

(2013) 09 TP CK 0007
In the Tripura High Court
Case No : Criminal Appeal No. 41 (J) of 2010
Rupchand Mondal Vs State of Tripura

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2013) 09 TP CK 0007

Hon'ble Judges : Deepak Gupta, C.J.; S.C. Das, J

Bench : Division Bench

Advocate : S. Kar Bhowmik, for the Appellant; A. Ghosh, PP, for the Respondent

Judgement

S.C. Das, J.—This Criminal appeal u/s 374 of the Code of Criminal Procedure is directed against the judgment and order of conviction and sentence, dated 26.06.2006, passed by learned Addl. Sessions Judge, Belonia, South Tripura, in Case No. ST 15(ST/B) 2006, whereby and where-under the accused-appellant Rupchand Mondal was found guilty of the charges framed against him u/s 302 and 201 of IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs. 5000/- in default of payment to suffer S.I. for 6(six) months u/s 302 of IPC and again sentenced him to suffer R.I. for 3(three) years and to pay a fine of Rs. 2000/- in default of payment to suffer S.I. for 6(six) months u/s 201 of IPC and directed the sentences to run concurrently. Heard learned counsel, Mr. S. Kar Bhowmik for the appellant and learned Public Prosecutor, Mr. A. Ghosh for the State respondent.

2. Prosecution case so far discerned from the evidence and materials on record is that, the accused-appellant Rupchand Mondal along with his wife Swapna Mondal and their minor child used to reside in their own house at village Naraifung under Santirbazar Police Station of South Tripura District. On 27.02.2006, at about 11:00 p.m., the accused Rupchand Mondal went to the house of his next door neighbour Mina Pal and Khokan Pal (P.Ws. 9 and 10), while the witnesses were sleeping and he called P.W. 9 to come out and enquired with those witnesses as to whether his wife came to their house or not. He also told them that he took liquor and therefore, his wife got annoyed with him and left the house. The witnesses on query of the accused told him that his wife did not come to their

house. Thereafter, the witnesses accompanied the accused to his house and searched for his wife Swapna, but she was not found available. Thereafter, the accused went to the house of his sister-in-law (wife's sister) Smt. Alo Rani Pal (P.W. 11) at village Santirbazar (neighbouring village) and called Alo Rani to come out and enquired with her about his wife whether she came to their house or not. Alo Rani and her husband (Babul Pal, P.W. 2) came out and enquired with the accused as to what happened, to which the accused informed them that his wife Swapna was missing and he also requested Alo Rani to enquire about his wife in the house of his father-in-law (parental house of Swapna and Alo Rani) and accordingly, Alo Rani with her husband and accused Rupchand went to her parents house and enquired about Swapna but she was not found there. Thereafter they returned to the house of Alo Rani and Rupchand also stayed there for the night. On that night Babul Pal (P.W. 2) gave a missing information of Swapna at Santirbazar P.S.

2.1 On the next morning the accused along with Babul Pal and Alo Rani (P.W. 2 and P.W. 11) came to his house and many other villagers also gathered. They searched all around but Swapna was found nowhere. In course of search, the witnesses could notice newly excavated earth near the latrine of the accused and got suspected. Accused was avoiding to go to that site. Then the witnesses asked the accused as to what happened to his wife Swapna, to which he confessed his guilt to the witnesses and neighbours that he had killed his wife following quarrel with her and thereafter buried her body in the ditch near the latrine. P.W. 2 immediately informed Santirbazar P.S. over telephone narrating the fact and thereafter O.C. of the P.S. came to the spot and recorded statement of P.W. 2 as FIR. The accused was kept detained by the witnesses and neighbours and he was arrested by O.C. of the P.S. (P.W. 14).

2.2 Thereafter, P.W. 14 informed the incident to Sub Divisional Police Officer and also informed the Sub Divisional Magistrate to depute an Executive Magistrate to recover the dead body and accordingly, P.W. 1 Subrata Majumder, an Executive Magistrate, was deputed by the SDM to remain present at the time of discovery of the dead body. Video recording of discovery of dead body was arranged by P.W. 14 (I.O.) and the dead body was dug out from the ditch from the side of the of latrine of the accused. Inquest report was prepared over the dead body by the Executive Magistrate (P.W. 1) and the dead body was forwarded to Santirbazar Hospital for Postmortem examination and accordingly, Dr. M.L. Baidya conducted postmortem examination and opined that the cause of death was due to asphyxia as a result of strangulation which was homicidal in nature.

2.3 O.C. of the P.S. himself investigated the case and submitted charge-sheet against the accused for commission of offence punishable u/s 302 and Section 201 of IPC.

