

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 122 of 2010

Subrata Das @ Totan

-Vs-

The State of West Bengal

For the Appellant : Mr. Ujjal Ray
Sk. Abdur Rahim

For the State : Mr. Avishek Sinha

Heard on : 15.09.2023, 12.10.2023, 19.10.2023

Judgment on : 31.01.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 28.1.2010 passed by the Learned Additional District and Sessions Judge, 2nd Fast Track Court, Chandernagore, Hooghly, in Sessions Trial Case No. 28 of 2009/Sessions Case No. 195 of 2009, arose out of Haripal Police Station Case No. 19 of 2001, dated 26.2.2001, under Section 304 of the Indian Penal Code (G.R. Case No. 124 of 2001) convicting the accused/appellant and sentencing him to suffer rigorous imprisonment for a period of seven(7) years and to pay a fine of Rs. 2000/- in default to suffer simple imprisonment for six(6) months

more, and the period of detention already undergone by the convict shall be set off from the substantive sentence.

2. One Tarak Chandra Das lodged a complaint on 26.2.2001 before Haripal Police Station to the effect that on 26.2.2001 at about 12.30 P.M. he heard the cry of the victim Usha Rani Patra and he entered into the house of the victim and found that the accused was coming out from the said house by locking a room with a bicycle and was trying to flee away there from and the victim was lying in bleeding injury. The complainant also found that the hands and mouth of the accused were stained with blood. When the accused tried to flee away there from the complainant shouted and at that time one Ananda Mana and Basudev Manna working in the field nearby the place of occurrence. They caught hold the accused and the accused confessed in presence of them that an altercation took place in between the accused and the victim regarding providing food to the accused and the accused on being angry killed the victim with a 'Bonti' and the victim died on the spot.
3. On the basis of the said written complaint Haripal Police Station Case No. 19 of 2009, dated 26.2.2001 under Section 304 of the Indian Penal code against the accused.
4. After the completion of investigation, charge-sheet was submitted under Section 304 of the Indian Penal Code.
5. Charge was framed against the accused under Section 304 of the Indian Penal Code to which the accused who pleaded not guilty and claimed to be tried.

6. The prosecution examined as many as eight (8) witnesses and filed documents which were marked as exhibits.

7. After completion, of trial the Learned Additional District and Sessions Judge, 2nd Fast Track Court, Chandernagore, Hooghly on perusal of the materials on record and after hearing the submissions of the Learned Advocates of the parties convicted the accused/appellant and sentenced him to suffer rigorous imprisonment for seven(7) years and to pay a fine of Rs. 2,000/- in default to suffer simple imprisonment for six(6) months more.

8. Learned Advocate for the appellant submitted that -

The conviction of the appellant was on the sole testimony of the PW-2 and extra judicial confession by the accused/appellant.

- a. The deposition of the PW-2 is self contradictory and un-corroborated by the other witnesses. The neighbours were examined by the Learned Trial Court, i.e., PW-3, PW-4 and PW-8. PW-3, PW-4 and PW-8 did not depose that the appellant herein was the perpetrator of the offence and as such did not corroborate the deposition of PW-2. Moreover, apart from the other contradictions, most noteworthy testimony was that of PW-2 who was the FIR maker mentioned in the FIR that after hearing the hue and cry he went out of his house and entered into the house of the victim where the appellant also resided; he then found that the victim was lying in kitchen with blood all around and the appellant was putting padlock at the room and was trying to flee with his cycle from the back door, he then shouted and then only two persons namely

Basudeb Manna and Ananada Manna were ploughing potato field who caught hold of the appellant. On the other hand, the same PW-2 while deposing stated that after hearing hue and cry he came out of his house and went in front of the house of the victim and he did not enter the house, however, at the outside itself he found accused fleeing away with bicycle then he along with one Basu caught hold of him and then they altogether went inside the victim's house then found the victim lying at the floor of her room. Therefore the first contradiction as to the fact that :-

