

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

APPELLATE SIDE

**CRA 453 of 2013
Rabi Murmu
Vs.
The State of West Bengal.**

**Before: The Hon'ble Justice Rajarshi Bharadwaj
&
The Hon'ble Justice Apurba Sinha Ray**

For the Appellant : Mr. Moinak Bakshi, Adv.
Ms. Niketa Bhattacharjee, Adv.

For the State : Mr. Madhu Sudan Sur, Adv.
Mr. Manoranjan Mahata, Adv.

CAV On : 14.07.2025

Judgment On : 29.08.2025

Apurba Sinha Ray, J.:-

1. The judgment of conviction and order dated 15.05.2013 and 16.05.2013 passed by the Learned Sessions Judge, Purulia in Sessions Trial No. 33 of 2012, Sessions Case No. 237 of 2012 was under challenge in this appeal on the grounds, *inter alia* that the order of conviction of the appellant under Section 302/201 of the Indian Penal Code sentencing the appellant to suffer imprisonment for life and to pay a fine of Rs. 2,000/-, in default to

suffer further rigorous imprisonment for six months etc. was passed without considering the materials on record.

2. The learned counsel appearing for the appellant has submitted that the impugned judgment is not sustainable in law since no confessional statement of the convict under Section 27 of the Evidence Act was recorded by the investigation officer and further the places of recovery of weapons were not proved since there was no eye witness who saw the appellant to kill his parents. The seizure lists were not proved in accordance with law. Further the record shows that the police personnel accompanied the appellant to the places of occurrence. There was no FSL Report in respect of the seized weapons and other articles. The learned counsel has further pointed out that prosecution could not establish any motive behind the murder. The Doctor being PW12 has submitted that the murder of the father of the appellant could not be done by weapons like “kait”. The offending weapons were neither shown to the said Doctor during post mortem nor during trial. Moreover, the offending weapons were not produced at the time of trial. The FSL Report was not available and as a result the human blood stains on the weapons as well as on other objects were not proved.

3. The learned counsel has further submitted that Section 27 of the Evidence Act is not attracted in this case because the confessional statement was not recorded and as such no facts were discovered under Section 27 of the said Act that would connect the chains of circumstances leading to the crime. It is also unclear as to when the convict made such an

unrecorded confession. The evidence shows that the convict was under illegal detention, in as much as the arrest memo shows the time of the arrest was at 5:00 P.M. whereas the alleged unrecorded confessional statement leading to the discovery was in the morning. Moreover the sequence narrated by the witnesses shows that the recovery of articles preceded the confession which is contrary to the legal mandate of Section 27 of the Evidence Act. The recovery was not carried forward to prove the involvement of the convict in the crime owing to absence of FSL report and witnesses not proving the seizures. The chain of circumstances remained unlinked and could not prove the prosecution case. Extra judicial confession if any, was not made voluntarily and was not recorded. The unrecorded confession preceded arrest. Weapons were never produced during trial and no FSL report arrived. The weapons were not shown to the autopsy surgeon during autopsy or trial to elicit his opinion.

4. The learned counsel has submitted that the chain of circumstances remains incomplete and as such the prosecution case was not proved beyond doubt. In support of his contention he has referred following judicial decisions.

[2023] 5 S.C.R. 601 State of Madhya Pradesh vs. Phool Chand Rathore

[2024] 11 S.C.R. 1425 Randeep Singh @ Rana & Anr. Vs. State of Haryana & Ors.

[2025] 2 S.C.R. 388 Ramu Appa Mahapatar vs. The State of Maharashtra

5. The learned counsel has also pointed out that as per deposition of the defacto-complainant that FIR was lodged on 16.05.2012 but the scribe deposed that he arrived at the place of occurrence at around 10:00 A.M. There are several material and glaring contradictions in the FIR as to the place and time of occurrence. Though the FIR indicated the convict's presence at the place of occurrence, his subsequent alleged extra judicial confession of crime to the defacto-complainant has further diluted the prosecution case since the evidence of the other witnesses show that the appellant allegedly reported the crime at the police station in the morning and came to the place of occurrence accompanied by the police. According to the learned counsel, the appellant was arrested at 5:00 P.M. on the date of lodging the FIR and further he has been arrested from his in-laws house and, therefore, such materials on record show that the appellant was not present at the place of occurrence when the incident took place.