2.4 Cognizance was taken on the basis of the police report by the learned SDJM, Belonia and thereafter case was committed to the Court of learned Addl. Sessions Judge, Belonia for trial. Learned Addl. Sessions Judge in course of trial

framed charges against the accused under Sections 302 and 201 of IPC to which the accused pleaded not guilty and claimed to be tried.

3. Prosecution examined 14 witnesses in course of trial Out of them P.Ws. 2 and 11 are the husband and wife i.e. the brother-in-law and sister-in-law of the accused. P.Ws. 3, 9 and 10 are the next door neighbours of the accused. P.W. 4 is the cousin brother of the deceased. They (P.Ws. 2, 3, 4, 9 and 11) are the material witnesses before whom the accused alleged to have made extra judicial confession. P.W. 1 is the Executive Magistrate who was present at the time when the dead body was dug out from the ditch where it was buried by the accused. P.W. 5 is a witness to the recovery of dead body and seizure of Exhibit M.O. 1 i.e. rope and the spade. P.W. 6 is Sub-Inspector of police of Santirbazar P.S. who was first informed by P.W. 2 over telephone about the occurrence and made G.D. entry of the fact reported by P.W. 2 on the basis of which O.C. of the P.S. i.e. P.W. 14 went to the spot and started investigation. P.Ws. 7 and 8 are the constables of police and they are of little importance. P.W. 12 has done video recording at the time of digging out of the dead body. P.W. 13 is the Medical Officer who conducted postmortem examination and P.W. 14 is the I.O. of the case.

3.1 In course of trial, prosecution also proved the FIR lodged by P.W. 2; inquest report prepared by the Executive Magistrate (P.W. 1); seizure list of nylon rope found with the dead body with the seized materials; wearing apparels of the deceased; postmortem report etc. and marked those as exhibited documents.

4. Prosecution witnesses were cross examined on behalf of the accused and after closure of the prosecution evidence, accused was examined u/s 313 , Cr.P.C. and in his turn, accused declined to adduce any defence evidence. Defence case is that of a bare denial of the prosecution case. During cross examination of the witnesses it is suggested that Swapna (deceased wife of the accused) was killed by somebody else and thereafter kept her dead body into the ditch to conceal it and that the accused did not kill her.

5. Learned counsel, Mr. Kar Bhowmik in course of his argument, seriously criticized the judgment and order of conviction and sentence and assailed it on the following grounds:-

(a) According to the prosecution case, after the accused made confession before P.W. 2 and others, P.W. 2 over telephone informed Santirbazar P.S. and P.W. 6, S.I., Sekharlal Bhattacharjee received the telephonic information and recorded the information in G.D. Book, but copy of that G.D. has not been produced rather it has been withheld by the prosecution purposely. That G.D. should be the first information report in respect of the commission of the alleged offence. So, subsequent statement of P.W. 2 recorded by P.W. 14 as FIR, after arrival in the house of the accused, is hit by Section 162 of Cr.P.C. and so it cannot be treated as an FIR.

(b) At the time of framing of charge, the accused was not questioned as to whether he pleads guilty of the offence alleged or not? And so, the valuable right

of the accused as conferred u/s 228 of Cr.P.C. has been denied and therefore, the trial vitiated.

(c) According to the prosecution, the accused made extra judicial confession before the witnesses and after such confession was made by the accused, P.W. 2 informed the P.S. and thereafter, I.O. (P.W. 14) came to the spot and recorded statement of P.W. 2 as FIR which is marked as Exbt. P-1 but in that FIR there is no whisper at all that the accused made a confession before the informant and others. So, the alleged extra judicial confession from the very inception is doubtful and based on such confession, punishment of the accused cannot stand logically and legally.

(d) According to the prosecution the location of the dead body was known to all the witnesses before arrival of police and the dead body was dug out after arrival of police in presence of the Executive Magistrate as alleged. Since the location of the dead body was already available to the notice of the witnesses before arrival of police, the discovery of the dead body cannot afford evidence u/s 27 of the Evidence Act.

(e) The accused was not properly examined u/s 313 , Cr.P.C. He was not afforded opportunity to explain all the circumstances in the evidence against him. Consolidated questions were put and thereby deprived the accused in giving response properly to the questions put to him and, therefore, the conviction and sentence cannot stand.

(f) The child of the accused who was in his house at the time of alleged occurrence has not been examined who might be the best witness to say the truth. Therefore, an adverse inference should be drawn.

(g) The next argument advanced by learned counsel, Mr. Kar Bhowmik is that the alleged extra judicial confession suffers from inherent improbability. The accused was encircled by the witnesses who all are relatives of his wife and other neighbours and under that circumstance, accused had no other alternative but to make a confession to save his life. So, such confession cannot be regarded as a voluntary confession. Extra judicial confession is a weak piece of evidence and unless it is supported by some other evidence on record, it is not safe to record a conviction relying on extra judicial confession alone. There is no eye witness of the occurrence and in no way the other circumstances supported the prosecution case. Hence, the accused is entitled to get benefit of doubt.

