

Dadarao Vs. the State of Maharashtra

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Court : Mumbai

Decided On : Aug-21-1997

Reported in : 1998(5)BomCR401

Judge : M.B. Ghodeswar and ;S.P. Kulkarni, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 376; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 161

Appeal No. : Criminal Appeal No. 455 of 1993

Appellant : Dadarao

Respondent : The State of Maharashtra

Advocate for Def. : S.Y. Deopujari, A.P.P.

Advocate for Pet/Ap. : M.R. Daga, Adv.

Judgement :

ORDER

S.P. Kulkarni, J.

1. The appellant who is the sole accused in Sessions Trial No. 88 of 1992 tried before the Additional Sessions Judge, Amravati, was found guilty on 2nd September, 1993, by the learned trial Judge for the offences punishable under

section 302 of I.P.C. for which he was sentenced to suffer imprisonment for life and to pay a fine of Rs. 500/- in default R.I. for three months, and for the offence punishable under section 376 of I.P.C., and sentenced to suffer R.I. for seven years and to pay a fine of Rs. 500/- in default to suffer R.I. for three months, substantive sentence to run concurrently.

2. The appellant, at the material time i.e. on, 16th May, 1991, when the incident took place, was of 25 years of age. The incident is said to have taken place at the residential house of the appellant at village Eklara, the place 25 kms. away from the Police Station, Teleasaon Dashasar, District Amravati. At a shorter distance was the village Ghulkhed where there exists police outpost as could be seen from the information contained in the printed form of the F.I.R. Exh. 26 registered in this case. The scene of offence is, thus, in the residential house of the complainant Babarao son of Gomaji who lived in the house along with his father Gomaji, three brothers including the appellant Dadarao. His married sister Ratnakala (RW. 2) had also come to reside with them because of the marriage of the appellant Dadarao, which was then settled. Accused Dadarao was said to be not moving out as he was the prospective bridegroom. On this background of the family circumstances, incident is alleged to have taken place on May 16th 1991, some time between 5 p.m. to 6 p.m. On that day it was alleged, that the complainant Babarao had gone out for his work to the nearby village Ghulkhed from where he returned by about 6 p.m. While entering his house he noticed his brother, the appellant, going out of the house and getting the door of the house closed from outside. The complainant Babarao entered the house. He gave calls in the name of his wife Kamal. Babarao was married to Kamal in 1987. Kamal had two children. He noticed that in the room of the house Kamal was lying on the ground. Full pant belonging to the appellant was wrapped round her face. A nylon string was tied to the country roof of the house by its one end, whereas the other end turned into loop was round the neck of the deceased Kamalabai. Her saree was untied and kept aside. Her petticoat appeared raised up, There were semen like stains by her side. Frightened by the said scene, Babarao raised shouts. He caught hold of accused, the brother. His father and sister Ratnakala who had been to the field on the outskirts of the village, listening to the shouts of Babarao, also came there. People also gathered, On securing information regarding the ghastly incident in

which Babarao's wife was seen dead, Babarao made certain enquiries, He learnt that it was accused Dadarao who had committed rape on Kamalabai and then by pressing her neck killed her. Leaving the accused to the care of neighbouring persons, he went to the Police Station and lodged his report Exh. 18 in the Police Station in which he reported that his younger brother Dadarao committed rape and murdered Kamalabai, On the background of this, offence was registered which was investigated by P. W 7- Head Constable Ramkhilavan Dubey, who appeared to have become Assistant Sub-Inspector by the time the trial of the offences took place. During the investigation, it transpired that the appellant made extra judicial confession before the complainant and the witnesses. The witness like P.W. 2 Ratnakala, P.W. 3 Shriram and P.W. 4 Ramrao were the persons before whom, the appellant was alleged to have confessed his guilt. After taking the usual steps of doing the spot panchanama, the inquest panchanama, getting the dead body examined from the doctor and after recording the statements of witnesses, charge sheet alleging the offences under section 376 and 302 of I.P.C. was filed against the accused. The post-mortem report was said to have noted abrasion on the left cheek of the deceased, of the size 1' x 1', another abrasion on the right wrist joint 1/ 2' x 1/2', tracheal cartilage congested and the thumb as well as index finger impressions on the throat of the deceased due to heavy pressure. The cause of death in opinion of the doctor, was asphyxia due to throttling.

