

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 185 of 2009

Masuda Bibi

-Vs-

The State of West Bengal

For the Appellant : Mr. Sabir Ahmed
Ms. Pampa Dey Dhabal
Mr. Pritam Sarkar
Mr. Tasmim Ahamed

For the State : Mr. Avishek Sinha

Judgment on : 05.05.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment dated 07.01.2009 and order of conviction and sentence dated 09.01.2009 under Section 304 (Part II) of the Indian Penal Code passed by the Learned Additional District and Sessions Judge, Fast Track Court No.4, Barasat, North 24 Parganas in Sessions Case No.31(6) 05/Session Trial No.01(4) 06 corresponding to Barasat P.S. Case No.78 of 2004 under Section 304 of the Indian Penal Code, convicting and sentencing the appellant under Section 304 (Part II) of the Indian Penal Code to suffer rigorous imprisonment for a period of 5 years and further to pay fine of Rs.1,000/, in default, to suffer imprisonment for six (06) months and period of detention, if any, undergone by the convict during pendency of investigation, enquiry and

trial shall be set off with the period of sentence under Section 428 of the Code of Criminal Procedure.

2. The appellant, the widow of late Chhabed Ali, had been a permanent resident of Konkapur, Ichhapur Nilganj Gram Panchayat, P.S.- Barasat, District- North 24 Parganas, lived with her only daughter and son-in-law.
3. The prosecution case described on 15.02.2004 at 8:10 hrs., one Md. Innach Ali (PW-1), son of late Abdul Jabbar Ali of Konkapur, P.S.- Barasat, lodged a written complaint at the Barasat Police Station stating his cousin Md. Chhabed Ali, son of late Ali Ahammad of Konkapur under Ichhapur Nilgank Gram Panchayat, P.S.- Barasat, was married about 20 years ago used to be inebriated occasionally. There was a dispute between Chhabed Ali and his wife Masuda Bibi and Masuda Bibi, who incidentally assaulted Chhabed Ali with a bamboo stick. Chhabed Ali sustained injury on his person on the night of 14/15.02.2004 round about 12:00 hrs. Chhabed Ali became sick and was taken to his bed in the room by his wife Masuda Bibi. On the next morning Chhabed Ali was found lying dead.
4. A.S.I., Barasat Police Station, Sandip Kumar Panja (PW-8) recorded the case on the basis of complaint of Innach Ali (PW-1) written by one Md. Rauf Ali and initiated Barasat P.S. Case No.78/04 dated 15.02.2004 under Section 304 of the Indian Penal Code against the appellant.
5. On completion of investigation, charge-sheet was submitted by Rabindra Chandra Bhowmik, S.I. of Barasat Police Station (PW-9) under Section 304 of the Indian Penal Code against the appellant. The formal charge was framed against the appellant under Section 304 (Part I) of the Indian Penal Code. The appellant pleaded not guilty and claimed to be tried.

6. During trial, nine witnesses were examined on behalf of prosecution and certain documents were marked as exhibits.

7. The Learned Advocate representing the appellant argued as follows:-

- i. Several prosecution witnesses, namely PW-1 Innach Ali and PW-4 Mourjan Bibi, were related to the deceased and admittedly had inimical relations with the appellant thereby rendering their evidence doubtful and untrustworthy.
- ii. The prosecution failed to examine the most vital witnesses, namely the daughter and son-in-law of the deceased, who were allegedly present at the time of the incident. The non-examination of these material witnesses weakened the prosecution case.
- iii. The medical evidence did not support the prosecution version. The post-mortem report revealed only six superficial abrasions on the body of the deceased and no fracture or internal injury was found. Hence, the cause of death as alleged could not be established.
- iv. The Learned Trial Court failed to consider the nature of the alleged weapon, the degree of force, and the lack of evidence showing intention or knowledge necessary to attract culpability under Section 304 of the Indian Penal Code.
- v. The alleged extra judicial confession was not proved beyond reasonable doubt and was not properly put to the accused under Section 313 of the Code of Criminal Procedure thereby causing prejudice to the defence.
- vi. The Learned Trial Court failed to appreciate the settled principle of law that in cases based on circumstantial evidence, the chain of

circumstances must be complete and unbroken. In the present case, the prosecution failed to establish such chain.