(h) Last argument advanced by learned counsel, Mr. Kar Bhowmik is that if the extra judicial confession is believed then it has to be believed as a whole. In the event it is relied, the extra judicial confession clearly spelt out that there was a quarrel between the accused and his wife and in the midst of quarrel, the accused got angry and he could not control himself and under such circumstances he strangulated his wife with a nylon rope and thereafter buried the dead body. This evidence suggests that it was a case of sudden anger of the accused who committed the offence and in that case the alleged offence does not

come within the purview of murder and it may be at best an offence of culpable homicide not amounting to murder, punishable u/s 304 part II of IPC. The accused appellant is already in custody for more than 7 years and he may be punished for the period already suffered by him.

6. In support of his argument, learned counsel, Mr. Kar Bhowmik relied on the following case laws:-

i.

(2012) 6 SCC 403 (Sahadevan & Anr. Vs. State of Tamil Nadu)

;

ii.

: 1989 Cri.L.J. 1495 (State of Assam Vs. Manik Chandra Dey)

;

iii.

(1991) 3 SCC 27 (Jaharlal Das Vs. State of Orissa)

;

iv.

(1998) 6 SCC 108 (Kavita Vs. State of Tamilnadu)

v.

: 2011 (2) GLT 425 (Gopal Goraik Vs. State of Assam)

vi.

: 2011 (1) GLT 47 (Lalsangzuala Vs. State of Mizoram)

7. Per contra, learned P.P., Mr. Ghosh has argued that the accused had deliberately murdered his helpless wife in his own house, buried the dead body to screen him from punishment and thereafter went out to say that his wife was missing. There is nothing in the evidence on record that there was a quarrel of such an extent that the accused could not control himself and committed the murder of his wife. It is evident that the accused with the intention and knowledge in cool mind committed the murder and thereafter buried the dead body. He made a voluntary confession before the witnesses who are his relatives and neighbours. Those witnesses have no animosity or any adverse interest to implicate the accused falsely. There is nothing on record that the extrajudicial confession was obtained under threat or coercion or under promise. There is no room at all to disbelieve the confession of the accused made before the witnesses. The confessional statement which is found to be voluntary, cogent and reliable and which is associated with the circumstances of recovery of the dead body, at the instance of the accused, is sufficient to hold him guilty of the charge

of murder. It is, however, admitted by learned Public Prosecutor that it was the duty of the prosecution to place on record the G.D. entry made on the basis of the telephonic information, lodged by P.W. 2, but non production of that G.D. book cannot vitiate the trial since the other evidence is cogent, consistent and not shaken in any manner.

8. We may now have a glimpse to the evidence on record. P.Ws. 9 and 10 are the next door neighbours of the accused. They stated that at about 11:00 p.m. the accused Rupchand called P.W. 9 and enquired as to whether his wife came to their house or not. They replied that his wife was not in their house. They came out of the hut and searched for Swapna, the wife of the accused but she was not available. The accused told P.W. 9 that he took liquor and therefore, his wife got annoyed and left the house. After search when Swapna was not found available, the accused left for the house of his brother-in-law and P.Ws. 9 and 10 went to sleep.

8.1 P.Ws 2 and 11 stated that at dead hours of night (1:00/2:00 a.m.) between 27.02.2006 and 28.02.2006, the accused Rupchand went to their house and enquired about Swapna, the younger sister of P.W. 11 and sister-in-law of P.W. 2 and told them that Swapna was missing. He also told that he had searched different places but his wife was not available. He requested P.W. 11 to go to the house of her parents to enquire about Swapna and accordingly all of them went to the house of the parents of P.W. 11 and Swapna, but Swapna was not available in that house. P.W. 2 also gave missing information at Shantirbazar P.S. on that night itself. The facts stated by the witnesses, discussed above, remained un-rebutted and not shaken in cross examination.

9. Let us now examine the evidence of the witnesses who deposed about the extra judicial confession.

9.1. P.W. 2 in his deposition stated--

On the next day morning I again begun to search Swapna in different places. I went to his house and the villagers continued search. We noticed that accd. Rupchand reluctant to go to the side of latrine side. I along with other villagers became suspicious. We saw some newly explored soil red coloured soil near the latrine. It appears that a ditch was explored mere. We then asked Rupchand. He confessed his guilt to me and stated that he killed his wife as he could not control his anger. He stated to me that he had killed his wife.

