

Pooln Haldar Vs. the State

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Court : Kolkata

Decided On : Sep-25-1995

Reported in : 1996CriLJ513

Judge : Satyabrata Sinha and ;D.K. Jain, JJ.

Acts : [Evidence Act, 1872](#) - Sections 8 and 24; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304; ;Code of Criminal Procedure (CrPC) , 1974 - Section 313

Appeal No. : Crl. Apl. No. 8 of 1993

Appellant : Pooln Haldar

Respondent : The State

Advocate for Def. : D.R. Parekh, Adv.

Advocate for Pet/Ap. : S.K. Mondal, Adv.

Disposition : Appeal dismissed

Judgement :

Satyabrata Sinha, J.

1. This appeal is directed against a judgment and order of conviction and sentence passed by the learned Sessions Judge, Andaman and Nicobar Islands, Port Blair, in Sessions Case No. 11 of 1991 (Sessions Trial No. 1 of 1993) whereby and

whereunder the said learned court convicted the accused/appellant for commission of an alleged offence under Section 302 of the Indian Penal Code and causing homicidal death to Jatin Mondal, and sentenced him to undergo rigorous imprisonment for life.

2. The incident took place at Village-Ganesh Nagar within P. S. Dinglipur at about 11 -30 A. M. to 12 noon on 12-9-88. The accused, the deceased and the material witnesses, namely, P.W. 2 Nikhil Biswas, P.W. 3 Kalipada Roy, P.W. 7 Kusum Deori, P. W. 9 Renubala Majhi, P.W. 11 Sudhir Deori, P.W. 12 Narayan Byapari, P.W. 13 Manindra Samaddar and P.W. 15 Basudeb Haider are all residents of the same village. The first information report was lodged by Sudhir Deori, P.W. 11 at about 7-30 P. M. on the same day. From the first information report (Ext. 2/ 1), it appears and which fact is also not disputed before us that before reaching the P. S. the informant and others went to Aerial Bay, contacted Gram Proadhan Haran Sardar and took him also to the P. S. It is stated that for reaching Aerial Bay, it takes about 4 hours time in a boat and Diglipur P. S. can be reached from Aerial Bay by bus, which takes about half an hour's time. The deceased Jatin Mondal originally was a resident of Beach Deru. He came over to Genesh Nagar and constructed, a house on a land which had been reclaimed by somebody else, 2/3 years prior to the occurrence. Allegedly, the deceased had been working under the appellant for more than one year, but he was not paid any remuneration therefor. It was further Alleged that in lieu of such remuneration, the appellant promised to the deceased that he would give her eldest in marriage with the deceased. Purna Gayen, P.W. 10 is the only eye witness who had seen the actual commission of offence by the appellant. He stated that at about 11 -30/11-45 A. M. on 12-9-88, he saw the appellant eating a guava on his land and a Ballam (spear) was kept against the guava tree. The deceased came at that time, whereupon the appellant asked him as to why he had talked to his daughter when he had made it clear that he would not give his daughter to him in marriage. The deceased allegedly told the appellant that he had worked under him for about a year, but neither any remuneration had been paid to him nor he intends to give his daughter in marriage with him, as promised. The appellant allegedly picked up the Ballam and hit the deceased on the chest, as a result whereof it got embedded therein. The deceased started running away but stumbled over the land of the appellant

whereupon the appellant plucked up the said weapon and ran towards his shouse. P.W. 10, Purna Gayen having witnessed the said occurrence became frightened and started running away and at a distance of about 50/60 cubits, he met Kusum Peori P.W. 7 and Renubala Majhi P.W. 9 who were passing by that road and requested them to report the matter to Gram Prodhan, Sudhir Deori to the effect that the appellant had killed Jatin Mondal by a Ballam. P.W. 7 and P.W. 11 also allegedly saw the deceased and the appellant. P.W. 7, on reaching her house, narrated the incident to Sudhir Deori, who although has been stated to be the Gram Prodhan by some witnesses, but now it appears that he was merely a Matabbar, to whom the villagers used to refer their disputes for his adjudication. Sudhir Deori, P.W. 11 upon hearing the incident started shouting, whereupon Kalippada Roy, P.W. 13, Manindra Smaddar, P.W. 13 and Baburam Haider, P.W. 15 came out and they came to the land of the appellant. Sudhir Deori, Baburam Haider and Kattick Haider started for Diglipur P. S. via Aereal Bay, where they, as stated hereinbefore, met the Prodhan Haran Sardar and took him also to Diglipur P.S. and lodged the first information report. P.W. 19 S. I. R. Vedam thereafter took up the investigation, reached the place of occurrence at about 11 -40 P.M. on that date and waited for the day to break. Allegedly, at 4-30 hours in the morning the accused was searched for but was not found. In the meantime, another police constable came to the place of occurrence with a Photographer and the said Photographer took some photographs of the deceased. P.W. 19 prepared the site plan (Ext. 12), made an inquest report (Ext. 3/2) and also seized blood-stained earth (Mat-Ext. V), control earth (Mat-Ext. VI), blood-stained grass (Mat-Ext. VII), control grass (Mat-Ext. VIII) and prepared a seizure list therefor, which was marked as Ext. 4/1. The appellant was allegedly arrested at 4-30 P.M. on 13-9-88 in presence of P.W. 11 and P.W. 15. His house was also searched and a blue coloured under-wear (Mat-Ext. III) which the accused was found wearing containing some stains, like blood was seized in relation where to a seizure list (Ext. 15/ 1) was prepared. The weapon of offence, namely, Ballam (Mat-Ext. II) was also recovered as per seizure list (Ext. 6/1). All the seized articles were separately packed and sealed. The dead body was brought to Diglipur at 22-15 hours on 13-9-88, the officer-in-charge having started from the place of occurrence at 18-20 hours. The post mortem examination was held at 3 P.M. on 14-9-88 by

