

**(1996) 06 BOM CK 0021**

**In the Bombay High Court**

**Case No : Criminal Appeal No. 773 of 1981**

Shivji Malji Gindara

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

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**Date of Decision :** 13-06-1996

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 24, 3, 45, 59

Penal Code, 1860 (IPC) — Section 302

**Citation :** (1996) 5 BomCR 649

**Hon'ble Judges :** Vishnu Sahai, J;S.S. Parkar, J

**Bench :** Division Bench

**Advocate :** Sirish Gupte and Sandip J. Ghogare, for the Appellant; Jyoti S. Pawar, Assistant Public Prosecutor, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Vishnu Sahai, J.—The appellant aggrieved by the Judgment and order dated 5th September, 1981 passed by the Additional Sessions Judge, Thane in Sessions Case No. 208 of 1980 convicting and sentencing him to undergo imprisonment for life u/s 302 I.P.C. has come up in appeal before us.

2. The prosecution case in brief is as under :

The deceased Naval Shivji Gindra was the wife of the appellant. She was married to the appellant in the year 1974. In the beginning the relations were good. However, two to three years after marriage when she visited her uncle Shivji Satra P.W. 5 she complained that the appellant used to beat her. Some days later she went to Kutcha the native village of her father Lakhmising Karamsi, P.W. 2. From there the appellant brought her back. Thereafter both of them started living separately at Jogeshwari. The appellant had a friend Kuverji Satra P.W. 1. He was constructing a building M.V. Estate in Virar. Fifteen to twenty days before the incident the appellant visited him. He told him that he wanted a change of surroundings and requested him to accommodate him in a room of that building.

The evidence is that the construction of the said building was almost complete. On considerations of friendship Kuverji Satra permitted the appellant to live in room No. 5 of the said building till someone came to occupy it. Accordingly on 15-11-1979 the appellant along with Naval shifted in room No. 5. It is alleged that during their stay there the appellant and Naval often used to quarrel.

On 24th April, 1979 at about 11.30 to 12 in the noon when Kuverji Bachubhai Satra P.W. 1 was inside the building a quarrel took place between the appellant and his wife Naval and on account of the same the latter ran towards Virar Railway Station. Kuverji asked one Dayaram Devji who was also working in the said building to bring her back. Dayaram Devji brought her back at about 12.30 in the noon. Thereafter Kuverji, Dayaram Devji and Naval went to room No. 5. There Kuverji asked Naval and the appellant not to quarrel and threatened them that in case they did he would throw them out from the premises. At about 1.30 p.m. Kuverji took his lunch and slept for a while in room No. 3 of the said building. After some time he came down and upto 3 p.m. remained on the ground floor. Then he went out and returned after two hours. After returning he, Dayaram Devji and one Kanji sat talking on a cot on the ground floor. At that time the appellant came there and also joined in the conversation. All of them sat there for about one hour. At about 6 p.m. the appellant went to the first floor where his room was situated. Immediately on returning from there the appellant asked them to accompany him. Kuverji along with the appellant went to the latter's room which was locked. The appellant opened the lock with a key which was with him. Before opening the lock of the room the appellant said that he was trying to wake up his wife but she did not wake up. When the lock was opened Kuverji went inside and found that Naval was lying down on the bed with her face towards the sky. Froth was coming out from her mouth, her neck was red and there was a black sign of thumb on her neck. Kuverji felt the pulse of Naval and realised that she was not alive. However, he did not tell the appellant anything. The appellant asked him to inform his brother who was residing in Jogeshwari. Kuverji went there and handed over to the brother of the appellant the chit given by the appellant. From Jogeshwari he went to Ghatkopar where the uncle of Naval, Shivji Satra resided. Along with Shivji Satra and two to three other persons he came back to Virar about 2 a.m. to 2.30 a.m. on 25th April, 1979.

All of them went to room No. 5 where the appellant and the deceased used to reside. Shivji Satra, the uncle of the deceased called the appellant by his side and started talking with him. He asked him as to who had killed Naval. The appellant replied that he had killed her as he was fed up with her. This was also heard by Kuverji and one Bachubhai Yersi who had come along with Shivji Satra from Ghatkopar.