3. On the background of the investigation and the offences complained against the appellant, the learned trial Judge put the appellant on trial for two offences punishable under section 376 I.P.C. and 302 I.P.C. The defence of the accused was of denial of the charges against him and his false involvement. The stand taken by him was that his brother Babarao was suspecting him to have developed illicit intimacy with deceased Kamal, that he as well as the deceased were doing work in their field. Complainant used to beat both of them. The complainant had even reached Kamal to her parent's house because of such suspicion. Ratnakala was afraid of the complainant. The witnesses, who rose to give evidence against the appellant, were close to Babarao. It was on account of all these aspects the appellant came to be falsely involved in this case at the instance of Babarao.

4. During the trial, the only evidence that was adduced before the trial Court was the evidence of extra judicial confession against the appellant. It was not debated that the death in this case was homicidal. There was debate as to whether any incidence of rape was really there. What weighed before the trial Court was the evidence of the complainant. Ratnakala and two more witnesses having stated in their evidence that the appellant admitted before them that he killed Kamal. The proof of extra judicial confession weighed before the trial Court which negated the defence and convicted the appellant as stated above.

5. In this appeal, the learned advocate appearing for the appellant strenuously canvassed that the evidence with respect to the proof of the extra judicial confession was untrustworthy and in the circumstances, the same could not have been accepted by the trial Court. He also assailed the oral evidence recorded in this case on various grounds such as that witness Ratnakala is the sister of complainant Babarao, who was under the influence of Babarao and as such did not possess independence of mind to state facts freely as noticed by her. It was urged that the rest of the two witnesses were also interested and not natural and, therefore, the trial Court should have disbelieved the oral evidence concerning extra judicial confession.

6. The learned Additional Public Prosecutor representing the State contended that the trial Court was justified in accepting the evidence of the witnesses which proved a fact that the accused confessed that he killed the deceased. However, so far as the offence punishable under section 376 I.P.C. is concerned, the learned Additional Public Prosecutor could not justifiably point out that anything out of the oral judicial confession allegedly made by the appellant could connect him with the said crime of rape.

7. In the light of the submissions made before us, oral evidence of the four prosecution witnesses consisting of the complainant, Ratnakala, Shriram and witness Ramarao who alone are said to constitute the foundation for the superstructure of extra judicial confession. We, therefore, proceed to evaluate the evidence of these witnesses first.

8. Complainant Babarao was examined as prosecution witness No. 1 at Exh. 17. He having stated some of the domestic aspects like he having married deceased Kamal in 1987, Babarao also mentioned that his family consisted of his father, three brothers including accused Dadarao who all lived jointly. According to him his married sister Ratnakala had come to reside with them, Ratnakala, however, stated in her evidence that she had gone there because the appellant's marriage was settled. Babarao further stated that appellant Dadarao used to remain at the house since the settlement of his marriage.

9. According to Babarao on the day of the incident which was 15-5-1991, he had gone to village Ghulkhed and his wife had gone for work to the field. On his return to his house from Ghulkhed at about 5 to 5.30 p.m., he noticed appellant Dadarao coming out from house as he started entering the same. After going inside the house, he noticed that his wife was lying on the floor of the house, that she was not responding to his calls, that he found her dead and that her saree was seen removed and kept aside, her petticoat was found in a condition of it being lifted upto her waist and that the face of his wife was wrapped by the pant of the accused. He saw a rope around her neck, that the other end of that rope having been already tied to the part of the ceiling under the roof of the house. The bangles from the hands of his wife were seen broken into pieces. A mark of dragging on one side of the face was seen. He shouted and caught hold of the accused Dadarao. At that time there was none in the house besides him and the accused. At that time, according to this witness, accused stated that he killed Kamal and had it been an occasion in which complainant were to come back to the house earlier, the complainant's fate would have been the same. Upon this, he handed over accused to the neighbour, went to the Police Station at Talegaon Dashasher and lodged his report Exh. 18. In his report, he stated that when he returned he saw the accused coming out of the house by closing the door from outside. He further stated in his report that he opened the door, gave calls in the name of his wife as 'Kamal. Kamal'. He received no response. He then described her condition. He mentioned in the report that his father and sister had gone to the field at 4'o'clock for bringing the dried stocks of cotton crop (presumably for use as a fuel). After collecting the aforesaid facts about the incident, he went to the Police Station and lodged the report against the accused stating that accused Dadarao

