

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1247 OF 2013

Rajesh Kumar Yedurajsingh Bhadoriya
Age 42 years, R/at. Anamitra,
B Wing, Flat No.1/103,
Prakruti Park, Bramhand,
Ghodbandar Road, Thane.

...Appellant

V/s.

The State of Maharashtra

...Respondent

Mr. Suhas M. Oak i/b. Mr. Sagar Joshi a/w. Mr. Deepesh
Vechekar, for the Appellant.

Mr. H. J. Dedhia, A.P.P. for the Respondent / State.

**CORAM : PRASANNA B. VARALE AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 7 JULY 2022

Oral Judgment (Per Shrikant D. Kulkarni, J.)

. Feeling dissatisfied by the impugned judgment and order of conviction passed in Sessions Case No.302/2010 by the Additional Sessions Judge, Thane, the Appellant / original

Accused has preferred this appeal by taking aid of Section 374 of Cr.P.C.

2. The prosecution story in brief is as under-

The Appellant / Accused Rajeshkumar Bhadoriya was residing with his wife Sangita, two daughters namely Tanishka aged 5 years and Aayushi aged 16 years in Flat No.1/103, Anamitra, B Wing, Prakruti Park, Bramhand, Ghodbandar Road, Thane. On 30 March 2010, PSI Rajendra Gujar (P.W.2) received phone call from Police Constable Bartad (P.W.10) attached to Thane Nagar Police Station deputed in the Civil Hospital Police Chowki Thane who informed that Sangita (wife of Appellant / Accused) was brought by her husband Rajeshkumar in the Civil Hospital Thane for medical treatment, with a case history that his wife Sangita sustained head injury due to fall of cupboard. The Medical Officer on duty, declared her dead. On that basis, PSI Rajendra Gujar took entry in the station diary vide ADR No.23/2010 under Section 174 of Cr.P.C. at Kasarwadavali Police Station, Thane. He informed such fact to his senior officers. He then rushed to Civil Hospital alongwith WPC Divar. On making inquiry with the Medical Officer of Civil Hospital Thane, PSI Gujar came to know that deceased Sangita was brought dead. Accordingly, PSI Gujar prepared panchanama of the dead body of Sangita in presence of two panch witnesses. He noticed that there were several head injuries on the corpse of Sangita coupled with

other injury marks. He therefore requested Medical Officer to issue advance death certificate and Post Mortem notes. In the meanwhile, PSI Gujar also came to know that daughter of Appellant / Accused namely Tanishka has also sustained serious injuries and she has been admitted in Lok Hospital. Accordingly, PSI Gujar lodged FIR on behalf of State with Kasarwadavali Police Station and on that basis Crime No.83/2010 under Section 302 and 307 of IPC came to be registered against the Appellant and criminal law was put in motion for further investigation.

3. The investigation was entrusted to Sr. PI Pramod Khade (P.W.15). On the very day, injured daughter Tanishka succumbed to serious injuries in Lok Hospital Thane. The dead body of Tanishka was sent to Civil Hospital, Thane for post mortem examination and report.

4. The Appellant / Accused came to be arrested. The panchanama of the scene of offence came to be prepared and muddemal articles were seized from the scene of offence. On the basis of disclosure statement given by the Appellant, iron pestle (lokhandi batta) and blood stained clothes of Appellant/ Accused were recovered and seized under panchanama. Sr. PI Khade recorded statement of witnesses and found sufficient incriminating evidence against the Appellant / Accused during the course of investigation. After receiving the post mortem

report and cause of death, Sr. PI Khade filed chargesheet against the Appellant / Accused in the concerned Court of JMFC at Thane. The learned JMFC committed the case to the Court of Sessions at Thane for trial, according to law.

5. The learned Additional Sessions Judge, Thane framed charge against the Appellant / Accused vide Exh.5. The trial was commenced. The prosecution agency has examined in all 16 witnesses and also produced documentary stock of evidence.

6. While completing the exercise of recording statement of Accused under Section 313 of Cr.P.C. an opportunity was extended to Appellant / Accused to explain about unfortunate death of his wife and small daughter. He defended that he is not the author of crime. It was a case of attempt of robbery in his flat in the early morning when he was away for morning walk. He defended that he was falsely implicated by police machinery. However, he did not chose to examine any defence witness.

7. The learned Additional Sessions Judge, Thane after appreciating the evidence on record and considering the arguments advanced by the learned APP for the State and learned defence counsel, was pleased to hold the Appellant / Accused guilty for committing murder of his wife and small daughter and awarded punishment of imprisonment for life under Section 302

of IPC and slapped fine of Rs.1,000/-.