3. After the appellant had confessed his guilt to Shivji Satra the latter along with Kuverji and Bachubhai Yersi proceeded to police station Virar. They reached the aforesaid police station at 4 a.m. At that time Shivji Satra lodged F.I.R. Exhibit

19. On the basis of the F.I.R. C.R. No. 1-155 of 1979 was registered.

After registering the offence P.S.I. Janardhan Raghunath Jain P.W. 8 proceeded to the place of the incident. He prepared the spot panchanama Exhibit 15. He found the dead body of the deceased lying in room No. 5. Thereafter he prepared the inquest panchanama Exhibit 14. In the inquest panchanama he noticed discharge of froth from the mouth of the deceased which had flown over right cheek and also on other parts of the body. He found her eyes to be closed. He found reddish signs all over the dead body. He also found injuries on the dead body. Between 8.30 to 9 a.m. he arrested the appellant under a panchanama Exhibit 16. From the right pocket of the bush shirt of the appellant he seized a receipt of Virar Gram Panchayat which showed that he had purchased wood from the cemetery. That receipt was produced as Article 1 in the Court. Thereafter he recorded the statements of the witnesses. On 10-5-1979 he received the post mortem report and on 7th October, 1979 he submitted the charge-sheet.

4. Going backwards the autopsy on the dead body of the deceased was conducted on 25-4-1979 between 12 noon to 2 p.m. by Dr. Jesthanand Damodar Kukal, P.W. 6. Dr. Kukal found the following ante mortem injuries on the dead body :

1. Abrasion oval shaped obliquely placed right of mid line below the thyroid cartilage in front of neck.
2. Erythema oval shaped 1 1/4" x 3/4". Obliquely placed just below injury No. 1, on the right side of the neck.
3. Erythema 4" x 2 1/2" obliquely downwards on left side of the neck, extending from thyroid cartilage.
4. Bruise 3/4" x 1/2" over mid part of right cheek.
5. Bruise 2 1/2" x 2" over palmar aspect of right hand.
6. Bruise 7" x 3 1/2" over posterior aspect of lower 2/3rd of left arm.
7. Erythema 12" x 7" over posterior auxiliary on right scapular region of the back of chest."

He opined that these injuries are attributable to any hard and blunt substance.

The doctor also found that the eyes were closed; when opened pupils appear to be dilated. Lips appeared to be blue. He also found that the tongue was protruding out and frothy fluid was oozing from the nostrils, mouth and dark frothy fluid was coming out from the cut section of the lung. In the opinion of the doctor the deceased died on account of asphyxia due to strangulation (throttling).

5. The case was committed to the Court of sessions where a charge u/s 302 I.P.C. was framed against the appellant to which he pleaded not guilty and claimed to be tried. In the trial Court, apart from tendering some documentary evidence prosecution examined as many as eight witnesses. We may straight

away mention that there is no eyewitness of the incident and the case rests exclusively on circumstantial evidence. The defence of the appellant was bare denial. However, no witness was examined from the side of the appellant.

The learned trial Judge believed the circumstantial evidence adduced by the prosecution and convicted and sentenced the appellant in the manner stated above. Hence this appeal.

6. We have heard Mr. Sirish Gupte for the appellant and Mrs. Jyoti S. Pawar A.P.P. for the respondent at considerable length. We have also gone through the depositions of the witnesses, the material exhibits, the statement of the appellant recorded under 313 Cr.P.C. and the impugned judgment. After giving our anxious consideration to this matter we are firmly of the opinion that there is no substance in this appeal and it deserves to be dismissed.

7. We may straight away mention that there is no ocular account in the instant case and the prosecution case rests entirely on circumstantial evidence. We are more than conscious that circumstantial evidence can only be made a basis for conviction if ----

- a) the circumstances are firmly established;
- b) they unerringly point out towards the guilt of the accused;
- c) they are wholly incompatible with the inference of the innocence of the accused; and
- d) they are incapable of being explained on any other reasonable hypothesis excepting the guilt of the accused.