9.2 P.W. 3, a next door neighbour of the accused in his deposition stated-

We went to the house of Rupchand, searching different places, but Swapna was not available. Then we noticed some newly explored soil near the latrine side and the accd. Rupchand repeatedly told us not to go to that side, then we suspected that fact and asked Rupchand why he killed his wife. Rupchand confessed his guilt and told us that he had a altercation with his wife and when his wife was cooking, then he bounded her throat by a nylon rope and tightened her, as a

result, she died. Thereafter, Rupchand buried her in the ditch near the latrine and covered by soil.

9.3 P.W. 4, a cousin brother of the deceased in his deposition stated-

Deceased Swapna is my cousin sister. On 28th Feb. I came to know about the missing of Swapna and I went to the house of Rupchand Mandal. I saw there Rupchand and others. I asked him about my sister and he told that he had a quarrel with my sister, thereafter killed her and buried her in nearby ditch near the latrine.

9.4 P.W. 9 in his deposition stated-

On the next day morning Babul Pal informed that Swapna was not in their house, thereafter people were coming in the house of Rupchand. We went to his house and red soil was found on the side of the house. Rupchand confessed his guilt and told that he killed his wife so they could kill him.

9.5 P.W. 11 in her deposition stated-

In the morning time myself, my husband along with Rupchand went out in search of my sister as the accd. Rupchand told us that my sister was missing and he had quarreled with her at about 9 p.m. we went to his house, searched different places along with villagers and noticed some fresh red soil excavated recently near the latrine side. We became suspicious and asked Rupchand about the fate of my sister. Rupchand then confessed his guilt and told us that he had killed my sister and buried her in the ditch where red soil was noticed. After confessing guilt, he told us to kill him.

10. The above quoted evidence of the witnesses in respect of extra judicial confession alleged to have made by the accused has not been shaken in any manner. The accused made the above statement confessing the fact of murder of his wife by him self before arrival of police. After arrival of police only dead body was dug out from the ditch where it was kept buried. The evidence on record is clear that after the accused made the confession, P.W. 2 informed the P.S. over telephone and the accused was kept detained. There is nothing in the evidence on record that there was any threat, inducement, coercion, pressure, torture, duress or promise exercised by the witnesses on the accused to make the confession. There is not even a suggestion in the cross examination that the confession was obtained under threat, inducement, coercion or promise. It appears that the confession has been made by the accused voluntarily to the witnesses when he found that there was no other way to escape and that the witnesses found the place where the dead body was buried. We cannot agree with the submission of learned counsel, Mr. Kar Bhowmik that the confession is involuntary or that it suffers from any inherent improbability. In the absence of any evidence that the accused was compelled to make the confession or that the confession was made in a suspicious circumstance, we found nothing to disbelieve the cogent statement of the witnesses about the confession made by

the accused.

10.1. In the case of Sahadevan (*supra*) relied upon by learned counsel, Mr. Kar Bhowmik, the Supreme Court referring to numerous earlier decisions of that Court, laid down the principles in respect of appreciation of extra judicial confession in paragraph 16 of the judgment thus:-

16. Upon a proper analysis of the above referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extrajudicial confession alleged to have been made by the accused.

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.

10.2 Learned counsel, Mr. Kar Bhowmik put emphasis in paragraphs 13 and 14 of the judgment which reads thus:-

13. There is no doubt that in the present case, there is no eye-witnesses. It is a case based upon circumstantial evidence. In case of circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. Furthermore, in case of circumstantial evidence, where the prosecution relies upon an extra - judicial confession, the court has to examine the same with a greater degree of care and caution.

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.

11. There is no doubt that extra judicial confession is ordinarily a weak piece of evidence unless it is found to have made voluntarily and the Court found it truthful and reliable. It should inspire the confidence of the Court that the confession was made voluntarily without any inducement, threat, coercion, promise, pressure or duress. The same principle has been laid down by the Apex Court in the case of Kavita (supra).

12. In the case of

State of Rajasthan Vs. Raja Ram reported in (2003) 8 SCC 180

, the Supreme Court elaborately discussed the meaning, reliability and requirement of an extra judicial confession in Paragraphs 18 and 19 of the judgment which is meaningful for fair appreciation of the fact in a given case and the observation made by the Court reads thus:-