vii. The Learned Trial Court failed to properly assess the defence plea of false implication due to longstanding enmity between the families of the complainant and the appellant.

viii. The prosecution miserably failed to prove motive, *mens rea* or any direct involvement of the appellant in the death of her husband. Mere suspicion, however strong, could not take the place of proof.

ix. The prosecution story being inconsistent with medical and oral evidence, the appellant was entitled to the benefit of doubt.

x. The prosecution failed to prove its case beyond reasonable doubt. The evidence on record being insufficient and unreliable, the conviction and sentence could not be sustained in law.

8. The Learned Advocate representing the State submitted the prosecution had been successful in placing corroborative evidence wherein the prosecution witnesses in unison concurred affirmatively to the occurrence to the incident whereby the victim had been assaulted by the appellant to death intensified by her extra judicial confession voluntarily, without inducement or intimidation. The medical report conformed to the occurrence of death of the victim in comity with the ocular evidence as well as the extra judicial confession. Accordingly, the appeal shall be dismissed.

9. A circumspection of evidence of the prosecution witnesses revealed as follows:-

- i. P.W.1 deposed he was a resident of village Kokapur, Ichapur, Nilgunge under Barasat Police Station and that deceased Chobed Ali was his uncle's son. According to him, Chobed Ali had been married to accused Masuda Bibi approximately twenty years prior to the occurrence and the relationship between the spouses was initially cordial. The witness, however, stated that Chobed Ali was habituated to alcohol consumption and discord frequently surfaced between the couple. He referred to a family altercation which allegedly took place during the midnight of 14th February, 2004 between the deceased and the accused.
- ii. The witness stated that on the following morning, namely 15th February, 2004, he heard hue and cry emanating from the residence of Chobed Ali. Upon rushing to the place of occurrence, he found accused Masuda Bibi weeping and noticed Chobed Ali lying dead upon the bed with bleeding injuries upon his person. P.W.1 asserted that upon being asked as to how the deceased had died, accused Masuda Bibi allegedly stated before him that she had assaulted Chobed Ali with a bamboo stick and thereafter he died. The witness further stated that he informed the police station regarding the incident and lodged the written complaint which was scribed by Md. Rouf Ali according to his instruction. He identified his signature upon the written complaint marked Exhibit 1/1. He also proved his signature upon the seizure list and the carbon copy of the inquest report. According to him, police seized a bamboo stick, blood-stained pillow and other blood-stained

articles from the place of occurrence. He further stated that the accused was arrested by the police from the place of occurrence on the same day.

- iii. In cross-examination, P.W.1 denied the defence suggestion that he had deposed at the instance of Panchayat members or his relatives. He admitted that the police station was situated approximately five kilometres from his residence and that he had informed the police through another person's mobile phone though he could neither recollect the identity of such person nor his whereabouts. He denied the suggestion that there had been no dispute between the deceased and the accused or that he had not heard any hue and cry from the house of the deceased. He maintained that he saw the deceased lying dead with bleeding injuries and that accused Masuda Bibi had confessed before him regarding the assault. He also denied the suggestion that a false case had been instituted against the accused.
- iv. The evidence of P.W.1 thus constitutes the foundational narrative of the prosecution case, particularly in relation to the extra-judicial confession allegedly made by the accused immediately after the occurrence.
- v. P.W.2 stated that he was acquainted with deceased Chobed Ali whose residence stood adjacent to his own. According to him, upon hearing about the death of Chobed Ali on 15th February, 2004, he proceeded to the house of the deceased and found him lying dead upon the bed. He noticed an injury on the left side of

the head of the deceased and further observed that accused Masuda Bibi was present there in a weeping condition. The witness identified accused Masuda Bibi in Court.