8. It is in the backdrop of this legal position that we propose evaluating the various circumstances adduced by the prosecution to bring home the guilt of the appellant.

9. In the instant case we find that there are a large number of circumstances to prove the prosecution case which we propose enumerating below :

- a) Motive - there was a history of sour relationship between the appellant and the deceased Naval which impelled him to commit her murder;
- b) On the date of the incident viz. 24th April, 1979 at about noon the deceased was seen running towards Virar Railway Station from where on the asking of Kuverji Satra P.W. 1 one Dayaram Devji brought her back at about 12.30 noon. He, Dayaram Devji and the deceased Naval went to room No. 5 where the appellant was present. At that time Kuverji Satra told the appellant and the deceased not to quarrel and threatened them that if they did they would have to vacate the premises;
- c) The appellant and the deceased who were the only occupants of room No. 5 were last seen together at about 12.30 noon on 24th April, 1979 in the said room by Kuverji Satra;

d) At about 6 p.m. the same day i.e. 24th April, 1979 inside room No. 5, the lock of which was opened by the appellant, Naval was found lying dead on the bed;

e) The appellant made an extra judicial confession to Shivji Satra P.W. 5, the uncle of Naval, some times between 2 a.m., to 3 a.m. on 25-4-1979 confessing that he had killed her because he was fed up with her;

f) The medical evidence which shows that it was a homicidal death and not a suicidal one;

g) The incriminating conduct of the appellant ---

(i) in not lodging the F.I.R.;

(ii) his going to purchase wood for the purposes of cremation on the evening of 24th April, 1979; and

(iii) his trying to mislead Kuverji Satra P.W. 1 that Naval was sleeping, something which is ridiculous to accept because froth was coming out from her mouth and there were reddish marks and marks of injuries on her neck and other parts of her body.

We would be failing in our fairness if we do not mention that (g)(iii) was brought to our notice by Mrs. Jyoti S. Pawar, the learned Additional Public Prosecutor.

Excepting the motive the learned trial Judge accepted all other circumstances. In our view all the circumstances, including motive, stand amply established in the instant case and the learned trial Judge committed an error in rejecting the motive.

10. We now propose taking up each of the circumstances.

We would like to begin with the motive. According to the prosecution the appellant and the deceased Naval were married some times in 1974 and it appears that shortly after the marriage the appellant started ill treating her and there were frequent quarrels between them. On this we have the evidence of Shivji Satra P.W. 5, the uncle of the deceased Naval and Kuverji Satra P.W. 1, the friend of the appellant in whose building the appellant and Naval were residing at the time of the incident. The evidence of Shivji Satra is that the marriage between Naval and the appellant took place in the year 1974. After the marriage Naval used to come to his house and he used to go to her house. In the beginning relations were good. However, after two to three years of marriage when Naval visited him she disclosed that the appellant used to beat her. Two to four days later her father in law came and asked him to come to his house. He accordingly went to his house. When he asked Naval as to what was the matter, she replied that the appellant used to beat her. He further deposed that after some days Naval went to Kutcha, the native village of her father Lakhmising Karamsi. From there the appellant brought her back. He further deposed that after her arrival from Kutcha she and the appellant were residing separately at Jogeshwari.

The evidence of Kuverji Satra is that on 15th March, 1979 the appellant and Naval started living in room No. 5 of the premises he was constructing (M.V. Estate) in Virar. He deposed that the appellant and Naval used to quarrel. He also deposed that on the date of the incident i.e. on 24th April, 1979 at about 11.30 to 12 noon on account of a quarrel between Naval and the appellant the former went towards Virar Railway Station. However, through Dayaram Devji Naval was brought back.