18. Confessions may be divided into two classes, i.e. judicial and extra-judicial. Judicial confessions are those which are made before Magistrate or Court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or court. Extra judicial confessions are generally those that are made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions u/s 164 of the Code or a Magistrate so empowered but receiving the confession at a stage when Section 164 does not apply. As to extrajudicial confessions, two questions arise: (i) were they made voluntarily? And (ii) are they true? As the section enacts, a confession made by an accused person is irrelevant in a criminal proceedings, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person, or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24. The law is clear that a confession cannot be used against an accused

person unless the Court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the Court has to be satisfied with is, whether when the accused made confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the Court is satisfied that its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of highest credit, because it is presumed to flow from the highest sense of guilt. (See *R. v. Warwickshall* (1783) 1 Leach 263. It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So where the statement is made as a result of the harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of a threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See *Woodroffe Evidence*, 9th Edn. P. 284). A promise is always attached to the confession, alternative while a threat is always attached to the silence-alternative; thus, in the one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonials untrustworthy, the inducement, threat or promise must be such as is calculated to lead to a untrue confession. On the aforesaid analysis the Court is to determine the absence or presence of inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words "appear to him" in the last part of the section refer to the mentality of the accused.

19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement 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 and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extrajudicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

13. Learned counsel, Mr. Kar Bhowmik has contended that what were the exact words stated by the accused while making confession, is not clear since the witnesses made statement in an inconsistent manner and referring to the case of Manik Ch. Dey (supra), learned counsel submitted that in the given facts and circumstances, the extra-judicial confession cannot be relied. The case of Manik Ch. Dey (supra) is clearly distinguishable to that of the fact of the present case. There is no legal requirement that the exact words stated by the accused while making the confession have to be stated by the witnesses. In the case of Kavita (supra), the Supreme Court has categorically held that actual words used by the accused need not be given by the witnesses but it is for the Court to decide on the acceptability of the evidence having regard to the credibility of the witnesses.

14. In the facts of the present case we find that P.Ws. 2, 3, 4, 9, 10 and 11 are all relatives and/or close neighbours of the accused. They have no animosity with the accused. There is not even a whisper in the evidence on record that they are in any way interested to implicate the accused with a false allegation of murder of his wife. There is not even a suggestion that the witnesses compelled the accused to make confession. The accused when enmeshed himself with incriminating network of fact, voluntarily came out with the confession that he killed his wife and he also stated to some of the witnesses that he may therefore be killed. Therefore, there is no room for suspicion of the prosecution witnesses in any manner that they made statement before the Court about the confession which the accused did not actually state to them. Besides suggestion that the accused did not make any confession, there is nothing else in the cross examination of those witnesses.

15. It is a settled law that an extra-judicial confession if found to be voluntary and truth-filled can form the basis of conviction even without other corroboration. It is a rule of caution that the Court would ordinarily look for an independent reliable corroboration but that is not a rule of law. If the witness, by whom extrajudicial confession is deposed, is believed and if such confession is voluntary, conviction can be based on it alone. The value thereof depends upon the veracity of the witness to whom it is made. Under the given facts and circumstances of the case and having regard to the relation between the accused and the witnesses to whom the confession has been made, we are of the opinion that there is nothing unnatural in respect of the extra-judicial confession made by the accused and it is clear, cogent and appeared to have been made in normal course without any pressure, threat or inducement.

16. We are agreeable with the submission of learned counsel, Mr. Kar Bhowmik that the recovery of dead body cannot afford evidence as to the leading to discovery since the witnesses already noticed before arrival of the police that the dead body was buried in the ditch by the accused. The dead body was dug out by the accused in presence of the witnesses and the Executive Magistrate. The nylon rope with which the accused strangled his wife was found round her neck after the dead body was taken out of the ditch. Though the fact of recovery of dead body from the ditch cannot be regarded as an evidence of "leading to discovery" but the discovery of the dead body from his own house is no doubt a material incriminating circumstance against him and the confessional statement of the accused made to the witnesses is supported by the discovery of the dead body that the accused himself committed the murder and buried the dead body there with a view to screen himself from the crime. The incriminating network of fact has created a dent and the accused has failed to come out of it.

The aggravating circumstances which have been successfully brought on record are:-

- i. The accused with his wife and their minor child were only at their house on that night.
- ii. At about 11:00 p.m. the accused went to the house of his close neighbours P.Ws. 9 and 10 and enquired about his wife saying that his wife was missing and he further told that he consumed liquor and therefore, his wife got annoyed and went away from the house. It was a deliberate false statement made by the accused to the neighbours to screen himself.
- iii. The accused thereafter went to the house of the P.Ws. 2 and 11 and enquired about his wife saying that his wife was missing. He along with P.Ws. 2 and 9 also went to the house of his in-laws to enquire about his wife and those all were pretext of the accused only to get rid of the charge of murder.
- iv. The witnesses stated that they found newly excavated earth near the latrine in the ditch and suspected that the accused might have killed his wife and buried there and when it was found by the witnesses, the accused broke down and

made the confessional statement voluntarily.

