

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 628 of 2019

***Jhuma Mondal*
versus
The State of West Bengal**

For the Appellant : Mr. Abhinaba Dan
Ms. Anikita Mukherjee

For the State : Mr. Ranbir Roy Chowdhury
Mr. Mainak Gupta

Reserved On : 21.08.2024.

Judgement On : 05.09.2024

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction and sentence passed by the Learned Sessions Judge, Bankura in connection with Sessions Trial No. 18 of 2018 arising out of Sessions Case No. 227 of 2018, wherein the Learned Trial Court was pleased to hold the appellant guilty under Section 304(II) of the Indian Penal Code and sentenced her to suffer rigorous imprisonment for 7 (seven) years and to pay a fine of Rs. 5,000/- in default to suffer rigorous imprisonment for 6 (six) months.

Bankura Police Station case No. 76/2018 dated 25.02.2018 was registered for investigation under Section 302 of Indian Penal Code, on the basis of a complaint submitted by Dr. Jagat Jyoti Bhunia, Medical Officer, Bankura Sammilani Medical College and Hospital attached to SNCU Ward. The

allegation made in the complaint were to the effect that during morning census on 25.03.2018, one baby was found missing from step down ward at about 8.00 A.M. The mother of the missing baby was identified as Jhuma Mondal. The baby was admitted on 24.03.2018 at about 10.57 A.M. on day one of life because of mild umbilical bleeding. As the baby was stable she was shifted to step down ward for being with the mother. At 8.00 A.M. on interrogation in presence of police she confessed of having thrown the baby through window of bathroom inside SNCU. The baby was recovered from drain at about 9.10 A.M. by the hospital personnel. As such he requested the M.S.V.P., B.S.M.C. & H Bankura to do the needful.

On receipt of the complaint submitted by Dr. Jagat Jyoti Bhunia, Medical Officer of SNCU, B.S.M.C & H Bankura, the Officer-in-Charge of Bankura Police Station registered the case and endorsed the case to Sub-Inspector of Police, Baranasi Layek. The investigating officer on conclusion of investigation submitted charge-sheet before the Learned C.J.M., Bankura under Section 302 of Indian Penal Code. Learned Magistrate was pleased to take cognizance of the offence and after complying with the relevant provisions of law committed the case to the Learned Sessions Judge, Bankura. The learned Sessions Judge, Bankura after taking cognizance of the offence was pleased to transfer the case to his personal file and on 03.08.2018 was pleased to frame charge under Section 302 of the Indian Penal Code against the accused/appellant Jhuma Mondal. The contents of the charge were read over to the accused who pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon seventeen (17) witnesses which included P.W.1, Dr. Jagat Jyoti Bhunia, complainant- Medical Officer of BSMC&H attached to SNCU Ward; P.W.2, Soma Mazumder, Staff Nurse (GNM) at SNCU Ward Bankura; P.W.3, Shankari Sahana, Staff Nurse who was engaged on 24.03.2018 at 'A' block of SNCU Ward; P.W.4, Dr. Rabi Adhikari, Medical Officer of SNCU Ward who was engaged between 9.00 P.M. to 9.00 A.M. on 24.03.2018; P.W.5, Jayashree Jana, Staff Nurse posted at SNCU 'B' Ward from 8.00 P.M. to 8.00 A.M.; P.W.6 Chhaya Murmu, Deputy Nursing Superintendent, BSMC&H Bankura; P.W.7, Dr. Damodar Chakraborty, Medical Officer at SNCU Ward under BMSC&H, Bankura; P.W.8, Partha Sarathi Bhunia, Medical Officer at SNCU Ward under BMSC&H Bankura; P.W.9, Padma Bauri, permanent employee, serving as a 'Dom' at BSMC&H, Bankura; P.W.10 Dr. Bipasha Dutta, Medical Officer at SNCU Ward, BSMC&H, Bankura; P.W.11, Mohan Chandra Orang, Constable attached to Bankura Police Station; P.W.12, Ranjit Kumar Paine, ASI of Police who prepared the case report; P.W.13, Sri Pradyut Kr. Sarkar, Sub-Inspector of Bankura Police Station who prepared the formal FIR; P.W.14, Barun Kumar Roy Facility Manager, BSMC&H, Bankura; P.W.15, Sanjoy Mondal husband of accused/appellant; P.W.16, Dr. Tanay Mohanta, Post-mortem doctor; P.W. 17 Baranasi Layek, Investigation Officer of the case.