Dr. R. Tulsidasan (P.W. 18), which is marked Ext. 11. P.W. 18, on external examination found one wound over the anterior chest wall mid-way between the two nipples over right boarder of sternum. The injury was penetrating with clean cut edges which are parallel and slightly curved to each other with sharp angle at the lower side and bruising and raggedness at the upper angle of the wound. Wound was vertical and has about 4-5 cm. s length piercing the skin, sub cutaneous tissue, sternum, pericardium and then traversed through the right ventricle of heart 2-3 cms. above its apex. In the opinion of the doctor, the said penetrating injury was caused by a sharp pointed cutting weapon. The sternum is cut and pierced through, large amount of blood clots and blood present inside the chest cavity. Pericardium congested and pierced through anterior surface, right ventricle of heart is traversed through the penetrating injury 2 to 3 cms. from its apex. He opined that the death was caused due to homicidal and penetrating injury of the vital organ like heart with massive internal haemorrhage with a sharp pointed cutting weapon with one edge sharp cutting and the other edge blunt. The probable period of time taken between the meal taken by the deceased and death was 3 hours. The said witness, when shown the Ballam (Mat-Ext. II), opined that the said penetrating injury might have been caused by the said Ballam.

3. Before the learned trial court, the prosecution in support of its case, examined as many as 19 witnesses. The learned trial court categorised the prosecution witnesses correctly in the following manner:

'(1) The only alleged eye witness to the incident of stabbing by the Ballam is P.W. 10 Purna Gayen.

(2) P.W. 2 Nikil Biswas and P.W. 12 Narayan Byapari are the alleged witnesses to the effect that immediately after the occurrence, when, it is alleged, the accused was holding out threats that no one would be able to save him (the deceased), they saw the accused with Ballam in hand.

(3) P.W. 7 (Kusum Deori) and P.W. 9 (Renubala Maji) are the two ladies whom the alleged eye witness P.W. 10 Purna Gayan met at a distance of hardly 100 cubits away from the P. O. and whom he asked to report the fact to Sudhir Deori P.W. 11 that the accused has killed the deceased Jotin Mondal by stabbing him with a

Ballam. These two ladies also claimed that they saw the accused with a Ballam in his hand and the deceased Jotin Mondal lying dead on accused's land.

(4) P.W. 3 (Kalipada Roy), P.W. 11 (Sudhir Deori), P.W. 12 (Narayan Byapari), P.W. 13 (Manindra Samaddar) and P.W. 15 Baburam Haider) are the witnesses who came to the P. O. after the incident was reported to Sudhir Deori (P.W. 11) by Kusum Deori (P.W. 17). And, out of these witnesses, P.W. 11 (Sudhir Deori) and P.W. 15 (Baburam Haider) went to the P. S. where Sudhir Deori lodged the FIR.

(5) P.W. 5 (N. Sanjeevan) is police constable who carried the sealed packet containing the case properties and a sealed envelope from the Diglipur P. S. to Aberdeen P. S. Port Blair and P.W. 6 (H. C. Jagdish Singh) carried them from Aberdeen P. S. to CFSL, Calcutta. P.W. 16 (S.I. Madhubala Chattopadhyaya) carried them from CFSL, Calcutta to Aberdeen P. S. and P.W. 17 Police Constable Nagabhushanam carried them from Aberdeen P. S. to Diglipur P. S.

(6) The Autopsy Surgeon is P.W. 18 Dr. Tulsidasan.

(7) The main I. O. is S.I.R. Vedam (P.W. 19). P.W. 14 (S.I. S.K. Das) simply submitted the charge sheet.

(8) P.W. 1 is a hospital Sweeper in whose presence the wearing apparels of the deceased were seized.

(9) P.W. 4 and P.W. 8 were only tendered for cross-examination and their cross-examination was declined by the defence.'

4. The appellant did not examine any witness in support of his defence, but from his examination under Section 313 of the Code of Criminal Procedure as also from the suggestions given to the prosecution witnesses, it appears that he had taken the following defences :-

1. Because of his failure to give a feast at the Sradh ceremony of his wife who died about one month 18 days prior to the date of occurrence, the villagers conspired to falsely implicate him in the case.

2. At the material time, he was not in the village and had gone out in the jungle for the purpose of hunting wild beer and came back only in the afternoon.

3. It is further the case of the appellant that the alleged motive for commission of the offence is wholly improbable as his daughter then being aged 11 years, could not be given in marriage with the deceased who is said to be then aged about 40 years.

