

State of Orissa Vs. Basanta Bag

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Court : Orissa

Decided On : Sep-09-1958

Reported in : AIR1959Ori33; 1959CriLJ353

Judge : R.L. Narasimham, C.J. and ;S. Barman, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164(3); [Evidence Act, 1872](#) - Sections 27; [Constitution of India](#) - Article 20(3)

Appeal No. : Death Reference No. 2 of 1958 with Criminal Appeal No. 95 of 1958

Appellant : State of Orissa

Respondent : Basanta Bag

Advocate for Def. : V. Pasayat, Adv. for Accused (in No. 2)

Advocate for Pet/Ap. : Government Adv. and ;V. Pasayat, Adv. for Appellant (in No. 95)

Disposition : Appeal dismissed

Judgement :

R.L. Narasimham, C.J.

1. This is a reference by the Sessions Judge of Sambalpur for confirmation of the sentence of death passed on the appellant Basanta Bag for having committed

murder of a boy aged four years in Sambalpur town on 17-3-1958. The condemned person filed an appeal from Jail and the appeal and the reference were heard together and will be dealt with in this judgment.

2. The deceased whose name was Prakash Chandra Varma alias Babu was the son of one Janardan Presad Varma (P.W. 3) a teacher of Sambalpur Zilla School. Janardan had six daughters, the youngest being a child aged one and a half years and only one son namely the deceased. He was residing in a double-storeyed house in Sambalpur town with his wife Rajeswari (P.W. 6) and his children. The accused also used to reside in Sambalpur town in the house of his sister Arati Kuntuni (P.W. 1) and was selling biscuits. The members of the family of Janardan Presad Varma used to call him 'the Biscuit wala' because for about six to seven years, he used to come to their house and sell biscuits.

The boy Babu was said to have become very much attached to the Biscuit-wala. For some months, prior to the occurrence the accused stopped selling biscuits because the Biscuit Manufacturer would not supply him biscuits on credit. He then took to selling eggs and it is alleged by the prosecution that he was supplying eggs to Varma's family and also receiving cash from Rajeswari. It was further alleged that while receiving cash from the woman, he came to know that she kept her cash and valuables in one of the inner rooms of the first floor.

The case for the prosecution is that on 17-3-1958, the accused went to the house of Rajeswari just after noon knowing that nobody would be there except the woman and her younger children, with the object of committing theft of cash and ornaments from the house by murdering some of the inmates, if necessary. The need for committing such an atrocious crime arose mainly because of the straitened circumstances in which the accused was placed at that time. He owed about Rs. 22/- to one Dasarathi Dehury (P.W. 4) and also some money to a hotel-keeper (P.W. 13) for having taken meals on credit. His own sister (P.W. 1) was not giving him free food and insisted on his paying for the same. The urgent need for money is said to be responsible for the commission of such a crime on a family which had done him no harm whatsoever.

3. Before discussing the circumstances under which the murder was committed, as spoken to by the prosecution witnesses, it is necessary to briefly describe the house of Mr. Varma as noted by the Sessions Judge during his local inspection. The first floor consisted of two living rooms and a kitchen. The cash and valuable of the family were kept in the inner room of the first floor. On the ground floor, there were four rooms, the first one being known as the Office Room and the second one leading to a small corridor in which there was a staircase leading to the first floor. There was also a store room in the ground floor and another room in a corner which was said to have been used as a lumber room for keeping the useless articles of the house.

4. According to Rajeswari (P.W. 6) the accused went to her house just afternoon on 17-3-1958, came upstairs as usual and told her that he had brought a maid-servant to assist her as requested by her on a previous occasion. Presumably this was just a ruse to send her away down stairs so that he may commit theft, but Rajeswari declined the services of a maid-servant and told him that she had already engaged one. Then she asked him for supply of eggs and reminded him that he owed her some balance in respect of the payment made for supply of eggs on the previous day.

In the meantime, her son Babu ran towards the accused, and asked him if he had brought eggs. Then the accused took the boy down-stairs and Rajeswari suspecting nothing, went to the kitchen to take her meals. After an interval of half an hour, when she was busy in the kitchen, she heard sounds of some one getting up the staircase, came out of the kitchen and enquired as to who he was. Then she noticed the accused getting down the staircase and called him to halt and also followed him down the staircase. She noticed that his pant pockets were bulging out and asked if he had stolen anything.