- i. In FIR, he said after hearing the hue and cry he entered into the house of the victim where the appellant also resides; he then found that the victim was lying in kitchen with blood all around and the accused was putting padlock in his room; where as in deposition he said after hearing hue and cry he came out of his house and reached in front of the house of the victim and he did not enter the house then, and there he found the accused fleeing by bicycle.
- ii. In FIR, he said after entering inside the house of victim he found the victim lying and after the accused put padlock in his door, the accused was fleeing from the back door of the house when he shouted and then only two persons namely Basudeb Manna and Ananada Manna were drenching potato field who caught hold of the appellant herein; where as in deposition he said while he was at the outside itself he found accused fleeing away with bicycle then he

along with one Basu caught hold of him and then they altogether went inside the victim's house then found the victim lying at the floor of her room.

- iii. In FIR, he said after entering inside the house of victim he found the victim lying in the kitchen with blood; where as in deposition he said after catching the appellant fleeing away by himself with another, when they came inside the victim's house, he found the victim lying at the floor of her room etc.

The Learned Court below erred in law and in fact by convicting the appellant herein relying solely upon such uncorroborated statements of the PW-2 that too which is full of major contradictions and the said prosecution witness is an interested witness who tried to grab the property of the victim for long time back and a specific suggestion has been given to that effect in his evidence at the time of cross examination.

- b. The extra judicial confession is inadmissible- The other reasoning for conviction is the extra judicial confession by the accused/appellant. The alleged extra judicial confession which alleged to be made by the appellant in front of the villagers when he was allegedly tied with a rope to a tree. On the face of it, for the sake of argument even if it is assumed to be made, the same is void and inadmissible since the same cannot be not voluntary and without duress or coercion.
- c. Faulty Investigation Fatal to the Prosecution Case –

- i. In FIR, the complainant said that after entering inside the house of victim he found the victim lying and after the accused put padlock in his door, the accused was fleeing from the back door of the house when he shouted and then only two persons namely Basudeb Manna and Ananada Manna were drenching potato filed who caught hold of the appellant herein. Therefore the said Basudeb Manna and Ananada Manna were the very vital witnesses who were not examined, therefore if at all those witnesses were examined the real truth that no such involvement of the appellant herein was there in the alleged crime would have been easily unearthed.
- ii. Neither the finger print of the accused did match from the alleged offending weapon nor the blood sample collected has been proved to be the blood of the victim.

Under such circumstances the appeal shall be allowed.

9. Learned Advocate for the State submitted that reliance of extra judicial confession is inadmissible at the first instance. He further emphasized of the evidence of PW-2, 3, 4 and 8 claiming the same to be circumstantial evidence. He further submitted that the appellant used to reside with the victim. The offending weapon and the cycle were recovered. The appellant was tied to the tree preventing him to escape. Therefore his presence at the spot cannot be denied or doubted.

10. The learned Advocate for the State further submitted that the trial proceeded for the period of nine years. He embarked on the evidence on PW-8 stating that the deceased, the appellant and his parents used to reside in the same house. It was also submitted that the father of the appellant expired during the course of investigation. It was further submitted that the PW-6 had prepared the inquest report of the dead body of the deceased victim and had arrested the appellant and recorded the statements of the available witnesses.
11. It was further pointed out by the learned Advocate for the State that PW-4 admitted that the offending weapon was seized by the police in his presence. Though PW-4 was declared hostile by the prosecution.
12. The learned Advocate for the State further submitted that PW-3 was won over in course of the trial and was declared hostile by the prosecution. However, he admitted his signature on the inquest report as a witness marked exhibit 3/1.
13. The learned Advocate for the State further relied on the provisions enumerated in Section 106 of the Indian Evidence Act as well as Section 8 of the Indian Evidence Act. Specifying the theory of (*Res Gestae*) signifying that the majority of the prosecution witnesses stated that the appellant resided with the deceased victim and therefore the prosecution had successfully proved its case beyond reasonable doubt and the appeal shall be dismissed.
14. A circumspection of the prosecution witnesses revealed as follows:
 - i. PW-1 who is a junior finger print expert adduced evidence and stated that as per the message sent by the O.C Haripal P.S he came to the P.O

and one blood stained sharp cutting weapon (banti) was shown to him and he examined that same but he could not obtained any finger print of the said weapon and accordingly he submitted the report to the O.C and he proved the report.