committed rape on his wife named Kamalabai and killed her by throttling at their residence. What was specifically pointed out was that the trial Court should have carefully assessed the evidence of the complainant with reference to what exactly noticed when he returned, about the presence of the accused, his conduct and what he said or what the complainant gathered at the spot enabling him to lodge a report alleging the appellant to be the perpetrator of the two crimes reported by the complainant.

10. The complainant was cross-examined in brief when he admitted that he had two children. Complainant denied that he suspected some illicit intimacy between the accused and his wife. He admitted that he did not tell the police that the part by which the face of the deceased was wrapped was the part of accused Dadarao. He had also not informed the Police about the injury to the face of the deceased because of dragging. He also admitted that he had not mentioned in the report about the confessional statement made by the accused or about the threat given by the accused that if the complainant were to come back to the house earlier, complainant's fate would have been the same. The explanation which the witness gave in his evidence for the said deficiencies was that he did not tell as he was mentally disturbed. He, however, denied the suggestion that he had not seen the accused coming out of the house. This witness is important in several respects. Firstly, he is the very brother of the accused. Secondly, he is the very person who first saw the accused coming out of the house and inside the house was the dead body of the witness's wife lying on the floor of the house in a situation where a crime of her murder had taken place. When this case is entirely dependent upon extra judicial confession, what happens at such moment of time by way of a conduct, a dialogue, a conversation is all very vital and important. On looking to the situation inside and realising the fact that the younger brother Dadarao, the accused was seen coming out of the house would surely make any person to act more on his impulses in catching hold of him to ascertain what was the cause of the death or how the incident happened. According to this witnesses, he caught hold of the accused when none was present at the house besides the accused, and then he refers to the version of the accused that the accused killed Kamal and further that if the complainant were to come there earlier, same would have been the complainant's fate. Then the complainant handed over the accused

to the neighbour and went to the Police. Catching hold of the accused, as we observed earlier, could be reflex action which does not need any thinking and then an action, but then having caught, should we consider it natural that some conversation would follow between the two and as a result of that conversation, the extra judicial confession would be the out come. Could it be considered natural to ascertain from the accused as to what was all that which had happened there or who did it? Was it that without asking anything the accused himself confessed and then what would be the possible motive for doing the said act? In respect of this vital part of the evidence, P.W. 1 Babarao has furnished no details except the bare act of he catching hold of the accused and the accused blurting out the words that he killed and even the complainant's fate would have been the same. There is also nothing in the evidence of the complainant then to throw a light as to how this fact was either repeated by the accused in the presence of some other persons than he himself. It is unnatural that soon after the complainant were to catch hold of the accused and the accused were to blurt out what he stated as a extra judicial confession that he killed Kamal, the complainant would simply hand over the accused to the neighbour and then go away to the Police Station, or would it have been a natural event that the complainant's father, and sister Ratnakala were to arrive? They would also question the complainant and the accused and then the accused may say something which may turn out to be his extra judicial confession. A chain of some of the natural events which if we judge the evidence of this witness in juxtaposition to thenormal realities of life, it would not be unjustified to expect some such event drawing on the process of ascertainment as to the cause of the death which must have prevailed should take place. If it had taken place, there should be a natural reference to that. We, therefore, pause here to ponder over a situation as to whether on account of the disturbed mental state, the unhappy memories of the death of his wife and his own individual faculties of describing the events in a cryptic manner, the witness referred to this aspect in the manner indicative by his evidence. In our view, this aspect will have to be judged intrinsically on the probative strength of his own evidence and extrinsically in the light of what corroboration to a voluntary utterance on the part of the accused in proclaiming that he killed Kamal. Intrinsically full utterance as to what the accused said did not find any place in the first information report lodged by the complainant.

