

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.489 OF 1997

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

RAJARAM GULABRAO KENJALE)...RESPONDENT

Mrs.M.M.Deshmukh, APP for the Appellant – State.

Mr.Shantanu Phanse a/w. Mr.Ateet Mhambrey i/b. Mr.M.S. Mohite, Advocate for the Respondent.

**CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

**DATE : RESERVED ON 8th JULY 2019
PRONOUNCED ON 16th JULY 2019**

JUDGMENT : (PER : A.M.BADAR, J.)

1 By this appeal, the appellant/State is challenging the judgment and order dated 15th January 1997 passed by the learned IVth Additional Sessions Judge, Satara, in Sessions Case No.138 of 1996, thereby acquitting the respondent of offences punishable under Sections 302 and 203 of the Indian Penal Code.

2 Facts, in brief, leading to the prosecution of the respondent/acquitted accused, can be summarized thus :

- (a) The respondent/acquitted accused married Sushma (since deceased) on 28th May 1996. The couple started residing at the house of respondent/acquitted accused Rajaram Kenjale at Village Kathapur in Koregaon Taluka of District Satara. The incident of alleged murder of Sushma Rajaram Kenjale took place on 16th June 1996 at Gat No.863 belonging to Nagnath Kenjale of Kathapur.
- (b) According to the prosecution case, Sushma Kenjale (since deceased) left her house in the morning hours of 16th June 1996 and proceeded towards Koregaon Taluka. Sensing the fact that his wife had left her matrimonial house, respondent/acquitted accused Rajaram Kenjale started searching her. On the way, he met PW5 Vithabai Kenjale and asked her whether Sushma (since deceased) passed from front of her house. On getting affirmative answer from PW5 Vithabai Kenjale, he proceeded further and met PW7

Kalidas Suryawanshi. Upon being asked to him, PW7 Kalidas Suryawanshi informed the respondent/acquitted accused that Sushma (since deceased) proceeded towards Koregaon. Then, respondent/acquitted accused Rajaram Kenjale took bicycle of PW7 Kalidas Suryawanshi and proceeded towards Koregaon in search of his wife Sushma (since deceased). It is case of the prosecution that after accosting Sushma (since deceased), respondent/acquitted accused Rajaram Kenjale started bringing her back to village Kathapur while assaulting her mercilessly on the way. PW13 Shrimant Sawant, while at Ghogavalewadi, found respondent/acquitted accused Rajaram Kenjale assaulting his wife Sushma (since deceased) and he intervened and pacified respondent/acquitted accused Rajaram Kenjale. Sushma (since deceased) then ran away towards canal. PW7 Kalidas Suryawanshi found the respondent/acquitted accused returning with Sushma (since deceased) and advised him not to assault her.

- (c) According to the prosecution, during the return journey to Village Kathapur, respondent/acquitted accused Rajaram Kenjale brutally killed Sushma (since deceased) in field Gat No.863 belonging to Navnath Kenjale. She was assaulted by means of stick as well as stone. Thereafter, respondent/acquitted accused Rajaram Kenjale met PW5 Vithabai Kenjale and PW4 Vijay Kenjale and disclosed to them that he had killed his wife. He, then, went to PW16 Vasant Kanse, Police Patil of Village Kathapur and told him the fact that he committed murder of his wife Sushma. Taking respondent/acquitted accused with him, PW16 Vasant Kanse, Police Patil, went to the spot of the incident, saw dead body of Sushma (since deceased) and then took respondent/acquitted accused Rajaram Kenjale to Police Station Rahimatpur and lodged report Exhibit 49. On the basis of the said report, Accidental Death Case No.17 of 1996 came to be registered with Police Station Rahimatpur by PW17 Pralhad Sawant, Police Head Constable. During the course of enquiry of that accidental case by PW18

