

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.448 OF 2016**

Nivrutti S/o Kishan Hire  
Age: 40 years, Occu.: Business,  
R/o. Manur, Tq. Vaijapur,  
Dist.Aurangabad.

..Appellant  
(Ori. Accused)

**VERSUS**

The State of Maharashtra  
Through Police Station Shivoor,  
Tq.Vaijapur, Dist.Aurangabad.

..Respondent

...

Advocate for Appellant : Mr.R.S.Deshmukh, Senior Counsel i/b.

Mr.Devang R.Deshmukh

APP for Respondent : Mr.A.M.Phule

...

**CORAM : SMT. VIBHA KANKANWADI AND  
ABHAY S. WAGHWASE, JJ.**

**RESERVED ON : 12 JULY, 2023**

**PRONOUNCED ON : 27 JULY, 2023**

**JUDGMENT (PER ABHAY S. WAGHWASE, J.) :**

1. Appellant herein is assailing judgment and order passed by the Additional Sessions Judge, Vaijapur dated 22-07-2016 in Sessions Case No.64 of 2014 by which appellant is held guilty for commission of offence under Section 302 of the Indian Penal Code (IPC) and sentenced to suffer imprisonment for life.

## IN NUTSHELL CASE OF PROSECUTION IN TRIAL COURT

2. Deceased was residing with her husband, children at village Manoor. On intervening night of 24-03-2014 and 25-03-2014, there were quarrels between appellant husband and deceased wife in the house itself. Subsequently, in the late night, both of them together went to their field to water maze crop. There again earlier quarrel continued. That after getting annoyed, accused hit deceased wife with a cement stone which was used for fencing i.e. on the left side of head of deceased, as a result of which she died on the spot.

Around 04:00 a.m. accused approached **PW1** Ramdas, Police Patil of the village and informed him about the incident. He took accused to the Police Station and gave report Exh.17 on the strength of which Police registered crime.

Accused came to be arrested on the same day and investigation was undertaken and after completing the same, **PW11** Sudhir Patil filed chargesheet which again came to be committed to the Additional Sessions Judge, Vaijapur, who conducted trial and held that prosecution has established the charges and thereby held appellant guilty for charge of murder of his wife and accordingly, awarded sentence of imprisonment for life.

The above judgment and order of conviction is challenged in the present appeal on the grounds raised in the appeal memo.

## SUBMISSIONS

### On behalf of Appellant :

3. Learned Senior Counsel for the appellant would take us through the entire evidence of the prosecution and would submit that, there is no direct evidence regarding alleged occurrence. Questioning credibility of testimony of informant **PW1** Ramdas (Police Patil), it is pointed out that there is no reason for giving so called extrajudicial confession to him. According to learned Senior Counsel, even when this witness was allegedly approached by accused around 04:00 a.m., information has not been passed to Police immediately. That further accused is not arrested immediately, rather he is arrested in the late evening and therefore, possibility of lodging false and afterthought report cannot be completely ruled out. According to him, this witness has admitted in cross, that, he was not a party to any quarrel between accused and deceased nor there was any previous complaint about behaviour and conduct of accused. It is next pointed out that answers given by this witness in cross admitting about creepers in the field clearly supports the defence of accused about accidental fall of deceased after her feet / leg getting entangled therein.

4. It is further submitted that very daughter **PW3** Shubhangi and father **PW4** Kisan of accused have not supported prosecution. It is submitted that though **PW5** Sakham, father of deceased has examined, he has no

knowledge about actual occurrence. That he has hearsay information. Likewise taking us through the evidence of **PW6** Indubai, it is submitted that mother of deceased has also no knowledge about the incident.

Consequently, it is put-forth that there is no direct and trustworthy evidence about accused assaulting his deceased wife as is alleged by prosecution. According to him, even Pancha to the spot has not supported the prosecution. Taking us through the post mortem report and answers given by the **PW10** Dr.Naresh, Autopsy Doctor in cross-examination, learned Senior Counsel would submit that death is not established to be only and only homicidal. While criticizing judgment under challenge, learned Senior Counsel would submit that learned trial Judge has accepted so called extrajudicial confession, which is the sole evidence on behalf of the prosecution. The reasons assigned for accepting the extrajudicial confession are not convincing and reasons assigned are against the settled legal position. He would add to above submission, that case is not of homicide, rather it could be at the most culpable homicide not amounting to murder as according to him there was no premeditation. Hence, he prayed to allow the appeal and set aside the impugned judgment.