- vi. P.W.2 deposed that accused Masuda Bibi told him that she had killed Chobed Ali with a stick. He also stated that he had seen blood-stained lungi and ganji belonging to the deceased. According to him, police arrived at the place of occurrence and obtained his signature upon the inquest report, which was marked Exhibit 3/1.
- vii. During cross-examination, P.W.2 stated that he did not know the exact incident which took place on the preceding night. He denied the suggestion that he had not gone to the place of occurrence or had not seen the dead body and the injury upon the head of the deceased. He maintained that accused Masuda Bibi had indeed told him that she killed Chobed Ali by a stick. At the same time, the witness admitted that he was not seeing the blood-stained apparel in open Court and that he did not recollect the contents of Exhibit 3 or the exact place where he appended his signature. He denied the suggestion that he had deposed falsely at the instance of the prosecution.
- viii. The testimony of P.W.2 principally serves as corroborative evidence regarding the condition of the dead body at the place of occurrence and the alleged extra-judicial confession attributed to the accused.
- ix. P.W.3 stated that he was a neighbour of deceased Chobed Ali and knew accused Masuda Bibi, the wife of the deceased, who was identified by him in Court. He deposed that on 15th February,

2004 he visited the house of Chobed Ali and found the deceased lying dead upon the bed with blood visible upon his head. According to him, he did not directly ask Masuda Bibi anything regarding the occurrence, but subsequently heard from local people that Masuda Bibi had killed Chobed Ali by means of a bamboo stick. He further stated that police arrived at the spot.

- x. In cross-examination, P.W.3 admitted that he had not stated before the Investigating Officer that the deceased used to return home in an intoxicated condition and assault Masuda Bibi. He further stated that he heard on the morning of 15th February, 2004 about the death of Chobed Ali and then went to the place of occurrence. He denied the defence suggestion that he did not see the deceased lying in injured condition or that the deceased had not been assaulted by a bamboo stick. The witness also admitted that he did not see the bamboo stick in open Court. He denied the suggestion that his deposition was the outcome of village factionalism or prosecutorial tutoring.
- xi. The evidence of P.W.3 does not directly implicate the accused through personal knowledge but introduces a hearsay account allegedly circulating amongst local residents regarding assault by a bamboo stick. His testimony nevertheless reflects the surrounding circumstances prevailing immediately after the occurrence and the condition in which the deceased was found.
- xii. P.W.4, a close relation of the deceased, deposed that Chobed Ali died approximately three years prior to his examination and that

he lived adjacent to the residence of the deceased. According to him, upon receiving information in the early morning regarding the death of Chobed Ali, he went to the place of occurrence and saw the deceased lying dead with blood oozing from his head. He also found accused Masuda Bibi present there.

- xiii. The witness stated that accused Masuda Bibi told him that she had killed Chobed Ali with a bamboo stick. He further deposed that police arrived at the place of occurrence at about 10 a.m. and that he narrated before the police the same facts which he stated before the Court. The accused was identified by him in Court.
- xiv. In cross-examination, P.W.4 stated that police interrogated him after one or two hours. He admitted that the deceased used to consume alcohol frequently and had no regular occupation at the relevant point of time. He further admitted that there existed strained relations between himself and accused Masuda Bibi. He denied the suggestion that because of such strained relationship the accused had been falsely implicated. He also denied the suggestion that accused Masuda Bibi had not made any confession before him.
- xv. The testimony of P.W.4, though similar in tenor to that of P.Ws.1 and 2, discloses the existence of prior strained relations between the witness and the accused, a circumstance requiring cautious appreciation while assessing the evidentiary value of the alleged extra-judicial confession.