11. We have gone through the evidence of both Shivji Satra and Kuverji Satra and we find that the same inspires confidence. That Shivji was the uncle of Naval would make us evaluate his evidence with caution and not mechanically reject the same. Kuverji Satra is a wholly independent witness who had no reason to falsely depose against the appellant. On the converse his evidence is that since 15 years prior to the incident he was friendly with the appellant. In paragraph 30 of the impugned judgment the learned trial Judge has observed that the motive has not been established. We regret to observe that in the teeth of the evidence of Shivji Satra P.W. 5 and Kuverji Satra P.W. 1 and the own admission of the appellant contained in his extra judicial confession to the effect that he was fed up with the deceased and killed her, the learned trial Judge acted perversely in rejecting the motive for the crime. We accordingly hold that the prosecution has established in the instant case a strong motive on the part of the appellant to have killed the deceased.

12. We would like to point out that the appellate Court in an appeal against conviction can reverse a finding of the trial Court if it is of the view that the same is contrary to the weight of evidence on record. Accordingly we reverse the finding of the trial Court that no motive has been established by the prosecution.

13. We next take up the circumstance (b) viz., that on the date of the incident at about noon the deceased was seen running towards Virar Railway Station from where on the asking of Kuverji Satra P.W. 1, one Dayaram Devji brought her back at about 12.30 noon. He Dayaram Devji and the deceased Naval went to room No. 5 where the appellant was present and Kuverji Satra told the appellant and the deceased not to quarrel and threatened them that if they did they would have to vacate the premises.

In support of this circumstance there is evidence of Kuverji Satra P.W. 1. We have gone through his evidence and in our view the same inspires implicit confidence. Nothing has been scored in his cross examination which could persuade us to the contrary. He had no axe to grind against the appellant. On the converse he was the friend of the appellant, knowing him since last fifteen years prior to the incident. In our view the learned trial Judge was perfectly justified in placing reliance on his testimony and in accepting the aforesaid circumstance to be established.

14. We next come to circumstance (c) viz., that the appellant and the deceased were last seen together at about 12.30 noon on 24th April, 1979 in room No. 5

by Kuverji Satra. On this we have the evidence of Kuverji Satra. His evidence is that after Dayaram Devji had brought back Naval from Virar Railway Station he along with Dayaram Devji and Naval went to room No. 5. He left her with the appellant, threatening both of them that in case they did not stop quarrelling they would have to vacate the premises. In our view there is absolutely no blemish in his evidence. As observed earlier Kuverji Satra was a friend of the appellant and had no reason to falsely implicate him. We accordingly hold that this circumstance has rightly been accepted by the learned trial Judge.

15. We next take up circumstance (d) viz., at about 6 p.m. the same day i.e. 24th April, 1979 inside room No. 5, the lock of which was opened by the appellant, Naval was found lying dead on the bed. For this also we have the evidence of Kuverji Satra. He stated that at about 6 p.m. on 24th April, 1979 the appellant came down to the ground floor of the building where he was talking with some persons and asked him to come up. On that along with the appellant he went to his room. When the appellant opened the lock of the room this witness found Naval to be dead. Since he is a friend of the appellant and there is no infirmity in his evidence we hold that the learned trial Judge acted correctly in finding that this circumstance was proved.

16. We now propose to consider circumstance (e) viz., that at about 2 a.m. to 3 a.m. on 25-4-1979 inside room No. 5 the appellant made an extra judicial confession to Shivji Satra P.W. 5, the uncle of Naval, confessing that he had killed her because he was fed up with her.

In support of this circumstance there is evidence of Shivji Satra P.W. 5. He stated that on receiving information from Kuverji Satra P.W. 1 that Naval had been killed by the appellant he went to room No. 5 where the appellant was residing and asked him as to who had killed Naval. The appellant thereupon replied that he had killed her as he was fed up with her. We have gone through the evidence of this witness and we find that the same inspires implicit confidence. We do not find any plausible reason for this witness to falsely attribute the extra judicial confession to the appellant.

To us this extra judicial confession appears to be voluntary, spontaneous and in tune with probabilities. We feel that under the pressure of guilt the appellant cracked and blurted to this witness, his killing of Naval.