P.W.1, Dr. Jagat Jyoti Bhunia was the Medical Officer of Bankura Sammilani Medical College and Hospital attached to SNCU Ward who deposed that on 24.03.2018 he was engaged in the same Hospital and on the morning

of 25.03.2018 he submitted a letter addressed to MSVP, BSMC&H Bankura informing that Soma Majumdar, Sister at SNCU Ward reported about a missing baby of mother Jhuma Mondal. On 24.03.2018 Jhuma Mondal's baby, a girl child, aged one day was admitted at the SNCU Ward with mild umbilical bleeding under Dr. Abhay Charan Pal. According to the prevailing norms of the hospital whenever the baby was admitted at the SNCU Ward, his or her mother is also required to be admitted at the Gynae Ward of the hospital. In this case the condition of the baby was stable and she was handed over to the mother Jhuma Mondal at the step down Ward. The step down Ward is situated within the SNCU Ward where the stable babies are allowed to be breast fed by the mother. It is a norm to count the head of babies at the SNCU Ward once at 8.00 P.M. at night before handing over the charge by the sister and again at 8.00 A.M. when the charge is handed over by the sisters of the Ward and two census of the child are conducted in SNCU Ward of the hospital at 12.00 noon and 12.00 midnight. In the present case the child of Jhuma Mondal was found present at the SNCU during the head count at night, while in the morning at 8.00 A.M. at the time of the delivery of the charge by the sister on counting, a child was found short and the baby of Jhuma Mondal was not found. He informed the matter to MSVP at first over telephone and then through letter about the missing child. He identified the letter which was written and signed by him, the same was admitted in evidence. It was also stated simultaneously in the treatment sheet of Jhuma Mondal's daughter and the same was recorded in his handwriting. He also identified the treatment sheet which was

in his own handwriting and contained his signature and as such the same was admitted in evidence. The witness also stated that information was also sent to the Ward Master's office and Jhuma Monadal was asked about the whereabouts of her daughter by the employees of the Ward Master's office. When the accused Jhuma Mondal was asked about the whereabouts of her baby by the employees she disclosed that she had thrown her baby outside through the window of SNCU of the hospital. The baby was recovered by those employees from a drain and brought back to SNCU. He examined the baby and found that she was brought dead and he declared her as clinically dead. He identified the accused Jhuma Mondal in Court. In cross-examination the witness replied that it is usual to mention in the BHT when the baby is handed over to the mother at the step down Ward and in this case at the time of admission of the baby it was not found in a serious condition so the baby was handed over to the mother at step down Ward from the very beginning. It was further replied by him in cross-examination that the baby was never separated from the mother to some other Ward. He denied the incident of Jhuma Mondal not having confessed before the hospital staff that she had thrown away the baby through the bathroom window from SNCU.

P.W.2, Soma Mazumder is a Staff Nurse (GNM) at SNCU of Bankura Medical College. She deposed that she was engaged at the night shift from 8.00 P.M. to 8.00 A.M. on 24.03.2018 and at night after counting process of baby was completed, she took charge of the step down Ward where mother and baby are kept together. At the relevant time there were 36 mothers and 36 babies.

She also checked the admission procedure of babies before they are shifted to two other Wards. According to her the place of keeping the babies after admission is known as 'Triage'. She deposed another census of the babies were conducted at the midnight and even during that count the number of mothers and babies they found to be in order. Before her shift/duty was about to end at about 7.00 A.M. while counting the number of babies she found one baby and mother were missing, she informed the P.W.1, Dr. Jagat Jyoti Bhunia, the on duty Medical Officer and she also informed the Nursing Superintendent Madam and Ward Master Office. At about 7.30 A.M. the mother as well as other family members of the baby came to the hospital and started inquiry about the missing baby and after some time the accused Jhuma Mondal, mother of the baby confessed that she had thrown the baby through the window. On further enquiry and on her indication the employees of the hospital found the baby from a drain nearby. The baby was brought to the SNCU Ward and examined by the Medical Officer Dr. Bhunia, who declared the baby dead. The baby was thereafter kept in death cot. She identified the accused in Court and further stated that they wanted to know from the accused why she had done such thing, when she replied that as the baby was a female child, she had thrown out. In cross-examination she replied that the baby was not suffering from serious illness or that the baby was not given to the custody of the mother she also denied in cross-examination regarding Jhuma Mondal not having confessed to them regarding throwing away the baby through the bathroom window.