Jagannath Chavan, Police Sub-Inspector, it was revealed that the respondent/acquitted accused had committed murder of his wife Sushma (since deceased) and accordingly, Crime No.13 of 1996 for offences punishable under Sections 302 and 203 of the Indian Penal Code came to be registered against the respondent/acquitted accused. He came to be arrested at 4.00 p.m. of 17th June 1996. Routine investigation followed during the course of which, Spot panchnama came to be recorded and blood stained shirt of respondent/acquitted accused came to be seized vide Panchnama Exhibit 41 in presence of PW11 Prakash Jadhav. Postmortem examination of dead body was conducted by PW9 Dr.Varsha Kulkarni and Autopsy Report at Exhibit 37 came to be prepared. On the basis of voluntary disclosure statement of respondent/acquitted accused Rajaram Kenjale, blood stained stone and blood stained stick came to be recovered in presence of panch witness PW14 Sampat Kanse and PW15 Anil Sonawale. Memorandum of statement of the respondent/acquitted accused is at Exhibit 45 whereas

Recovery Panchnama is at Exhibit 47. Statement of witnesses came to be recorded. Seized articles were sent for chemical analysis and on completion of investigation, charge-sheet came to be filed against the respondent/acquitted accused.

(d) After framing of Charge, it was explained to the respondent/acquitted accused, to which he abjured his guilt and claimed trial. In order to bring home the guilt to the respondent/acquitted accused, the prosecution has examined in all nineteen witnesses and also relied on documentary evidence. Defence of the respondent/acquitted accused was that of total denial. He, however, did not enter in defence.

(e) After hearing the parties, by the impugned judgment and order, the learned trial court was pleased to acquit the respondent/acquitted accused of all offences by holding that the prosecution has failed to establish the Charge leveled

against him. Feeling aggrieved thereby, the State has filed the instant appeal challenging acquittal of the respondent/acquitted accused.

3 We have heard Mrs.M.M.Deshmukh, the learned APP appearing on behalf of the State. She argued that in this case based on circumstantial evidence, the prosecution has established the fact that deceased Sushma had left her matrimonial house and the respondent/acquitted accused followed her. After tracing her out, he had assaulted her in presence of PW13 Shrimant Sawant. The learned APP further argued that after killing his wife, the respondent/acquitted accused confessed his guilt before PW4 Vijay Kenjale, PW5 Vithabai Kenjale, PW6 Chandrabhaga Kenjale and PW16 Vasant Kanse, Police Patil. It was found in the autopsy that deceased Sushma died homicidal death. According to the learned APP, with this evidence, coupled with forensic evidence, the prosecution has proved guilt of the respondent/acquitted accused beyond all reasonable doubts.

4 As against this, Mr.Phanse, the learned counsel appearing for the respondent/acquitted accused, by relying on judgment of the Honourable Apex Court in the matter of **Muralidhar alias Gidda and Another vs. State of Karnataka**¹ argued that evidence on record shows that the view taken by the learned trial court in acquitting the respondent/acquitted accused is a plausible view, based on evidence adduced in the case, and therefore, this court may not take any other view in the matter. The learned counsel for the respondent/acquitted accused further relied on **Sahadevan and Another vs. State of Tamil Nadu**² and argued that, so called extra judicial confession, allegedly made by the respondent/acquitted accused, constitutes a weak piece of evidence and without there being any corroboration to this evidence, the same cannot be accepted. He, further, argued that, the fact that the respondent/acquitted accused was not arrested on the day of the incident, though allegedly he was taken to the Police Station by the Police Patil, goes to show that the prosecution case is suspicious. The learned counsel further

1 (2014) 5 Supreme Court Cases 730

2 (2012) 6 Supreme Court Cases 403

argued that evidence of PW13 Shrimant Sawant is suspicious because the same suffers from material omissions. This witness has even deposed wrong colour of saree worn by the deceased. With this, the learned counsel submitted that the appeal deserves to be dismissed.

5 We have considered the relevant submissions and also perused the record and proceedings. Even according to the prosecution case, PW13 Shrimant Sawant had not witnessed the fact of commission of murder of deceased Sushma by the respondent/acquitted accused. Principles to be followed in hearing of an appeal from acquittal are elaborated by the Honourable Apex Court in **Muralidhar alias Gidda and Another (supra)**. Paragraphs 10 and 13 thereof can be quoted with advantage and those read thus :

“10 **Lord Russell in Sheo Swarup v. King Emperor AIR 1934 PC 227(2)**, highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said (IA p.404) :

“... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.”