Some circumstances also lend corroboration to the evidence of extra judicial confession which we propose pointing out. Firstly corroboration is forth coming from the evidence of Kuverji Satra P.W. 1, the own friend of the appellant, who as is apparent from para 3 of his statement was at a distance of 5 to 6 feet from Shivji Satra when the appellant made the confession. Naturally we are inclined to believe him when he stated that the appellant had confessed to Shivji Satra that being fed up he had murdered Naval by throttling her.

Another corroboration is furnished by the circumstance that in the F.I.R. of the incident which was made within one to one and half hours of the appellant

making the extra judicial confession to Shivji Satra, there is a mention of extra judicial confession. This speaks volumes in favour of the fact that extra-judicial confession is not a got up piece of evidence. After all there was no time for Shivji Satra for making improvements and embellishments in the F.I.R. A prompt F.I.R. is a very good guarantee of the authenticity of the recitals contained therein.

The informant Shivji Satra has stated in the F.I.R. that when he asked the appellant as to what he had done he replied that he had killed her as he was fed up with her. There is complete consistency between the words in which the informant has described the extra judicial confession in the F.I.R. and in those used in his statement in the trial Court.

Finally corroboration is lent to it by the circumstance that the death of the deceased in the instant case was homicidal and not suicidal.

In the post mortem report we find that apart from the fact that the deceased sustained some injuries which rule out suicide the cause of death mentioned is asphyxia, as a result of strangulation. It would be absurd to suggest that the deceased strangled herself.

In our view prosecution has proved the circumstance of extra judicial confession and the learned trial Judge was wholly justified in accepting it as established.

17. We next take up circumstances (f) viz., the medical evidence shows that it was a homicidal death and not a suicidal one. In our view the data noted in the autopsy report by the autopsy surgeon P.W. 5 Dr. Kulak, like the presence of injuries on the person of the deceased; death on account of asphyxia as a result of strangulation; pupils being dilated; froth coming out from mouth; lips being blue; and tongue protruding out, wholly rule out suicide in the instant case and show that death was homicidal. The medical evidence tremendously strengthens the prosecution case that the deceased had been murdered. This circumstance also goes to lend assurance to the prosecution case.

18. We now take up the last circumstance viz., the incriminating conduct of the appellant.

Firstly had he not been the murderer of his wife the normal instinct and the normal conduct would have been to go and lodge an F.I.R. From 6 p.m. on 24th April, 1979 when it was discovered that the deceased was dead till 2 to 3 a.m. on 25th April, 1979 when Shivji Satra P.W. 5 came the appellant had ample time to lodge the F.I.R. No cogent explanation is forth coming from his side, in spite of the fact that he has made a detailed statement u/s 313 Cr.P.C., as to why he did not lodge an F.I.R.

The second incriminating conduct of the appellant was that on the evening of the date of the incident he went to purchase wood for the purposes of cremating his wife Naval without waiting for Naval's relations to come although he had asked his friend Kuverji Satra to inform them. To prove this prosecution has examined Ramsing Keval P.W. 7.

The evidence of Ramsing Keval shows that he was working in Gram Panchayat Virar as a peon and his duty was to sell wood for cremation purposes. He deposed that appellant came in the evening wanting wood. When he asked him as to why he required it he told him that it was in connection with the last ceremony. He further stated that at that time the appellant was afraid and trembling. When he asked him as to who had died he replied that his wife had died. Ramsing further stated that he gave him wood and issued a receipt. It is significant to point out that the appellant was arrested at about 8.30 a.m. 9 a.m. on 25-4-1979 and vide panchanama Exhibit 16, from the right pocket of his bush shirt a receipt (Article 1) was recovered. During trial this witness was shown the receipt and he claimed that it was the same which he had issued to the accused. This is a very strong piece of corroborative evidence. Again we find that this witness has no axe to grind against the appellant. We have gone through his statement and we find no serious infirmity in the same which erodes the core of his evidence. Some contradictions are there but they are bound to be when a witness is examined nearly 21/2 years after the incident. We accept the evidence of Ramsing Keval in support of this incriminating conduct of the appellant.