5. The learned trial court in an elaborate judgment discussed the materials brought on records by the prosecution and upon analysing the evidence, held the appellant guilty for commission of the offence punishable under Section 302 of the Indian Penal Code and upon giving him an opportunity to be heard on sentence, sentenced him to undergo imprisonment for life.

6. Mr. Santosh Kumar Mondal, learned counsel appearing on behalf of the appellant has. taken us through the evidences of the material witnesses and, inter alia, submitted:

1. The prosecution has not been able to prove the motive.

2. Statements of the eye witness P.W. 10 are contrary to or inconsistent with the statements of other material witnesses.

3. Conduct of the material witnesses and in particular that of P.W. 10 during the alleged occurrence, and thereafter appears to be wholly improbable.

4. Investigation left much to be desired and the conduct of the Investigation is also not above board.

5. Neither the serological report nor the post mortem report support the case of the prosecution.

6. Place of occurrence is also doubtful in view of the statements made by different witnesses as regards the distance of the place of occurrence from their respective houses and/or their respective lands.

7. In the post mortem report rigor mortis having been found present in the dead body and such post mortem examination having been conducted 51 hours after the alleged occurrence took place, and the age of the deceased having been stated to be 26 years, whereas according to the other witnesses the deceased was aged about 40/45 years, the entire prosecution case is doubtful. In any event, the offence having taken place at the spur of the moment without any pre-meditation whatsoever, the appellant cannot be said to have committed an offence of culpable homicide as contemplated under Section 302 of the Indian Penal Code, but may have been found guilty only under Section 304 Part I thereof.

Mr. Parekh, learned counsel appearing on behalf of the respondent, on the other hand, submitted that the prosecution has been able to prove the case beyond all reasonable doubt which has been supported by ocular evidence, extra judicial confession, recovery of the wearing apparel and the weapon of offence as also the medical evidence. Learned counsel pointed out that the incident admittedly has taken place in the field belonging to the appellant. Learned counsel contended that the plea of alibi set up by the appellant has not been established, nor any suggestion having been given to the material witnesses that they had deposed falsely owing to their enmity with the appellant, the defence of the appellant must be held to be false. Learned counsel contended that the first information report, which was lodged at the earliest possible opportunity contains material particulars of the incident, and thus the same can neither be said to be false or fabricated. Learned counsel submitted that the defence had neither challenged the seizure of the wearing apparels and the Ballam from his house, nor their identification was questioned. Mr. Parekh urged that the case of the appellant to the effect that he had been falsely implicated by the villagers as he had not been able to give a feast on the Sradh ceremony of his wife, appears to be wholly unbelievable, in as much as, for such a petty matter, the entire villagers would not turn hostile against the appellant so as to implicate him falsely, which is possible only in case of a land dispute or a political rivalry.

8. Before discussing the ocular evidences, it may be noticed that the appellant before the court below did not question the identity of the deceased. Before us, however, Mr. Mondal faintly raised the said question. According to the learned

counsel, in view of the age of the deceased having been stated in the post mortem report to be 26 years, whereas other witnesses having stated his age to be 40-42 years, and further in view of the fact that partial rigor mortis having been found to be present in the body of the deceased, the identity of the deceased at the time of death is doubtful.

9. It is pertinent to note as is evident from the deposition of the Investigating Officer, P.W. 19 (R. Vedam), he along with the appellant, the dead body and the seized articles came to the police station in a dingi fitted with an engine. Before the learned trial court, no suggestion was given to the Investigating Officer that the deceased was not Jatin Mondal or identity of the deceased is suspicious. No such statement was also made by the appellant in his examination under Section 313 of the Code of Criminal Procedure before the court below. The discrepancy with regard to the age of the deceased vis-a-vis post mortem report was neither drawn to the attention of the doctor, Investigating Officer or the other witnesses. The said discrepancy in the age, in view of the aforementioned circumstances, in our opinion, is not very pertinent so as to throw away the entire prosecution case.

10. So far as the presence of partial rigor mortis in the dead body is concerned, Mr. Mondal has relied upon a passage from W.V. Cox's Medical Jurisprudence and Toxicology, 5th Edition, at page 163, which reads thus:

'The speed of onset of rigor mortis is very variable and depends upon a number of factors. In the average condition in temperate climates (but not in India as will be discussed shortly) the stiffening of the muscles is usually detectable about 2-5 hours after death. It rapidly spreads to the rest of the body and may be fully established in 8-12 hours. However, it may be apparent within half-an-hour after death or it may be delayed indefinitely in very cold conditions.

Rigor persists throughout the body again for a very variable time, but usually for twelve to twenty-four hours in its full state, beginning to pass off during the next twelve to twenty-four hours. Sometimes the 'rule of twelve' is quoted in respect of rigor-twelve hours to become fully established, twelve hours in full rigor and twelve hours to pass off, but this simplification is unjustified. In the warm climates of India, rigor mortis may commence in an hour or two and begin to disappear within

eighteen to twenty four hours. Broadly speaking, the faster the rigor appears, the shorter the time that it persists. In temperate climates, rigor lasts for two to three days, but sometimes may persist much longer, even up to five days or more.'