P.W.3, Shankari Sahana is a Staff Nurse at Bankura Sammilani Medical College and Hospital and was engaged in night duty as staff nurse at 'A' block of SNCU Ward of Bankura Medical College. She stated that there are four unit at SNCU Ward and when she went to hand over the charge after her duty on 25.03.2018 she heard that a baby was missing from the step down Ward of SNCU 'D' unit. The mother of the baby Jhuma Mondal confessed in presence of many people including her that she had thrown the baby out from the window of the bathroom. On identifying the bathroom from where the baby had been thrown, search was made and the baby was recovered from region below the window, from a drain. The baby was kept on the death cot after recovery at SNCU unit and the mother of the baby disclosed that it was a female child, so she had thrown away the child. She identified the accused Jhuma Mondal as the mother of the baby. In cross-examination she denied the fact of not having stated regarding the incident to the police officer who examined her and also that the baby was recovered shortly after the mother confessed about throwing out the baby.

P.W. 4, Dr. Rabi Adhikary, Medical Officer, at SNCU Ward at BSMC&H, Bankura, who deposed that on 24.03.2018 he was engaged at the Ward from 9.00 P.M. to 9.00 A.M. Doctor Jagat Joyti Bhunia was also on duty along with him at the same Ward. On 25.03.2018 between 7.30 A.M. to 8.00 A.M. the baby of Jhuma Mondal was found missing according to the witness, at the time of counting of babies by the sister of the Ward. He was in the 'A' unit of the Ward and the incident took place in the step down Ward of 'D' unit. The baby

was found missing, the mother was identified by the sister and then whereabouts of the baby was enquired from her, she was unable to give any answer and on being questioned by several persons she disclosed in his presence that she had thrown away the baby from window of a bathroom by the side of the Ward. Dr. Bhunia informed about this matter to the Ward Master, RMO, MSVP and Police. The baby was recovered from the drain below the bathroom window and he learnt from Dr. Bhunia that the baby had been recovered in dead condition. He identified the accused in Court. In cross-examination he replied that the SNCU Ward is situated at the first floor of the building and the Gynae Ward is situated in the ground floor and second floor of the building. He denied in cross-examination that Jhuma Mondal did not state that she had thrown her baby through the bathroom window. He further stated in his cross-examination that the baby was recovered at about 9.00 A.M. on 25.03.2018.

P.W. 5, Jayashree Jana, attached Staff Nurse at BSMC&H, Bankura at SNCU Ward who deposed that she was posted at 'B' Ward from 8.00 P.M to 8.00 A.M. on 25.03.2018. She deposed at the time of handing over of charge, after completion of her duty on 25.03.2018 she learnt that one baby of SNCU 'D' unit was missing. Soma Majumder was performing duty at SNCU Ward 'D' unit from 8.00 P.M. on 24.03.2018 to 8.00 A.M. on 25.03.2018. She informed about the matter to the Deputy Nursing Superintendent in charge of her Ward. She further deposed that Jhuma Mondal the mother of the missing baby was called and she was not present in the step down Ward and was found at the

gate of SNCU. On being asked the mother made inconsistent statement at first and then disclosed that since she gave birth to female child she had kept the baby by the side of the window and at times she said that she had thrown away the baby. On search, the missing baby of Jhuma Mondal was found from a drain by the side of the window and the baby was found dead on being examined by the doctor. She identified accused Jhuma Mondal in Court. In cross-examination she denied the fact that she stated to the Police that on the following day Padma Dom recovered the baby from the drain and brought it out. She also denied of having stated to the police that the mother of the baby was not in the Ward and she was near the gate.