The third leg of the incriminating conduct of the appellant was that he tried to mislead Kuverji Satra P.W. 1 by telling him that Naval was sleeping. The evidence of Kuverji Satra shows that when he went in the room he found froth coming out from the mouth of the deceased. There were reddish marks and marks of injuries on her body. Obviously all this would not have been missed by the appellant and would not have been there had Naval been only sleeping, as the appellant innocently tried to feign to this witness. We are of the definite view that the whole object of the appellant in telling Kuverji Satra that Naval was sleeping was to mislead him to believe that she had committed suicide and was not murdered.

19. In our view the aforesaid circumstances unmistakably lead to the inference that it was the appellant alone who had committed murder of the deceased. To us the circumstances appear to be wholly incompatible with the inference of innocence of the appellant and incapable of being explained on any other reasonable hypothesis excepting his guilt.

20. We feel that there is yet another circumstance which goes against the appellant, namely, the absence of any explanation from his side as to how the deceased died inside his own house.

In our view this is an additional circumstance against him. Way back in the year 1955, in a case of murder of wife resting on circumstantial evidence, reported in *Deonandan Mishra Vs. The State of Bihar*, the Supreme Court observed thus ;

"It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the

probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain."

This decision is wholly applicable to the present case and we respectfully derive support for our view from it.

In our view the silence of the appellant is ominous and goes against him.

21. We strongly feel that the learned trial Judge acted rightly in convicting and sentencing the appellant u/s 302 I.P.C.

22. Mr. Sirish Gupte learned Counsel for the appellant made a large number of submissions before us. His first submission is that if the evidence of extra judicial confession is excluded the residual circumstantial evidence would not be sufficient to warrant the inference of guilt against the appellant. He also urged that extra judicial confession by itself cannot be the sole basis for recording a conviction in a given case. In his contention it can only form a supportive piece of evidence.

23. Apart from the fact that we do not agree with Mr. Gupte's submission that the residual evidence, after excluding evidence of extra judicial confession, is not sufficient to warrant the inference of guilt we find that the proposition canvassed by him is unsustainable in law. The Apex Court in a large number of decisions has observed that extra judicial confession can form the sole basis of conviction without any corroboration. We feel it pertinent to point out the observations of Their Lordships of the Apex Court in paragraph 10 of the decision reported in *Piara Singh and Others Vs. State of Punjab*, which are as under :

"Law does not require that the evidence of an extra judicial confession should in all cases be corroborated. In the instant case, the extra judicial confession was proved by an independent witness who was a responsible officer and who bore no animus against the appellants. There was hardly any justification for the Sessions Judge to disbelieve the evidence of Balbir Singh particularly when the extra judicial confession was corroborated by the recovery of an empty (sic) (cartridge) from the place of occurrence."

In this connection it would also be useful to refer to the observations of Their Lordships of the Apex Court, reported in *State of U.P. Vs. M.K. Anthony*, wherein in paragraph 15 Their Lordship observed thus :

"There is neither any rule or law nor of prudence that evidence furnished by extra judicial confession cannot be relied upon, unless corroborated by some other credible evidence."

24. We do not propose multiplying authorities in respect of the legal position. We would like to point out that in the instant case corroboration has been lent to the

extra judicial confession by the evidence of Kuverji Satra P.W. 1; by the F.I.R. which was made by Shivji Satra P.W. 5 within one and half hours of the appellant making extra judicial confession to him and also by the circumstance that death of the deceased was homicidal and not suicidal. Hence in our view the first submission canvassed by Mr. Gupte fails.

25. Mr. Gupte next submitted that before a Criminal Court can act on the evidence of the extra judicial confession it should be certain about the exact words which have been used by the maker. In this connection he pointed out that there is variation between the statement of Shivji Satra P.W. 5 and the F.I.R. lodged by him on the one hand and the evidence of Kuverji Satra P.W. 1 on the other. He urged that while Shivji Satra stated both in the F.I.R. and in his statement in the trial Court that when he asked the appellant as to what he had done, he replied that he had killed her because he was fed up with her, Kuverji Satra stated that when Shivji Satra asked the appellant as to what he had done he replied that he was fed up and murdered her by throttling her. Mr. Gupte urged that the word throttling is not to be found either in the F.I.R. or in the statement of Shivji Satra.