11. No question to the aforementioned aspect was put to the autopsy surgeon, nor the aforementioned authority was brought to his notice, suffice, however, is to observe that in his post mortem report, the autopsy surgeon found that the body was well preserved. In the passage from Cox, as referred to hereinbefore, itself, would appear that rigor lasts for 2 or 3 days in temperate climates, but sometimes may persist much longer, even up to 5 days or more.

In Lyon's Medical Jurisprudence for India, 10th Edition at page 144 the learned author stated :

'Order of onset and disappearance of rigor follows a definite course. It appears first in the law and the face, rapidly spreads to the muscles of the neck and back, then to the upper extremities, and finally to the lower extremities. The time of onset varies somewhat, but rigor is generally present in the jaw by the end of two hours after death, the upper extremities are probably rigid in three hours, and rigidity is complete in another hour. The order of disappearance is the same as that of onset and all trace of rigidity has, in the majority of cases, disappeared in from twenty to twenty-four hours after death. These figures relate to cases on the plains; in the Hills and in Northern India during the cold weather, the times of onset and disappearance approximate more closely to those observed in Europe.'

In cases in which, previous to death, the muscles have undergone great fatigue, and after death from any septicaemic condition, rigor sets in early and is of short duration. On the other hand, in cases of sudden death in the healthy, rigidity comes on late, provided that the muscles just previous to death have not been subjected to fatigue.'

12. Furthermore, the statements of P.W. 10 with regard to the manner of occurrence and the medical opinion that the deceased died because of the injury suffered by him which could be caused by the Ballam (Mat-Ext. II) also corroborates the manner of death of the said deceased.

13. In this view of the matter, we are of the opinion that the prosecution has been able to prove the identity of the deceased. The appellant also does not dispute that the material witnesses, as referred to hereinbefore, are his co-villagers. From the evidence of the only eye witness, it appears that he has supported the prosecution case to the hilt. The submission of Mr. Mondal as regards this witness that he was a tutored one cannot be accepted. The very fact that this witness categorically stated that he, upon witnessing the occurrence, ran away from that place out of fear and merely looked back once to find that the deceased had stumbled over the land of the appellant and he was running away with the Ballam in his hand, but did not see when the appellant picked up the embedded Ballam from the chest of the deceased, go to show that he is not a tutored witness. It is also corroborated by the fact that he categorically stated that he had met only Kusum Deori (P.W. 7) and Renubala Majhi (P.W.9). He informed only the said ladies, presumably in view of the fact that P.W. 7 happened to be the brother's wife of the first informant Sudhir Deori, who admittedly was the Matabbar of the village, although he was not the Gram Prodhan. Had he been a tutored witness, he could have stated the incident in greater details and his statements also could have been corroborated by the other witnesses. Mr. Mondal remarked that there was no occasion for the said witness to stop for the purpose of hearing the conversation between the appellant and the deceased as he had been going to the ration shop belonging to Amal Mondal. The said witness and the other witnesses categorically stated and which fact had not been denied or disputed by the appellant before the court below that Amal Mondal used to distribute ration. P.W. 7 and P.W. 9 had also gone to his place to get the ration. The said witness was also going to the said place for the selfsame purpose. It is, therefore, not at all unbelievable that he had been going to Amal Mondal's place and came to see the occurrence on his way. Learned counsels comments that there was no reason as to why he had stopped by, does not merit any consideration. Admittedly, the deceased was not following P.W. 10. He was coming from a different direction. When the deceased and the appellant saw each other then only the appellant, according to this witness abused the deceased stating as to why he had talked to his daughter when he categorically stated that he would not give his daughter in marriage with him, to which the deceased replied that he had neither been paid his remuneration for working at his

place for more than a year nor the appellant had kept his promise to give his daughter in marriage with him, whereafter some altercation followed. In this view of the matter, we are of the view that P.W. 10 cannot be said to be a chance witness.

14. Mr. Mondal submitted that keeping in view the distance of the place of occurrence and the place where P.W. 10 met P.W. 7 and P.W. 9, neither there was any reason as to why the ladies did not see the occurrence nor was there any reason as to why the other two material witnesses, namely, P.W. 2 and P.W. 12 could not hear the occurrence, also does not merit much consideration. There is nothing to show that the quarrel between the appellant and the deceased was at such a high pitch which could attract the attention of P.W. 7 and P.W. 9, or for that matter, P.W. 2 and P.W. 15. P.W. 7 and P.W.9 were returning from the ration shop. P.W. 9 had a child in her lap and also a ration bag. P.W. 10 categorically stated that upon witnessing the occurrence, he started running away and only at a distance of about 60/70 cubits from the place of occurrence, he met those ladies. Had the defence of the appellant that the entire village conspired against him been correct, the said witnesses also could have become eye witnesses. The very fact that they categorically stated that they did not see the occurrence, but saw the dead body of the deceased and the appellant only when they were at a distance of about 20 cubits from the place of occurrence, clearly goes to show that they are truthful witnesses. It may further be noticed that both the said witnesses also became frightened and ran towards their respective houses. P.W. 9 even did not go to the house of P.W. 7 and only P.W. 7 narrated the incident as was requested so to do by P.W. 10, to the first informant, P.W. 11.