8. In the above premise, the Appellant / Accused has questioned the legality of the order of conviction and sentence passed by the Additional Sessions Judge on various grounds.

9. Heard Mr. Suhas Oak instructed by Mr. Sagar Joshi, learned counsel for the Appellant / Accused and Mr. H. J. Dedhia, learned APP for the State.

10. Mr. Suhas Oak, learned counsel for the Appellant / Accused vehemently submitted that there is no eye witness to the incident. The case is completely rest upon circumstantial evidence. The prosecution agency has failed to establish the entire chain of circumstances and thus failed to prove the offence of murder against the Appellant / Accused beyond reasonable doubt.

11. Mr. Oak invited our attention to the stock of prosecution witnesses. He submitted that the prosecution has mainly relied upon evidence of P.W.5 Ashok Kotiyan in whose presence the extra judicial confession was allegedly made by the Appellant / Accused and P.W.6 Narayan Vaidyanathan who rushed to scene of offence being Secretary of the said housing society. He submitted that the extra judicial confession made by the Appellant / Accused is not at all genuine and not reliable. The

evidence of P.W.5 Ashok Kotian is also not trustworthy.

12. Mr. Suhas Oak took us through the evidence of P.W.13 Aayushi who happened to be elder daughter of the Appellant / Accused. Mr. Oak submitted that the testimony of Aayushi has destroyed the case of prosecution of causing murder and the Appellant / Accused is the author of the crime. He submitted that the evidence of P.W.13 Aayushi has made it clear that on the day of incident in the early morning Appellant / Accused has left for morning walk. He came back to his house and noticed that his wife Sangita and daughter Tanishka were lying in the bed room in injured condition. It was an attempt of robbery by the robbers in the wee hours when the Appellant / Accused was away for morning walk. He submitted that the Appellant / Accused is innocent and he has been falsely implicated in this case.

13. Mr. Oak also invited our attention to the testimony of P.W.6 Narayan Vaidyanathan to submit that his evidence is also not reliable. He submitted that in a case of circumstantial evidence, motive is important. The prosecution has failed to prove the motive. The Appellant / Accused was serving as a Security Officer in the Merchant Navy. As per the evidence of P.W.13 Aayushi, he was drawing handsome salary at the relevant point of time and he has no financial crisis.

14. Mr. Suhas Oak submitted that the recovery of weapon iron pestle / batta at the instance of Appellant is not reliable since the paper seals were pasted on the next day of the alleged seizure panchanama. As such, that piece of evidence cannot be relied upon. The report of Chemical Analyst also cannot be accepted in view of suspicious exercise of seizure of weapon.

15. Mr. Oak has placed his reliance in case of ***Lalchand Cheddilal Yadav Vs. State of Maharashtra***¹ on the point of recovery of weapon. According to Mr. Oak, recovery of weapon in this case is very much doubtful. Mr. Oak learned counsel for the Appellant further placed his reliance in case of ***Sahadevan and Another Vs. State of Tamilnadu***² on the point of extra judicial confession. He submitted that extra judicial confession is a weak piece of evidence and the Court must ensure that the same inspires confidence and is corroborated by other prosecution witnesses. He submitted that in the present case, the alleged extra judicial confession given by the Appellant / Accused is not at all corroborated by other prosecution witnesses. The extra judicial confession also suffers from material discrepancies and as such, it is liable to be discarded.

16. Mr. Oak, the learned counsel for the Appellant / Accused further placed his reliance in case of ***Parubai Vs. State of***

¹2000(3) Mh.L.J. 438

²(2012) 6 SCC 403

Maharashtra³ on the subject of circumstantial evidence. By taking help of said citation, Mr. Oak vehemently submitted that in this case links in the chain of circumstances is not established. The prosecution agency has failed to travel the journey to prove the charge of murder against the Appellant / Accused beyond reasonable doubt. He submitted that the explanation given by the Appellant / Accused about death of his wife and daughter even if found to be false, the Appellant / Accused cannot be convicted on that sole basis of false explanation. Mr. Oak while concluding the argument vehemently submitted that the learned Additional Sessions Judge has committed an error while convicting the Appellant / Accused for the offence of causing murder of his wife and daughter when chain of circumstances is not established. He therefore urged to set aside the conviction and sentence awarded by the learned Additional Sessions Judge and prayed that the Appellant / Accused may be set at free.