- xvi. P.W.5 was the Medical Officer who conducted post-mortem examination upon the dead body of Chobed Ali on 15th February, 2004 at Barasat District Hospital. He deposed that the dead body had been brought before him by constable Asgar Ali and that upon examination he found several ante-mortem injuries. According to his opinion, death was caused due to shock and haemorrhage resulting from the injuries sustained by the deceased and the death was homicidal in nature.
- xvii. The witness stated that the injuries noted in the post-mortem report could be caused by a bamboo stick. He proved the post-mortem report marked Exhibit 4.
- xviii. In cross-examination, P.W.5 admitted that he had not seen any chemical examination report prior to conducting post-mortem examination. He stated that the stomach of the deceased contained liquid with smell of alcohol. He further admitted that there was no incised injury on the body of the deceased and that all six injuries were abrasion in nature. He also stated that there was no fracture over the dead body. Significantly, the witness admitted that such injuries could occur due to falling upon a hard substance, though he clarified that all the injuries collectively could not be caused merely after a fall on a hard surface.
- xix. The medical evidence of P.W.5 therefore establishes that the death was homicidal in nature and that the injuries were compatible with assault by a blunt object such as a bamboo stick, while at the same time acknowledging the absence of fracture or sharp-cutting

injuries and the presence of alcohol in the stomach of the deceased.

- xx. P.W.6 deposed that he was acquainted with both deceased Chobed Ali and accused Masuda Bibi, who was identified by him in Court. According to the witness, upon learning in the morning of the year 2004 that Chobed Ali had died inside his residence, he proceeded to the place of occurrence. The witness stated that there he heard directly from accused Masuda Bibi that on the previous night, namely 14th February, 2004, Chobed Ali returned home in a drunken condition, abused her in filthy language and that being unable to tolerate such conduct any further, she assaulted him with a bamboo stick as a consequence whereof he died.
- xxi. P.W.6 further stated that police arrived at the place of occurrence and seized a bamboo stick, a shirt, a pillow and a pair of chappals. The witness identified the seized articles marked material Exhibits I to IV respectively. He also proved his signature on the seizure list marked Exhibit 2/1 and stated that police further seized blood-stained earth from the place of occurrence under another seizure list in which he also appended his signature, marked Exhibit 5/1.
- xxii. In cross-examination, P.W.6 stated that he remained at the place of occurrence for approximately one hour and that police arrived within fifteen to thirty minutes after his arrival. He admitted that the seized articles did not bear his signature and further that there was no seal or label on the pillow, shirt, chappal or bamboo stick. Nevertheless, he denied the suggestion that the seized articles had

not in fact been recovered from the place of occurrence. The witness elaborated that the police seized the chappal from the verandah, the pillow from the cot inside the house and the bamboo stick and shirt from the lower portion of the cot. According to him, the dead body of Chobed Ali was lying inside the bamboo-structured dwelling upon the cot. He further stated that several villagers including Sirajul Gazi, Injam Ali, Sahajada Ali and Asraf Ali were present during the seizure. The witness denied the defence suggestion that he had falsely deposed.

xxiii. The evidence of P.W.6 assumes significance inasmuch as the witness not only spoke of an alleged extra-judicial confession made by the accused explaining the surrounding circumstances leading to the occurrence, but also proved the seizure of incriminating articles from the place of occurrence.

xxiv. P.W.7 deposed that he knew deceased Chobed Ali and accused Masuda Bibi, whom he identified in Court. According to him, Chobed Ali died during the night of 14th February, 2004. Upon receiving information regarding the death in the early morning, he visited the place of occurrence and found the dead body of Chobed Ali lying upon a cot inside the room. He stated that upon asking accused Masuda Bibi as to the cause of death, she replied that during the previous night Chobed Ali had returned home in an intoxicated condition and entered into a quarrel with her, whereafter she assaulted him with a bamboo stick causing him to fall down.