**On behalf of APP :**

5. Countering the submissions of learned Senior Counsel for the appellant,

learned APP submitted that deceased was in the company and custody of accused. That she had died only because of fatal head injury in their field itself. That appellant himself spoke about his deceased wife accompanying him in the field for watering maze crop. That accused on his own gave extrajudicial confession to the Police Patil, who promptly reported the matter to the Police. Accused was arrested and investigation revealed that there used to be quarrels between accused and deceased. Relatives of deceased unequivocally deposed about mal-treatment given to deceased. Therefore, according to learned APP, learned trial Judge has committed no error in accepting the case of prosecution and recording guilt and hence, he prayed to dismiss the appeal.

6. Instant proceeding being filed under Section 374 of the Code of Criminal Procedure (Cr.P.C.), we are required to re-examine, re-analyze and re-appreciate the oral and documentary evidence on record to ascertain whether case of prosecution is proved beyond reasonable doubt.

Before adverting to the merits of the circumstances and so called extrajudicial confession, we would like to discuss the nature of evidence, the status and role of prosecution witnesses i.e. for properly comprehending the evidence.

**EVIDENCE ON BEHALF OF PROSECUTION**

7. **PW1** Ramdas Kachru Jadhav is informant. He claims himself to be Police Patil of village and further deposed that accused approached him in early hours on 25-03-2014 and disclosed about initial quarrel taking place between him and his deceased wife and he assaulting her with stone.

**PW2** Rameshwar Murlidhar Gaikwad is Panch to spot panchanama but he has not supported the prosecution.

**PW3** Shubhangi Nivrutti Hire is the daughter of accused and deceased, but she did not support prosecution as she stated that her parents were living a cordial life and she denied about any occurrence in the field.

**PW4** Kisan Dhondiba Hire is father of appellant. Though he stated that his daughter-in-law died, he has learnt about her death from villagers. He has also not supported case of prosecution.

**PW5** Sakharam Sandu Tawade is father of deceased. He stated that for 2 to 3 years after marriage, his deceased daughter was treated well but thereafter, appellant has ill-treated and harassed her for giving birth to female child. He stated that appellant has also demanded Rs.50,000/-. However, inspite of fulfilling the demand, there was no change in his conduct. He spoke about accused himself calling his son **PW9** Shivnath in the morning of 25-03-2014 and informing about daughter of this witness being killed. **PW6** Indubai Sakharam Tawade, mother of deceased also deposed in similar manner.

**PW7** Krushna Dattatraya Raut is Panch to seizure of cement block and other articles like mud with and without blood stains, scarf etc.

**PW8** Dnyaneshwar Sakharam Tawade is the brother of deceased. He stated that appellant husband ill-treated his sister for begetting only girl child. They paid Rs.50,000/- to appellant out of demand of Rs.1,00,000/-. He has also stated that accused -appellant killed his sister in the field.

**PW9** Shivnath Sakharam Tawade is another brother of deceased. He stated about ill-treatment and demand. According to him, on 25-03-2014 at 05:00 a.m. accused telephoned him and informed that he killed his sister.

**PW10** Dr.Naresh Ambadasrao Devnikar is the Autopsy Doctor. According to him, on conducting post mortem, it was his opinion that death was due to head injury.

**PW11** Sudhir Bhimrao Patil is the Investigating Officer. He narrated all the steps taken by him since inspection till filing of chargesheet.

### **ANALYSIS**

8. Here there is charge of Section 302 of the Indian Penal Code. Appellant has questioned the mode and manner of death. Therefore, it is become imperative on our part to get satisfied that prosecution has established death of deceased to be nothing but homicidal and not otherwise. To ascertain the above, we need to visit medico legal expert's evidence and inquest panchanama. Inquest panchanama also reflects grievous head injury. On

visiting Autopsy Doctor's evidence i.e. evidence of **PW10** Dr.Naresh, it shows that he had come across following external and internal injury :

External injuries : *Right upper limb, elbow jt. on right lateral aspect, seen the opd heated abrasion with brand-aid lowered around 2 cm x 1 cm.*

Internal injuries : *Contusion under the scalp seen over the fronto temporo parital region on right side. Comminuted displaced fracture seen over right tempero parital region, size 10 cm. - horizontally, 9 cm. vertically – over Right temporo parital region.*

In the opinion of Doctor, death was due to head injury.