15. It may safely be presumed that the conversation between the appellant and the deceased might not have been at a high pitch so as to attract the attention of the other witnesses. It is true, as was submitted by Mr. Mondal, that some other witnesses, including P.W. 11 had stated that P.W. 10 came with the other witnesses at the place of occurrence later on, but he himself did not say so, but the said omission on the part of the said witness, in our opinion, does not amount to contradiction. The submission of Mr. Mondal to the effect that P.W. 10 ought to have become the first informant is also misplaced keeping in view the fact that

P.W. 11 being the Matabbar of the village not only took the said task upon himself, but went to the police station along with another villager after visiting Aereal Bay and reporting the matter to the Gram Proshan and even the Gram Prodhan accompanied them to the police station. In the first information report itself, P.W. 10 has been named as an eye witness. No contradiction in the statements made by P.W. 11 in the first information report, his statements before the police and his deposition in the court below, has been brought to our notice. In fact, no contradiction at all between the previous statements made by any of the witnesses and their deposition before the court below, has been taken from the Investigating Officer (P.W. 19). The statements of P.W. 10 have thus been corroborated in material particulars by P.W.7 and P.W. 9.

16. P. W. 2 is Nikhil Biswas. He and P.W. 12, Narayan Byapari are witnesses to the second part of the occurrence. P.W. 2, at about 12 noon, while working in his field, heard the appellant shouting to the effect that no one would be able to save Jatin Mondal. At that time, he had a Ballam in his hand. Similar is the statement of Narayan Byapari (P.W. 12). It is true, as was commenced upon by Mr. Mondal, that both the aforementioned witnesses had not stated to have seen each other, but the same, in our opinion, instead of helping the defence, goes against its contention, in as much as, had the theory of conspiracy as propounded by the defence was correct, they could have either become witnesses to the entire occurrence, or would have stated the same story in a parrot like manner, but the very fact that they did not do so and confined their evidence only to that part of the event to which they were witnesses, in our opinion, make them truthful witnesses P.W. 10, P. W. 7, P.W. 9, P.W. 2 and P.W. 12 were subjected to cross-examination. No statement, worth the name, which may help the defence, in one way or the other, could be taken from them.

17. So far as the conduct of the different witnesses, upon which comments have been made by Mr. Mondal to the effect that their conduct was unnatural, suffice it to refer to an observation made by the Apex Court in the case of Rana Pratap v. State of Haryana reported in : 1983 CriLJ1272 wherein the Apex Court clearly stated that there is no legal principle of universal application as to how a witness will react in seeing an occurrence. A person may be dumb-founded and may not

disclose the incident to others immediately. Some are stunned. Some become speechless and some stand rooted to the spot. The court while considering the conduct of the witnesses had to bear in mind that even in a given situation different persons act differently which may not be considered to be natural and probable by others while judging the matter after a number of years. In a case where the witnesses depose after a number of years, slight contradictions in their evidences and slight discrepancies in their statements must be viewed in the context of capacity of retention of the respective witnesses, the chance of their forgetting a minor part of the incident etc. We have also to bear in mind that the doctrine of *falsus in uno falsus in omnibus* has no application in India. The court has a duty to separate the grain from the chaff. The evidence of a witness cannot be rejected only because a part of his testimony may not inspire confidence. In the case of *Anant B. Kamble v. State of Maharashtra*, reported in 1995 Cri LJ 2583, a learned single Judge of the Bombay High Court observed:

'It is well settled by a catena of decisions of the Apex Court that the maxim *falsus in uno falsus in omnibus* has not been accepted by our Courts. While assessing evidence Courts try to separate the grain from the chaff and it is only where truth and falsehood are so inextricably mixed that it is impossible to separate them that the entire statement of a witness is rejected (See para 8 of : 1975 CriLJ1734 *Balaka Singh v. State of Punjab*). Here this sifting is possible.'

18. Having gone through the evidences of the aforementioned witnesses, we are of the view that the statements of the eye witness have been corroborated not only by P.W. 7 and P.W. 9, but also by P.W. 2 and P.W. 12. An extra judicial confession undoubtedly is an evidence of the weak nature, but it must be borne in mind that in terms of Section 24 of the Evidence Act, a conviction can also be based on extra judicial confession, subject of course to the fact that such statements are corroborated by other materials on record. The conduct of the appellant sometime after the murder took place in shouting that nobody would be able to save the deceased not only amounts to an extra judicial - confession, but also is a relevant fact for the purpose of corroboration of the prosecution case.

19. Extra-judicial confessions are not usually considered with favour but that does not mean that such a confession coming from a person who has no reason to state falsely and the circumstances tend to support his statement, should not be disbelieved. An extra-judicial confession made to one who is not a person of authority and which is free from any suspicion as to its voluntary character and has also a ring of truth in it, is admissible in evidence against the accused and deserves to be acted upon.

20. Recently, a Division Bench of Orissa High Court in the case of Luku Paiké v. State of Orissa, reported in 1995 Cri LJ 1207 extracted a passage from Sarkar on Evidence, 14th Edition, 1993, at page 309, wherein it is stated :

'An extra-judicial confession may properly be made to any person or collection or body of persons. It is not even necessary that the statement should have been addressed to any definite individual....