- xxv. The witness further deposed that police thereafter arrived at the place of occurrence and seized one pillow, shirt, chappal and bamboo stick. He stated that police prepared a seizure list in respect thereof and he appended his signature upon the same, which was marked Exhibit 2/2. He also stated that police examined him regarding the incident.
- xxvi. During cross-examination, P.W.7 stated that he had been informed about the incident at approximately 6 a.m. and thereafter reached the place of occurrence at about 8 a.m. He remained there for nearly one and a half hours. He further stated that several villagers including Maiuddin Gazi, Sahajad Ali, Innach Ali and Asraf Ali were present at the place of occurrence and that the mother of the deceased was also there. He maintained that the dead body was lying on the cot inside the room. He admitted that the material exhibits did not contain his signatures. The witness further stated that police removed the accused in a police van in his presence and that subsequently he accompanied others to the hospital for collection of the dead body. He denied the defence suggestion that he had falsely implicated the accused.
- xxvii. The testimony of P.W.7 substantially corroborates the evidence of P.W.6 in relation to the condition of the dead body, the alleged disclosure made by the accused immediately after the occurrence and the seizure of material articles from the place of occurrence.
- xxviii. P.W.8 was the formal witness attached to Barasat Police Station as Assistant Sub-Inspector of Police. He deposed that on 15th

February, 2004 he received the written complaint lodged by Innach Ali and on the basis thereof started Barasat Police Station Case No. 78 of 2004 under Section 304 of the Indian Penal Code against accused Masuda Bibi. He proved the endorsement bearing his signature marked Exhibit 1/2 and further proved the formal First Information Report prepared in his own handwriting marked Exhibit 6.

xxix. The witness stated that after registration of the case he placed the matter before the then Officer-in-Charge of Barasat Police Station for investigation. In cross-examination, P.W.8 candidly stated that he had no personal knowledge regarding the occurrence itself.

xxx. The evidence of P.W.8 is therefore purely formal in character and establishes the registration of the criminal case upon the written complaint lodged on behalf of the prosecution.

xxxi. P.W.9 was the Investigating Officer of the case. He deposed that at the relevant time he was posted as Sub-Inspector of Police at Barasat Police Station and that the Officer-in-Charge entrusted him with the investigation of Barasat Police Station Case No. 78 dated 15th February, 2004.

xxxii. According to the witness, after taking charge of investigation he visited the place of occurrence and prepared a rough sketch map with index marked Exhibit 7. He further stated that he seized several articles from the place of occurrence including a bamboo stick measuring approximately three feet, one pair of Ajanta Hawai chappals, one blood-stained red and white pillow and one blue

polyester half-shirt. The seizure list prepared by him was marked Exhibit 2/3. He also prepared another seizure list in respect of blood-stained earth and control earth seized from the place of occurrence, marked Exhibit 5.

xxxiii. P.W.9 further stated that he held inquest over the dead body of Chobed Ali and proved the inquest report marked Exhibit 3/2. He thereafter sent the dead body for post-mortem examination through Constable Asgar Ali and proved the dead body challan marked Exhibit 8. According to him, during investigation he examined available witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure. He also arrested the accused person and subsequently, upon collecting the post-mortem report and consulting superior officers, submitted charge-sheet against accused Masuda Bibi under Section 304 of the Indian Penal Code.

xxxiv. During cross-examination, P.W.9 stated that he commenced investigation at about 8:40 a.m. on 15th February, 2004 and that it took nearly fifteen minutes to reach the place of occurrence from the police station. He admitted that he had not received any information regarding the incident during the period between the previous night and 8:10 a.m. on 15th February, 2004. He further admitted that he did not record the statement of Innach Ali under Section 161 Cr.P.C. and that though one Abdul Hannan had signed the inquest report, his statement was also not recorded. The witness admitted that he did not send the seized materials for

forensic examination and further stated that he did not find the seized articles in Court during deposition.

xxxv. P.W.9 nevertheless denied the suggestion that the investigation had been conducted mechanically or at the instance of any political influence. He maintained that he personally visited the place of occurrence, found the dead body lying upon a cot inside the room and seized the pillow from the said cot though the cot itself was not seized.

xxxvi. The evidence of P.W.9 thus unfolds the investigative steps undertaken in the case while simultaneously revealing certain omissions in investigation, particularly the non-forwarding of seized articles for forensic examination and failure to record statements of certain material witnesses.