So the evidence of the PW-1 does not support the prosecution's case as because the expert did not find any finger print over the said weapon of assault.

- ii. PW-2 Tarak Das being the complainant in this case adduced evidence and stated that about 8 years at about 12.30 p.m he was in his house and heard the hue and cry of the victim form their house and accordingly he came out from his house and went to the house of the victim and found that the accused was coming out form his house and his and hands and face were stained with blood. He asked the accused whereabouts of the said incident but the accused did not give any answer and started to go with a bicycle and at that time the complainant and Basudeb Das caught hold him and brought him to his house and found that the victim was lying in the floor in front of the room with a severe bleeding injury on her person. The complainant informed the matter to the local P.S and on being asked the accused told them the victim did not provide food to him and for that her was angry and he assaulted the victim with a sharp cutting weapon i.e banti. PW-2 also proved the written FIR as well as the seized article before this Ld. Court.

- iii. During cross-examination PW-2 stated that he did not see the actual incident of alleged murder and he did not see the actual injury of the victim. He further stated that the accused was tied up with a tree till the police came. The local people tried to assault the accused but he forbade them not to do so. He further stated that police came to the P.O and they disclosed the fact to them. Police noted down their statements and police instructed him to file the written FIR before the P.S.
- iv. PW-3 Gobindo Das stated that the victim was murdered in her house. PW-3 also stated that he drafted the written FIR and proved the same before the Ld. Court and he also proved the signature on the seizure list.
- v. During his cross-examination he stated that he put the signature and the inquest report as per the instruction of the police but he does not know the contents of the same.
- vi. PW-4 was also declared hostile by the prosecution. PW-4 stated that he heard that the victim died in her house but he do not know anything about the incident.
- vii. PW-5 stated that he received a complaint from the complainant Tarak Das and started Haripal P.S. case no.19 dated 28.02.01 under Section 304 IPC. The defence did not cross-examine the witness.
- viii. PW-6 the I.O. of this case adduced the evidence and stated that he took over the charge of this case visited the P.O, prepared the rough sketch map, made a inquest of the dead body of victim, arrested the accuseds,

prepared the seizure list and after completion of the investigation he made over the charge on 05.04.02 on account of transfer.

- ix. During cross-examination he admitted that he did not mention in the forwarding report that the hands and face were stained with blood or not.
- x. PW-7 S.I Kamala Kanta Hazra who investigated the later part of this case and after completion of the investigation he submitted the charge-sheet against the accuseds under Section 304/109 IPC.
- xi. PW-8 the brother of the victim stated that on the day of incident her returned home at about 12 O' clock and heard that the victim was murdered at her house. On getting the news he went to the house of the victim but the house was under lock and key came to learn from the local people that he accused No.1 Subrata had killed his sister.
- xii. During his cross-examination PW-8 admitted that he cannot say the name of the person that the accused had killed the victim so the evidence of the PW-8 is appearing to be hearsay evidence.

15. The Hon'ble Supreme Court held the following in **Vadivelu Thevar v. State of Madras¹**,

“10. ...On a consideration of the relevant authorities and the provisions of the Evidence Act, the following propositions maybe safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness

¹AIR 1957 SC 614

outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

11. *In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that “no particular number of witnesses shall, in any case, be required for the proof of any fact”. The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence — 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well recognized maxim that “Evidence has to be weighed and not counted”. Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to*

be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. *In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony,*

direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable...”