The opinion of the Lord Russell has been followed over the years.”

“11 As early as in 1952, this Court in **Surajpal Singh v. State AIR 1952 SC 52** while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed (AIR p. 54, paragraph 7)

“7.....the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the

advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

“12 The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu vs. State* AIR 1954 SC 1, *Madan Mohan Singh vs. State of U.P.* AIR 1954 SC 637, *Atley vs. State of U.P.* AIR 1955 SC 807, *Aher Raja Khima vs. State of Saurashtra* AIR 1956 SC 217, *Balbir Singh vs. State of Punjab* AIR 1957 SC 216, *M.G. Agarwal vs. State of Maharashtra* AIR 1963 SC 200, *Noor Khan vs. State of Rajasthan* AIR 1964 SC 286, *Khedu Mohton vs. State of Bihar* (1970) 2 SCC 450, *Shivaji Sahabrao Bobade vs. State of Maharashtra* (1973) 2 SCC 793, *Lekha Yadav vs. State of Bihar* (1973) 2 SCC 424, *Khem Karan vs. State of U.P.* (1974) 4 SCC 603, *Bishan Singh vs. State of Punjab* (1974) 3 SCC 288, *Umedbhai Jadavbhai vs. State of Gujarat* (1978) 1 SCC 228, *K. Gopal Reddy vs. State of A.P.* (1979) 1 SCC 355, *Tota Singh vs. State of Punjab* (1987) 2 SCC 529, *Ram Kumar vs. State of Haryana* 1995 SCC (Cri) 355, *Madan Lal vs. State of J&K* (1997) 7 SCC 677, *Sambasivan vs. State of Kerala* (1998) 5

SCC 412, Bhagwan Singh vs. State of M.P. (2002) 4 SCC 85, Harijana Thirupala vs. Public Prosecutor (2002) 6 SCC 470, C. Antony vs. K.G.Raghavan Nair (2003) 1 SCC 1, State of Karnataka vs. K. Gopalakrishna (2005) 9 SCC 291, State of Goa vs. Sanjay Thakran (2007) 3 SCC 755 and Chandrappa vs. State of Karnataka (2007) 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

- (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court,
- (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal,
- (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses.

If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and

(iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

“13 In Ghurey Lal vs. State of U.P., the Court has culled out the principles relating to the appeals from a judgment of acquittal which are in line with what we have observed above.”

6 The case in hand, to a large extent, is based on circumstantial evidence, as even PW13 Shrimant Sawant has not witnessed the alleged commission of murder of deceased Sushma by the respondent/acquitted accused. Perusal of evidence of PW9 Dr.Varsha Kulkarni of Civil Hospital, Satara, coupled with Autopsy Report at Exhibit 37, goes to show that Sushma died homicidal death. Her dead body was having several antemortem injuries in the nature of contused lacerated wounds, abrasions and contusions over forehead, occipital region, elbow, legs, buttocks and forearm. The dead body was having cuts through and through and injury at right pinna. There was fracture at vault of the skull and the Autopsy Surgeon opined that Sushma died due to coma caused by head injury. Though an attempt was made to show that the deceased caused said injuries to herself, evidence of the Autopsy Surgeon goes to show that antemortem injuries found on the dead body were not self inflicted injuries.

7 In a case based on circumstantial evidence, evidence must satisfy the following tests :

“1 The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

2 Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

3 The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

4 The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

8 According to the prosecution case, respondent/acquitted accused Rajaram Kenjale confessed his guilt before several prosecution witnesses. Law regarding appreciation of extra judicial confession is crystallized by the Honourable Apex Court in the matter of Sahadevan and Another (supra).

Paragraphs 14 to 16 of that judgment read thus :

“14 It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

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

15.1 In Balwinder Singh v. State of Punjab [1995 Supp. (4) SCC 259], this Court stated the principle that : (SCC p. 265, paragraph 10)

“10 An extra-judicial confession, by its very nature is rather a weak type of evidence and requires

appreciation with a great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.”

