

Rameshwar Vs. The State of Maharashtra, through P.S.O.

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Court : Mumbai Nagpur

Decided On : Mar-30-2016

Judge : B.R. Gavai & The Honourable Mrs. Justice Swapna Joshi

Appeal No. : Criminal Appeal No. 455 of 2013

Appellant : Rameshwar

Respondent : The State of Maharashtra, through P.S.O.

Advocate for Pet/Ap. : Shri. Daga

Judgement :

Oral Judgment: (B.R. Gavai, J.)

1. The appellant challenges the judgment and order passed by the learned Sessions Judge, Gondia in Sessions Trial No.41/2012, dated 6.4.2013, vide which the learned Trial Judge has convicted and sentenced the appellant for the offences punishable under Sections 302 and 309 of the Indian Penal Code. The accused is sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for six months for the offence punishable under Section 302 of the Indian Penal Code, whereas the accused is sentenced to suffer simple imprisonment for six months for the offence punishable under Section 309 of the Indian Penal Code.

2. The prosecution case, in brief, is thus:

The deceased Motabai was a mother of the appellant and they were residing together at Brahmni, Tahsil Amgaon, District-Gondia. Deceased Motabai was receiving pension after the death of her husband. The appellant was not doing anything and was addicted to liquor. It is the case of the prosecution that the appellant used to demand money from deceased Motabai for consuming liquor and on that count there used to be quarreled between them.

On the morning of 13.6.2011, PW-1 Devraj Dhawde, who is cousin of the appellant, learnt that deceased Motabai was lying dead in her house. Consequently he visited the house of deceased Motabai. On visiting the house, he saw deceased Motabai was lying on the ground and there were injuries on her person. Two sickles and one axe was found lying which were stained with blood. The appellant was sitting in his house and there was injury on his person also. The accused informed Devraj Dhawde (PW-1) that he had attacked deceased Motabai by means of sickles and axe and caused her death as she did not pay money for consuming liquor. The accused also informed that after commission of this heinous act, he had repentance and consequently he attempted to commit suicide. PW-1 Devraj called the President of the Tanta Mukti Samiti and also the Police Patil. Both of them i.e. PW-2 Kewalram Pande, Police Patil and PW-3 Kashiram Nagrikar, the President of the Tanta Mukti Samiti came on the scene of occurrence. The appellant informed them about the commission of crime. Telephonic information was given to the police, who arrived at the spot and removed the accused to the Rural Hospital, Amgaon. First Information Report came to be lodged, vide Crime No.59/2011, below Exh.41. Oral report was lodged by PW-1 Devraj Dhawade below Exh.40. On the basis of the same, the printed FIR was registered vide Crime No.59/2011, below Exh.41. Investigation was set into motion. At the conclusion of investigation, chargesheet came to be filed in the Court of learned Judicial Magistrate, First Class, Amgaon. Since the offence was exclusively triable by the Court of Sessions, the case came to be committed to the Sessions Court, Gondia. The charges for the offences punishable under Sections 302 and 309 of the Indian Penal Code came to be framed against the accused. The accused pleaded not guilty and claimed to be tried. At the conclusion of the trial, the learned Trial Judge passed the order of conviction and sentence as aforestated.

Being aggrieved thereby the present appeal.

3. Shri R.M. Daga, the learned counsel appearing on behalf of the appellant, submits that the conviction is based solely on the circumstances of extra-judicial confession. Learned counsel further submits that extra-judicial confession is a very weak piece of evidence. Learned counsel submits that unless there is some corroboration by proving incriminating circumstances, a conviction on the basis of an extra-judicial confession would not be sustainable. Learned counsel submits that for accepting the extra-judicial confession to be valid, it is necessary that it should be truthful, voluntary and the one which would inspire confidence in the mind of the Court. Learned counsel submits that the perusal of the evidence of PW-2 and PW-3 itself would reveal that the so called extra-judicial confession is after a question was put to the accused. Learned counsel, therefore, submits that in view of the law laid down by the Hon'ble Apex Court in the case of Sahadevan and another .vs. State of Tamil Nadu, reported in (2012) 3 SCC (Cri), 146 and the Division Bench of this Court in the case of Ishwar s/o Pandurang Masram .vs. The State of Maharashtra, reported in 2013 ALL MR (Cri) 2750, to which one of us (B.R. Gavai, J) was a Party, the said extra-judicial confession cannot be treated as a voluntary and the conviction cannot be based on the basis of the said dying declaration without there being corroboration. Learned counsel further submits that the present case being based on circumstantial evidence, it is necessary for the prosecution to prove that no other hypothesis than the guilt of the accused is possible. It is, therefore, submitted that conviction cannot be based on such evidence. Learned counsel, therefore, prays for allowing the appeal and setting aside the order of conviction and sentence. Learned counsel further submits that even accepting the prosecution case as it is, the death has occurred due to heavy blood loss and not as a direct result of injuries sustained by the deceased. Learned counsel submits that, as a matter of fact, the conduct of the appellant in immediately showing repentance by causing grievous injuries, which then resulted into the death, offence would rather fall under Section 304-I of the Indian Penal Code. Therefore, in the alternative, learned counsel submits that if this Court is not inclined to set aside the order of conviction, then from the material placed on record, this Court may come to a conclusion that the offence would not fall under Section 302 of the Indian Penal Code.