Thereupon the accused pulled out a piece of white cloth from his pant pocket, waved it and said that he had stolen nothing. She asked him as to where her boy was and he replied that he had gone out to play. Then he went away. At that time, all the other inmates of the house excepting her baby had gone away elsewhere. The woman did not suspect anything and therefore, carried on her household

duties as usual but sometime after, when the boy did not return, she grew anxious and began to make a search for him.

Her daughter Gita (P.W. 7) had also returning from the college by then and assisted in the search. One of the former students of her husband, namely Jayanarayan, (P.W. 21) also came there and assisted the family in searching for the boy. But no trace of the boy was found anywhere. They did not, however, search the lumber room which was chained from outside. Jainarayan immediately went to the Police Out Post at Balibandh and lodged a missing report (Exhibit 1) at 3-15 P.M. 15 minutes later, a station diary entry was made by him at Sadar Police Station.

He again met Rajeswari and learnt from her that the boy was in the company of the accused just before he disappeared. Then he, Rajeswari and another person went to the house of the sister of the accused and called him out. The accused had by that time returned to his sister's house. On being questioned by Rajeswari as to the whereabouts of the boy, he was not able to give any definite reply but stated that he may be in the house. Rajeswari returned home and became very anxious for her boy.

In the meantime, her husband' (P.W. 3) also returned at about 5 P.M. and on learning from his family members about the missing of the boy, he made a careful search and on opening the lumber room in the ground floor, he was shocked to find the boy lying in a corner with his throat cut. He completely lost his head, took the murdered boy in his hands and began to roam about in the street like a mad man. Some of the neighbours took away the dead body from him and kept it in the house. Information was immediately given to the police who ran to the spot. Neither Janardan, (P.W. 3) nor his wife (P.W. 6) was in a condition to give any sensible or coherent account of what had happened. Hence the police officer drew an F.I.R. at 6-30 P.M. on the information given by Jayanarayan (P.W. 21) and investigated the case.

5. The post-mortem examination on the corpse of the boy was held by Dr. Rath (P.W. 18) who found three antemortem incised wounds in the neck, in consequence of which the trachea, the thyroidgland and the cartoid artery were all

cut. There was haemorrhage on the right lung. Violet patches were diffusely spread over the surface of the lung and the lung itself was congested. The Medical Officer, therefore, stated that there was partial obstruction to respiration produced before the fatal wound on the neck was given and such obstruction to respiration might have been caused by throttling.

The injury was inflicted by a cutting weapon. Though there was complete absence of any finger marks on the throat of the boy, the Medical Officer explained that it was possible that the assailant lightly caught hold of the neck for some time before the cut blow was given and that in such circumstances, finger marks on the neck might or might not exist.

6. The cruel murder of this boy spread in the locality and the accused coming to know about it, suddenly disappeared from Sambalpur. He was subsequently arrested at Ullando (in Sonapur) on 19-3-1958 at 4-30 P.M. and was brought to Sambalpur at 7-30 P.M. on the same day and kept in police custody until he was produced before the Sub-divisional Magistrate on the 20th at 5-30 P.M. As he was said to be confessing, the Sub-Divisional Magistrate directed his production before Sri P. G. Sinha, Magistrate, 1st Class, (P.W. 22) for recording his confession.

He was actually produced before that Magistrate at 12-30 P.M. on 21-3-1958. That Magistrate gave him nearly four hours time for reflection and recorded his confession at 4-15 P.M. The Police in due course collected other incriminating evidence and sent up the case for trial.

7. The accused has denied the charge and stated that he was falsely implicated in this case.

8. There is no eye witness to the commission of the crime and the prosecution case rests on the judicial confession of the accused (which was subsequently retracted) and on the various pieces of circumstantial evidence used to corroborate the confession.

9. I may first deal with the confession. The English translation of the confession is as follows:

'My acquaintance with the family of Varma Babu has been for the last 6 to 7 years. I supply biscuits and eggs at his place. I had borrowed Rs. 22/- from a person named Dasarathi because my business was not running on well. Once when I was paid for the price of the eggs, I had seen money and gold ornaments in a box in the house of Varma Babu. I thought that by killing Varma's wife and children, I would clear up that loan of Rs. 22/-. Thinking in the aforesaid way on the date of the occurrence after 12-30 or 1 P.M., I went to his house.