15.2 [In Pakkirisamy v. State of T.N.](#) [(1997) 8 SCC 158], the Court held that : (SCC p.162, paragraph 8)

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

15.3 Again in [Kavita v. State of T.N.](#) [(1998) 6 SCC 108], the Court stated the dictum that : (SCC p.109, paragraph 4)

“4 There is no doubt that conviction can be based on extrajudicial confession, but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon veracity of the witnesses to whom it is made.”

15.4 While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession,

this Court in the case of [State of Rajasthan v. Raja Ram](#) [(2003) 8 SCC 180] stated the principle that : (SCC p.192, paragraph 19)

“19 An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.”

The Court, further expressed the view that : (SCC p. 192, paragraph 19)

“19Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused....”

15.5 In the case of [Aloke Nath Dutta v. State of W.B.](#) [(2007) 12 SCC 230], the Court, while holding the placing of reliance on extra-judicial confession by the lower courts in absence of other

corroborating material, as unjustified, observed:
(SCC pp 265-66, paragraphs 87 & 89)

“87 Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.

“89 A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof.”

15.6 Accepting the admissibility of the extra-judicial confession, the Court in the case of [Sansar Chand v. State of Rajasthan](#) [(2010) 10 SCC 604] held that :- (SCC p.611, paragraphs 29-30)

“29 There is no absolute rule that an extra-judicial confession can never be the basis of a

conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [[Vide Thimma and Thimma Raju v. State of Mysore](#), [Mulk Raj v. State of U.P.](#), [Sivakumar v. State](#) (SCC paras 40 and 41 : AIR paras 41 & 42), [Shiva Karam Payaswami Tewari v. State of Maharashtra](#) and [Mohd. Azad v. State of W.B.](#).]”

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

15.7 Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Court in the case of [Rameshbhai Chandubhai Rathod v. State of Gujarat](#) [(2009) 5 SCC 740], held as under : (SCC pp.772-73, paragraph 53)

“53 It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no

inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless, the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true.”

15.8 Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. [Ref. [Sk. Yusuf v. State of W.B.](#) [(2011) 11 SCC 754] and [Pancho v. State of Haryana](#) [(2011) 10 SCC 165].

16 Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible

piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused.

The principles

- (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.
- (iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- (vi) Such statement essentially has to be proved like any other fact and in accordance with law.

9 Keeping in mind these principles, let us examine the acceptability and evidentiary value of the extra judicial confession

tried to be brought on record by the prosecution. According to the prosecution case, the respondent/acquitted accused met PW16 Vasant Kanse, Police Patil, and confessed his guilt. Thereafter, said Police Patil took him to the Police station and lodged the report. If evidence of PW16 Vasant Kanse, Police Patil, is perused, then it is found that though this witness has deposed that on 16th June 1996 the respondent/acquitted accused came to his house at about 2.30 p.m. and told him that he had killed his wife Sushma, the report lodged by this Police Patil is conspicuously silent about confession of guilt to him by the respondent/acquitted accused. As per version of PW16 Vasant Kanse, Police Patil, he then went to the spot accompanied by the respondent/acquitted accused, saw dead body of Sushma and then taking the respondent/acquitted accused with him, he went to Rahimatpur Police Station and lodged the report Exhibit 49. Duly proved report at Exhibit 49 lodged by PW16 Vasant Kanse, Police Patil, is to the effect that the respondent/acquitted accused met him at 4.30 p.m. of 16th June 1996 and disclosed to him that when he was taking back his wife Sushma (since deceased), she started banging her head on the

stone and died due to self inflicted wounds. Even acting on this report at Exhibit 49, the police did not register the First Information Report (FIR). What was registered on the basis of this report is case of Accidental Death bearing no.17 of 1996 under Section 174 of the Code of Criminal Procedure. Thus, first version of PW16 Vasant Kanse, Police Patil, regarding disclosure of the respondent/acquitted accused, reflected in his report, is to the effect that the respondent/acquitted accused communicated to him that Sushma had died of suicidal death by banging her head on the stone. In the light of recitals in the report Exhibit 49, evidence of this witness, to the effect that the respondent/acquitted accused confessed his guilt of commission of murder of his wife, cannot be accepted, leave apart the fact that he being a Police Patil, confession made to him is not admissible in evidence.