4. Shri M.J. Khan, the learned Additional Public Prosecutor appearing on behalf of the respondent-State, submitted that merely because the conviction is based on the circumstantial evidence, the extra-judicial confession cannot be thrown out of consideration. Learned Additional Public Prosecutor submits that unless it is pointed out that the confession is given under threat, coercion, duress or on some promises, the same will have to be held to be voluntary and truthful and the conviction could be based on the basis of the same. Learned Additional Public Prosecutor has done elaborate research on the issue and has pointed out to us various judgments of the Hon'ble Supreme Court. Shri Khan has placed reliance on the judgment of the Hon'ble Apex Court in the cases of Ajay Singh .vs. State of Maharashtra, reported in 2007 (3) Crimes 1 (SC), Ram Singh .vs. Sonia and others, reported in 2007 (2) Crimes 1 (SC) and Chattar Singh and another .vs. State of Haryana, reported in 2009 CRI.L.J. 319.

5. With the assistance of the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent-State, we have scrutinized entire evidence on record.

6. Undisputedly, the present case is based on circumstantial evidence. As has been held by the Hon'ble Apex Court in the case of Sharad Birdhichand Sarda .vs. State of Maharashtra, reported in (1984) 4 SCC 116 that for resting a conviction on the basis of circumstantial evidence, it will be necessary for the prosecution to prove beyond reasonable doubt each and every incriminating circumstances. Not only this but the prosecution will have to establish the chain of circumstance which is so interwoven to each other that leads to no other conclusion than the guilt of the accused. Prosecution will also have to establish that every hypothesis except the guilt of the accused is ruled out. In the light of these guiding principles as laid down by the Hon'ble Apex Court, we have examined prosecution evidence, as has been brought on record.

7. The learned Trial Judge has relied on ten incriminating circumstances as has been pointed out in paragraph 7 of the judgment. Since in an appeal we are required to reappreciate the evidence to find out as to what are the circumstances which are proved by the prosecution beyond reasonable doubt and as to whether

the circumstances so proved make out a case of conviction or not.

8. We are of the considered view that the prosecution has proved following circumstances beyond reasonable doubt.

(1) Extra-judicial confession;

(2) Motive;

(3) Finding of the accused and the deceased on the spot of incident immediately after the death of the deceased;

(4) The First Information Report immediately lodged after the incident which implicates the present appellant.

9. Insofar as the first circumstance is concerned, Shri Daga, learned counsel for the appellant heavily attacks on extra-judicial confession. He submits that the extra-judicial confession solely cannot be a circumstance for resting the order of conviction. We may gainfully refer to the law laid down by the Hon'ble Apex Court in various cases. It will be relevant to refer the following observations of the Hon'ble Apex Court in the case of *Chattar Singh .vs. State of Haryana*. 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 of 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 extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

(emphasis supplied)

It could thus be seen that the Apex Court in clear terms held that the value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is further held that 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 of such a confession. It has been held that 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. A conviction can be based on the basis of such a conviction if words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime. It has been held that 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.

10. In the case of Chattar Singh and another .vs. State of Haryana (supra), Hon'ble Apex Court had again an occasion to consider the position with regard to extra-judicial confession. It will be relevant to refer to the following observations made in paragraphs no.17 and 18 of the aforesaid judgment.

17..... 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 the 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 in 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 the highest credit, because it is presumed to flow from the highest sense of guilt. (See R.V. Warickshall). 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 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's 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 one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of 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 testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the court is to determine the absence or presence of an 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 persons 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.