16. In **Sharad Birdhichand Sarda v. State of Maharashtra**² the following was held by the Hon’ble Supreme Court:-

“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 v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC

²(1984) 4 SCC 116

(Cri) 1033 : 1973 CrL 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.*

15.5. *It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in King v. Horry [1952 NZLR 111] thus:*

“Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury

that upon no rational hypothesis other than murder can the facts be accounted for.”

17. In **Bodhraj v. State of J&K³**, the Hon’ble Supreme Court held the following:-

“9. Before analysing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

10. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan [(1977) 2 SCC 99 : 1977 SCC (Cri) 250 : AIR 1977 SC 1063] , Eradu v. State of Hyderabad [AIR 1956 SC 316 : 1956 Cri LJ 559] , Earabhadrapa v. State of Karnataka [(1983) 2 SCC 330 : 1983 SCC (Cri) 447 : AIR 1983 SC 446] , State of U.P. v. Sukhbasi [1985 Supp SCC 79 : 1985 SCC (Cri) 387 : AIR 1985 SC 1224] , Balwinder Singh v. State of Punjab [(1987) 1 SCC 1 : 1987 SCC (Cri) 27 : AIR 1987 SC 350] and Ashok Kumar Chatterjee v. State of M.P. [1989 Supp (1) SCC 560 : 1989 SCC (Cri) 566 : AIR 1989 SC 1890]) The circumstances from which an inference as to the guilt of the accused is drawn have to be proved

³(2002) 8 SCC 45

beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram v. State of Punjab [AIR 1954 SC 621 : 1954 Cri LJ 1645] it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

11. We may also make a reference to a decision of this Court in *C. Chenga Reddy v. State of A.P.* [(1996) 10 SCC 193 : 1996 SCC (Cri) 1205] wherein it has been observed thus : (SCC pp. 206-07, para 21)

“21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

12. In *Padala Veera Reddy v. State of A.P.* [1989 Supp (2) SCC 706 : 1991 SCC (Cri) 407 : AIR 1990 SC 79] it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests : (SCC pp. 710-11, para 10)

“10. (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 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 of any other hypothesis than that of 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.”

13. *In State of U.P. v. Ashok Kumar Srivastava [(1992) 2 SCC 86 : 1992 SCC (Cri) 241 : 1992 Cri LJ 1104] it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.*

14. *Sir Alfred Wills in his admirable book Wills' Circumstantial Evidence (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence : (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.*

15. *There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.*

16. *In Hanumant Govind Nargundkar v. State of M.P.* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1953 Cri LJ 129] it was observed thus : (AIR pp. 345-46, para 10)

“10. ... It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

18. The Hon'ble Supreme Court held the following in ***Hanumant v. State of M.P.***⁴:-

11. ...In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson to the jury in *R. v. Hodge* [*R. v. Hodge*, (1838) 2 Lew 227 : 168 ER 1136] where he said:

“The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that

⁴ (1952) 2 SCC 71

is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.”

12. *It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”*

19. The Hon’ble Supreme Court held the following in **Sahadevan v. State of T.N.**⁵-

“The principles:

16. *Upon a proper analysis of the abovereferred 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:*

(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.

⁵(2012) 6 SCC 403

(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.”

20. The inquest report of the deceased corroborated with the post mortem report marked as exhibit-6. The seizure list marked as exhibit-4/1 mentioned following articles to have been seized:-

“i) A wooden made ‘jap’ about 2 feet long

ii) An iron made blade of bonti of which diagonal length is about 1½ foot.

iii) Some dry soil collected from the place of occurrence of the incident.

iv) Some soil stained with blood collected from the place of occurrence of the incident.”

21. The seizure list marked exhibit-5 stated the article to have been seized as followed:-

“I) A red coloured old bye cycle by which the accused was trying to flee away which was learnt from the local people. The cycle was seized from the back side pathway of Usha Rani Patra.”