Undoubtedly he was mentally disturbed and we do not doubt this aspect as anybody whose wife is killed or whose wife suffers a death could scarcely be in his natural state of mind. A reference to the F.I.R. when looked at from the point of view of the complainant being brief in the narration due to his grief, the F.I.R. seems to refer to the age of the deceased being 28 years, she being killed by throttling by the accused with his own hands, the manner in which the ends of the rope were tied to the ceiling and around the neck of the deceased, the manner in which the accused came out of the house and was getting the door of the house closed to which we do not find any reference in his evidence and, therefore, the act of getting the door of the house closed attributed by the F.I.R. to the accused finds no proof in the oral version of P.W. 1 in his evidence on oath and then after narrating what he gathered at the spot and after noting several facts such as the condition of the deceased, his father and sister having gone to the field at 4 o'clock for bringing the dried stock of cotton plants, that the incident having taken place between 5 to 6 p.m. a report narrated that the complainant submitted his 'written application' to the Police with a hope that the Police would inquire into the matter immediately. We understand that a written report was presented by the complainant rather than he himself presenting into the police station to say what he noticed and what he heard and then a narration being recorded by the Police as delivered by the complainant. Could it be said that on the background of this aspect of the F.I.R. it could have been natural that there; should have been reference to the confessional statement made by the accused being mentioned as nearly as possible, in his own words. If it were to be there, it could have been the most natural shade of the first description of the event to the Police. However, that is not there. Thus we find that there is a brief reference only in evidence to the response of the accused to the act of the complainant in catching him at the spot, and the accused saying I killed without more. There is no reference to any conversation as such how the accused was dealt with, who gathered there first, how even in the presence of others what the accused said. All these aspects are absent in the F.I.R., though very briefly without the cushioning of the realities of the life surrounding it, mentioned in the evidence. Therefore, the question would be as to which of the inspiring and corroborative pieces of evidence the Court should look to in overcoming this aspect before considering the narration of the

complainant to be trustworthy in the totality of the circumstances of the case.

11. We then turn to analyse the evidence of P.W. 2 Ratnakala, the very sister of the complainant and the accused at Exh. 19. According to her she had been to the house of Babarao for the marriage of the accused. It is from her evidence we learnt that the marriage of the accused was settled and to take place sometime in near future after the day of the incident. She heard the shouts from her house while she was in the field. She went back to the house. At that time Radha Kaku, Sita, Droupadi, Gomai, complainant Babarao, Shriram and Ramkrishna were present. Then she describes how a cloth was seen wrapped around the face of Kamal who was lying inside the room and that the said cloth was removed under a belief that Kamal might be alive. The rope around Karnal's neck was also removed. Kamal was found dead. Accused Dadarao was present. On being questioned by people, (she does not name who questioned the accused) accused Dadarao said that he killed Kamal and then fastened the rope. Accused was held fast. Complainant Babarao went to lodge the report. She admitted that the houses of Shrikrishna, Shriram, Balkrishna, Ramkrishna, Domaji and Veenabai were situated around the house in question. Complainant Babarao used to look after her father's land of 12 acres and her brothers Pundlik, Mroti and accused Dadarao were working as labourers. Complainant Babarao had come to the Court on the day her evidence was recorded. She contradicted with her previous statement under section 161 Cr.P.C. to the effect that Dadarao was not present inside the house. That contradiction which was put to her has been proved by the Investigating Officer P.W. 7 Ramkhilavan in his evidence at Exh. 27. The said contradiction could be found at Exh. 31. There does not appear to be any explanation sought from this witness as to why there could be reference to the absence of Dadarao from the house as attempted to be mentioned by her in her statement before the Police. The contradiction seems to be quite material in the totality of the incident occurring inside the house of the complainant and her brother's wife seemed lying on the floor dead with unpleasant appearance and her surrounding. According to her evidence accused Dadarao was tied by rope. She denied suggestion that she gave the evidence on the say of complainant Babarao. She is a girl of 22 years of age. She is married. Like the rest of the witnesses, she does not refer to the presence of her father, her two other brothers or the children