17. Mr. Dedhia, learned APP for the State supported the findings recorded by the Additional Sessions Judge while convicting the Appellant / Accused for the offence of murder of his wife and daughter. He submitted that the Appellant / Accused is not disputing the fact that his wife and daughter met with homicidal death. He is not disputing the post mortem report and cause of death given by the respective Doctors P.W.12 Dr. Sunil Jawale (Exh.62 post mortem of daughter Tanishka) and

³AIR 2021 SC 3784

P.W.16 Dr. Kendre (Exh.77 post mortem of wife Sangita). He submitted that the incident had taken place in the residential home of the Appellant / Accused in the early morning. He submitted that even though burden is on the prosecution to prove the guilt of the Accused beyond reasonable doubt, with the help of evidence, equally duty is cast upon the Appellant / Accused to offer explanation in view of Section 106 of the Evidence Act under what circumstances his wife and daughter sustained injuries. There was no other person except the Appellant / Accused in the home when the incident had taken place. The elder daughter of Appellant / Accused namely Aayushi though in the house, she was in another room. The Appellant / Accused has given explanation that it was an attempt of robbery in his house in the wee hours on the date of incident but the same is found to be bundle of false. The Appellant / Accused has failed to establish such fact through his surviving daughter P.W.13 Aayushi, her evidence is an improvised version which the learned trial Court has rightly discarded the same.

18. Mr. Dedhia, learned APP submitted that story of Appellant going away for the morning walk on the date of incident and thereby keeping away from the scene of offence is concocted developed story. The prosecution agency has established chain of circumstances. The case is based upon circumstantial evidence coupled with extra judicial confession given by the Appellant /

Accused before P.W.5 Ashok Kotiyan in whose car wife and daughter were taken to the hospital. He submitted that evidence of P.W.6 Narayan Vaidyanathan is also reliable. The evidence of three police officers particularly who received the history from the Appellant / Accused first in time unerringly pointed out how the Appellant / Accused has planned and putforth false case of suffering injury by his wife because of falling of cupboard on her head. He pointed out that there is absolutely no evidence to indicate that there was an attempt of robbery in the flat of Appellant / Accused on that day. Mr. Dedhia, learned APP submitted that the learned trial Judge has considered the oral and documentary piece of evidence and recorded the correct findings after appreciating the evidence in a proper way. He submitted that there is no reason to disturb the findings recorded by the learned trial Judge. There is no merit in the appeal. The appeal is liable to be dismissed.

19. We have considered the submissions of Mr. Suhas Oak, learned counsel for the Appellant / Accused and Mr. H. J. Dedhia, learned APP for the State. We have also gone through the original Record and Proceedings, stock of oral and documentary evidence produced by the prosecution agency with able assistance of learned counsel for the Appellant / Accused and learned APP for the State.

20. It is revealed during the course of argument that the Appellant / Accused is not disputing that his wife Sangita and daughter Tanishka met with homicidal death. He is disputing the author of crime. On perusal of testimony of P.W.12 Dr. Sunil Jawale who has conducted post mortem on the dead body of Sangita, it would reveal the picture. On going through the post mortem report, eight external injuries were found on the dead body of Sangita coupled with internal injuries as shown in Column No.19. The cause of death as shown in the post mortem notes is death due to head injury and fracture of skull with intracranial haemorrhage. The post mortem notes of Sangita is produced vide Exh.78. The post mortem report of Tanishka (small daughter) is vide Exh.63. The Column No.17 throws light on the external injuries noticed on the dead body whereas Column No.19 throws light on the external injuries found on the head. In the post mortem, Doctor has opined that probable cause of death of Tanishka is due to head injury in the form of fracture skull bones with intracranial haemorrhage.

21. Having regard to the cause of death given by the Doctor in the respective post mortem report vide Exh.63 and 78 (Tanishka and Sangita) coupled with medical evidence, it is found to be a case of homicidal death of Tanishka (small daughter) and Sangita (wife of Appellant).

22. The interesting question remained to be answered as to who is the author of crime. There is no eye witness to the incident. The case is rest upon circumstantial evidence. The law in respect of case based upon circumstantial evidence is well settled in a celebrated judgment of the Apex Court in case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra***⁴. In case of *Parubai Vs. State of Maharashtra (supra)* relied upon by Mr. Oak, learned counsel for the Appellant, guidelines laid down by the Apex Court in *Sharad Birdhichand Sarda (supra)* is followed. The relevant paragraph in the decision of *Sharad Birdhichand Sarda* are reproduced hereunder.

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade Vs. State of Maharashtra (AIR

⁴AIR 1984 SC 1622

*1973 SC 2622) where the observations were made:
(SCC para 19, p.807 : SCC (Cri.) p.1047)*

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

159. It will be seen that this Court while taking

into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied.