18. 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 extrajudicial 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 of 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 extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

It could thus be seen that the Apex Court in clear terms has held that a deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. It has been further held that an involuntary confession is one which is not the result of the free will of the maker of it. It has been further held that where the statement is made as a result of harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. It has further been held that if the statement is extracted by promise, threat, then such a confession would not be admissible in law. However, the Apex Court held that every inducement, threat or promise does not vitiate a confession. It has been held that the object of the rule is to exclude only those confessions which are testimonially untrustworthy.

The inducement, threat or promise must be such as is calculated to lead to an untrue confession. The Apex Court further held that the value of the evidence as to the confession depends on the reliability of the witness, who gives the evidence. It has been held that the trustworthiness of the confession would depend on the nature of the circumstances, the time when the conviction was made and the credibility of the witnesses who speak to such a conviction. It has been held that after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

11. Insofar as the judgment of the Apex Court in the case of Sahadevan and another .vs. State of Tamil Nadu (supra), on which Shri Daga, the learned counsel for the appellant, strongly relied is concerned, the said judgment also reiterates the same position of law. The Hon'ble Apex Court has reproduced various judgments in the said case. It will be relevant to refer to paragraph 15 of the said judgment.

15. Now, we may examine some judgments of this Court dealing with this aspect.

15.1. In Balwinder Singh v. State of Punjab, this Court stated the principle that :

10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.

15.2. In Pakkirisamy v. State of T.N., the Court held that :

8... It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession .

15.3. Again in Kavita v. State of T.N., the Court stated the dictum that :

4. There is no doubt that convictions can be based on extra-judicial confession, but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon

veracity of the witnesses to whom it is made. .

15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in *State of Rajasthan v. Raja Ram*, stated the principle that :

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 Court further expressed the view that :

19. 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 of attributing an untruthful statement to the accused.

15.5. In *Aloke Nath Dutta v. State of W.B.*, the Court, while holding the placing of reliance on extra-judicial confession by the lower courts in absence of other corroborating material as unjustified, observed:

87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; and (iii) corroboration. 89. A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof.

15.6. Accepting the admissibility of the extra-judicial confession, the Court in *Sansar Chand v. State of Rajasthan* held that:

29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extrajudicial confession should be corroborated by some other material. [Vide *Thimma and Thimma Raju v. State of Mysore*, *Mulk Raj v. State of U.P.*, *Sivakumar v. State* (SCC paras 40 and 41 : AIR paras 41 and 42), *Shiva Karam Payaswami Tewari v. State of Maharashtra* and *Mohd. Azad v. State of W.B.*]

30. In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872.

15.7. Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Court in *Rameshbhai Chandubhai Rathod v. State of Gujarat*, held as under:

53. It appears, therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true.

15.8. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extrajudicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. [Ref. *Sk. Yusuf v. State of W.B.* and *Pancho v. State of Haryana*].

12. It could thus be seen that after surveying the earlier position of law, Their Lordships of the Apex Court came to the conclusion that the extra-judicial

confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. It has further reiterated that the extrajudicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the Court should find out whether there are other cogent circumstances on record to support it. No doubt, in the said case, Their Lordships rejected the extra-judicial confession on the ground that it was recorded after four days and that the statement which is sought to be made in the extra-judicial confession on the independent scrutiny of the evidence was found to be not established by the Court. On the contrary, it was found that the motive which was attributed to the said extra-judicial confession was contradicted by the prosecution witnesses itself.

13. Insofar the judgment of the Division Bench, to which one of us (B.R. Gavai, J.) is a party, is concerned, in the said case also, the Court has rejected the extra-judicial confession of three witnesses. Insofar as one witness was concerned, his statement was recorded after 12 days and, therefore, his testimony was not found to be trustworthy. Insofar as the second witness was concerned, the court did not accept his testimony. Inasmuch as from the deposition, it was found that extra-judicial confession was not given to him to a third person. Insofar as third witness was concerned, it was found that extra-judicial confession was not voluntarily as all answers were given in replies to the queries made by his superior in an inquiry.

14. We are unable to accept the contention of Shri Daga, learned counsel, that if a confession is given by an accused to a witness on some questions being put to him, the said confession would partake character of untruthfulness. We find that upon survey of the judgments of the Hon'ble Apex Court, such would not be the position. A confession which is held to be involuntarily must be extracted giving some threats, coercion or promises. A confession given in an ordinary conversation by asking some question would not by itself make it involuntarily. As has already been held by the Apex Court, before accepting the evidence of confession, the character of the witnesses, the circumstances in which it is made and the time at which it is made, will have to be taken into consideration by the

Court.