21. The evidence of P.W. 2 and P.W. 12 with regard to the conduct of the appellant along with his utterances, as indicated hereinbefore, not only amounts to an extra judicial confession within the meaning of Section 24 of the Evidence Act, but also corroboration of the statements made by the other witnesses, who were witnesses to the actual occurrence, meaning thereby P.W. 10 as also the conduct of the appellant in running away towards his house with a Ballam in his hand immediately after the occurrence as has been stated both by P.W. 7 and P.W. 9. It is also pertinent to note that P.W. 7 and P.W. 9 both stated that they had seen and identified the deceased as also the appellant while they were only at a distance of 20/25 cubits from the place of occurrence. Such conduct on the part of P.W. 7 and P.W. 9 cannot be said to be unnatural.

22. P.W. 11 is the first informant. In his first information report he had disclosed the motive on the part of the appellant for committing the offence. That there had been a dispute between the appellant and the deceased over non-payment of remuneration or about the breaking of the promise on the part of the appellant to give his daughter in marriage with the deceased, had been stated in the first information report. Not only P.W. 11, P.W. 10 and also the other prosecution witnesses categorically stated that the deceased used to work at the house of the

appellant. P.W. 11 categorically stated that he came to learn about the incident from the wife of his younger brother, Kusum Deori, who also disclosed that P.W. 10 had told him to report the matter to him and P.W. 7 also narrated before him that she herself saw the appellant going to house hurriedly with a blood stained Ballam in his hand whereupon P.W. 11 called Kalipada Roy, (P.W.3), Manindra Samaddar (P.W. 13) and one Jagadish Haider (P.W. 4) and proceeded towards the house of the deceased. Having found the deceased lying on the ground he called other villagers, including Baburam Haider (P.W. 15) whereafter keeping some of them at the place of occurrence to watch the dead body, he, P. W. 15 and one Kartick Halder went to Aereal Bay. Statement of this witness that it takes about half an hour to reach the sea shore and from sea shore to Aereal Bay it takes about 4 hours time, and then again from Aereal Bay to Diglipur P. S. half an hour's time is required to cover the distance by bus. The first information was lodged at 7-30 p.m. If the fact that immediately after the matter was reported to him, P.W. 11 did not lose any time in calling the other witnesses coming to the place of occurrence, taking a look at the deceased and then asking his co-villagers to accompany him to the police station and on his way reporting the matter to the Gram Proddhan at Aereal Bay and also taking him along with them to the police station, clearly goes to show that the first information report had been lodged at the earliest possible opportunity. There has been no delay at all in lodging the first information report as we have to keep in mind that some time must have been lost in starting from the place of occurrence, at Aereal Bay and sometimes must have been taken in getting a bus at Aereal Bay for going to Diglipur P. S. At this juncture, it is also to be borne in mind that P.W. 15, Baburam Haider clearly stated that after he was asked to accompany P.W. 11 to the police station, he went to his house to change his clothes. This witness also stated that the deceased had complained to him about non-payment of wages by the appellant, whereafter he called the appellant for a settlement, but he did not appear. The fact that P.W. 11 was a Matabbar of the village and used to settle the disputes, has neither been denied nor disputed. That such a role used to be played by P.W. 11 has also been accepted by the appellant in his examination under Section 313 of the Code of Criminal Procedure. If he was the villain of the piece, as it was suggested that he owed some money to the appellant, he could have himself become an eye

witness. He clearly admitted that as the appellant did not come to him, he reported the matter to Haran Sardar, the Gram Proddhan who also having failed in his attempt to get the dispute settled at the village level informed the police officer orally, but despite a direction by a police officer to meet him at the police station, the appellant did not oblige. Statements of P.W. 11 and other witnesses to the effect that the deceased used to work in the house of the appellant are trustworthy. As before the learned court below, and also before us, Mr. Mondal submitted that it is highly improbable that the appellant would agree to give her eldest daughter in marriage, who at the relevant time was aged 12/14 years with a man aged 40/42 years. Although it may seem improbable to us, the same cannot be stated to be impossible. The fact that the appellant was a poor man stands admitted. He himself stated that he had not been able to give any feast at the Sradh ceremony of his wife, who died 1 month 18 days prior to the date of occurrence. P.W. 11 also stated that the appellant could not do so due to his poverty and nobody took the matter otherwise. We may remind ourselves that the immediate cause for the commission of the offence was an altercation between the deceased and the appellant which began with the utterances of the appellant as to why the deceased had talked to his daughter despite the fact that he had categorically stated that he would not give his daughter in marriage with him. Assuming that the prosecution has not been able to prove the motive, it is now well known, that absence of motive itself would not be sufficient to pass a judgment of acquittal. In the case of Prem Kumar v. State of Bihar, reported in 1995 Cri LJ 2634, K.S. Paripoornan, J. speaking for the Division Bench quoted with approval a passage from Shamsul Huda in Tagore Law Lecture in 1902 in his treatise, the Principles of the Law and Crimes in British India at page 176 in the following terms:-

'But proof of the Existence of a motive is not necessary for a conviction for any offence. But where the motive is proved it is evidence of the evil intent and is also relevant to show that the person who had the motive to commit a crime actually committed it, although such evidence alone would not ordinarily be sufficient. Under Section 8 of the Evidence Act any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.'