I kept a knife in my pocket. The knife had a wooden handle and it was about 8' long. Going to his house. I went straight to the upper floor since all were in the upper floor. In the upper floor I talked with Varma Babu's wife. About maid-servant she said that she did not require any more maid-servant. Then I came down. The boy (whom I killed) came down with me. Because I was giving him eggs, the boy asked me for eggs. Telling him that I would give him egg, I took him to the lonely room in the down floor, the room which I had previously seen.

Going inside that room. I pressed the neck of the deceased and kept him so for 10 to 15 minutes. The boy could not cry. Then with the knife which I had, I cut his throat. The boy had put on a shirt and a pant. After killing him. I wiped the knife with his shirt. Then I shut the door of that room. Thereafter I again went to the upstairs. I had a mind that killing the mother of the child, I would take away all gold and cash from the box; then the other children were in another room in the down floor.

Going up the staircase, I came near the door when Babu's wife cried out as to who I was, whereupon I fled down and she came down just behind me and I ran away from his house. From there I went to my sister's place, I changed my cloth. Then I went to the shop of the Biscuit-walla. Therefrom a confectioner's shop. I went to the market. When coming home, I had thrown the knife at Kabarsthan tank. That night I passed in the Kabarsthan. The next day morning by 7 A.M., I went away from home, to my maternal uncle's house. Spending one day there, I went to Unda (Ullanda) where police arrested.'

The confession is complete in almost all the essential details. It is admitted that he knew the family of Varma Babu very well and that he went to the house of Varma

on the fatal day for the purpose of committing theft by killing Varma's wife and children and that he brought the child down-stairs, took it to the unused room first and then cut his neck. He has also admitted that he went upstairs hut when Varma wife cried out, he lost his nerve and fled away from the place. The main questions to decide are (1) whether the confession was made voluntarily so as to be admissible in evidence and (2) even if it wa3 voluntary, whether it can be said to be true.

As regards the voluntary nature of the confession I am satisfied that adequate time was given to the accused to free him completely from police influence. It is true that he was in police custody from the time of his arrest at 4-30 P.M on 19-3-1958 at village Ullando till his production before the Magistrate at 5-30 P.M. on 20-3-1958 when the Magistrate remanded him to Jail custody. He remained there on the 20th night and was produced in Court at 12 noon on the 21st.

Mr. Sinha gave him nearly four hours time for reflection after giving the usual caution. He has stated that he took care to send away all police officers from the Court and that the accused was kept in charge of the Court peon in the room itself. Sufficient precautions were thus taken to remove completely police influence from the mind of the accused. Moreover, the questions put to him by the learned Magistrate before recording the confession were all very searching. In particular, he took care to question him as to why he was making a confession, to which the accused replied as follows :

'I have already been arrested and I feel repeatant and therefore, I want to speak out of truth.'

It was, however, urged that in the confession (Exhibit 8) while recording the questions and answers (para 4) there was no entry made about the accused having been told by the Magistrate that he was not bound to make any confession. The first question (as recorded) merely shows that the Magistrate informed the accused that he was a Magistrate, and the second question shows that he further told him that if he made any confession before him, it would be used against him. Section 164(3), Cr. p. C. requires that the Magistrate should caution the accused that he way not bound to make any confession. In the certificate attached to the

confession, however, the Magistrate has clearly stated as follows :

'I have explained to Basanta Bag that he is not bound to make a confession and that if he does so, any confession he may make, may be used as evidence against him and I believe that this confession was voluntarily made.'

In his denosition, in Court, also he stated that he duly cautioned the accused twice, firstly when he was produced before him at 12-30 P.M. on 21-3-1958 and secondly at 4-15 P.M. before actually recording the confession. During the cross-examination of this Magistrate, nothing was brought out to show that due caution was not given to the accused, nor was any circumstance brought out to show that he mechanically signed the certificate in the prescribed form. The question, therefore, arises as to whether that portion of the certificate of the Magistrate which says that be explained to Basanta Bag that he was not bound to make any confession, can be believed, especially when in the record of questions and answers, no such caution is found.