P.W.6, Chhaya Murmu, is a Deputy Nursing Superintendent, BSMC&H, Bankura and on 25.03.2018 she was posted in same place. At about 8.30 A.M. to 9.00 A.M. on 25.03.2018 at the time of handing over of the charge, she was informed by Soma Majumdar, Nursing Staff, from gynae and SNCU Ward that a baby was found missing. After receiving such information she went to SNCU Ward and asked Jhuma Mondal, mother of the missing baby why the baby was missing when it was given to her custody at step down Ward. According to the witness the accused Jhuma Mondal confessed after sometime that since she gave birth to a girl child so she killed her. According to the witness the accused showed the window of the bathroom from where the baby was thrown. The baby was recovered from the drain below the window and on examination the doctor of the Ward declared her to be dead. She identified the accused Jhuma Mondal in Court. In cross-examination she denied the fact of not asking

Jhuma Mondal regarding whereabouts of her baby as also she denied regarding disclosing the fact that the accused confessed before her that she had thrown away the baby through the window.

P.W.7, Dr. Damadar Chakraborty, Medical Officer at SNCU Ward under BMSC&H, Bankura. He deposed on 25.03.2018 he was performing morning duty from 9.00 A.M. at SNCU 'A' Ward and was handed over the charge from Dr. Jagat Joyti Bhunia and Dr. Rabi Adhikary who were on duty on the previous night. He learnt from Dr. Bhunia and Dr. Adhikary that a baby was missing from the step down Ward from the custody of a mother and later on the baby was recovered from the drain below the SNCU Ward. He also deposed that he was busy with his duty and did not see the recovered baby and Dr. Bhunia and Dr. Adhikary were doing the necessary work. In cross-examination he deposed that he could not recollect from whom he heard regarding the incident.

P.W.8, Partha Sarathi Bhunia is Medical Officer of SNCU Ward, BMSC & H, Bankura. He deposed that on 25.03.2018 he was on duty at the 'Triage' from 9.00 A.M. He further deposed that during the previous night Dr. Bhunia and Dr. Adhikary were on duty at SNCU Ward and he learnt from them that one baby was missing from the step down Ward at the time of head counting by sister in the morning. It was also informed to him that the mother of the missing baby Jhuma Mondal was traced out who confessed that she threw the baby from the window of the bathroom. The baby was recovered below the

bathroom window and declared dead at the SNCU Ward. Later on he continued with his work at 'Triage'. In cross-examination he deposed that in the 'Triage' babies were given emergency medical attendance and they are shifted to their respective Wards after primary care. He further replied in cross-examination that he is unable to inform the Court under which doctor the deceased baby was admitted first at the 'Triage' or under which doctor she was undergoing treatment.

P.W.9 is Padma Bauri who was a permanent employee, serving as a Dom at SNCU Ward under BSMC&H, Bankura, who deposed on 25.03.2018 at about 8.30 A.M. she was called to the SNCU Ward from the Ward Master's Office. The doctor, sister and Ward master asked her to look for a baby in the drain on the back side of the SNCU Ward. She looked for the baby and traced it out from the drain below the SNCU Ward. According to the witness the baby was taken to the Ward and after police arrived she was taken to the morgue of the hospital.

P.W.10, Dr. Bipasha Dutta, Medical Officer at SNCU Ward, BSMC&H, Bankura who deposed that on 25.03.2018 she reported for her duty at SNCU Ward at about 9.00 A.M. According to her on the previous night, Dr. Rabi Adhikary and Dr. Jagat Jyoti Bhunia were on duty at SNCU Ward along with Sister, Soma Majumdar and at the time of taking charge, Dr. Jagat Jyoti Bhunia informed her that the baby was missing from the Ward since 8.00 A.M. The baby was recovered before she joined for her duty in morning from the

drain and she was unable to recollect as to whose baby was missing. In cross-examination she deposed that she did not notice the baby or the mother after reporting for duty.

P.W.11 is Mohan Chandra Orang, a Constable attached to Bankura Police Station who on 25.03.2018 took the body of the baby to the morgue at Bankura. The challan according to him was prepared by ASI Ranjit kr. Paine. His signature in carbon impression was admitted in evidence. After the post-mortem he produced the clothes of the baby at the Police Station which was seized from his possession and he signed the seizure list. He identified his signature in the seizure list which was admitted in evidence.