10 According to the prosecution case, the respondent/acquitted accused confessed his guilt before PW4 Vijay Kenjale and PW5 Vithabai Kenjale, when he met both of them at 2.00 p.m.

of 16th June 1996. Evidence of PW5 Vithabai Kenjale shows that on the day of the incident, at about 9.00 a.m., Sushma passed from front of her house and half an hour thereafter, the respondent/acquitted accused came and asked her whether Sushma passed therefrom. After getting affirmative answer, he went in the direction from where Sushma had passed. PW5 Vithabai Kenjale further deposed that at about 2.00 p.m., she met respondent/acquitted accused Rajaram Kenjale and asked him if he had found his wife. Upon that, the respondent/acquitted accused replied that his wife suffered a head injury and requested her to accompany him. PW5 Vithabai Kenjale deposed that she refused to accompany him. Thus, PW5 Vithabai Kenjale has not spoken about any extra judicial confession by respondent /acquitted accused Rajaram Kenjale regarding murder of Sushma.

11 As against this, PW4 Vijay Kenjale, who claimed to be accompanying PW5 Vithabai Kenjale, has spoken that when he was with PW5 Vithabai Kenjale, respondent/acquitted accused Rajaram Kenjale met them. PW4 Vijay Kenjale further deposed

that PW5 Vithabai Kenjale asked respondent/acquitted accused Rajaram Kenjale if he had beaten his wife and upon that, respondent/acquitted accused Rajaram Kenjale informed her that he killed his wife Sushma. At that time, the respondent/acquitted accused was seen to have suffered a scratch mark on the finger of his left hand, and on enquiry, he told them that the said injury was caused in a quarrel.

12 Though PW4 Vijay Kenjale has spoken about extra judicial confession made by respondent/acquitted accused Rajaram Kenjale to PW5 Vithabai Kenjale within his hearing, while answering the question of PW5 Vithabai Kenjale, testimony of PW5 Vithabai Kenjale is conspicuously silent about the same. Thus, it is not possible to rely on evidence of PW4 Vijay Kenjale in respect of alleged extra judicial confession, when the witness to whom such confession was allegedly made, is not speaking about the same. Evidence of both these witnesses is not consistent in that regard.

13 The prosecution has claimed that PW6 Chandrabhaga Kenjale had also heard about the extra judicial confession made by the respondent/acquitted accused. Evidence of PW6 Chandrabhaga Kenjale makes it clear that deceased Sushma was her distant relative. This witness deposed that while respondent/acquitted accused Rajaram Kenjale was passing from her house, she asked him if he had found his wife Sushma. She advised him not to assault Sushma. Upon that, as per evidence of PW6 Chandrabhaga Kenjale, respondent/acquitted accused Rajaram Kenjale walked ahead and told her that he had killed Sushma. However, in cross-examination, PW6 Chandrabhaga Kenjale candidly admitted the fact that she only asked respondent/acquitted accused Rajaram Kenjale if he had found his wife and respondent/acquitted accused Rajaram Kenjale did not reply to her question and went away. She confirmed the fact that this was the only occasion on that day, when she talked with respondent/acquitted accused Rajaram Kenjale. Thus, evidence of PW6 Chandrabhaga Kenjale makes it clear that the respondent/acquitted accused never confessed the guilt to her in any manner.

14 Next piece of evidence relied by the prosecution is that of PW13 Shrimant Sawant, who, allegedly, saw respondent/acquitted accused Rajaram Kenjale beating his wife Sushma on the day of the incident. This witness is a resident of Village Ghogavalewadi and he saw the incident of assault at the bus stop of the said village. This witness was not knowing either the respondent/acquitted accused or the deceased. He deposed that he saw quarrel going on between the husband and the wife. As per his version, there was injury to head of the wife and the husband had fallen the wife on ground and was holding her one leg. He claimed to have intervened in the quarrel and convinced the husband to take his wife home. As per evidence of PW13 Shrimant Sawant, the wife was wearing faint blue coloured saree. When he separated the husband from the wife, the wife ran away towards the canal. On the backdrop of this material in chief-examination, PW13 Shrimant Sawant has accepted the fact that he did not talk anything with either the husband or the wife. His evidence regarding injury on forehead of the wife came on record by way of omission. When his evidence is compared with the

documentary evidence i.e. Inquest panchnama, it is seen that the dead body was having green coloured saree.