6. The learned counsel for the State has submitted that the prosecution has examined as many as 14 witnesses in support of the prosecution case and as per the appellant's information, which was recorded in GDE No. 571 and marked as Exhibit No. 11, the offending weapons were recovered from the places of occurrence. All the local witnesses supported the prosecution case. The appellant not only helped the police to recover the offending weapons but also identified the dead bodies of his parents. It is the appellant who informed the police about the commission of offence and police accompanied him to the place of occurrence on the basis of such information. This was the appellant who opened the door of his room and

showed the dead body of his mother and he also brought out the axe from the room. He made extra judicial confessions before the local people and also the police officer and such facts were corroborated by the said witnesses during their examination-in-chief. It is also found from the materials on record that the appellant led the police officer and others to a jungle which was 3 km away from his home and identified the dead body of his father and further he brought out a 'kait' from the said jungle. His blood stained tee-shirt was also handed over to the concerned police officer by the appellant. The medical evidence has also supported the prosecution case. In fact there is no denial about the findings of the post mortem doctor during his cross-examination. According to learned State counsel, the chains of all the events have been inter-linked and there is no breaking up of any single chain facilitating the defence case to succeed. The minor discrepancies have been rightly ignored by the Learned Trial Court. Accordingly, the learned counsel has submitted that the relevant judgment and order has been correctly passed.

7. We have considered the rival contentions of the parties. It appears to us that the instant case is based purely on circumstantial evidence, and further the prosecution has relied upon some extra judicial confession to establish the guilt of the appellant. Needless to mention, the extra judicial confession is considered as a weak piece of evidence. However, that does not mean that conviction cannot be based on such extra judicial confession.

8. The learned counsel for the appellant has relied upon several judicial decisions; such as **(2024) 14 SCR 1425 Randeep Singh @ Rana & Anr. Vs. State of Haryana & Ors.**, **(2025) 2 SCR 388 Ramu Appa Mahapatar Vs. the State of Maharashtra**, **(2023) 5 SCR 601 State of Madhya Pradesh Vs. Phoolchand Rathore** in support of his contention.

9. In **Ramu Appa Mahapatar (supra)** the Hon'ble Apex Court has dealt with the cases when extra judicial confession cannot be relied upon. In the said decision the Hon'ble Court has considered the observations of the Hon'ble Apex Court, made in **State of Rajasthan Vs. Raja Ram reported in (2003) 8 SCC 180** wherein the Hon'ble Apex Court has dealt with the theory of extra judicial confession. Paragraph 17 is quoted herein below:-

“17. In State of Rajasthan Vs. Raja Ram, this Court explained the concept of extra-judicial confession. Confession may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a magistrate or a court. Extra-judicial confessions are generally those that are made by a party before a private individual who may

be a judicial officer also in his private capacity. As to extra-judicial confessions, two questions arise: firstly, whether they are made voluntarily and secondly, are they true? If the court is of the opinion that the confession was not made voluntarily but was a result of an inducement, threat or promise, it would not be acted upon. 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 having reference to the charge against him proceeding from a person in authority. 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 Indian Evidence Act, 1872 (briefly 'the Evidence Act' hereinafter). The law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary. 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 and voluntariness of the confession, the

court may refuse to act upon the confession even if it is admissible in evidence. The question whether a confession is voluntary or not is always a question of fact. A free and voluntary confession is deserving of the highest credit because it is presumed to flow from the highest sense of guilt.

17.1. 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 reliability of the witness to whom it is made and who gives the evidence. Extra-judicial confession can be relied upon and conviction can be based thereon if the evidence about the confession comes from a witness who appears to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused. The words spoken by the witness

should be clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and that 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.

17.2. If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration is a matter of prudence and not an invariable rule of law."