P.W.12, Ranjit Kumar Paine was posted as ASI of Police at Bankura Sadar Police Station and on 25.03.2018 he conducted the inquest over the dead body of a new born baby of Jhuma Mondal at the compound of BSMCH, Bankura. He identified the carbon copy of the inquest report prepared by him which was admitted in evidence. He further deposed that he sent the body to the morgue for post-mortem examination and the copy of dead body challan with his signature. He identified his signature which was marked in evidence. He also identified the seizure list relating to the seizure of wearing apparels of the deceased baby which he signed as a witness, he identified his signature and the same was admitted in evidence. In cross-examination he replied that he found the dead body of the deceased baby in the bed of SNCU, BSMC&H, Bankura and was unable to recollect the bed number where the body was laid.

He further deposed that Jhuma Mondal was present at the time of inquest examination.

P.W.13, Pradyut Kumar Sarkar, Sub-Inspector of Bankura Sadar Police Station who prepared the formal FIR in connection with Bankura P.S. Case No. 76/18 dated 25.03.2018 under Section 302 of IPC. He deposed that he filled up the FIR as per instruction of the Inspector-in-Charge Bankura Police Station and he identified his signature in the formal FIR which was admitted in evidence. He also identified the endorsement which was also admitted in evidence.

P.W.14, Barun Krmar Roy, is Facility Manager, BSMC&H, Bankura. He deposed that 25.03.2018 police personnel visited BSMC&H Bankura and conducted inquest on the dead body of a deceased baby of Jhuma Mondal. He signed the inquest report as witness and identified his signature in the carbon copy of the inquest report which was marked in evidence. In cross-examination he replied that he did not personally see how the said baby died.

P.W.15, Sanjoy Mondal is the husband of the accused Jhuma Mondal. He deposed that his wife gave birth to a female child on 25.03.2018 in their house and immediately thereafter the child was admitted in Amarkannan Rural Hospital and thereafter the child was admitted at BSMC & H, Bankura on the said date. His wife was with the child at the relevant time and the child was admitted in SNCU Ward, BSMC & H, Bankura. He was waiting in the area of BSMC&H Ward, Bankura and on the next day morning at about 8.00 A.M. his

wife came to him when both of them took tea and after sometime they went to SNCU Ward and found that the baby was not in the bed. Both of them along with staff of the hospital tried to search out the baby and after sometime he heard the baby was lying in the drain, thereafter, the baby was brought to the said Ward and found to be dead. He identified the inquest report as well as signature therein which was admitted in evidence. In cross-examination, he replied that he did not state anything to police personnel who conducted and prepared inquest report.

P.W.16 is Dr. Tanay Mohanta who is an Assistant Professor of BSMC&H, of SNCU Ward. He stated that on 25.03.2018 he conducted post-mortem examination on the body of one day old child of Jhuma Mondal. The body was brought by Constable Mohan Chandra Orang of Bankura Police Station in connection with Bankura P.S. U.D. case no. 191/18 dated 25.03.2018, on examination he found the following injuries:

“1. Abrasion $\frac{1}{2}$ " x $\frac{1}{2}$ " present over the chin.

2. Contusion 0.7" x 0.2" over left knee joint.

3. Contusion $\frac{1}{2}$ " x 0.3" over right knee joint.

4. Recent tear marks over umbilicus.

On dissection,

5. Sub-Dural haemorrhage over both parietal lobe size 3" x 3"

6. Multiple bruise present over under surface of the liver.

All the injuries showed evidences of vital reactions. No other internal or external injuries present even after careful dissection and examination with the help of a magnifying hand lance.

My opinion regarding cause of death, the death was due to the effects of ante-mortem injuries as noted above.”

According to him the cause of death was due to the effects of ante-mortem injuries. He identified the post-mortem report which was prepared and signed by him which was admitted in evidence and also deposed that if anybody throws away a baby from second floor, such type of injuries may occur to the body of a baby.