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,*
- (2) the said circumstance points to the guilt of the accused with reasonable definiteness, and*
- (3) the circumstance is in proximity to the time and situation.*

160. If these conditions are fulfilled only then a Court can use a false explanation or a false defence as an additional link to lend an assurance to the Court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case.”

23. In case of *Parubai Vs. State of Maharashtra (supra)*, the Hon’ble Supreme Court in paragraph No.17 has held as under:

17. It has been propounded that while scrutinising the circumstantial evidence, a court has to evaluate it to ensure the chain of events is

established clearly and completely to rule out any reasonable likelihood of innocence of the accused. The underlying principle is whether the chain is complete or not, indeed it would depend on the facts of each case emanating from the evidence and there cannot be a straightjacket formula which can be laid down for the purpose. But the circumstances adduced when considered collectively, it must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator of the crime alleged and the circumstances must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused.

24. Having regard to the above referred well settled position of law, we have to examine the evidence on record to find out whether the chain is complete or not and secondly, arrive at conclusion that it is none else but the Appellant / Accused who alone is the perpetrator of the crime. It may not be out of place to reproduce admitted factual scenario.

Deceased Sangita was happened to be wife of the Appellant / Accused. Tanishka was happened to be the younger daughter of the Appellant / Accused. P.W.13 Aayushi happened to be the elder daughter of the couple who is surviving. All of them were

residing in Flat No.1/103, Anamitra, B Wing, Prakruti Park, Bramhand, Ghodbandar Road, Thane at the time of incident. Sangita (wife) and Tanishka (younger daughter) of the Appellant / Accused met with untimely death falling in the category of homicidal death. Inquest panchanamas vide Exh.17 and 18 pertaining to deceased Sangita and deceased Tanishka are admitted by the defence side. The crime scene is the flat of the Appellant / Accused as described above, also not in dispute.

25. In the backdrop of admitted factual scenario, we shall first examine evidence of P.W.2 Rajendra Gujar then PSI, who is first informant, attached to Kasarwadavali Police Station, Thane and his testimony is vide Exh.22. On going through the evidence of P.W.2, it is revealed that on 30 March 2010, he was on duty as PSO at Kasarwadavali Police Station. He received telephonic information from Police Constable Bartad who was attached to Police Chowki Civil Hospital, Thane at 10.20 a.m. Police Constable Bartad informed to PSI Gujar that one Mrs. Sangita Rajeshkumar aged 35 years resident of Prakruti Park, Thane has been admitted in the hospital because of injury due to falling of cupboard on her person. She was admitted by her husband Rajeshkumar and she has been declared dead. This first information received by P.W.2 PSI Gujar about death of Sangita was through Police Chowki situated in the Civil Hospital at Thane. Accordingly, PSI Gujar has taken entry in the station

diary vide ADR No.23/2010 under Section 174 of Cr.P.C. vide Exh.23. On going through the extract of station diary vide Exh.23, we find the same narration. The testimony of P.W.2 PSI Gujar further discloses that he went to the Civil Hospital Thane alongwith WPC Divar. He had seen the dead body of Sangita in Mortuary and after making arrangement of panch witnesses, he prepared inquest panchanama which is not in dispute. He noticed during inquest that there were head injuries apart from other injuries on the person of deceased Sangita and he was of the opinion that said injuries might have been caused by hard and heavy object and it is a case of murder. He further came to know that younger daughter of the Appellant / Accused namely Tanishka had also sustained serious injuries and she has been admitted in Lok Hospital, Thane who also succumbed to the injuries. Accordingly, he lodged FIR with the police station vide Exh.24 and put the criminal law in motion. On that basis, Crime No.82/2010 came to be registered against the Appellant / Accused. While facing the cross examination, he has admitted that no members of the society were present in the Civil Hospital when he had been to the said hospital. It is not anyway helpful to the defence. The testimony of this witness PSI Gujar throws light that information was given by the police official attached to the police chowki of Civil Hospital Thane that wife of Appellant / Accused Sangita sustained injuries due to falling of cupboard and she was declared dead on the basis of information given by the

Appellant / Accused.