10. The prosecution case, when arranged in its proper evidentiary sequence, discloses not a premeditated assault born out of design or calculation, but a domestic occurrence erupting within the confined and distressed sphere of a matrimonial relationship strained by persistent drunkenness and discord. The evidence of the prosecution witnesses, particularly P.Ws.1, 2, 4, 6 and 7, forms the substantive axis upon which the prosecution rests its case, while the medical and investigative evidence furnished by P.Ws.5 and 9 lend corroborative assurance to the occurrence of homicidal violence.

11. P.W.1, the de facto complainant and relation of the deceased, stated that deceased Chobed Ali and accused Masuda Bibi had been married for nearly two decades. He deposed that though there existed no serious

discord in the marital relationship, the deceased was habitually addicted to alcohol and quarrels frequently took place between the spouses. The witness specifically referred to a family altercation during the night preceding the occurrence. On the following morning, upon hearing cries from the house of the deceased, he rushed to the spot and found Chobed Ali lying dead upon the bed with bleeding injuries on his person while accused Masuda Bibi was weeping. The witness further stated that upon being questioned, accused Masuda Bibi disclosed that she had assaulted the deceased with a bamboo stick, resulting in his death. He proved the written complaint, seizure list and inquest-related documents. Despite lengthy cross-examination, no material contradiction could be elicited undermining the essential substratum of his testimony.

12. P.W.2, a neighbouring witness, corroborated the presence of the dead body upon the bed and the injury upon the left side of the head of the deceased. He too deposed that accused Masuda Bibi, while weeping, stated before him that she had killed Chobed Ali with a stick. The witness further noticed blood-stained apparel of the deceased. His cross-examination remained directed principally towards peripheral inconsistencies without dislodging the principal narrative emerging from his examination-in-chief.

13. P.W.3, another local witness, stated that he found the deceased lying dead upon the bed with blood upon his head and heard from local people that accused Masuda Bibi had assaulted him with a bamboo stick. His evidence, though partly hearsay in nature, lends contextual continuity to

the prosecution version regarding the immediate aftermath of the occurrence.

14. P.W.4, a close relation of the deceased, deposed that upon reaching the place of occurrence she found blood oozing from the head of Chobed Ali and accused Masuda Bibi present there. The witness stated in unequivocal terms that accused Masuda Bibi told her that she had killed Chobed Ali with a bamboo stick. Significantly, in cross-examination the witness stated that deceased Chobed Ali was unemployed and frequently consumed alcohol. She further referred to strained relations between herself and the accused. Yet, despite such admitted hostility, the defence could not demonstrate any circumstance suggesting fabrication of the occurrence itself.

15. P.W.5, the Medical Officer conducting the post-mortem examination, found the injuries to be ante-mortem and homicidal in nature. According to the witness, death was caused due to shock and haemorrhage arising out of the injuries sustained by the deceased. The doctor categorically stated that such injuries could be caused by a bamboo stick. Though he conceded in cross-examination that certain injuries could result from a fall upon a hard substance, he clarified that all the injuries collectively could not be explained merely by such a fall. The medical evidence therefore substantially corroborates the ocular account regarding assault by a hard blunt object.

16. P.Ws.6 and 7 assume considerable importance in the evidentiary chain. Both witnesses stated that accused Masuda Bibi herself narrated the circumstances leading to the occurrence. According to them, the deceased

returned home in a drunken condition, abused the accused in filthy language and created a quarrel whereafter the accused, unable to endure the conduct any further, assaulted him with a bamboo stick. Both witnesses also proved the seizure of incriminating articles including bamboo stick, pillow, shirt and *chappals* from the place of occurrence. Their evidence reflects not merely an inculpatory statement attributed to the accused but also the surrounding circumstances under which the occurrence took place. The defence attempted to question the absence of seals and labels on the seized articles and the absence of signatures upon material exhibits. Such omissions may indicate lack of investigative precision, but they do not erode the core prosecution narrative consistently emerging through several witnesses present immediately after the occurrence.