P.W.17, Baranasi Layek, Sub-Inspector of Bankura Police Station and the investigating officer of the case who deposed the chronology in which he conducted the investigation after the same was endorsed to him. He stated that he contacted the complainant Dr. Jagat Jyoti Bhunia, visited the place of occurrence as per his identification and also visited the place where the new borns are kept in BSMC&H, Bankura. He prepared rough sketch maps of two places of occurrences with index. He also examined available witness after complying with all the legal formalities and arrested the accused Jhuma Mondal. He also seized the wearing apparels of the victim baby on 25.03.2018 under proper seizure list. He collected the post-mortem report of the victim baby, B.H.T. papers and inquest papers and thereafter submitted charge-sheet against the accused Jhuma Mondal under Section 302 of the Indian Penal

Code. In cross-examination when the Investigating Officer was confronted regarding the statement made by some of witnesses he replied as follows:

“Soma Majumdar stated before me that in the previous night when she counted the number of babies in the ward, she did not find the victim baby therein.

She did not state before me that she narrated the incident to Jagatjyoti Bhunia for the first time.

She did not state before me that after narrating the incident to Jagatjyoti, she narrated the incident to the Nursing Superintendent and Ward Master.

She did not state before me that Jhuma Mondal told her and other members of Jhuma's family that she had thrown away the baby.

Shankari Sahana did not state before me that Jhuma confessed before her that she had thrown away the baby from window.

Dr. Rabi Adhikary told before me that he came to know that on the night of 24.3.18 the baby of Jhuma Mondal was missing

He stated before me that on the next day one Padma Dom brought the dead body of the said baby from the drain and kept in the cot for the said baby.

Jayashri Jana told before me that on 24.3.18 she was on duty at Gynae ward and received an information that one baby was missing from first floor.

She stated that on the next day, Padma Dom brought the baby from the drain.

She did not state before me that the mother of the baby was not in the ward and she was standing in the gate.

Chhaya Murmu did not state before me that she enquired the matter from Jhuma.

Chhaya Murmu did not state before me that Jhuma Mondal confessed before her that she had thrown away the baby through the window.

She did not state before me that Jhuma Mondal showed her the window through which she had thrown the baby away. Partha Sarathi Bhunia did not state before me that the baby was found missing at the time of counting in the morning.

He did not state before me that Jagatjyoti Bhuinia and Dr. Rabi Adhikary disclosed that mother of the baby confessed before them that she had thrown away the baby from the window of SNCU ward”.

Learned Advocate appearing for the appellant submitted that the prosecution has only relied upon specific set of witnesses who are associated with the Hospital and have tried to forcefully implicate the present appellant. In fact, there are no eye-witnesses to the incident neither there is any case of circumstantial evidence and the whole case is based on extrajudicial confession of the appellant which is not even corroborated by any materials or independent witnesses. Additionally, it has been submitted that there are material discrepancies in the evidence of the prosecution witnesses which dilutes the allegations, so far as the appellant is concerned and if the deposition of the prosecution witnesses are read in between the lines then in that case it would be transparent that the prosecution has failed to prove the case beyond reasonable doubt. As such the learned advocate submits that the appellant be acquitted of the charges by setting aside the judgment and order of conviction and sentence passed by the learned Trial Court.

Mr. Ranabir Roy Chowdhury learned advocate appearing for the State on the other hand submitted that the prosecution witnesses consistently stated that the appellant confessed before them that she had thrown the child through the window of the bathroom and the recovery of the child beneath the window and from the drain by Padma Bauri (P.W.9) itself goes to show that it was at the instance of the appellant the child was recovered. According to the learned advocate the behaviour of the mother/appellant was unnatural as she was not there at the bed and was having tea with her husband which substantiates the motive which has been spelt out by the prosecution i.e. a female child being born second time she had thrown away the child. Learned advocate for the State submits that the prosecution has been able to prove the case beyond all reasonable doubt as the version of the prosecution witnesses have been consistent and there is no alternative factual aspect which can be arrived at in the given set of circumstances which can exonerate the appellant from the charges for which she was called upon to face the trial. So, it has been prayed on behalf of the State that no interference is called for in respect of the judgment and order of conviction and sentence passed by the learned Trial Court and the same may be affirmed.