26. It is interesting to see the testimony of Police Constable Ashok Bartad attached to police chowki situated in the Civil Hospital, Thane. He is P.W.No.10 vide Exh.57. P.W.10 Police Constable Bartad has stated during his evidence that on 30 March 2010, he was on duty at police chowki Civil Hospital, Thane from 9.00 a.m. to 9.00 p.m. Appellant / Accused Rajeshkumar arrived about 10.00 a.m. with MLC papers of his daughter Tanishka. He further disclosed that wife of the Appellant / Accused was already dead prior to admission. The Appellant / Accused Rajeshkumar disclosed to him that the cupboard had fallen on his wife and daughter Tanishka and in the said incident his wife is dead and daughter has sustained injuries. Accordingly, Police Constable Bartad took entry in the register. After 10 to 20 minutes, Appellant / Accused again came to him and informed that he wants to shift his daughter to Lok Hospital immediately and accordingly, he has shifted his daughter to Lok Hospital. While facing the cross examination, he has disclosed that Accused had come to the hospital at about 10.00 a.m. and nobody was accompanied him in the hospital. He went to admit that 7 to 8 persons had brought the injured Tanishka and Appellant / Accused gave the history. It is therefore clear that 7 to 8 persons had brought the injured Tanishka and Appellant / Accused had given the history which is focusing as to how the Appellant /

Accused had planned the incident.

27. We shall now appreciate the evidence of P.W.5 Mr. Ashok Kotiyan vide Exh.43 before whom Appellant / Accused had given extra judicial confession. On going through the evidence of P.W.5 Mr. Ashok Kotiyan, it is evident that he is resident of same building and occupied 10th floor. He rushed to the house of Appellant / Accused at first floor in view of narration given by Mrs. Deshpande and Mrs. Shetty who are resident of same building. He entered in the house of Appellant and noticed that elder daughter of Appellant and Appellant as well were present. Another daughter of the Appellant was lying on the floor and there was blood on the floor. He further noticed that in the bed room wife of the Appellant was lying on the bed and her body was covered. He had taken injured daughter and wife of the Appellant to Civil Hospital by his car and on arrival Doctor informed that wife of the Appellant is dead. Doctor further informed that health of the daughter of Appellant is serious and advised to shift her in a private hospital. P.W.5 Ashok Kotiyan asked to the Appellant / Accused as to what had happened and in response Appellant / Accused disclosed him that he had assaulted his wife and daughter in a heat of anger by iron pestle on their head. The evidence of P.W.5 Mr. Ashok Kotiyan is tried to be attacked on the ground that he was a stranger. It is difficult to believe that Appellant / Accused may give such kind of extra

judicial confession to a stranger. It is further attempted by the learned counsel for the Appellant to impress that so called extra judicial confession given by the Appellant / Accused is not at all genuine and trustworthy. It is an improvised version at the hands of P.W.5 Mr. Ashok Kotiyan.

28. On careful scrutiny of the evidence of P.W.5 Mr. Ashok Kotiyan, as pointed out earlier, he is resident of same building Anamitra where the Appellant / Accused was residing with his family. Even though, he was not knowing Accused personally before the incident, he cannot be said to be a stranger. He had been to the house of Appellant on receiving information from the other residents of the same building. He had taken the injured wife and daughter of the Appellant to the Civil Hospital by his own car. In this background, this witness P.W.5 Mr. Ashok Kotiyan cannot be said to be a stranger. He was a natural witness in the above factual scenario. So far as improvisation made by this witness is concerned, on careful scrutiny, it is noticed by us that improvisation is to the extent of heat of anger. Remaining part of extra judicial confession given by the Appellant / Accused before him is found to be a true version. In the above premise, the testimony of P.W.5 Mr. Ashok Kotiyan cannot be discarded on simple improvisation.

29. Mr. Suhas Oak, the learned counsel for the Appellant has referred the citation in case of *Sahadevan and Another (supra)* on

the point of extra judicial confession and its reliability. The Apex Court in case of *Sahadevan and Another (supra)* reiterated the principles regarding extra judicial confession, its admissibility and evidentiary value. It is held that extra judicial confession is a weak piece of evidence. The Court must ensure that the same inspires confidence and is corroborated by other prosecution witnesses. If the extra judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent, 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. In the present case, the Appellant / Accused had given extra judicial confession before P.W.5 Mr. Ashok Kotiyan who is resident of same building. He is the person who had taken the injured wife and small daughter of the Appellant to the Civil Hospital for medical treatment by his own car. He cannot be termed as a stranger. On the other hand, he is found to be a natural witness. He had no reason to state about such confession. There is no enmity between the Appellant and this witness P.W.5 Mr. Ashok Kotiyan. The improvement in the extra judicial confession which is brought on record is found to be a minor and not sufficient to discard the entire extra judicial confession. The word “in heat of passion” is only found to be an improvement which is not any way sufficient to discard the extra judicial confession given by the Appellant / Accused before this witness P.W.5 Mr. Ashok

Kotiyan.