15 Now let us compare evidence of this witness PW13 Shrimant Sawant with that of PW7 Kalidas Suryawanshi, who had claimed to have seen the respondent/acquitted accused and deceased Sushma, while returning to their home, on the day of the incident. As per evidence of PW7 Kalidas Suryawanshi, initially, he witnessed Sushma walking towards Koregaon, at about 9 to 9.30 a.m. of the day of the incident. After half an hour, as per his version, respondent/acquitted accused Rajaram Kenjale came to him and demanded bicycle by telling that Sushma had proceeded towards Koregaon. Taking bicycle from PW7 Kalidas Suryawanshi, respondent/acquitted accused Rajaram Kenjale then went towards Koregaon. PW7 Kalidas Suryawanshi deposed that after one hour, by taking another bicycle from one Ankush, he went to search respondent/acquitted accused Rajaram Kenjale and found respondent/acquitted accused Rajaram Kenjale and his wife Sushma coming back while talking with each other. It is, thus,

seen from evidence of PW7 Kalidas Suryawanshi that, respondent/acquitted accused Rajaram Kenjale was seen returning to his house along with his wife Sushma and they were talking with each other. PW7 Kalidas Suryawanshi has not spoken about noticing any wounds on body of Sushma or the fact that respondent/acquitted accused Rajaram Kenjale assaulting his wife Sushma while bringing her back to his house. In the light of this evidence, evidence of PW13 Shrimant Sawant is rendered unbelievable and untrustworthy.

16 The prosecution has relied on forensic evidence regarding finding of blood of "A" group, which was the blood group of deceased Sushma, on the seized shirt of respondent/acquitted accused Rajaram Kenjale. However, it needs to be noted that, though PW16 Vasant Kanse, Police Patil, had taken the respondent/acquitted accused to the police station on the day of the incident, no action in the form of his arrest was taken by the police. The respondent/acquitted accused was shown to be arrested on the next day. His clothes came to be

seized in presence of PW11 Prakash Jadhav – panch witness. Cross-examination of this panch witness shows that clothes were kept on the table, on the first floor of the police station, in folded condition. The panch witness further deposed that he did not know personally whether those clothes really belonged to respondent/acquitted accused Rajaram Kenjale. Moreover, there is no evidence on record to show that after seizure, those clothes were sealed by applying wax seal and then those were sent to the forensic laboratory. In the light of this position of evidence, forensic evidence is of no assistance to the prosecution.

17 The prosecution has claimed that, at the instance of respondent/acquitted accused Rajaram Kenjale, weapons of assault i.e. stick and stone came to be seized. However, evidence of panch witness PW14 Sampat Kanse shows that Police Constable Sarde came to him and told him that panchnama of stone and stick was to be prepared. As per version of this panch witness, Police Constable Sarde told him that the stone and the stick were in the field. As per his version, his two signatures were obtained

in the field. This panch witness admitted that respondent/acquitted accused Rajaram Kenjale did not tell anything to him. Thus, version of the panch witness makes it clear that police were already aware about the place where the weapons of the assault were lying and he did not hear anything from the respondent/acquitted accused. Apart from this, recovery in pursuant to alleged Memorandum Statement at Exhibit 45, is shown to have been made from an open field. Hence, this evidence is also of no avail to the prosecution.

18 In the light of foregoing discussion, it cannot be said that the learned trial court has committed any error in acquitting the respondent of charges leveled against him. Circumstantial evidence adduced by the prosecution is not sufficient to infer guilt of the respondent/acquitted accused in the crime in question. Similarly, evidence regarding extra judicial confession, allegedly made by the respondent/acquitted accused, is also not trustworthy and reliable.

19 In the result, we proceed to pass the following order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)