I have considered the deposition of all the witnesses as also the submissions advanced by the appellant and the State. On an analysis of the list of witnesses it is reflected that out of the 17 witnesses so relied upon by the prosecution 12 witnesses are from the hospital, 4 witnesses belong to the Police Department and the only witness (P.W.15) is the husband of the

appellant. Before proceeding further it would be relevant to state that the prosecution in this case has mainly built up their foundation on the confession made by the appellant before the hospital staff, as such the principles which deal with extrajudicial confession is required to be considered. In *Sunny Kapoor -versus- State of (UT of Chandigarh)*, (2006) 10 SCC 182 the Hon'ble Supreme Court by relying upon the judgment of *Jaswant Gir -versus-State of Punjab* (2005) 12 SCC 438 held that the first and foremost aspect which has to be assessed in case of extrajudicial confession is that whether there was an intimate relation or friendship existing for divulging the information to the witnesses concerned. In *Ajay Singh -versus- State of Maharashtra*, (2007) 12 SCC 341, the Hon'ble Supreme Court while dealing with extrajudicial confession observed that the Court has to satisfy that the same was voluntary and without any coercion and undue influence. It further reiterated in the same judgment that extrajudicial confession can form basis of conviction if persons before whom it has been stated are unbiased and not even remotely inimical to the accused. Where there is material to show animosity, Court has to proceed cautiously and find out whether confession like any other evidence depends on veracity of witness to whom it is made. In *State of U.P. -Versus- M.K. Anthony*, (1985) 1 SCC 505 the Hon'ble Supreme Court in paragraph 15 observed as follow:

“15. There is neither any rule of law nor of prudence that evidence furnished by extrajudicial confession cannot be relied upon unless corroborated by some other credible evidence. The courts have

considered the evidence of extrajudicial confession a weak piece of evidence. (See Jagta v. State of Haryana [(1974) 4 SCC 747, 752 : 1974 SCC (Cri) 657, 662 : (1975) 1 SCR 165, 170 : 1974 Cri LJ 1010] and State of Punjab v. Bhajan Singh [(1975) 4 SCC 472, 476 : 1975 SCC (Cri) 584, 588 : (1975) 1 SCR 747, 751 : 1975 Cri LJ 282] .) In Sahoo v. State of U.P. [AIR 1966 SC 40 : (1965) 3 SCR 86 : 1966 Cri LJ 68] it was held that “an extrajudicial confession may be an expression of conflict of emotion, a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime”. Before evidence in this behalf is accepted, it must be established by cogent evidence what were the exact words used by the accused. The Court proceeded to state that even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence. In that case, the evidence was that after the commission of murder the accused was heard muttering to himself that he has finished the deceased. The High Court did not interfere with the conviction observing that the evidence of extrajudicial confession is corroborated by circumstantial evidence. However, in Piara Singh v. State of Punjab [(1977) 4 SCC 452 : 1977 SCC (Cri) 614 : (1978) 1 SCR 597 : 1977 Cri LJ 1941] this Court observed that the law does not require that evidence of an extrajudicial confession should in all cases be corroborated. It thus appears that extrajudicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extrajudicial confession comes from the mouth of witness/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, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extrajudicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extrajudicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon.”

Thus, the proposition of law which emerges in respect of acceptance relating to evidentiary value of extrajudicial confession, depends upon the veracity of the witnesses to whom it is made and to decide on the acceptability of the evidence having regard to the credibility of the witnesses. Needless to state that extrajudicial confession by its nature is a weak piece of evidence.

Having considered the aforesaid in the background of the present case particularly with respect to the deposition of P.W.1- Dr. Jagat Jyoti Bhunia, P.W.2- Soma Mazumder, P.W.3- Shankari Sahana, P.W.4- Dr. Rabi Adhikary, P.W.5.- Jayshree Jana, P.W.6.- Chhaya Murmu who in their deposition before the Court narrated that the appellant on being repeatedly asked by several persons confessed before them that she had thrown away the baby from the window of the step down Ward of B.S.M.C. & H, Bankura. It is seen that all these witnesses are either the doctors, the staff nurse or the Deputy Superintendent associated with SNCU Ward of B.S.M.C. & H, who were

responsible for their duties at the relevant point of time when the child along with mother was at the hospital.