30. On careful scrutiny of the evidence of P.W.5 Mr. Ashok Kotiyan, we are satisfied that it is not a result of inducement, threat or promise. Why we accept this extra judicial confession given by the Appellant / Accused before P.W.5 Mr. Ashok Kotiyan, there are four reasons (i) it is made to a person who is resident of same building, (ii) he is the person who had taken the injured wife and daughter of the Appellant to the Civil Hospital, Thane for medical treatment (iii) the time of giving extra judicial confession before P.W.5 Mr. Ashok Kotiyan and the place i.e. Civil Hospital at Thane and (iv) the circumstances in which the Appellant / Accused had made the extra judicial confession before P.W.5 Mr. Ashok Kotiyan.

31. Having regard to the above reasons, we have no hesitation in accepting the extra judicial confession given by the Appellant / Accused before P.W.5 Mr. Ashok Kotiyan, thereby establishing his complicity in the commission of crime.

32. There is one more witness P.W.6 Mr. Narayan Vaidyanathan vide Exh.45 who was a Secretary of the said society (Anamitra). He has disclosed that on 30 March 2010 about 8.00 a.m. he was about to leave for his work when Mrs. Deshpande, Mrs. Shetty and Mrs. Kotiyan came to his house and informed that something had happened in Flat No.103 i.e. flat of Appellant

/ Accused. They asked him to come down as a Secretary of the said society. He rushed to the flat of the Appellant and saw that Appellant was standing near the window and was busy in talking on phone with somebody. He went inside the bed room and noticed that somebody was lying on the bed and covered with the blanket. Big noise was coming and he removed the blanket and noticed that it was wife of Appellant and blood was oozing from her face and pillow was stained with blood and she was alive. In another bed room, the daughter of Appellant was lying in the pool of blood. He asked to the Appellant as to what had happened and Appellant did not reply as he was talking with somebody on phone. He also asked to the Appellant as to why he was not taking his wife and daughter to the Doctor. In the meanwhile, P.W.5 Mr. Ashok Kotiyan made arrangement and they decided to take both injured to the hospital in Innova Car owned by P.W.5 Mr. Ashok Kotiyan. He has disclosed that both injured were admitted in Civil Hospital at Thane. After about half an hour, Doctor declared wife of Appellant as dead and suggested to shift injured daughter of Appellant to a private hospital and accordingly she was shifted to Lok Hospital at Thane. Accordingly, she was shifted there but after 3 to 4 hours, daughter of Appellant also succumbed to injuries. Thus evidence of P.W.6 Mr. Narayan Vaidyanathan is found to be trustworthy and reliable. His evidence is corroborating to the factual aspects and the scenario in the flat of the Appellant / Accused, thereby

giving the picture about the unfortunate incident. So it was an unnatural and untimely death of wife and daughter of the Appellant / accused in the residential home of Appellant / Accused in the morning hours.

33. Now coming to P.W.7 Mr. Badrilal Rebari (Exh.47) from whom the Appellant / Accused had taken hand loan. His evidence discloses that though Appellant / Accused was serving in the Merchant Navy, he was facing financial crises and he had taken loan firstly of Rs.50,000/- and secondly of Rs.2,00,000/-. Out of which, Rs.30,000/- was remained to be paid.

34. P.W.9 Mr. Yogesh Kulkarni vide Exh.56 is a Tax Consultant who has arranged for the loan of Rs.29 Lakhs from Corporation Bank for the Appellant / Accused to purchase flat. His evidence further discloses that after some time Appellant / Accused stopped paying installments of loan and requested him to arrange additional loan. This important aspect throws light that Appellant / Accused was in financial crunch at the time of incident which is stated be the cause of incident.

35. Now coming to testimony of P.W.13 Aayushi, who happened to be elder daughter of late Sangita and Appellant / Accused. On careful scrutiny of the testimony of P.W.13 Aayushi vide Exh.67, it is revealed that in the morning of the day of

incident she was in the house. According to Aayushi, on that day, she got up early for her studies and her father went for morning walk about 6.00 to 6.30 a.m. She has disclosed that her father was working in Merchant Navy and was drawing handsome salary of Rs.90,000/-. He was paying loan installment of Rs.30,000/- per month. The abovesaid statement of Aayushi is found to be a material improvement. She has further disclosed that on that day about 8.00 a.m. her father told her that her mother had sustained head injuries and told her to see her. She went to the bed room of her father and found that her younger sister Tanishka had sustained head injuries and blood was oozing from nose. She further noticed that her mother had also sustained head injuries as well as other injuries.