15. In the light of this legal position, as enumerated by the Apex Court, we will have to examine evidence regarding the extra-judicial confession in the present case. PW-1 Devraj Thuna Dhavde is the first informant. No doubt that he has turned hostile and denied lodging of First Information Report. However, the First Information Report has been duly exhibited in the evidence of PW-14 Pundlik Deshmukh, ASI, who has recorded the First Information Report. His evidence is sought to be attacked on the ground that he is a hostile witness. By now, it is settled position of law that merely because witness is hostile witness, his entire testimony need not be discarded. Such part of testimony of hostile witness, which is found to be trustworthy and cogent, can be accepted in evidence. In his examination-in-chief, he states that he had visited the house of the accused and noticed that Motabai was lying on the ground, accused was lying on the cot and one axe and two sickles were also lying. He further states that the accused was stained with blood. He further states that he noticed one axe and two sickles at that place. Thereafter, he called the President of Tanta Mukti Samiti and Police Patil. He further states that message was given on telephone to police. However, the later part regarding his lodging of the report is denied by him. However, it is pertinent to note that in his cross-examination, he has stated thus:

It is correct to say that I and Police Patil visited house of accused. It is correct to say that Motabai was lying there and one axe and two sickles were also lying. It is correct to say that the accused informed that he had killed his mother, later on, he inflicted injuries on his neck and private part.

It could thus be seen that this witness has clearly admitted in his examination-in-chief that the Police Patil has visited the house of the accused. He further admitted that Motabai was lying there and one axe and two sickles also lying. He further admitted that the accused informed him that he had killed his mother and inflicted injuries on his neck and private part. It could thus be seen that the said confession is given by the accused to his own cousin immediately after the incident.

16. The next witness is PW-2 Kewalram Patle. In his examination-in-chief he states thus :

In my presence Devraj asked the accused what had happened. At that time the accused informed that as Motabai did not pay him money for consuming liquor, therefore, he had killed Motabai. At that time, accused also informed that due to repentance he decided to finish his life and he inflicted injuries on his neck and private part.

It could thus be seen that the accused had also given extra-judicial confession in the present case to this witness that he had killed Motabai. He had also informed that due to repentance, he decided to finish his life and he inflicted injuries on his neck and private part. Insofar as the extra-judicial confession is concerned, in the cross-examination, neither there is any suggestion that confession was involuntarily or was given under threat or coercion. As such no damage has been done to the extrajudicial confession given in the examination-in-chief to this witness.

17. The third witness is PW-3 Kashiram Nagrikar, who was the President of Tanta Mukti Samiti . He states in his evidence that on 13.6.2011 he received telephone call from the Police Patil at about 6.30 a.m., who informed him that accused had killed Motabai. He went to the house of Police Patil. Thereafter, he and Police Patil went to the house of the accused. Motabai was lying on ground and the accused was sitting there. There were injuries on the person of Motabai, one axe and two sickles were lying on the ground. The relevant part of his evidence is reproduced thus :

We asked the accused what had happened. The accused informed that as Motabai did not pay money for liquor, therefore, he killed Motabai.

Insofar as this witness is concerned, only three questions are asked to him in his cross-examination. There is not a single question asked in the cross-examination about extra-judicial confession.

18. In the totality of the circumstances, we are of the considered view that the evidence of all three witnesses i.e. PW-1 Devraj Dhavde, PW-2 Kewalram Patle and PW-3 Kashiram Nagrikar is reliable, trustworthy and cogent. All three of them have reached the spot immediately. The time gap between the incident and the

extrajudicial confession is very short. It was done immediately after the incident of attack on the mother and the attack on himself due to repentance. The perusal of the testimony of all these witnesses would reveal that these witnesses are independent witnesses. Nothing has been brought on record that they are having any inimical terms with the accused. We, therefore, find that the witnesses are reliable, credible and their testimony is trustworthy. We further find that the words in which confession is given to them by accused clearly implicates the accused in the crime. We, therefore, found that the prosecution has proved the circumstances of extra-judicial confession, which is voluntarily, trustworthy and cogent beyond all reasonable doubt. The extrajudicial confession of the witnesses, as reproduced by us, is clearly admits the guilt of the accused.

19. As already discussed hereinabove, the conviction could also be rested only on the basis of sole circumstances of extra-judicial confession. However, as has been held by the Hon'ble Apex Court, it will always be prudent to find some corroboration from the other circumstances.