22. The document marked as exhibit 7 revealed that the offending weapon and control earth were sent for examination to Forensic Science Laboratory whereby the blood stains on the said articles were found to be disintegrated and therefore their origin could not be determined. However, the presence of blood stains on the aforesaid articles were not denied.

23. The learned Advocate for the appellant submitted that the confession of the appellant to have hit his grand-mother, the victim as a result of an altercation on denial to serve him with food, to have angered him and consequently struck the grand-mother with the offending weapon (bonti) at her neck been extra judicial confession could not be sustained. The Learned Advocate for the State too conceded to the same. The extra judicial confession of the appellant is not taken into consideration. PW-1 the Junior Finger Print CID, West Bengal stated his inability to obtain any finger print from the said weapon and the following report submitted by him was marked as exhibit-1. However he identified the offending weapon which was marked as Mat exhibit-1.
24. PW-2, de-facto complainant witnessed the appellant to exit from the house of the deceased with hands and face smeared with blood as he tried escape on his bicycle. However, he was obstructed on his way to flee. Thereafter, he was coerced to be brought to his house.
25. Subsequently, the victim was found lying on the floor in front of the room with severe bleeding injury on her person. There had been certain deviation in the evidence on PW-2. However, the same did not affect the prosecution case. The series of incidents in sequence whereby the deceased was found in injured condition inflicted by the offending weapon in conformity with inquest report as well as the P.M report marked as exhibits was corroborative of the fact of the injury to have been inflicted by the appellant who was prevented to flee from the spot on his bicycle. Though PW-3 and 4 were declared hostile by

the prosecution they did not deny their signature on the seizure list marked as exhibit 3/1. PW-3 had scribed the written complaint which was marked as exhibit 2/1. He identified his signatures on the seizure list marked as exhibit 4 and 5. He also admitted his signature on the inquest report marked as exhibit 3/1. PW-4 indentified his signature on the inquest report marked as exhibit 3/2. He further admitted the offending weapon was seized by the police in his presence. PW-6 had prepared inquest report of the dead body of the deceased and identified the inquest report marked exhibit 3/2. He had prepared the dead body challan which was marked as exhibit-11. He had arrested the accused/appellant and recorded the statements of the available witnesses. PW-6 further stated, during investigation he seized the “bonti” which was a sharp cutting iron weapon and prepared a seizure list marked exhibit 4/1. He had also seized a cycle and admitted signature on the seizure list marked exhibit 5/1. During cross-examination PW-6 stated that he arrested the appellant who was confined by the local people along with one Raghunath Das on the next date of the incident.

26. The learned Advocate for the State submitted the Raghunath Das to be the father of the appellant who expired during course of the investigation. PW-7 after completion of the investigation had submitted the charge-sheet after 27 months from the date of occurrence without recording an explanation for such delay. PW-8 deposed to have heard the death of his elder sister who was murdered at her own house by the appellant. During his cross-examination he stated that the deceased the appellant and his parents resided in the said

house. Though the investigating officer did not examine any independent witness out of the local people who had restrained the appellant and confined him, he stated to have arrested the appellant from his captivity near the place of occurrence. Recovery of the offending weapon and the cycle to have been the equipment of assault and the means to escape created the link to form a chain of circumstances to indict the present appellant. The signature of the hostile witnesses namely PW-3 and 4 upon the seizure list evinced the occurrence of the incident with the presence of the appellant. None of the prosecution witness indicated animosity of the PW-2 to have falsely implicated the appellant contrary to the submission to the learned Advocate for the appellant that PW-2 wanted to grab the property of the deceased victim. Circumstantial evidence along with the deposition of PW-2 did not exemplify concoction and fabrication, on the contrary constituted reliability to prove the prosecution case.

27. In view of the above discussions, the Criminal Appeal being CRA 122 of 2010 is accordingly dismissed.
28. There is no order as to costs.
29. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
30. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)