We have considered this submission of Mr. Gupte. In our view the discrepancy pointed out by him is innocuous. In this context we should remember that Kuverji Satra deposed in the trial Court two years and 4 months after the incident. We should also bear in mind that he had no axe to grind against the appellant and in fact was his friend since the last 15 years prior to the incident. It was on the basis of consideration of friendship that he had given him the room. After two years and four months if such a minor discrepancy occurs in the statement of a witness the same cannot be made capital of for human memory fades with passage of time. This discrepancy does not effect the meat of the evidence of extra judicial confession. We have been constantly asking ourselves as to why a friend more so one of 15 years standing would depose about a false extra judicial confession which if accepted can atleast result in his friend being sentenced to imprisonment for life. To that we have found no satisfactory answer.

In this connection it would be appropriate to make a reference to the decision cited by Mrs. Jyoti S. Pawar, the learned A.P.P. reported in Baldev Raj Vs. State of Haryana, wherein in paragraphs 9 and 10 Their Lordships of the Apex Court have held that the value attached to an extra judicial confession depends on the veracity of the witness to whom it is made and it is not necessary to give actual words. Mere substance is enough. She invited our attention to that portion of paragraph 9 wherein the Apex Court held as follows :

"It is true that the Court requires the witness to give the actual words used by the accused as nearly as possible but it is not an invariable rule that the Court should not accept the evidence, if not the actual words but the substance were given. It is for the Court having regard to the credibility of the witness to accept the evidence or not. When the Court believes the witness before whom the confession is made and it is satisfied that the confession was voluntary,

conviction can be founded on such evidence."

For the aforesaid reasons we do not find any merit in the submission of Mr. Gupte.

26. Thirdly Mr. Gupte contended that the extra judicial confession does not appear to be voluntary in the instant case, but appears to be on account of duress and coercion. Mr. Gupte tried to establish duress and coercion by the circumstances that Shivji Satra asked the appellant as to what he had done and at that time Kuverji Satra and two others viz., Bachubhai Versi and Lakhamji who had come with Shivji Satra were also present in the room. He urged that out of fear the appellant made it. We regret that on this material we cannot hold that the extra judicial confession was occasioned by duress or any coercion. In our view it was absolutely voluntary.

27. Mr. Gupte next urged that Prabhavati Tribhuvandas who resided in the proximity of the appellant and whose statement has been recorded by the Investigating Officer was a witness whose evidence was essential to the unfolding of the narrative and the failure of the prosecution to examine her has caused prejudice to the appellant.

We have given our anxious consideration to the submission of Mr. Gupte and we regret that we find hardly any merit in it. The law is that all witnesses need not be examined by the prosecution. Only those witnesses whose evidence is essential to the unfolding of the narrative should be examined by it. The prosecution in the instant case probably felt that no useful purpose would be served by examining this witness and hence did not examine her. If the defence felt that her evidence was essential an application in the trial Court could have been given for summoning her as a defence witness.

28. Mr. Gupte next urged that the evidence of Ramsing Ramji Keval P.W. 7 which is to the effect that on the evening of the date of the incident the appellant purchased wood from him for performing the last rites of Naval does not inspire any confidence. In this connection Mr. Gupte invited our attention to his statement u/s 161 Cr.P.C. wherein he has not stated that the appellant came trembling and contrary to his statement in the trial Court stated that along with the appellant one other person came. This witness was confronted with these discrepancies during the course of the cross examination but could not give any satisfactory answer.