20. We find that the prosecution has also proved the circumstances of motive beyond reasonable doubt. The evidence of PW-2 Kewalram Patle would show that the accused was not doing any work, he was addicted to liquor and he used to quarrel with deceased Motabai. He further states that Motabai had complained to Tanta Mukti Samiti alleging that accused used to beat her. He further states that an understanding was given to accused. The extrajudicial confession made by him to this witness would also show that since Motabai did not pay money for consuming liquor, he had killed Motabai. The testimony of this witness is duly corroborated by PW3-Kashiram Nagrikar. He has also stated in his evidence that accused used to demand money for the liquor from Motabai. He has further stated that the accused used to dispute for money and, therefore, Motabai had gone to her daughter for some time. The extra-judicial confession made to him also show that the accused informed that as Motabai did not pay money for liquor, he had killed Motabai. We are, therefore, of the considered view that the prosecution has proved the motive behind the crime. The prosecution has proved beyond reasonable doubt that denial on the part of Motabai of giving money to the accused for purchasing liquor was the motive behind the crime.

21. The third circumstance, which we find that the prosecution has proved is immediate lodging of the First Information Report and the implication of the present appellant therein. The evidence of PW-1 Devraj, PW-2 Kewalram and PW-3 Kashiram would clearly show that immediately after they came to know about the incident, police arrived at the spot immediately. Though PW-1 has denied lodging of First Information Report, which is below Exh.41, it is proved in the evidence of PW-14. The First Information Report is lodged within a hour of the incident coming into notice and it clearly implicates the present appellant.

22. The next circumstance, which we find that the prosecution has proved beyond reasonable doubt is, that immediately after the incident, the deceased Motabai and the appellant were found together on the spot in an injured condition. The evidence of PW-1 Devraj, PW-2 Kewalram and PW-3 Kashiram would prove beyond reasonable doubt that immediately after the incident, the deceased and the accused were found together on the spot.

23. We are, therefore, of the considered view that the prosecution has proved beyond reasonable doubt the aforesaid incriminating circumstances and has further proved that the circumstances so proved are so interwoven to each other that lead to no other conclusion than the guilt of the accused. We are, therefore, of the considered view that no interference is warranted in the findings of the learned Trial Court that it is the present appellant alone who is an author of the crime.

24. The next question is, as to whether, the conviction under Section 302 of the Indian Penal Code is sustainable or not. The perusal of the spot panchanama would reveal that one axe and two sickles were found on the spot. The evidence of PW-7 Dr. Rishekesh Sambharkar would reveal that he had noticed following two injuries on the person of the deceased.

(1) Stab wound on right side of neck, 6 x 2 x 3.5 c.m.s, right side at thyroid cartilage upto below the pinna.

(2) Incised wound at right parital occipital region 5 x 0.5 c.m.

The cause of death given by him is due to haemorrhagic shock. In his evidence, he has admitted that deceased had died due to sudden loss of blood. As against this, it could be seen that the injuries sustained by the appellant are of more grievous nature. The appellant has sustained following injuries.

(i) Incised wound on throat, 7 x 2 x 1 c.m.

(ii) Incised wound on lower part of penis or panic, 3.5 x 0.5 x 0.5 c.m.

(iii) Small hesitation wound on middle part of penis or panic, 1 x 0.5 x 0.5 c.m.

It could thus be seen that the possibility of the appellant getting annoyed on account of the denial of the deceased Motabai in refusing to pay any heed to his demand for purchasing liquor and out of this they quarreling and in that quarrel, in a heat of passion, the appellant assaulting the deceased, cannot be ruled out. From the nature of injuries, it cannot be said that the appellant has taken undue advantage or acted in a cruel or unusual manner. On the contrary, it appears that immediately after noticing that he has done what he should not have done, he has assaulted himself and in which he has sustained more grievous injuries. We, therefore, find that the case would rather fall under Exception 4 of Section 300 of the Code of Criminal Procedure. We are, therefore, of the view that the conviction under Section 302 of the Indian Penal Code would not be sustainable and the conviction would be rather under Section 304 Part-I of the Indian Penal Code. Insofar as the conviction under Section 309 of the Indian Penal Code is concerned, we find that no interference is warranted.

25. In the result, the Criminal Appeal is partly allowed. The order of conviction under Section 302 of the Indian Penal Code is altered to one under Part-I of Section 304 of the Indian Penal Code and the appellant-accused is sentenced to suffer rigorous imprisonment for **ten** years for the said offence. Rest of the order impugned is maintained.

26. We place on record our appreciation to Shri M.J. Khan, the learned Additional Public Prosecutor appearing on behalf of the respondent-State for valuable assistance rendered by him.