10. In the above decision the Hon'ble Apex Court has also referred to another case, that is **Sansar Chand Vs. State of Rajasthan reported in (2010) 10 SCC 604**, wherein the court accepted the admissibility of extra judicial confession and held that there is no absolute rule that an extra judicial confession can never be the basis of a conviction although ordinarily an extra judicial confession should be corroborated by some other material. It is also held in the case of **Ramu Appa Mahapatra (supra)** that in a case of circumstantial evidence the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of

the accused. That apart in a case of circumstantial evidence while the prosecution relies upon an extra judicial confession, the court has to examine the same with a greater degree of care and caution. An extra judicial confession if voluntary and true and made in a fit state of mind can be relied upon by the court. The value of evidence as to extra judicial confession like any other evidence depends upon the veracity of the witness to whom it has been made.

11. In paragraph 19.2 the Hon'ble Apex Court in the above case of **Ramu Appa Mahapatra (supra)** has referred to the decision of **Sahadevan Vs. State of Tamil Nadu reported in (2012) 6 SCC 403** to point out the principles and which would make an extra judicial confession an admissible piece of evidence which can formulate the basis of conviction of an accused. The said principles are quoted herein below:-

“i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances

and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such a statement essentially has to be proved like any other fact and in accordance with law.”

12. In **Randeep Singh @ Rana & Anr. (supra)** the observations of the Apex Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra reported in (1984) 4 SCC 116** have been quoted to point out the five principles of circumstantial evidence.

“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 concerning "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 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." (emphasis added)

13. In the said decision of **Randeep Singh @ Rana & Anr. (supra)** it has also been held that even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved under Section 27.

By quoting **K. Chinaswamy Reddy Vs. State of A.P. reported in (1963) 3 SCR 412**, the Hon'ble Apex Court in **Randeep Singh @ Rana & Anr. (supra)** has explained section 27 of Indian Evidence Act, 1972 in the following manner:-

"...Thus even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved under Section 27. The Judicial Committee had in that case to consider how much of the information given by the accused to the police would be admissible under Section 27 and laid stress on the words "so much of such information...as relates distinctly to the fact thereby discovered" in that connection. It held that the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. It was further pointed out that "the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact". It was further observed that-

"Information as to past users, or the past history of the object produced is not related to its discovery in the setting in which it is discovered."

This was exemplified further by the Judicial Committee by observing-

"Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. If however to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

14. By quoting the observation in **Subhas Chand Vs. State of Rajasthan reported in 2002 1 SCC 702**, the Hon'ble Apex Court in **Randeep Singh @ Rana & Anr. (supra)** has reminded us that:-

"Though the offence is gruesome and revolts the human conscience but an accused can be convicted only on legal evidence and if only a chain of circumstantial evidence has been so forged as to rule out the possibility of any other reasonable hypothesis excepting the guilt of the accused. In Shankarlal Gyarsilal Dixit case [(1981) 2 SCC 35: 1981 SCC (Cri) 315: AIR 1981 SC 765] this Court cautioned -"human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions" (SCC p. 44, para 33). This Court has held time and again

that between may be true and must be true there is a long distance to travel which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an accused is condemned as a convict."

15. In State of Madhya Pradesh Vs. Phoolchand Rathore (Supra) the Hon'ble Apex Court has been pleased to mention in page 621 that the circumstances of extra judicial confession are also required to be proved beyond doubt.

16. In our case, it has been time and again contended from the part of the appellant that there is no recovery statement of the appellant under Section 27 of the Indian Evidence Act nor there is any material to show that the appellant had committed the alleged gruesome offences. It is also alleged that there was no direct evidence to implicate the present appellant and the prosecution has heavily relied upon the statements of the witnesses who were not at all eye witnesses to the alleged incident of murder.