23. Once the court is satisfied that there exists cogent evidence for bringing home the guilt of the appellant, the relevance of motive and the value to be given to it may lose importance. Certainly, motive, if proved, affords a key to scan the evidence of the case in its proper perspective and as a corroboration to the prosecution case, in as much as, as is well known that a motive when proved indicates the high degree of probability and provides a link in the chain to connect the accused with the offence. Suggestion given to this witness that he had borrowed a sum of Rs. 3400/- from the appellant and returned the said money only on his date of arrest, does not inspire confidence. No such statement was put to the other witnesses. The evidence of P.W. 11, therefore, also in our opinion, cannot be said to be untrustworthy. The evidence of P.W. 11 clearly shows that the house of the appellant was about 15/20 minutes from his house. We may notice that P.W. 7 and P.W. 9 stated that their houses are at a great distance from the place of occurrence and it took about one hour for them to return to their house from the place of occurrence. Both P.W. 7 and P.W. 9 are illiterate. Their evidence shows that they have hardly any idea with regard to distance or time. At the time when she was cross-examined she stated the time to be 9 o'clock, although it was 10 o'clock. Although the distance between the place of occurrence and the place where P.W. 10 met them, according to the said witness was only 60/70 cubits, she stated that it takes about one and half hour to go from her house to the ration shop on fool and it takes half an hour from the place of occurrence to reach her house. This goes to show that she is not fully conversant with the distance and/or time, same is with the case of P.W. 9. This witness further stated that near the house of the appellant there are houses of Baburam Haider (P.W. 15), Nikhil Biswas (P.W. 2), Haran Mirdha and Narayan Byapari. Haran Mirdha does not appear to have any role to play, nor there is anything on record to show that he at any point of time had gone to the place of occurrence. Other 3 neighbours of the appellant, namely, P.W. 15, P.W. 2 and P.W. 12 have been examined in this case.

24. Mr. Mondal submitted that it appears unseemingly that P.W. 11 would not question the eye witness (P.W. 10) as regards the manner of occurrence. Probably he did not think it necessary to do so in view of the fact that he came to learn about the occurrence from his brother's wife (P.W. 7), and when he came to the place of occurrence, he himself found the deceased lying on the ground. P.W.

11 was candid enough to admit that on 12-9-88 he did not meet the appellant. He also admitted that the appellant goes to hunt wild pigs on occasions. Statements of P.W. 11 had been corroborated in material particulars by P.W. 2, P.W. 3 and P.W. 13. P.W. 4 Jagadish Haider, who, it may be noticed, was tendered for cross-examination but no cross-examination was done on behalf of the appellant. In this view of the matter, we are of the opinion that the evidence of the eye witness had been corroborated in material particulars by the other witnesses. In the case of Sheikh Ishaque v. State of Bihar, reported in 1995 Cri LJ 2682, the Apex Court held that when the testimony of the first informant on whose statement formal F.I.R. was registered, was reliable and corroborated by other materials on record, the same cannot be discredited on account of mere acquittal of some of the accused nominated by him as being present along with convicted accused at the time of occurrence. P.W. 19 is the Investigating Officer. He also supported the evidence of P.W. 11. He made search of and seizure in the house of the accused. The blue coloured under-wear which the appellant was wearing at the time of commission of the offence had been identified by P.W. 10, P.W. 7 and P.W. 9. The said Mat-Ext. III was identified by other witnesses also. The report of the Serologist proved that the same contained human blood stains. It is true, as was submitted by Mr. Mondal, that the Serologist could not state as regards presence of human blood in the Ballam and other materials seized by P.W. 19 because of disintegration, but only because the prosecution has not been able to prove existence of human blood in the weapon of offence and on the earth and grass seized, cannot be said to be sufficient to prove the innocence of the accused.

25. Mr. Mondal further submitted that from the evidence of P.W. 11 it would appear that there are houses of some other persons nearby and there is a school where the students were reading, and Amal Mondal also had not been examined. Records do not reveal that the said persons had any role to play, or for that matter they were material witnesses. It is not necessary for the prosecution to examine all the witnesses who were the neighbours of the deceased and/or the appellant or whose names have been taken by other witnesses although they do not have much role to play in the matter. Non-examination of such witnesses, in our opinion, is wholly immaterial. It is not a case where the prosecution deliberately and intentionally did not examine any material witness. Nothing has been shown