Mr. Gupte also urged that in his cross examination this witness first stated that he was appointed for the purpose of selling the wood for cremation of dead bodies; thereafter he stated that he had not been appointed and that his father had been appointed for that purpose and in the next breath stated that in the absence of his father he did that work

We have given our anxious thought to the aforesaid infirmities. We do not feel that they militate against the core of his evidence. The seal to his credibility is lent by the circumstance that at the time of selling the wood to the appellant he

had given him a receipt and the next morning at about 8.30 - 9 a.m. when the appellant was arrested it was seized under a panchanama Ex. 16. That receipt was produced in the trial Court as Article 1 and when it was shown to the witness he duly identified it as the receipt which he had given to the appellant when he had purchased the wood. While evaluating the criticism of Mr. Gupte we should not lose sight of the fact that the witness was deposing nearly 21/2 years after the incident and with passage of time memory is bound to fade and hence there are bound to be discrepancies between his statement in trial Court and statement recorded u/s 161 Cr.P.C. In the context of Mr. Gupte's submission that this witness took shifting postures when cross-examined on the question as to who sold wood, we would do well to remember that he was employed as a peon in the Gram Panchayat and it is not uncommon that in such positions the son or a relative also performs the work of another person in his absence. Hence we reject this submission.

29. Mr. Gupte next contended that in between the circumstance of last seen and discovery of the fact that Naval had died there was a time lag of at least 5 hours and on account of this time lag it cannot be conclusively said that it was the appellant who had committed the murder of the deceased. We may mention that the circumstance of last seen in only one of the circumstances which we have relied upon. There are a large number of other circumstances which we have enumerated in paragraph 9 and have accepted for the reasons given in paragraphs 10 to 18 and 20 of this judgment.

30. Lastly Mr. Gupte urged that the appellant would not be guilty for an offence punishable u/s 302 I.P.C. but for a lesser offence. In our view there is no merit in this submission either. The postmortem report of the deceased shows that prior to strangulating the deceased the appellant assaulted her. It further shows that death of the deceased was on account of asphyxia as a result of strangulation. It appears that the death of the deceased must have been instantaneous. We feel that it can be safely said that when the appellant strangled the deceased he intended to cause her death. In our view this act of the appellant would fall in the first clause of section 300 of the Indian Penal Code viz., an act done with the intention of causing death. Since the breach of this clause is punishable u/s 302 I.P.C. the appellant has been rightly convicted u/s 302 I.P.C. Hence this contention also fails.

31. Before parting with this judgment we would like to observe that if the deceased was not murdered by the appellant, then by whom. Certainly she did not commit suicide for the medical evidence and the findings in the post mortem report militate against such an inference. Then on what other hypothesis can her murder be explained. Mr. Gupte urged that between 1 p.m. to 6 p.m. some other person/persons may have murdered the deceased. Apart from the fact that it sounds a very very unhappy coincidence indeed the question which we are not able to answer is as to why some other person/persons should have done it. There could have been two possibilities:---

(a) an attempt to commit robbery and killing the deceased when she tried to resist the robber/robbers; and (b) commission of rape or an attempt to commit rape on her and killing her when she resisted the rapist/rapists. However, in our view both the possibilities are eliminated in this case. As regards possibility (a) we find that when the investigating officer visited the place of the incident early next morning he found no evidence suggesting robbery or looting. Possibility (b) namely, the theory of forcible sex also does not appeal to reason. The post mortem report does not show any data from which it can be inferred that the deceased was raped or any attempt to commit rape upon her was made.

It may also be mentioned that although the appellant has made an elaborate statement u/s 313 Cr.P.C. but he has not alleged in the same that he found evidence of some robbery or of sexual assault on the deceased.

32. For the aforesaid reasons we reject Mr. Gupte's submission that who murdered the deceased is a grey area. To us it is in black and white that the appellant murdered her. And there is clinching circumstantial evidence to prove it.

33. In the result this appeal is dismissed. The conviction and sentence of the appellant recorded vide the impugned judgment is confirmed. The appellant is on bail. He shall be taken into custody forthwith to serve out his sentence.

Issuance of certified copy expedited.

We would not be doing justice to this judgment if we do not mention that submissions of a very high level have been canvassed by the learned Counsel on either sides. That, including the time taken in dictating judgment, it took us two days to decide this appeal per se speaks of it.