17. In course of cross examination of prosecution witnesses, suggestions were put to the witnesses that the wife of the accused might be killed by somebody else and thereafter buried it in the house of the accused. This wild suggestion has no supporting evidence. There is no whisper in the evidence on record to show that somebody else might have killed the wife of the accused and buried her in his house.

18. Normally in a criminal case the burden of proof is on the prosecution to prove the ingredients of the offence. But in a case where the accused is found shrouded with suspicion and is enmeshed in an incriminating network of facts, it becomes his duty to explain the circumstances yielding to an adverse inference against him and if he omits to do so or fails in creating a dent in the prosecution story, his omission assumes a sinister significance. The accused and his wife were at home. At 11:00 p.m. of the night he went to his neighbours house and reported that his wife was missing and enquired about his wife. Thereafter, he went to the house of his brother and sister-in-laws and enquired about his wife. It shows that the accused after killing his wife buried her and then went out to play a drama to escape from the offence committed by him. The circumstances brought on record leads to the only inference of guilt of the accused and it is inconsistent with his plea of innocence.

19. In the case of Jaharlal (*supra*), the Supreme Court has observed that the circumstantial evidence in order to sustain the conviction must satisfy three conditions--

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

20. The law has been well settled regarding circumstantial evidence. In the present case the homicidal death of the deceased Swapna is not disputed. The recovery of the dead body from the house of the accused from buried condition clearly makes out an incriminating circumstance against the accused. It is a settled law that the circumstances from which the conclusion is to be drawn should be fully proved and the circumstances should be conclusive in nature. All the facts so established should be consistent only with the hypothesis of guilt and inconsistent with the plea of innocence. The circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than that of the

accused.

20.1 In the present case, though the accused has suggested that any other person might have killed his wife and buried her in the ditch, is rather incriminating circumstance against the accused since he has confessed his guilt to the witnesses making extrajudicial confession.

21. It is abundantly clear in the prosecution evidence itself that after the accused made the confession, P.W. 2 informed Shantirbazar P.S. over telephone and P.W. 6 received the telephone and made a G.D. entry about the murder of wife of accused Rupchand and P.W. 6 after making G.D. entry informed the O.C. Babul Pal (informant) also went to the P.S. But O.C. told that he will verify the fact. This is enough of an information about a cognizable offence. Any other statement recorded subsequently as FIR is definitely hit by Section 162 of Cr.P.C. Copy of G.D. entry has not been placed by the prosecution. It is a serious lapse on the part of the prosecution. Exhibit 1, the statement recorded by P.W. 14 after reaching the house of accused has lost its credentials as an FIR. It can in no way be treated as FIR of the case since the information already recorded in the G.D. by P.W. 6 should be regarded as the FIR which has been withheld. However, we find no cogent reason to draw any adverse inference for withholding that G.D. entry.

We are also in agreement with the learned counsel, Mr. Kar Bhowmik that exhibit-1 cannot be regarded as an FIR. Since exhibit-1 lost its credentials as an FIR, we are reluctant to see as to what has been recorded in the so called FIR though that FIR was recorded in the house of the accused after arrival of police and though it is the prosecution case that before arrival of police, the accused made confession to the witnesses but nothing was stated in the FIR about the confession, however, it has been stated in exhibit-1 that the accused committed murder of Swapna and buried the dead body in his house at Naraifung school Para. Since Exhibit-1 lost its credibility as FIR, we are reluctant to attach any importance as to what has been stated in that document.

22. Learned counsel, Mr. Kar Bhowmik assailed the charge stating that no question was put to the accused as to whether he pleads guilty or not after the charge was framed against him and thereby Section 228 of Cr.P.C. has been violated. The charge framed against the accused reads as follows:-

CHARGE

I, Shri A. Pal, Addl. Sessions Judge, Belonia, South Tripura do hereby charge you SRI RUPCHAND MANDAL as follows:-

FIRSTLY that you on 27.2.06 at 21:00 hrs. at Naraifung, under Santirbazar Police Station did commit murder by intentionally or knowingly, causing the death of Smt. Swapna Mandal and thereby committed an offence punishable u/s 302 of the I.P.C. and within the cognizance of this Court of Sessions.

SECONDLY that you on or about the same date, time and place, knowing or

having reason to believe that certain offence to wit, murder, punishable with imprisonment for life or death, having been committed, did cause certain evidence of the said offence to disappear to wit, buried the dead body of Smt. Swapna Mandal, with intention to screening the offender, namely, yourself Sri Rupchand Mandal from legal punishment and thereby committed an offence punishable U/S 201 of the I.P.C. and within the cognizance of this Court of Sessions.

AND I hereby direct that you be tried on the said charge by this Court of Sessions.