before us that non-examination of such witnesses had in any way prejudiced the appellant in his defence. However, it may be pointed out that in A. B. Kamble's case (Supra), it has been held that non-examination of the witnesses of the locality cannot be said to in law prove fatal to the prosecution. In this case, the evidence adduced by the prosecution has been found to be reliable by us. In our opinion, while judging a case of this nature the quality of the evidence matters and not the quantity. We may note that except some faint suggestions to some of the witnesses, as for example P.W. 11 and P.W. 15, that they had some sort of enmity, no suggestion had been given to any other witnesses either that they are enemically disposed towards the appellant. In particular, no such suggestion had been given to P.W. 2, Nikhil Biswas, P.W. 3, Kalipada Roy, P.W. 7, Kusum Deori, P.W. 9, Renubala Majhi, P.W. 10, Purna Gayen, P.W. 12, Narayan Byapari and P.W. 13, Manindra Samaddar. The only suggestion that was given to P.W. 11 and P.W. 15 was that in the Sradh ceremony of the wife of the appellant, which took place about 1 month 18 days before, the appellant did not give feast to the villagers. These witnesses admitted that the appellant did not do so, but at the same time they categorically stated that they did not expect the feast even. It also appears unlikely to us that such a large number of witnesses would depose against the appellant to implicate him falsely in a serious case of murder. However, only in his examination under Section 313 of the Code of Criminal Procedure the appellant alleged that he was in enemical terms with Nikhil Biswas (P. W. 2) as a quarrel ensued between them over hunting of pigs, with Purna Gayen (P.W. 10) over drinking of liquor, with Sudhir Deori, as he did not give back his money of Rs. 3400/- to him until the date of the appellant being forwarded to the court in connection with the case and Baburam Haider over boundary dispute. Such a statement under Section 313 of the Code of Criminal Procedure cannot be taken any serious note of as no such suggestion had been given to P.W.2, P.W. 3, P.W. 10, P.W. 11 and P.W. 15 that they were biased as against him or enemically disposed of towards him. Such statements by the appellant under Section 313 of the Code of Criminal Procedure must be held to be by way of after-thought. It may be noticed that P.W. 10 in his evidence stated that he had never visited the house of the appellant. Similarly, some of the other witnesses also stated that they had never visited the house of the appellant. Only P.W. 11 stated that he had visited

the house of the appellant when necessary. A court has to judge the veracity of the witnesses keeping in view the background, the socio economic condition and other relevant factors. Village Ganesh Nagar, which is even at a great distance from the sea shore, is not a thickly populated area. According to P.W. 11 only 40 families reside there. The Gram Panchayat is situated at Aerial Bay, which is about 4 1/2 hours journey by a boat fitted with engine, from the place. The evidence of the appellant itself suggests that apart from cultivation and plantation etc., people still hunt wild bears. The occurrence took place near the house of the appellant and admittedly the dead body was found on his land. P.W. 9 states that the house of the appellant is about 150 cubits from the place of occurrence, whereas P.W. 11 gives the distance as 150/200 cubits, whereas P.W. 10 states that the said distance would be about 200 to 300 cubits. If the plea of alibi made out by the appellant is not believed, which cannot be done in absence of any materials whatsoever on record, it is absolutely unlikely that the appellant will have no role to play or would not do anything upon finding that a dead body lies in his lands which is very close to his own house. The other defence of the appellant, namely, that the entire village was enviously disposed of towards him because he did not give feast on the occasion of Sradh ceremony of his wife is hard to believe for the reasons stated hereinbefore. Even if the appellant was a man who had hardly a few friends in the village, would not invite the wrath of all the villagers and particularly the lady witnesses, namely, P.W. 7 and P.W. 9. The prosecution, in order to bring home the charges as against the appellant, has brought on materials which proved his guilt beyond any reasonable doubt. In short, the prosecution case is supported by ocular evidence, namely, the statements of P.W. 10, who saw the actual commission of the offence; statements of P.W. 7 and P.W. 9 who were going back to their houses from the ration shop of Amal Mondal and to whom the incident was reported by P.W. 10 had themselves saw the accused running away towards his house with the Balam and the body of the deceased lying at the place of occurrence, as well as the conduct of the appellant which is admissible as res geste and his utterances which amount to extra judicial confession as disclosed by P.W. 2 and P.W. 12. Apart from the said ocular evidences all the material witnesses identified the under-wear which the appellant had put on at the time of occurrence and the Ballam, the weapon of offence. The

said under-wear and the weapon of offence were seized from his house. Such seizure had not been challenged. Medical evidence also supports the prosecution case to the effect that such a penetrating injury suffered by the deceased can be caused by the Ballam which was shown to the autopsy surgeon, Dr. R. Tulsidasn (P.W. 18).

26. The submission of Mr. Mondal to the effect that the petitioner, in the facts and circumstances of the case, cannot be said to be guilty of an offence under Section 302 of the Indian Penal Code cannot be accepted. There is nothing to show that the said vital injury was inflicted by the appellant upon the deceased while he was deprived of the power of self-control by grave and sudden provocation. No such provocation was given by the deceased at all, in as much as, it was the appellant himself, who chided the deceased for talking to his daughter. He, at the relevant time, had a Ballam by his side. It is difficult to arrive at a finding that the offence was premeditated one, but the manner in which the said offence was committed, the impact of the blow by the Ballam on the very vital part of the body of the deceased, as a result of which not only such extensive injuries were caused but the said weapon got stuck up in his chest and the deceased ran with the said Ballam stuck up in his chest and fell down after covering some distance on the land of the appellant himself, he took the said Ballam out presumably, just before the deceased breathed his last.

27. For the reasons aforementioned, we are of the view that the learned trial court has rightly found the appellant guilty of commission of an offence under Section 302 of the Indian Penal Code. The appeal is dismissed and the order of conviction and sentence passed as against the appellant is confirmed.

D.K. Jain, J.

28. I agree.