This question has been fully discussed in a Full Bench decision of this Court reported in Bala Majhi v. State of Orissa, ILR 1951 Cut 65: (AIR 1951 Orissa 168), One of the questions for the decision of the Full Bench was whether

'a Magistrate recording a confessional statement under Section 164, Cr.P. C., is bound to record all the questions put by him to the accused and the answers given, to satisfy himself that the confession to be made is voluntary and, if so, what is the effect of the non-recording of the same.'

The answer of the Full Bench was as follows (at pages 72 -and 73 (of ILR Cut): (at p. 176 of AIR)) :

'If the requisite questioning has, in fact, been done, the non-compliance with the recording thereof is a defect of form which can be remedied under Section 533, Cr. P. C. It would also follow from Section 80 of the Evidence Act that where any document is produced before a Court purporting to be a statement made by a prisoner or accused person, in accordance with law and purporting to be signed by the Magistrate, the Court shall presume that any statement as to the circumstances

under which it was taken purporting to be made by the person signing it, is true and that the confession was duly taken.

From this it would follow that if the certificate contemplated by Section 164(3), Cr. P. C. is found in a confessional statement as recorded and if, by evidence taken under Section 533, Cr. P. C. the factum of the explanation and of the questioning as required under Section 164(3), Cr. P. C. is satisfactorily made out, a presumption would arise that the confession was duly taken If therefore a trial Court finds no material which would conflict with that presumption, the statement would be admissible and the weight to be attached must depend on circumstances.'

Bearing in mind the principles laid down in the aforesaid decision and having regard to the fact that the certificate is found attached to the confession (Ext. 8) that the Magistrate has also stated on oath that he duly cautioned the accused before he recorded the confession and there is absolutely nothing in his cross-examination to discredit this statement of his, I must hold that he did caution the accused that he was not bound to make a confession though he omitted to record the actual words used by him while so cautioning the accused. In my opinion there has been a substantial compliance with the requirements of Section 164(3), Cr. P. C. The learned Sessions Judge was, therefore, justified in holding that the confession was voluntarily made and therefore, admissible.

10. The next question is whether the confession is true. As it was retracted during trial it requires adequate corroboration. Such corroboration is found at almost every stage. The statement of the accused to the effect that he knew the family of Varma since six or seven years and that he was also familiar with them, is amply corroborated by the evidence of Varma's wife, Rajeswari (P.W. 6). Though she is the mother of the murdered boy, she had no previous enmity with the accused and there could possibly be no motive for her to falsely depose against him on such a serious charge. Again the statement in the confession that after entering the house of Varma on the fatal day, the accused came down with the boy after some conversation with Rajeswari is fully corroborated by her own evidence on this point.

11. An attempt was made to discredit this portion of the case on the ground that neither in the earlier station diary entries, (Exts. 1 and 2) nor in the F.I.R. (Ext. 7) was it clearly stated by the Informant (P.W. 21) that when the boy was last seen alive, he was seen in the company of the accused. Jayanarayan's explanation is that when he first lodged the station diary entry about the missing of the boy, he met Rajeswari and learnt that as the boy had gone out in the company of his sister Tara in the morning to purchase icecream, he might have gone again for the same purpose.

At that time, nobody suspected the accused. The absence of the accused's name in the Exhibits 1 and 2 is thus quite natural. But Jayanarayan further stated that after returning from the Thana, he learnt from Rajeswari that at about noon that day, the Biscuitwalla had come and that her son had gone down with him. Thereupon, Jayanarayan along with Rajeswari went to the house of the accused's sister to enquire about the whereabouts of the boy. This portion of the statement is fully supported by the evidence of P.Ws. 1 and 2.

In the subsequent F.I.R. lodged at 6-30 P.M. that day, the statement of Rajeswari was not correctly reported by Jayanarayan but as rightly pointed out by the lower Court any discrepancy between the statement of Jayanarayan in the F.I.R. and the evidence of Rajeswari in Court, cannot have much importance because Rajeswari was not the informant. The distracted condition in which Rajeswari and her husband Janardan, (P.W. 3) were when the police reached the spot at 6 P.M. has already been referred to.

They were not in a fit condition to make any statement. Hence the police officer was compelled to record the statement of Jayanarayan who was not an eye-witness. He rightly admitted that there was some confusion in his mind and that he was not correct in matters of detail in his report to the police. This explanation seems to be very reasonable, in the circumstances of this case. This witness also is entirely disinterested and there could possibly be no motive for him to join in a conspiracy to bring a false charge against the accused.