17. P.W.8 was the formal witness proving registration of the First Information Report.

18. P.W.9, the Investigating Officer, proved the sketch map, seizure lists, inquest report, dead body challan and submission of charge-sheet under Section 304 of the Indian Penal Code. During cross-examination, certain lapses in investigation surfaced. The seized articles were not forwarded for forensic examination; statements of some witnesses were not recorded under Section 161 of the Code of Criminal Procedure and the Investigating Officer admitted that he did not seize the cot upon which the body was lying. These deficiencies certainly reflect an imperfect investigation. Yet it is equally settled that lapses in investigation do not

necessarily corrode the prosecution case where the substantive evidence otherwise inspires confidence and remains materially consistent.

19. The evidence of P.Ws.1, 2, 4, 6 and 7, read conjointly, reveals a consistent and uninterrupted factual pattern. Each witness reached the place of occurrence immediately after the incident. Each found the deceased lying dead with bleeding injuries. Each found accused Masuda Bibi present at the scene. Most importantly, the accused is consistently stated to have admitted before them that she assaulted the deceased with a bamboo stick following a drunken quarrel. The witnesses belong to the same locality and their evidence carries the natural texture of rustic narration may or may not be influenced by artificial embellishment. Minor variations regarding time, sequence or peripheral details are but the ordinary marks of human recollection and do not impair the intrinsic reliability of their testimony.

20. Extra judicial confessions possess circumscribed evidentiary value under the Indian Law, admissible yet frail, necessitating rigorous judicial safeguards to avert miscarriage of justice governed by Sections 24 and 27 of the Indian Evidence Act, 1872 it demands unyielding scrutiny of voluntariness corroboration and truthfulness. These confessions, uttered beyond judicial confines to private persons or witnesses rank as weak evidence prone to fabrication, exaggeration or inducement. In the instant case, the cumulative testimony of the prosecution witnesses embarked on extra judicial confession of the appellant to buttress and fortify their stance to indict the appellant which cannot be the exclusively sterling in

terms of accountability in an ambience of enmity, grudge and irascibility.

It can at best constitute a secondary and supportive instance of evidence.

21. The circumstances borne out from the record indicate that the occurrence emerged from a sudden domestic confrontation. The prosecution itself establishes that the deceased habitually consumed alcohol and returned home intoxicated on the night of occurrence. The evidence further reveals that he abused the accused in obscene language and quarreled with her immediately prior to the assault. No material has emerged indicating previous planning, preparation or calculated intention to extinguish life. Equally absent is any evidence of repeated brutal assault or use of a deadly weapon designed for fatal destruction.
22. The assault was made with a bamboo stick ordinarily available within a rural household. The prosecution has not established that the accused intended to cause death within the meaning of Section 300 of the Indian Penal Code. Yet, when a person assaults another with a bamboo stick upon a vital part of the body, knowledge may reasonably be attributed that such act was likely to cause death. The ingredients of Section 304 Part-II of the Indian Penal Code therefore stand satisfied. The act clearly falls within culpable homicide not amounting to murder, committed with the knowledge that death was a likely consequence, though without intention to cause death.
23. The evidentiary framework of the present case acquires greater legal clarity when examined through the statutory contours of Section 304 Part-II of the Indian Penal Code. The distinction between culpable homicide amounting to murder and culpable homicide not amounting to

murder rests not merely upon the physical act causing death, but upon the accompanying mental element discernible from the surrounding circumstances, nature of assault, weapon used, situs of injuries and the immediate conduct of the offender.

