

Court, this Court and various High Courts in support of his contention :

In the decision reported in *Heramba Brahma and Another Vs. State of Assam*, the Supreme Court held as follows (at Page 152; of Cri LJ) :

We are at a loss to understand how the High Court accepted the evidence on his extra judicial confession without examining the credentials of

P.W. 2 Bistiram; without ascertaining the words used; without referring to the decision of this Court to be presently mentioned wherein it is

succinctly stated that extra judicial confession to afford a piece of reliable evidence must pass the test of reproduction of exact words, the reason

or motive for confession and person selected in whom confidence is reposed in *Rahim Beg and Another Vs. State of U.P.*, ; this Court while

examining the evidence as to extra judicial confession made by two accused to Mohamed Nasim Khan (P.W. 4) observed that :

There was no history of previous association between the witness and the two accused as may justify the inference that the accused could repose

confidence in him. In the circumstances, it seems highly improbable that the two accused would go to Mohammed Nasim Khan and blurt out a confession.

In the decision reported in Jagta Vs. State of Haryana, the Supreme Court observed as under (at Page 1014; of Cri LJ) :

The evidence about an extra judicial confession is in the nature of things a weak piece of evidence. If the same is lacking in probability there would be no difficulty rejecting it.

In the decision reported in Makhan Singh Vs. State of Punjab, the Supreme Court observed as follows (at Page 1707) :

..... There is no other corroborative evidence about the extra judicial confession. As rightly conceded by the learned counsel for the State that

extra judicial confession is a very weak piece of evidence and is hardly of any consequence.

The Karnataka High Court in the decision reported in Aneppa and Others Vs. The State of Karnataka, held as follows (at Page 465) :

Extra judicial confession should be proved in the same way as other admissions or statements by the evidence of persons to whom they are made.

They must be proved by evidence of the most reliable character. The infirmity is that in most cases owing to the absence of any writing the exact

words used by the accused cannot be known and the witness may have misunderstood or may not have remembered. For this reason extra judicial

confessions are not considered of much value unless the witness can be depended upon. It is unsafe to convict a person only on such evidence

without corroboration. As a rule of caution, Courts usually require some material corroboration to an extra judicial confession.

It is clear from the ratio laid down in the abovesaid decisions that in the absence of recording the exact words said to have been used by the

accused and in the absence of any material with regard to the person to whom the accused is alleged to have made the confession or the one on

whom he had reposed confidence and also sought protection from harassment from the police and further in the absence of any corroboration no

conviction can be given on the basis of the alleged retracted extra judicial confession. Applying the ratio of all the decisions cited supra to the

present case, we have no hesitation to hold that no conviction can be had on the

basis of the alleged extra judicial confession as relied on by the prosecution in this case. As already observed except stating that he committed rape of one woman and murdered her, absolutely there is nothing to connect Ex. P. 11 with the appellant. As already observed, P.Ws. 4 and 5 are strangers to the accused and it is not the case of the prosecution that the accused approached P.Ws. 4 and 5 and sought their help from harassment of the police. We do not find any probability in the version of the prosecution that the accused himself voluntarily made the extra judicial confession to P.W. 5 and that too when he was brought from the forest and produced before P.W. 4, there is absolutely nothing to show that any investigation was done in respect of the other offence said to have been committed by the accused in the said extra judicial confession. Admittedly, no materials whatsoever were available in the evidence adduced by the prosecution to corroborate such extra judicial confession. In the circumstances we have no hesitation in holding that no reliance could be placed on the alleged extra judicial confession, which is a weak piece of evidence to convict the accused. Admittedly, corpus delicti is not available in this case. We have got the evidence to the effect that M.O. 13 skull which was seized in this case is in respect of a female. Beyond that there is no material to connect the said skull with that of the deceased. Even though it is stated that it was sent to the Forensic Department for superimposition test along with the photograph, we do not have any material that any superimposition test was done and it was found that the Skull relates to the deceased Sangunthala. Thus on a careful consideration of the entire materials, we are of the view that the prosecution has miserably failed to establish the guilt of the accused by acceptable evidence and consequently, the conviction of the appellant is not sustainable and the same is liable to be set aside.

19. In the result, the appeal is allowed. The conviction and sentence awarded to the appellant are set aside and the appellant is directed to be set at liberty forthwith, unless he is required in connection with any other case.

20. Appeal allowed.