While under **cross**, this witness has answered that he did not mention size of first and third injuries. That injuries mentioned in column no.17 were old. He admitted that he has seen article cement block in the first time in Court and that he did not mention whether injuries are ante mortem or post mortem. He flatly denied that such head injury may be possible if a person falls on stone by entangling the leg in a creeper. He again stated that such head injuries are not possible on account of fall on the stone. He denied that aforesaid injuries are corresponding injuries. He stated that those injuries are associated injuries. To a question as to whether he found one external injury on right side of the head, Doctor answered that right fronto temporo region with right ear are totally crushed with blood. He admitted that said external injuries are possible on account of fall of a person on hard and blunt object. He admitted that he has reserved opinion for CA.

9. In the light of nature of injuries noted in column no.17 of post mortem report and the answers given by Autopsy Doctor in cross-examination, there is no hesitation to held that injury is nothing **but homicidal** one. Though suggestion is given whether it is possible on account of fall on cement stone, taking into consideration height of the deceased lady, which is approximately over 5 feet 5 inch (as seen from the photograph), if a standing person falls and lands on hard surface, definitely its impact would not be so grievous that death would be instantaneous. Hence, in the light of above material, it can be safely held that prosecution has established that death of Savita Hire is homicidal one.

10. Now let us advert to the crucial question as to whether accused is author of the fatal injury or it is a case of culpable homicide not amounting to murder as is a case put-forth by the appellant.

Here there is no direct evidence, therefore, admittedly case is based entirely on circumstantial evidence. Law with regard to conviction in case of circumstantial evidence is fairly settled by numerous judicial pronouncements since the case of *Hanumant Govind Nirgudkar v. State of M.P.*; AIR 1952 SC 343 and *Sharad B. Sarada v. State of Maharashtra*; AIR 1984 SC 1622. Recently, in the case of *Pritinder Singh alias Lovely v. State of Punjab* [2023 SCC OnLine 811], the conditions which are required to be fulfilled for returning guilt in a case based on circumstantial evidence are given in

paragraph no.16, which could be summarized as under :

*“..... (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 v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783] 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.”*

It is thus settled that circumstances from which conclusion of guilt is to be drawn should be fully and firmly established beyond reasonable doubt.

11. In the light of above legal requirements, if we re-examine the available evidence, it is emerging that here report is by **PW1** Ramdas, who is Police Patil of village Manoor. He claims that in the early morning of 25-03-2014 accused approached him and disclosed about quarrel between him and his wife taking place in the maze field and in annoyance he assaulted her with concrete stone on the head and committed murder.

It seems from the record, more particularly spot panchanama that dead body was lying in the field owned by accused appellant and there is no any dispute to that extent. From the evidence of **PW5** Sakharam, **PW6** Indubai (parents of deceased) and **PW8** Dnyaneshwar and **PW9** Shivnath (brothers of deceased), it has unanimously come on record that accused was allegedly ill-treating deceased firstly for delivering only girl children and secondly demand of Rs.1,00,000/- for setting up garage not met. Even **PW1** Ramdas - informant speaks about appellant informing about quarrel taking place between him and deceased that day. Therefore, there is a background to the occurrence.

12. The principal evidence which prosecution is firmly catching hold of is the alleged extrajudicial confession by accused – appellant. **PW1** Ramdas - Police Patil whose evidence is discussed in aforesaid paragraphs, indicates that

accused approached him at 04:00 a.m. and gave extrajudicial confession and thereafter, PW1 Ramdas took accused to Police Station and lodged the report, on the strength of which crime was registered. Thereafter, investigating machinery swung into action and visited the spot. Apart from drawing spot panchanama, photograph of dead body was made part of chargesheet and same shows that dead body was lying in the field. As stated above, deceased was very much in the company and custody of husband which is not refuted by him. In extrajudicial confession he seems to have informed that while they were in the house there was quarrel. They both went to water maze crop in the night and there was said to be quarrel and thereafter, he himself spoke about assaulting her on the head.

13. Learned Senior Counsel would vociferously submit that, here except extrajudicial confession, there is no other clinching evidence or circumstance to connect the accused. According to him, it is fairly settled that an extrajudicial confession is a very weak type of evidence and so he submits that such sole evidence cannot be taken recourse to for fastening guilt.

Issue of evidentiary value of extrajudicial confession being raised, it has become incumbent upon us to deal with the same at the threshold.

If we take extrajudicial confession into consideration, then it is noticed that **PW1** Ramdas was informed by accused appellant that there was quarrel between him and his wife and he after getting annoyed assaulted her i.e.

when they both had been for watering maze crop in their field.

Before deciding the evidentiary value of extrajudicial confession and accepting it, it would be profitable to give a brief account of settled legal position on the point of evidentiary value of extrajudicial confession.