Sd/- (A. Pal) Addl. Sessions Judge, Belonia, South Tripura.

Charge read over and explained to the accused person, in Bengali, to which he pleaded not guilty and claimed to be tried.

Sd/- Addl. Sessions Judge, Belonia, South Tripura.

23. It is abundantly clear that the trial Judge read over and explained the charge to the accused in Bengali (mother tongue) to which the accused pleaded not guilty and claimed to be tried. This is enough that the charge was stated to the accused and in response thereto, the accused pleaded his innocence and that is sufficient compliance of Section 228 of Cr.P.C. We find no fault in the charge and consequently find no merit in the argument of learned counsel Mr. Kar Bhowmik.

24. Regarding non examination of the son of the accused and the deceased, we find nothing on record that the son of the accused had witnessed the occurrence. The accused also stated nothing in his examination u/s 313 , Cr.P.C. or in the course of cross examination of witnesses that something else had happened in his house to which his minor son was a witness. The age of the minor child also not brought on record. Whether he was capable to make a statement or not that is neither brought on record by the prosecution nor by defence. So, we find no relevance in the argument.

Regarding examination of accused u/s 313 Cr.P.C. a serious question has been raised by learned counsel, Mr. Kar Bhowmik. We have carefully gone through the memorandum of examination u/s 313 , Cr.P.C. We find that altogether 7(seven) questions were put to the accused. Most of the questions were put consolidating the statements of the witnesses which cannot be encouraged. Examination of accused u/s 313 , Cr.P.C. in the course of a criminal trial is not an empty formality or an avoidable rituals. We are in full agreement with the principles of law regarding examination u/s 313 , Cr.P.C. discussed in the case of Gopal Goraik V. State of Assam (supra) and Lalsangzuala V. State of Mizoram (supra).

25. For the guidance of the trial Courts we would like to refer here some of the important case laws on the issue:-

i.

Hate Singh Bhagat Singh Vs. State of Madhya Pradesh (: AIR 1953 SC 468)

;

ii.

Parichhat & Ors. Vs. State of Madhya Pradesh (: AIR 1972 SC 535)

iii.

Sharad Birdichand Sarda Vs. State of Maharashtra (: AIR 1984 SC 1622)

;

iv.

Kuldip Singh Vs. State of Delhi (: AIR 2004 SC 771)

;

v.

Janak Yadav & Ors. Vs. State of Bihar ((1999) 9 SCC 125)

;

vi.

Parsuram Pandey & Ors. Vs. State of Bihar (: AIR 2004 SC 5068)

;

vii. Ranbir Yadav Vs. State of Bihar (2009) Cr.L.J. 2692;

viii.

Manu Sharma Vs. State (NCT Delhi) (2010) 6 SCC 1

;

ix.

C. Ronald & Anr. Vs. U.T. of Andaman & Nicobar Island ((2011) 12 SCC 428)

;

x.

V.K. Sasikala Vs. State rep. by Superintendent of Police (2012) 9 SCC 771

;

xi. Ratanlal Banik Vs. State of Tripura (2012 (2) GLT 252;

xii.

Suraj Gupta & Ors. Vs. State of Meghalaya (2010 (3) GLT 225

;

xiii.

Basavraj R. Patil Vs. State of Karnataka & Ors. (: 2000 Cr.L.J. 4604)

;

xiv.

Sajjan Sharma Vs. State of Bihar (: 2011 CrL.L.J. 1169)

;

xv.

Sanatan Naskar Vs. State of W.B. { (2010) 8 SCC 249}

&

xvi.

Naval Kishore Singh Vs. State of Bihar ((2004) 7 SCC 502)

.

26. This Division Bench in the case of Dhirenjoy Debbarma Vs. State of Tripura in Cr L.A. (J) 69 of 2008 (judgment scribed by one of us, D. Gupta, C.J.) clearly and categorically laid down the law regarding importance of the examination u/s 313 , Cr.P.C.

27. In the case at hand, the trial Judge put all the incriminating materials at the time of examination u/s 313 , Cr.P.C. to the accused but it was in a consolidated form. Since all the incriminating materials were placed to the accused at the time of examination u/s 313 , Cr.P.C., though it cannot be said to be in proper form, we are reluctant to interfere in the judgment for that reason alone and to remand the case back after 7(seven) years for fresh examination u/s 313 , Cr.P.C. in the given facts and circumstances of the case.

28. The case against the accused is based on extrajudicial confession and the circumstances of recovery of the dead body from the ditch in the house of the accused. We find that those incriminating facts have been clearly stated to the accused in course of examination u/s 313 , Cr.P.C. and hence, we find no justification to interfere with the judgment at this stage on the ground of improper examination of accused u/s 313 , Cr.P.C.