of the deceased. Her evidence concentrates more on she approaching the house on hearing shouts. She did not refer as to what kind of shouts she heard. According to her she saw the deceased lying inside, she described her condition, the presence of the accused and how he said that he killed Kamal, in what manner the accused said, what questions were put to him, why such questions were necessitated to be asked to the accused or any other description of natural events which might take place on the background of what she said, has not been mentioned, and on the top of all this in respect of the presence of the accused, she appeared to have contradicted with her previous statement that the accused was not there. The question which arises before us is as to whether her evidence could be accepted to be trustworthy so far as the presence of the accused is concerned in a natural manner at the house even after he being caught and held by the complainant there, but then the very fact that she said before the Police that the accused was not there and then she contradicted with her previous statement in saying before the Court that he was present at the house. What correct and proper inference is available should be the task which in our opinion has to be undertaken. If the accused were really to be present and later on were to make some statement or utterance in the presence of others, his presence has to be there. If, however, he is not present then how his presence was procured at the house becomes a matter of debate. It was suggested to this witness also that it did not happen that the accused was caught by Babarao and Shriram and brought to the house where he was kept tied by a rope. One thing seems to be there that the contents of her evidence before the Court seems to be to take care of listening to the shouts, responding to the shouts, going to the house from the nearby field, observing the accused, referring to what accused said in making statement that he killed Kamal and then referring to the further aspect of complainant Babarao going to the police station to lodge a report and nothing more. It appears that this witness would not be in a position to prevent a criticism that the narration of events by her as member of the said house was quite cryptic and referable to certain broad aspects as mentioned above. The incident of unnatural death in the house was a shocking event. Evidence with respect to such event, which is mixed with the practical observations and explosion of sentiments, comes out in a manner which is rather less calculating, and more natural. That does not appear to be the

case with P.W. 2 Ratanakala. We are, therefore, left with no clue to understand as to what was the role of her father in listening to the shouts of Babarao, where were the two other brothers besides the accused or where were the children of deceased Kamal. Her evidence does not make any reference to it.

12. The next evidence on the point of extra judicial confession is the version of P.W. 3 Shriram Exh. 20. He stated that the accused Dadarao was his nephew. This means even complainant Babarao was his nephew. Then he stated that his house was situated at 10 to 15 feet from the house of complainant Babarao. The witness endeavours to enumerate the members living together in the house of the complainant and the accused and while doing so the witness stated that at the time of the incident Babarao (complainant), Kamal (deceased), Dadarao (accused), etc. were living together, it is not understood as to why so close a neighbour should not have mentioned all the members of the family which naturally strikes the reader of this evidence when the eyes are struck against the word 'etc'. It is not understood why while enumerating the members who were living together there should not have been a very natural description as to who were the inmates of this house. This apart, according to him on 16-5-1991 at about 5 p.m. he was present at his house. That time complainant Babarao had returned from Ghuikhed and had shouted that Dadarao committed a murder. Upon this he went to the house of Babarao. He saw the condition of deceased Kamal, how she was lying, her appearance, the rope tied to the ceiling and the other end around her neck. Then he stated that he himself and Babarao caught hold of the accused Dadarao. Having thus caught him he asked Dadarao as to who did it to which accused Dadarao was said to have replied by saying that he killed Kamal. Then they tied Dadarao by rope and complainant Babarao went to lodge report in the Police Station. We cannot brush aside a situation that the neighbouring person on listening to the shouts, apart from the quality of consistency as to what exactly the words shouted conveyed, had visited the house, seen the scene but before catching hold of accused Dadarao, there is no gesture on the part of anyone to ascertain either by conduct or by appearance or by utterances or by any other earthly factor which necessitated catching of the accused. Nothing has been mentioned by him except to say that he heard the shouts of Babarao, that Dadarao committed murder, visited the house of the accused, saw the accused,