14. Law is fairly settled that extrajudicial confession is a weak type of evidence, **however**, it is also a fairly settled law that if said extrajudicial confession is corroborated by other convincing evidence, then it can, not only be taken into consideration, but also can be acted upon. The essential conditions for acceptance of confession are that it should be voluntary, truthful and inspiring confidence and it should be ruled out that it is a product of inducement, threat or pressure. There are various and numerous legal pronouncements wherein confessions are accepted for deciding the guilt of accused.

It would be useful to refer to the the ruling of *Sahadevan and Another v. State of Tamil Nadu; (2012) 6 SCC 403*, wherein following principles are enunciated are as under :

*“16. Upon proper analysis of above referred judgments of this Court, it would be appropriate to state the principles which would make a extrajudicial confession an admissible piece of evidence, capable of forming basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of the cases where prosecution heavily relies on extrajudicial confession alleged to have*

*been made by the accused :*

*(I) The extrajudicial 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 truthfull.*

*(III) It should inspire confidence.*

*(IV) An extrajudicial confession attains greater credibility and evidentiary value if it is supported by chain of cogent circumstances and it is further corroborated by other prosecution evidence.*

*(V) An extrajudicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent probabilities.*

*(VI) Such statement initially has to be proved like any other fact and in accordance with law.”*

15. Likewise very recently the Hon’ble Apex Court in the case of ***Ramanand @ Nandlal Bharti v. The State of UP; 2022 SCC Online 1396*** has again very lucidly, succinctly and elaborately dealt with the scope and evidentiary value of extrajudicial confession in para 81 to 86 of the judgment. We propose to borrow and quote only the relevant part i.e. observations made in paragraph 81 and 82 which is as under :

*“81. Confessions may be divided into two classes, i.e. judicial and extra judicial. Judicial confessions are those which are made before Magistrate or Court in the course of judicial proceedings. Extra judicial confessions are those which are made by the party elsewhere than before a Magistrate or Court. Extra judicial confessions are generally those made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions*

*under Section 164 of the CrPC or a Magistrate so empowered but receiving the confession at a stage when Section 164 does not apply. As to extra judicial confessions, two questions arise : (i) were they made voluntarily? And (ii) are they true? As the Section enacts, a confession made by an accused person is irrelevant in a criminal proceedings, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person, or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24 of the Evidence Act. The law is clear that a confession cannot be used against an accused person unless the Court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the Court may refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the Court has to be satisfied with is, whether when the accused made confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing*

*such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors at the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the Court is satisfied that its opinion, the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of highest credit, because it is presumed to flow from the highest sense of guilt. [See R.V. Warwickshall, (1783) Lesch 263)]. It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So, where the statement is made as a result of the harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See Woodroffe Evidence, 9 th Edn. Page 284). A promise is always attached to the confession, alternative while a threat is always attached to the silence-alternative; thus, in the one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the Court is to determine the absence or presence of inducement, promise etc. or its*

*sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words 'appear to him' in the last part of the section refer to the mentality of the accused. (See State of Rajasthan v. Raja Ram, (2003) 8 SCC 180).*

**82.** *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 the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any Court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such 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 for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.*

Similarly, the Hon'ble Apex Court in ***Madan Gopal Kakkad v. Naval Dubey*; (1992) 3 SCC 204** by referring to the previous judgment in the case of

*Piara Singh v. State of Punjab: (1977) 4 SCC 452* held that “law does not require that the evidence of an extrajudicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in confession must be separately and independently corroborated”.

Even in the cases of *Thimma and Thimma Raj v. State of Mysore; [(1970) 2 SCC 105 : 1970 SCC (Cri) 320]*, *Mulk Raj v. State of U.P.; [AIR 1959 SC 902 : 1959 Cri LJ 1219]*, *Sivakumar v. State; [(2006) 1 SCC 714 : (2006) 1 SCC (Cri) 470] [SCC paras 40 and 41 : AIR paras 41 and 42]*; *Shiva Karam Payaswami Tewari v. State of Maharashtra; [(2009) 11 SCC 262 : (2009) 3 SCC (Cri) 1320]* and *Mohd. Azad v. State of W.B.; [(2008) 15 SCC 449 : (2009) 3 SCC (Cri) 1082]*, it is held that “there is no absolute rule that an extra-judicial confession can never be the basis of conviction, although ordinarily an extra-judicial confession should be corroborated by some other material”.