17. Needless to mention, some offences are committed intentionally by the offender beyond the glare of any witness. The law does not encourage the real culprit to escape due to non-availability of such eye witnesses; rather the law has formulated the theory of circumstantial evidence to nab the actual culprit and to release the innocent people who are not the real culprits from the clutches of law. In this type of cases where there is no eye

witness, the law of the land prescribes that if the chains of circumstances/events are so complete and are so entangled in a manner pointing to the guilt of the accused only and there cannot be any other opinion apart from the complicity of the accused in commission of the offence, in that case the offender or the accused can be convicted only on the basis of such piece of reliable circumstantial evidence.

18. In this case nobody saw the appellant to commit the murder of his parents. But the depositions of the witnesses from the locality divulge that the appellant had confessed before them that he murdered his parents with some weapons and he has also brought out those weapons from the hide out. They have also narrated that it was the appellant who opened the door and led the police personnel and others to the place of murder of his mother, and thereafter to the second place of occurrence where his father's dead body was found. The witnesses have also deposed that the appellant brought out the offending weapons and seizure lists were prepared by the concerned police officer.

19. Now the question is whether the series of extra judicial confessions of the appellant as revealed have been proved beyond the shadow of reasonable doubt or not.

20. Let us see the materials brought on record by the prosecution to prove the extra judicial confession beyond shadow of doubt.

21. The instant case was started with extra judicial confession. On 16.05.2012 the appellant allegedly went to the Bandwan PS and lodged one GD stating that he killed his mother Nilmoni Murmu with an axe by cutting her throat and also killed his father by cutting his throat with a small knife by the side of the road approximately 3 KM away from Burijhor to Mrigichami behind a bush. He also stated before the concerned police that he has kept the offending weapons, tee-shirt in his secret hideout. He wished that police would recover the dead bodies of his parents, the offending weapons and tee-shirt. He also stated before the police that he believed that the bad souls in his parents' bodies were responsible for illness and death of his wife and for that reason he killed his parents. The said GD extract has been marked as exhibit – 11.

22. Thereafter, to verify such statements or information, as the case may be, the Officer-in-charge of Bandwan Police Sation Dipankar Sarkar along with force went to the places of occurrence accompanied by Rabi Murmu. The P.W. 1 Amin Tudu being a local villager in his deposition has indicated that the appellant had also made extra judicial confession before them admitting that he murdered his parents. The relevant portion of his deposition is being quoted herein below:-

“In the morning I found that cows and buffaloes which were tying in ropes in the house of Sukram were crying. On hearing the same, I reached there. After some time police came there. Rabi was there with police. After getting

down from the Police Van Rabi opened Shickle of the door from outside. Rabi accompanied by police entered inside the room and we also followed them. On entering the room we found that the mother of Rabi i.e. Nilmani was lying down on the room having serious cut injury on her throat. On seeing it we came outside. I noticed Rabi to come out with an axe. Rabi told that by that weapon he committed murder of his mother. Police seized that axe on the strength of seizure list in which I put my signature on it in Bengali. It is my signature there on (The signature of witness in the seizure list dated 16-05-12 be marked as Ext. 1/1 on proof).

Police examined the dead body of mother. It is my signature in the copy of the inquest report (The signature of witness Amin Tudu appears in the inquest report in respect of victim Nilmani Murmu be marked as Ext.2/1 on proof).

Rabi also disclosed that he also committed murder of his father. Then Rabi, police and ourselves visited in Birjhore Mouja and found that Sukram i.e. father of Rabi was lying dead. Rabi identified his father. Police examined the dead body and prepared a document.”

23. The P.W. 5 Sri Ajit Murmu has also indicated that the appellant had made extra judicial confession before him. The relevant portion of his deposition is quoted herein below:-

“On the 2nd Day of Jaistha of this Bengali year, the incident had taken place. On the relevant date while we were going outside for nature's call, I noticed that 2/3 police vans came to our village with the accused. Robi came down from the police vehicle. Police also came down from the vehicle. Thereafter being led by Robi they entered inside the house of Robi, We also followed the police personnel and entered inside the room. On reaching there we found that the mother of the accused was lying on the floor of the room having cut marks on the throat. Robi brought out one Axe and handed over the same to the police. Robi told that by that Axe he killed his mother.

Robi also disclosed that he had committed murder to his father in a jungle.