36. She has stated that she had a separate bed room and around 12.00 night, she went to her bed room. Above stock of evidence of Aayushi is supporting to the prosecution case. It is well settled position of law that the testimony of witness is to be assessed as a whole. Whatever part of evidence is found trustworthy and reliable, can be accepted and relied upon. The whole testimony cannot be discarded only because of certain improvement or certain part of evidence is found unreliable. A useful reference can be made in case of *Lahu Kamlakar Patil & Anr. Vs. State of Maharashtra*⁵, wherein it is held by the Apex Court that it is settled proposition that the evidence of a prosecution witness

⁵(2013) 6 SCC 417

cannot be rejected in toto merely because the prosecution chose him to treat him as hostile and cross examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. Recently, in case of *Duleshwar and Anr. Vs. State of Madhya Pradesh* ⁶, same view has been reiterated by the Apex Court. By applying the abovesaid legal principle of law, we have examined remaining part of evidence of Aayushi. She has attempted to support her father. She has stated that her father had left for morning walk at 6.30 a.m. and in the meanwhile, somebody had entered in her house for committing robbery and sexually assaulted to her mother as per her opinion. She has further stated that 2-3 incidents of house breaking had taken place in their building. The defence counsel has taken help of this witness in order to prove its defence. However, the story tried to be put forth by the Accused regarding attempt of robbery and attempt of sexual assault on his wife in his house is found to be a bundle of false. The spot panchanama is on record vide Exh.36, nowhere indicates that there was any attempt of robbery in the house of Appellant / Accused in the morning hours on the date of incident. The spot panchanama further nowhere speaks that sliding shutter of the window of the house of Appellant was broken so as to take entry in the house for robbery. It is not the case of the Appellant that lock of the front door of his house was

⁶(2020) 11 SCC 440

broken thereby forcible entry was made for committing robbery. As such, the defence put forth by the Appellant / Accused regarding robbery in his house in the early hours on 30 March 2010 is absolutely baseless. She did not state that her father / Appellant informed her about robbery in her house in the morning. She had formed such opinion favourable to her father / Appellant. Aayushi was bound to say that her father is innocent and she wish that he should come home again. This is the reason for making abovesaid improvisation during her evidence to support her father.

37. Having regard to the careful scrutiny of the P.W.13 Aayushi, it is established by the prosecution that her mother Sangita and younger sister Tanishka were found in injured condition in her father's bed room. As such, there is no difficulty to accept that part of evidence of Aayushi (P.W.13).

38. The Investigating Officer has seized number of muddemal articles including weapon used in the commission of offence from the crime scene under the panchanama.

39. Mr. Oak, the learned counsel for the Appellant / Accused has rightly invited our attention to the evidence of P.W.3 Akbar Mohd. Husain Shaikh, vide Exh.26, who is one of the panch witnesses. He pointed out that P.W.3 Akbar stated about the

alleged recovery of weapon i.e. iron pestle (lokhandi batta) and sealing thereof by paper seal on the next date of the panchanama. He argued that this exercise is very much doubtful and not safe to accept such evidence of using the weapon while committing the offence of murder. Be that as it may, what about remaining muddemal articles. It is material to note that Investigating Officer has seized barmuda pant and T-shirt of the Appellant / Accused, bed sheet, pillow, window curtain and other articles which were stained with blood. The C.A. report to that effect is produced by the prosecution vide Exh.79. The blood group of the wife of the Appellant, Sangita is of group 'B' and his daughter Tanishka's blood group is 'AB'. It is material to note that half T-shirt and barmuda pant belonging to the Appellant / Accused were found stained with blood having blood group belonging to his wife. Pillow cover, bed sheet are also found stained with blood having blood group of 'AB' belonging to his daughter. Even excluding the weapon iron pestle, remaining 24 muddemal articles were found stained with blood except muddemal article Nos.1-A, 12, 14, 17 and 19. All the abovesaid muddemal articles were stained with blood group of either 'B' or 'AB' belonging to wife and younger daughter of the Appellant respectively. The explanation offered by the Appellant / Accused while his examination under Section 313(1)(b) of Cr.P.C. is found to be false and added as a one more link showing his complicity in the commission of crime.

40. The Investigating Officer P.W.15 Mr. Pramod Khade, then Sr. PI attached to Kasarwadavali Police Station, has disclosed about procedural part of his investigation. His evidence has also ruled out so called attempt of robbery in the house of Appellant in the morning hours of 30 March 2010.

41. The arrest panchanama of the Accused is placed on record vide Exh.27. During his body search, one mobile handset, gold ear tops of his wife and one key of his house were recovered. No explanation is offered by the Appellant / Accused as to how he was possessing two ear tops in his pocket. P.W.13 Aayushi has stated during her evidence that ear tops of her mother were missing which were found during the body search of Appellant / Accused while making his arrest. This is also one more circumstance which goes against the Appellant / Accused.