16. Bearing in mind the above legal position, we appreciate so called extrajudicial confession made by appellant to PW1 Ramdas. It is pertinent to note that PW1 Ramdas was acting as Police Patil of the village. Full Bench of this Court in the case of *Rajeshwar s/o Hiranman Mohurle (In Jail) v. State of Maharashtra; 2009 (4) Mh.L.J., 483* has held that Police Patil under the Village Police Act is not a Police Officer. The duties, functions of Police Patil

incorporated in the Maharashtra Village Police Act are succinctly dealt in the above ruling. He is said to be under the control of District Magistrate and he does not enjoy powers in relation to investigation apprehending suspect. Therefore, taking into consideration above settled legal position, which still holds the field, there is no bar for use of an extrajudicial confession made to such person. It is worth mentioning that alleged confession by appellant is made by him while he was not in custody of Police but he was a free man. Nobody shown to have exhorted any pressure, inducement or threatened to him. Therefore, in our considered opinion, all hurdles for its non-acceptance are removed. Consequently, there is no hesitation to take into account said extrajudicial confession.

17. Now to ascertain whether there is corroboration to the same, on taking into consideration the circumstances of strained relations between accused appellant and deceased, as are surfacing from the testimonies of parents and brothers of deceased; the conduct of the accused on that day i.e. prior to the occurrence, it is emerging that he was annoyed that day and even night i.e. in the backdrop of quarrel. Alleged occurrence has taken place while deceased was not only in his company but being wife was also in his custody. Scene of occurrence panchanama shows that incident had taken place in the very field owned by accused. Therefore, in the totality of such circumstances, it was expected of appellant, who has not taken any other stand like alibi, to explain

the grievous / fatal injury suffered by his wife.

18. Learned Senior Counsel would strenuously submit that, the stand of appellant is that while moving in the field, feet of deceased got entangled in the creeper and she accidentally fell and her head landed on the stone lying there causing her grievous injury.

We have pondered over such submissions by taking into consideration the circumstances at the scene of occurrence. We have noticed the injury suffered by deceased as is spelt out in column no.17 of post mortem report, which is as under :

*‘Surface wounds and injuries - Right upper limb, elbow jt. on right lateral aspect, seen the opd heated abrasion with brand-aid lowered around 2 cm x 1 cm.’.*

It is difficult to accept above submission advanced by learned Senior Counsel that a person of average height like that of deceased if falls accidentally on account of any obstruction, would suffer injury noticed on deceased which is described as above. In our opinion, for such nature of injury to occur, a person has to fall from a considerable high place or height. Such is not a case here. Therefore, said explanation is unworthy of credence.

19. The second limb of argument put forth by the learned Senior Counsel is that, it is a case of sudden quarrel and therefore, it is at the most culpable

homicide not amounting to murder, but surely not homicide as according to him there was no premeditation.

We are not impressed with such submission also for the simple reason that quarrel has not erupted all of a sudden. While in the house also, as per the accused himself, there was quarrel between the couple. After reaching to the field also quarrel seems to have been resumed resulting into the incident. Therefore, it cannot be said that there was a sudden quarrel so as to bring the case in the ambit of culpable homicide not amounting to murder. As stated above, husband was already annoyed and quarrel lasted since day till night and consequently, it cannot be said to be a case of sudden quarrel as put forth before us. Quarrel was during the day as well as in the night also and therefore, by no means, it can be said to be sudden occurrence.

20. Learned Senior Counsel also tried to pose a question as to whether looking at the alleged article, it is at all possible for a person like accused to lift it and then hit it on the head of deceased.

In absence of any details and no questioning on that count during trial, we are afraid whether at the appellate stage we could at all entertain such question. There is no material to doubt the capacity of accused to lift and put the article to use. Therefore, even above submission holds no water.

## SUMMATION

21. Relations between accused and deceased are shown to be strained. On the day and night of occurrence, quarrel had taken place and this is emerging from the very extrajudicial confession which we have found to be voluntary and worthy of credence. Deceased wife died due to fatal injury while she was in the company and custody of appellant. No acceptable explanation whatsoever is coming from appellant side regarding the fatal injury suffered by wife. Consequently, none other than accused is responsible for her death.

22. We have perused the judgment under challenge. In our considered opinion, on re-appreciation and re-analysis of entire evidence, we are in complete agreement with the conclusion reached at by the learned trial Judge. Required points have been determined and dealt by the learned trial Judge by keeping in mind the legal requirements. The findings are found to be supported by sound reasons. No perversity or illegality has been brought to our notice so as to interfere in the judgment. Resultantly, finding no merits, we proceed to pass the following order :

## ORDER

Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)