Police inspected the dead body of the deceased and prepared a report. Police also seized the said Axe. This is the carbon copy of the Inquest Report which bears my signature. I was present at the time of conducting the inquest over the dead body of Nilmoni Mumu. (The signature of the witness in the "Inquest" report of Nilmoni Murmu is marked as Exhibit2/2).

This is the seizure list prepared by the police in my presence. It bears my signature. (The signature of the witness in the seizure list dated 16.05.12 be marked as Ext. 1/2).

This is another seizure list on the strength of which the police seized the blood-stained Axe etc. It is my signature thereon. After recovery of the Axe I followed the police personnel and Robi to the jungle and in the jungle Robi identified the dead body of his father Sukram Murmu. He also brought out one Kait blood stained genji etc. which were seized by the police on the strength of the seizure list.”

24. The P.W. 6 Some Murmu is as follows:-

“I have been living at Burijhore village under Bandwan P.S. One day in the month of Jaistha of this Bengali year, the incident had happened. In one day on seeing the police van I came. I found Robi Mumu coming down from the police van. Then Robi being accompanied by police entered inside his room. We followed them. There I found the dead body of Nilmoni Murmu, the mother of the accused. Robi brought out one Axe and has stated that by it he killed his mother.

I did not visit the jungle.”

25. The P.W. 7 Baburam Murmu has also deposed that the appellant confessed before them that he killed his parents. The relevant deposition is quoted herein below:-

“On the 2nd day of Jaistha of this Bengali year, in the morning at about 7/8 a.m. while myself along with others was sitting in a village pathway (Kuli). At that time, I noticed 2/3 Police vans accompanied by a person and Police personnel came to our village. Rabi came down from the Police-van and entered the room. We followed Rabi and the Police personnel. On reaching inside the house, we found the dead-body of mother of Rabi. Rabi told that he lynched his mother by an axe. Rabi also confessed that he killed his father.

I was interrogated by the police.”

26. The P.W. 8 Baren Tudu, PW 9 Bangal Tudu and PW 10 Suklal Tudu have deposed that Rabi Murmu confessed before them that he killed his mother by an axe and he also killed his father. Now the question is whether the extra judicial confession made before the police station and the extra judicial confession made before the above local witnesses can be accepted as confession in holding that the accused had committed his parents.

27. Needless to mention, any confession before the police authority is not acceptable and it is an inadmissible piece of evidence. As the GD allegedly contained some extra judicial confessions, the same cannot be accepted in view of Section 25 of the Indian Evidence Act. However, the information given by the appellant that he intended that police should recover dead bodies of his parents and also the offending weapons including his wearing

apparels is significant in view of the fact that Section 27 of Indian Evidence Act has been regarded as an exception to Sections 25 and 26 of the Indian Evidence Act. In other words, by virtue of Section 27 the statement of the accused by which recovery of offending weapons was done appears to be an admissible piece of evidence. However, all other confessions as made out in the said GD cannot be treated as admissible evidence under the Indian Evidence Act.

28. However, we have found that several witnesses such as PW. 1, PW5, PW6, PW7, PW8, PW9 and PW10 have categorically deposed that the appellant confessed before them that he committed the murder of his parents by an axe and a kait. Now the question is whether such alleged extra judicial confession of the appellant before those witnesses can be accepted or not? It appears from the record that those witnesses withstood the cross-examination and they stuck to their deposition on this point. In other words the said witnesses remained unshaken during their cross-examination.

29. In spite of such unshaken testimony of the above PWs, it appears that when such alleged extra-judicial confession was made by the appellant before the above witnesses, the police was very much present at the spot. It is also deposed by the said witnesses that they saw Rabi Murmu come down from a police vehicle and thereafter led the police to the place of the occurrence. The fact that extra-judicial confessions made allegedly by Rabi Murmu in presence of the police personnel at the spot was admitted by the

said witnesses namely P.W. 1 Amin Tudu, P.W. 5 Sri Ajit Murmu, P.W. 6 Some Murmu, P.W. 7 Baburam Murmu, P.W. 8 Baren Tudu, P.W. 9 Bangal Tudu and P.W. 10 Suklal Tudu.