42. In the case in hand, there is no eye witness of the occurrence and the prosecution case is rest upon circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established, that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused, that 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

43. The question of burden of proof where some facts are within personal knowledge of accused was examined by the Apex Court in ***State of West Bengal Vs. Mir Mohammad Omar & Ors.***⁷. The Apex Court took note of Section 106 of the Evidence Act and laid down the following principles in paras 31 to 33.

31. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

32. In this case, when the prosecution succeeded in establishing the afore-narrated circumstances, the

⁷(2000) 8 SCC 382

Court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.

33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process the Court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

44. Recently, in case of ***Trimukh Maroti Kirkan Vs. State of Maharashtra***⁸, the Apex Court has observed as under:

“If an offence takes place inside the privacy of a

⁸2007 Cri.L.J. 20

house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies

entirely upon the prosecution and there is no duty at all on an accused to offer any explanation. In case of no explanation or false explanation it would because an additional link in chain of circumstances.

45. Whether an Accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence had taken place in the residential home where the husband also normally resided, it has been consistently held that if the husband does not offer any explanation how his wife received injuries or offered explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime and useful reference can be made in case of *State of Tamil Nadu Vs. Rajendran*⁹, *State of U.P. Vs. Dr. Ravindra Prakash Mittal*¹⁰ and *Ganesh Lal Vs. State of Maharashtra*¹¹

46. In the early part of the judgment, we have given resume of the evidence which is available on record. From the evidence adduced by the prosecution, following chain of circumstances are clearly established-

⁹(1999) 8 SCC 679

¹⁰AIR 1992 SC 2045

¹¹(1992) 3 SCC 106

(i) The dead body of the wife Sangita and younger daughter Tanishka were found in the residential house of the Appellant / Accused.

(ii) Wife and daughter have sustained serious head injuries and succumbed to death.

(iii) Wife Sangita and daughter Tanishka met with homicidal death, as per medical evidence.

(iv) The Appellant / Accused was residing with his family consisting of his wife Sangita, elder daughter Aayushi and younger daughter Tanishka in the same residential house.

(v) Blood stains of the blood group of wife and daughter Tanishka were found on the half T-shirt and barmuda pant of the Appellant / Accused.

(vi) Explanation offered by the Appellant / Accused regarding attempt of robbery and sexual assault on his wife by using some force is found to be false and added one more link pointing to his guilt.

(vii) The post mortem report of wife and daughter clearly revealed that both died due to head injuries.

(viii) The spot panchanama nowhere indicates any attempt of committing robbery in the house of Appellant / Accused.

(ix) Two ear tops of wife Sangita were found in the pocket of Appellant / Accused during his body search at the time of arrest panchanama.

(x) Out of twenty six muddemal articles seized from the crime scene twenty one articles including bed sheet, pillow cover as well as window curtain were found stained with blood having blood group of 'B' and 'AB' belonging to wife and daughter of the Appellant / Accused.

(xi) The Appellant / Accused was in a financial crisis at the time of incident.

(xii) Extra judicial confession given by the Appellant / Accused before P.W.5 Ashok Kotiyan.

47. The circumstances enumerated above unerringly pointing to the guilt of the Appellant / Accused. It is none else but the Appellant / Accused is the author of crime. He has committed murder of his wife Sangita and younger daughter Tanishka in the early morning on 30 March 2010 and attempted to create scene that it was a case of robbery which is found be the bundle of false.

48. The extra judicial confession given by the Appellant / Accused before the witness P.W.5 Ashok Kotiyan is found to be reliable and voluntary and corroborating the above chain of circumstances which strengthen the prosecution case.

49. Having regard to the above reasons and discussion, we are in agreement with the findings recorded by the Additional Sessions Judge, Thane. The learned trial Judge has rightly convicted the Appellant / Accused for committing murder of his wife and younger daughter. We do not find any error on the part of the learned trial judge while convicting the Appellant / Accused under Section 302 of IPC. No interference is called for in the conviction and the order of sentence awarded by the learned trial Judge in the above scenario. Needless to state that the appeal needs to be dismissed.

ORDER

- (i) The Appeal is dismissed.
- (ii) The impugned judgment and order of conviction passed in Sessions Case No.302/2010 by the Additional Sessions Judge, Thane, is hereby confirmed.
- (iii) R & P be sent back to the Sessions Court as per rules and procedure.
- (iv) The Criminal Appeal is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

(PRASANNA B. VARALE, J.)