24. Section 304 Part-II IPC becomes attracted where death is caused by an act done with the knowledge that it is likely to cause death, though without any intention either to cause death or to cause such bodily injury as is likely to cause death. The legislative distinction between “intention” and “knowledge” is neither ornamental nor semantic. Intention denotes a conscious objective directed towards a definite consequence, whereas knowledge imports an awareness of the probable consequence flowing from the act committed.

25. In the present case, the prosecution evidence does not disclose antecedent enmity, pre-arranged design or calculated preparation. On the contrary, the consistent testimony of P.Ws.1, 4, 6 and 7 reveals that the occurrence arose within the domestic sphere during a sudden quarrel after the deceased returned home in an intoxicated condition and abused the accused in filthy language. The prosecution witnesses themselves narrate that the accused reacted in the course of an immediate confrontation born out of matrimonial discord and accumulated provocation. The occurrence, therefore, did not emerge from a deliberate scheme to extinguish life.

26. Yet, absence of intention does not efface criminal culpability. A grown individual assaulting another with a bamboo stick upon a vulnerable part of the body cannot disclaim awareness of the probable fatal consequence

of such conduct. The medical evidence of P.W.5 assumes decisive importance in this regard. The post-mortem doctor opined that the injuries were ante-mortem and homicidal and that death occurred due to shock and haemorrhage resulting from those injuries. He further clarified that such injuries could be caused by a bamboo stick. Thus, while the weapon employed may not be inherently lethal in the conventional sense, its use in the manner established by evidence rendered the act sufficiently dangerous to attract the element of knowledge contemplated under Section 304 Part-II IPC.

27. The factual complexion of the case also excludes applicability of Section 302 IPC. There is no evidence of repeated assault exhibiting brutality of such degree from which intention to kill may irresistibly be inferred. There is equally no evidence that the accused persisted with the attack after the victim became helpless or incapacitated. The prosecution evidence instead depicts a singular episode erupting during a domestic altercation. The weapon used was not procured from outside pursuant to preparation; rather, it was an ordinary bamboo stick available within the household surroundings. These surrounding circumstances materially dilute the element of murderous intent.

28. At the same time, the defence cannot derive advantage from the suddenness of the occurrence so as to seek complete exoneration. The deceased succumbed to injuries admittedly inflicted by the accused. The assault was directed with sufficient force to produce haemorrhage and fatal bodily consequences. Knowledge of likelihood of death therefore stands attributable to the accused within the meaning of Section 299 IPC,

thereby bringing the offence squarely within the ambit of Section 304 Part-II IPC.

29. The legal position thus emerging from the evidence may be summarised in the following manner:

- i. the act causing death is proved;
- ii. the act is attributable to the accused;
- iii. the occurrence arose out of a sudden domestic quarrel devoid of premeditated intention;
- iv. the accused nevertheless possessed knowledge that assault with a bamboo stick upon the body of the deceased was likely to cause death; and
- v. the medical evidence furnishes complete corroboration to the ocular version regarding homicidal injuries.

30. The conviction under Section 304 Part-II IPC, therefore, rests upon a legally sustainable foundation where the mental element established is one of knowledge and not intention. The learned Trial Court correctly appreciated this distinction and appropriately refrained from elevating the offence into one punishable under Section 302 of the Indian Penal Code while simultaneously recognising that the gravity of the act travelled far beyond the boundaries of a mere accidental occurrence or trivial assault.

31. The learned Trial Court, upon proper appreciation of the evidence, returned a finding of guilt under Section 304 Part-II of the Indian Penal Code. Upon scrutiny of the depositions and documentary evidence, no perversity, misapplication of law or miscarriage of justice becomes visible warranting appellate interference.

32. The conviction of the appellant under Section 304 Part-II of the Indian Penal Code and the sentence imposed thereunder are affirmed. However, considering the gravity and the instinctiveness of the offence committed, the sentence is modified to the extent of the incarceration undergone by the appellant.
33. Accordingly, the instant criminal appeal being CRA 185 of 2009 is dismissed.
34. There is no order as to cost.
35. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
36. 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.)