saw the deceased and caught hold of the accused by assisting Babarao to do the said act. Indeed naturalness of the event may require reference to how the events occur necessitating this witness to be inspired to join Babarao in catching the accused on the spot. It is pertinent to note that the sequence with which he unfolds the incident indicated that Babarao was caught first and then he replied to this witness that he killed Kamal. The act of catching is thus bereft of the natural surrounding necessitating a person to catch somebody as a culprit. Thus we find the peculiarity of the evidence of Shriram that the evidence does not throw any light on the position, condition, gestures, conduct, or the mood in which the accused was seen present when he went to the house of the complainant and the accused. Secondly there does not appear any circumstance to indicate that catching was necessary because of either any thought being present, as could be guessed by the witnesses, in the mind of the accused to run away. Then if the accused was really to make a confessional statement that too in a voluntary manner could it be imagined that he must be in a mood to run away? We further find that if the situation in which confessional words were uttered were to prevail in the atmosphere, would the accused really succeed in running away apart from the eventuality as to how far he would succeed. There is also no reference to any talk more than the three worded confessional sentence. There is also no reference to any circumstance where the witness realised not to question the accused more and simply to accept what the accused said to be the truth. The cross-examination of this witness indicates that although his statement before the police was recorded on the third day from the incident, a suggestion made to him that the statement was recorded on 19-5-1991 i.e. 3/ 4 days after the incident, is denied by the witness. One can understand that in respect of the belated statement considerations of propriety and trustworthiness may trouble legal minds but the witness should in a frank manner refer to the day on which his statement to be recorded under section 161 Cr.P.C. it is rather strange that inspite of the Investigating Officer recording the statement of this witness on the third day of the incident i.e. on 19-5-1991, a witness should be inclined to deny the same. He, however, admitted that in his statement under section 161 Cr.P.C. there was no reference to the shouts of Babarao to the effect that Dadarao committed murder. He could not explain why there was no specific reference to this in his statement

before the police but a reference to that was made for the first time in the Court. In our view, this is a material improvement made by the witness. It seems to us that he may not be merely a relation witness but also a witness having inclination to lean in the direction of the prosecution case in a manner, which apparently does not appear to us to be convincing.

13. The last evidence on the point of the extra judicial confession alleged in this case is the evidence of P.W. 4 Ramrao. Like the previous witness, he mentions that at the time of the incident Babarao, Dadarao and Kamal were living together. There is no mention to the rest of the members of the family consisting of Ratnakala, her father, two other brothers of the complainant and the accused. This witness had asked Babarao to withdraw money from the Bank at Ghuikhed. Babarao returned from Ghuikhed between 5 to 5.30 p.m. gave money withdrawn from the Bank to this witness and went back to his house. Witness then heard the shouts from the house of Babarao, when he went near Babarao's house. He does not state what were those shouts. He found that Babarao had caught hold of accused Dadarao. According to him Babarao told him that his wife was dead inside. He went inside and noticed the same. He did not inquire as to how she died. He enquired from Dadarao about the incident when Dadarao said 'I killed her'. Many persons had assembled. The cross-examination of Ramrao, who is 60 years of age, repeats the same conduct in denying that his statement during the investigation was recorded by the police 2/3 days after the incident. It is proved that his statement was recorded on 19-5-1991. Even he could not explain his omission to make a reference to a situation that he noticed that Babarao had held fast Dadarao, being mentioned by him in his statement before the police. He seemed to have simply stated that he could not tell why there was no reference to that in his statement before the police. He, however, denied a suggestion made to him that after he reached the house of the complainant, complainant had brought Dadarao to the house presumably from somewhere outside that house. According to him Babarao left for Ghuikhed to lodge a report immediately thereafter. He denied suggestion that he was deposing falsely about the accused.