29. We may gainfully refer here the case of

Ramdas & Ors. Vs. State of Maharashtra reported in (2007) 2 SCC 170

wherein the Supreme Court has observed that different cases have different facts and it is the totality of the evidence and the impact that it has on the mind of the Court that is important. No straightjacket formula can be evolved in such matter and each case must rest on its own facts. It is settled law that however similar the circumstances, facts in one case cannot be used as a precedent to determine the conclusion on the facts in another.

30. Regarding the last argument advanced by learned counsel, Mr. Kar Bhowmik that the offence if found to have proved against the accused may be at best an offence of culpable homicide not amounting to murder, punishable u/s 304 part II of IPC, is also carefully considered by us. It is contended by Mr. Kar Bhowmik that the accused might have committed the offence, if at all, because of sudden anger following quarrel as stated by him in his extra-judicial confession. So, the offence committed by the accused will come under the purview of exception 4 to Section 300 of IPC. Exception 4 reads as follows:-

Exception 4--Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

31. Section 304 of IPC reads as follows:-

304. Punishment for culpable homicide not amounting to murder.--Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

32. Burden lies on the accused to make out a case that the offence alleged comes under the purview of culpable homicide not amounting to murder. The accused can establish it based on the prosecution evidence or making a statement at the time of examination u/s 313, Cr.P.C. and adducing defence evidence. It is an undisputed fact that the deceased was murdered by strangulation with a ligature. The nylon rope has been seized and proved with which the deceased was strangled by the accused. P.W. 13, the medical officer who conducted postmortem examination, found a transversely ligature mark in the neck and he opined that the death was due to asphyxia caused by strangulation, homicidal in nature and time of death was within 12 hours to 24 hours. The finding of P.W. 13 has not been disputed. We have already reproduced above that part of the evidence of witnesses which consists extra-judicial confession wherein the accused has stated that he had a quarrel and he could not restrain his anger and killed his wife. The accused stated nothing as to what was the quarrel and the magnitude of the quarrel which resulted in murder of his wife by strangulation. It is not a case that the accused suddenly in the midst of quarrel, out of anger dealt a blow unintentionally which resulted in death of the deceased. Here is the clear case that the accused strangled his wife with a nylon rope and thereafter dragged the dead body to the side of the latrine, dug a

hole in the earth and buried the dead body. All these facts cumulatively make out a culpable mindset of the accused that he intentionally and willfully committed the murder of his wife and the offence, therefore, cannot come within the purview of Section 304 of IPC.

33. The facts and circumstances make it abundantly clear that the accused intentionally and deliberately strangled his wife and thereafter plotted a foul drama to get rid of the offence committed by him and in a cool mind he went out for search of his wife in the house of his neighbours and relatives. It was a cool blooded desperate murder of the wife with whom the accused tied his matrimonial life. We find nothing to consider that the offence committed by the accused in a sudden quarrel or sudden spur of a moment. The incriminating facts and circumstances clearly speak that the accused committed murder of his wife and therefore, he cannot escape punishment of murder.

34. Learned counsel, Mr. Kar Bhowmik in support of his argument referred the case of Subramani @ Jeeva @ Kullujeeva Vs. Station House Officer, Police Station, Odiyansalai reported in (2011) 14 SCC 454 but we find that the reported case is on a different and distinguishable fact and the ratio of that case cannot be applied in the facts and circumstances of the present case. The fact of that reported case has been summarily stated in paragraph 2 of the judgment, which reads thus:-

2. The facts of the case are as under on the 4.11.1991 P.W. 1, along with his brother the deceased-Tamilvendhan, went to a restaurant in Labortene Street, Pondicherry. At the restaurant his friends Pws. 2, 3, 4 and another person joined them. They ordered their food and while they were waiting to be served, asked for some drinks. A short while later they heard sounds of breaking of plates inside the restaurant. The seven accused then came out and while they were passing by PWs. 1, 2, 4 and the deceased, Appellant-Subramani made an abrasive comment on the complainant party. The deceased however laughed at him on which the Appellant called his friends and they surrounded the table of the complainants. The Appellant also took up a bottle lying on the table, broke it by hitting it on the table and stabbed Tamilvendhan on his neck. When P.W. 1 intervened he too was caused injuries in that process. On seeing this P.W. 2 came out to rescue them and he too was attacked by the Appellant. The deceased fell down on the ground where after all the accused ran away from the place.

35. The fact of the present case as already discussed is quite different and distinguishable and so the ratio of that decision cannot be applied in the fact of the present case.

36. In view of the discussions made above and for the reasons assigned, we find no merit in the appeal and accordingly, the appeal stands dismissed. Send back the L.C. records along with a copy of this judgment.