12. The statement in the confession that the accused first caught hold of the throat of the boy and then cut his neck gains corroboration from the medical evidence,

The Medical Officer found congestion in the lungs which shows that there was throttling before death. The post mortem examination was held at 6-30 A.M. on 18-3-1958 before the accused was arrested. Hence this striking corroboration between the post mortem report and the confession as regards the manner in which the child was killed is indeed very significant.

13. The most important corroborative circumstance is the recovery of knife (M.O. IV) from a tank near the Muslim Kabarsthan on 23-3-1958 from a place pointed out by the accused himself. In the confession, he stated that while returning to his house (sister's house) he threw the knife with which he committed the crime in the Kabarsthan tank. On the 23rd, the accused was taken to the tank by the police officer and there he was asked to throw a piece of stone into the water to point out approximately the place where he threw the knife.

He threw stones thrice and after the third attempt, stated that the place where the stone fell was the correct place where the knife had been thrown by him. A fisherman named Nara Behera, (P.W. 14) after several previous unsuccessful attempts recovered (M.O. IV). the knife from the bed of the tank by diving at the place where the stone fell. His evidence on this point is corroborated by a Muslim jeweller namely Tar Mahammad, (P.W. 19) who was also a witness to the throwing of stone and recovery of knife from that tank.

The circumstances under which the knife was recovered are fully corroborated by these two disinterested witnesses. When called upon to explain as to how he could point out the place where the knife was recovered, the accused gave an unsatisfactory explanation by saying that he was forced by the Sub-Inspector of Police to throw some stones at random in the tank. But P.W. 19 is very clear on that point. He states that on the last throw of the stone, the accused said that that was the correct place. This explanation of the accused is, therefore, untrue.

Mr. Pasayat, however, urged that the statement made by the accused at the time of throwing this stone, which would ordinarily be admissible under Section 27 of the Indian Evidence Act should be held to be inadmissible as it contravened the right guaranteed under Article 20(3) of the Constitution. He relied on *Amin v. The State*, AIR 1958 All 293, in support of his argument. It is true that after the coming

into force of the Constitution, the evidence which may otherwise be admissible under Section 27 of the Evidence Act may be inadmissible by virtue of Article 20(3), if it could be established that such evidence was obtained under compulsion.

There is, however, nothing on record to show that the accused was compelled to throw the stone at the place from where the knife was recovered. P.W. 19 does not say that any force was used. It is true that the accused was then under police custody, but mere police custody in the absence of further evidence to show that force or compulsion was used, will not suffice to show that his statement was made under compulsion so as to attract Article 20(3) of the Constitution.

14. The fact that the accused went to the Kabarsthan tank is also fully corroborated by the evidence of the Chaukidar of the tank namely Sk. Juman who has stated that at about 2.30 P. M. that day, he saw the accused coming from the Kabarsthan tank. He did not see what the accused did there, but the accused's presence near about the tank corroborates that portion of his confession. I am not attaching any importance to the evidence of P.W. 9, about the presence of the accused at Ramsagar tank. The Sessions Judge has given sufficient reasons for disbelieving this witness.

15. As regards the financial difficulties, his statement in the confession is also supported by prosecution witnesses. His own sister, (P.W. 1) stated that though she kept the accused as a paying guest for about two years, for about 4 to 5 months, prior to the incident, he was not in a good financial condition and was not able to give her money for his food. P.W. 4 also spoke about the debt of Rs. 22/- due to him from the accused and his unsuccessful demand for repaying the same.

The hotel keeper (P.W. 13) has also spoken about the accused owing him for the meals taken on credit on three different occasions. In the confessions the accused admits that want of money was the main reason for his committing the crime and he added that he wanted to murder Rajeswari also. But somehow, when she cried out, when he was going upstairs, he lost his nerve and ran away from the place.

16. I would not attach much importance to the presence of blood-stains on the knife, half-pant (Ext. 1) half shirt, (Ext. III), handkerchief (Ext. V) and underwear (Ext. IV) and torn piece of cloth (Ext II) recovered from the accused. Though blood stains were found on them the origin of the blood could not be determined. Unless there is evidence to show that the blood stains were caused by human blood, they cannot connect the accused with the crime. Similarly the presence of blood in his cut-nails is not of any value,

17. It was then urged that if a murder of this type with a knife was committed there would be patches of blood on the pant and shirt of the accused and that they would have attracted the notice not only of Rajeswari when she saw him coming down but also other persons when he returned from that house to his sister's house after passing through the Kabarsthan. The answer to, this to some extent, depends on the weight to be attached to the evidence of the accused's sister (P.W. 1) to the effect that when the accused returned to her house that afternoon, he had with him a wet torn cloth which he put to sun for drying.