14. Such is the kind of evidence as regards the presence, the situation in which the accused was noticed first after the death of the deceased and as to his

confessional words which he uttered. There is no consistency and harmony inter se amongst the witnesses about this simple aspect of the conduct of the accused in uttering the confessional words. There is no reference to the natural surrounding in the presence of which the accused uttered the confessional sentence. There seems to be something fishy in the evidence of these witnesses as to whether the accused was really present at the house when the complainant went there or whether the accused was brought to the house from somewhere. There seems to be a conscious emphasis made by the witnesses on the presence of the accused in the house or the act of the accused being caught and held at the house and in endeavouring to say so in their evidence. The witnesses appeared to have been exposed to a criticism of their improving their version or witness like Ratnakala contradicting her version. Even the main witness Babarao inexplicably has nothing in his evidence to show why the F.I.R. should not have made a simple and natural reference to the confessional words uttered by the accused in the presence of witnesses. In our view, therefore, the particularity with which the witnesses have only referred to the so called material link supplied by the confessional utterance without more, seems to us to be a thoughtful endeavour in not referring to any natural surrounding circumstances. There does not appear to be any description as regards the physical appearance of the accused when these witnesses first saw him, as regards his conduct, his gestures, some signs indicative of his mental condition or something besides alleged act of committing rape, supplying motive for killing his own brother's wife on the admitted background of his marriage having been settled and Ratnakala his married sister having come back to her father's house for the purpose of marriage of the accused. The evidence does not throw any light on all these natural aspects of observation by the witnesses before the bare reference to the utterance of the accused that he killed Kamal could be accepted by the Court to be a trustworthy and adequately acceptable evidence in support of a confessional utterance. We are, therefore, clearly of the view that for a serious offence of murder where the evidence is required to be closely scrutinised to satisfy the Court that the same is not only adequate but also trustworthy and reliable to record a finding regarding the guilt of the accused, we find it difficult to accept this evidence or to proceed to record any findings on the strength of such evidence to the effect that when Babarao returned, accused must

really be present, or that there really prevailed any circumstances to indicate that the accused voluntarily confessed his guilt and the evidence with respect to such voluntary confession made by the accused was in the circumstances quite trustworthy, strong and believable to hold that on his own confession the accused could be said to have committed murder in question.

15. Having regard to the medical evidence of the doctor, the fact of homicidal death by throttling resulting into asphyxia is not debated before us. Having regard to the injuries sustained to the throat, the finger marks on the throat, we felt convinced that the nature of death was homicidal, that it was surely by throttling rather than by hanging to the ceiling, but then the medical evidence so also the evidence of the Chemical Analyser is found by us to be not adequate enough to connect a link between the act of killing of Kamal inside the residential house or any stains of blood or the semen stains connecting the accused to the incident. Even the results of Chemical Analyser in respect thereof are not adequate enough to search for some such link.

16. The three aspects which weighed before the learned trial Judge viz. the act of the accused in going out of the house, the blood stains, the semen stains and the so called extra judicial confession in their totality forming a chain to convict the accused, was in the circumstances, not a correct conclusion which could have been reached. Each circumstance seems to stand on a foundation which is weak. In their totality also, they do not appear to be strong enough to establish beyond doubt the involvement of the accused. These circumstances do not also have a capacity to rule to any other possibility as regards any other person than the accused being responsible for the killing of Kamal. From the evidence discussed above, it is also difficult to draw an inference that the accused must have succeeded in attempting to outrage the modesty of the victim against her will without there being any corresponding resistance, followed by some violence and shouts or noise so as to maintain the whole affair in such a secrecy and silence that the neighbouring persons would not become aware about it. Silencing victim by throttling her neck with such violence could not have remained from its repulses spreading up to the minds of the neighbouring persons. Therefore, it creates a doubt as to whether the prosecution case as alleged must have really taken place.

In brief, we hold that the evidence is not trust-worthy and adequate enough to accept the important link of confessional statement beyond shadow of a reasonable doubt. We, therefore, disagree with the trial Court in confirming his judgment.

17. We find no need to refer to the other parts of the prosecution evidence with any greater details when we noticed that the main plank is untrustworthy and weak enough to support the theory of extra judicial confession supplying any basis to prove the guilt. We, therefore, feel satisfied in view of the above discussion, to hold that the conviction and sentence awarded against the appellant cannot be sustained. We set aside the judgment of conviction and sentence recorded against the appellant by the trial Court. We, therefore, order that the appellant shall stand acquitted and be set at liberty forthwith in this case if not required in any other case.

18. The appeal thus stands allowed.

19. Appeal allowed.