30. Needless to mention, when confession of a crime by an accused is to be relied upon, it is the duty of the court to see that such confession is made voluntarily and without being influenced by police authority or any other person. It is the usual practice of the Judicial Magistrates recording confession of the accused under section 164 Cr.P.C. (183 of BNSS) to send him to the correctional home with a direction to keep the accused in segregation for reflection of his mind and also for alleviating any persisting influence on his mind caused at the instance of police authority or any other person and after being satisfied that the accused is free from influence etc., his confessional statement, if any is recorded in chamber of the Judicial Magistrate. This usual practice is followed by the Judicial Magistrates to make the confessional statement of the accused more believable and trustworthy, but in our case it is found that when the appellant had made such alleged extra judicial confession before those local witnesses, he was with the police personnel. In other words when such extra judicial confessions were made the police were very much present at the spot. Therefore, it cannot be said that such extra judicial confessions were made by the appellant in the absence of the police authority. In other words, the vital question whether or not such extra judicial confession was made by the appellant free from influence, threat or intimidation cannot be ascertained since immediately before making such confession he came down from the

police van and further when he made such alleged confessions the police was very much present in the vicinity. The basic ingredients for recording such extra judicial confession were not followed in the course of the proceedings. As the prosecution has failed to show that the appellant has made voluntary extra judicial confession before the said witnesses in the absence of the police personnel and also in the absence of their influence, it is not prudent or reasonable to rely upon such extra judicial confessions made by the appellant to the above witnesses in presence of the police personnel. The Learned Trial Judge did not consider this vital issue properly in delivering the impugned judgment.

31. In view of the above discussion we find that such extra judicial confessions which were allegedly made by the appellant to the local witnesses in presence of the police personnel are unreliable and cannot be a part of legal evidence.

32. In the facts and circumstances, as discussed above, the investigating officer could have produced the accused before the Judicial Magistrate for recording his confessional statement under Section 164 Cr.P.C. but that was not done by the I.O. for the reasons best known to him. It is also found that recovery of weapons was done on the basis of information given by the appellant without recording any discovery statement of the appellant. It is further found that the weapons were sent to the Forensic Science Laboratory for chemical examination but no reports of the Forensic Science Laboratory were received to that effect that the weapons contained human blood. It is a

fact that the offence was committed in a place which was infested with Maoist personnel at the relevant point of time. There was a defence taken on behalf of the appellant that he has been falsely implicated as the police had failed to get any breakthrough in several cases involving Maoist and for which the appellant has been made scapegoat. In view of such allegations it is the duty of the court to see that appellant was not falsely implicated. In this case, the deposition of a post mortem doctor (P.W.12) is very much significant who opines that the death of Sukram Murmu, father of the appellant, could not be caused by using a small knife (kait). This has also created a serious doubt. Therefore, in this case, there are several lacunae since neither the recovery statement was recorded nor the weapons, wearing apparels were sent for FSL Report. Furthermore, the extra judicial confession on which the prosecution has heavily relied upon was made by the appellant in presence of the police personnel. In other words, the prosecution is unable to show that chains of circumstances or the events are complete which only point to the guilt of the accused.

33. Therefore, considering all materials on record, we are inclined to give benefit of doubt to the appellant Rabi Murmu. In view of the above discussion the appeal succeeds. The impugned judgment and order dated 15.05.2013 and 16.05.2013 passed by the Learned Sessions Judge, Purulia in Sessions Trial No. 33 of 2012, Sessions Case No. 237 of 2012 of conviction is set aside. The appellant Rabi Murmu is acquitted from the charges of the case and be set at liberty at once. The accused be released

from the custody if he is not wanted in any other case. The criminal appeal being CRA 453 of 2013 is allowed on contest. No order as to costs. The trial court record be sent to the concerned court immediately.

34. Accordingly, CRA 453 of 2013 is disposed of.

35. Urgent photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree

(RAJARSHI BHARADWAJ, J.)

(APURBA SINHA RAY, J.)