That torn cloth (M. O. II) was seized by the police that night and it was found to have some blood stains, but the Chemical Examiner was not able to determine their origin. We have also seen, the torn cloth (M. O. II) and we find that it is a fairly long one, but thin and it can be kept inside the half-pant pocket (M. O. I.). When the cloth was put inside one of the pockets of the half-pant, the pocket bulged out appreciably. The reasonable inference seems to be that when the child was murdered, most of the blood was caught in the torn cloth and when that cloth was concealed inside the half-pant pocket nobody could notice the blood stains.

The accused washed it, returned to his sisters house and dried it there but notwithstanding his precautions, some blood stains were found on it and this led to the seizure of this cloth by the police. It is true that small blood stains were also found on his underwear, half-pant and shirt but these were not noticed by the accused, who, after committing the crime was naturally very anxious to conceal the weapon and to return speedily to his house. They could not be noticed either by Rajeswari who had only a fleeting glimpse of him while he was going away from her house, nor by any passerby during his return journey to his sister's house.

It was further urged that Rajeswari's evidence to the effect that when she questioned the accused whether he had stolen anything, he took out a white piece of cloth from his pant pocket and waved it, would show that there were no blood stains on the torn cloth. But her evidence is to the effect that both the pant pockets appeared to be bulging out and she had only a momentary glimpse of the white cloth. Immediately after showing the cloth, he disappeared from the place. As both his half-pant pockets were seen bulging out, it may be inferred that the piece of white cloth which he waved at Rajeswari was another cloth concealed in the other pocket, and not the torn cloth which contained most of the blood of the victim.

18. I am, therefore, satisfied that the judicial confession of the accused though retracted is fully believable inasmuch as it has been corroborated in material particulars, by witnesses whose disinterestedness is beyond question. None else but the accused committed this crime and the only motive as stated by him, was robbery. There is no extenuating circumstance to mitigate the offence. The appellant is a grown up man of 30 years and he committed a brutal murder of an innocent child who always trusted him. I would, therefore, accept the reference, dismiss the appeal, and confirm the sentence of death. S. BARMAN J.:

19. I agree with my Lord the Chief Justice confirming the sentence of death in his judgment just delivered. I would, however, like to add a few words.

20. Although there is no direct evidence connecting the accused-appellant with the murder of the four-year old child, the circumstantial evidence was too strong to take any lenient view in the matter. The recovery of the knife, in the circumstances it was traced by the police and identified by the accused-appellant himself, is positive evidence connecting the accused-appellant with the murder. The learned counsel for the accused-appellant cited before us a 'decision' in *In re Periyaswami Thevan*, AIR 1950 Mad 714. In that case a weapon with blood-stains was discovered.

The mere fact that the weapon, which could have been used for the commission of the crime, was discovered with blood-stains on it on information given by the accused, would not by itself be sufficient to show that he was the murderer. On the facts of the Madras case, the offence of murder could not be held to have been

brought home beyond reasonable doubt to the accused and he was given the benefit of doubt. The distinguishing feature in the case before us was that there was no such confession as in the present case.

31. As to punishment, there are no extenuating circumstances. The murder was very cruel one which had taken place in the heart of Sambalpur town. Here was a quiet family of a school teacher of the local Zilla School consisting of his wife and children living in the town. The murder had taken place at the time of the day -- about midday -- when there was nobody in the house except the mother with the four-year old deceased son and one and a half year old daughter. Apparently, the accused-appellant took advantage of the time of the day when he expected the grown-up children to be in the college and the father in the school where he was a teacher.

The accused-appellant was familiar with this family having known them for several years. He was given free access to the family members so much so that he could freely go up the stairs on the first floor. The accused-appellant betrayed the confidence that had been reposed in him and he committed the murder for gain and he had gone prepared to commit such murder.

22. In this background; we have been compelled to take the view that this is a fit case for capital punishment. The appeal, therefore, must be dismissed and the death sentence confirmed.