Surprisingly in this case although in evidence it has surfaced that at the Step down ward there were 36 mothers along with their babies but the police authorities did not examine any of those mothers who were present in the unit where the appellant along with her baby was admitted. The lone independent witness after all is the husband of the appellant who did not support the prosecution case. What is much more alarming is the improvement made by the witnesses before the Court who were associated with the hospital as the investigating officer categorically deposed in cross-examination that PW2, Soma Majumdar stated before him that in the previous night when she counted the number of babies in the ward she did not find the victim baby therein. In the same breath, in respect of PW2, Soma Majumdar the investigating officer deposed that PW2 did not state before him that the appellant Jhuma Mondal told her and other members of her family that she had thrown away the baby. The investigating officer further in respect of PW3 Shankari Sahana, staff nurse deposed that the said witness i.e. PW3 did not state before him that the appellant confessed before her that she had thrown away the baby from the window. The investigating officer further deposed that PW4, Dr. Rabi Adhikary told him that he came to know that on the night of 24.03.2018 the baby of Jhuma Mondal was missing. The investigating officer also deposed that PW5 Jayasree Jana, staff nurse stated before him that on 24.03.2018 while she was on duty at Gynae ward she received an information that a baby was missing

from first floor. The investigating officer further deposed that PW5 did not state before him that the mother of the baby was not in the ward and she was standing in the gate. The investigating officer also before the Court in cross-examination deposed that PW6, Chhaya Murmu, Deputy Nursing Superintendent did not state before him that Jhuma Mondal confessed before her that she had thrown away the baby through the window and that the appellant Jhuma Mondal showed her the window from where she had thrown the baby. In respect of PW8, Partha Sarathi Bhunia, Medical Officer of SNCU ward the investigating officer deposed that he did not state before him that the baby was found missing at the time of counting in the morning and that Dr. Jagat Jyoti Bhunia and Dr. Rabi Adhikary disclosed that mother of the baby confessed before them that she had thrown away the baby from the window of SNCU Ward.

On scrutiny and assessment of the aforesaid evidence it can be ascertained that there is a gulf of difference in respect of the statement made before the investigating officer by the aforesaid witnesses and their deposition in Court. All the witnesses were in discharge of their official duties at the relevant point of time in the hospital and they have improved their version in Court (if it is compared with their previous statement). To rely upon their evidence and arrive at a conclusion would be against the settled proposition of criminal jurisprudence as the reliability of these witnesses are questionable. Thus the prosecution case if taken as a whole suffers from the following defects:

- (i) An attempt was built to establish the case on extrajudicial confession which itself is a weak piece of evidences;
- (ii) Such narration regarding the confession was first time deposited before the Court and was not divulged in course of investigation as is reflected from the deposition (reply in cross-examination) of the investigating officer;
- (iii) The relevant witnesses who could have supported the prosecution case particularly the other patients/mothers who were admitted in the same ward were not cited as prosecution witnesses to make out a chain of circumstance for implicating the appellant in a criminal case;
- (iv) The extrajudicial confession has not been corroborated by any material particulars or by way of any independent evidence for implicating the present appellant;
- (v) Even if the extrajudicial confession is accepted to be true then also the same cannot be relied upon as majority of the witnesses have for the first time before the Court spoke of such confession being made without the same being disclosed in course of investigation to the investigating officer;
- (vi) A set of the witnesses deposed that in the previous night while counting one of the babies were found to be short, while another set of witnesses stated/deposed that in the morning at 8.00 A.M. on 25.03.2018 while counting a baby was found to be missing.

Having regard to the inherent factual weaknesses in the instant case it would be unsafe to rely upon such evidence to arrive at an order of conviction in respect of the appellant. Thus the judgment and order of conviction and sentence so passed by the learned Sessions Judge, Bankura in connection with Sessions Trial No. 18/2018 (arising out of Bankura Police Station case no. 76/18 dated 25.02.2018) is hereby set aside.

The appellant is acquitted of the charges.

The appellant is on bail and as such she is discharged from the bail bonds.

Consequently, CRA 628 of 2019 is **allowed**.

Pending connected application(s), if any, are also disposed of.

Department is directed to send back the LCR immediately. A copy of the judgment be forwarded to the ld. Trial court immediately for compliance regarding the directions given above.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)