
(2008) 12 CAL CK 0010

Calcutta High Court

Case No: Govt. Appeal No. 38 of 1987

State of West Bengal

APPELLANT

Vs

Nikhil Chandra Mondal

RESPONDENT

Date of Decision: Dec. 15, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Citation: (2009) CriLJ 2744

Hon'ble Judges: Kishore Kumar Prasad, J; Girish Chandra Gupta, J

Bench: Division Bench

Advocate: Minoti Gomes, for the Appellant; Ashis Chakraborty and Mirza Kamruddin, for the Respondent

Final Decision: Allowed

Judgement

Girish Chandra Gupta, J.

This Government Appeal is directed against a judgment and order dated 31st March, 1987, passed by the learned Additional Sessions Judge, 4th Court, Burdwan, acquitting the respondent, Nikhil Chandra Mondal, of the charge u/s 302 of the Indian Penal Code.

2. Ms. Minoti Gomes, learned Counsel, appearing in support of the appeal, for the State, submitted that the judgment is perverse and the reasoning adopted by the learned trial Judge in recording the order of acquittal is based on incorrect appreciation of the evidence on the record and is clearly wrong. She took us through the evidence both oral and documentary and submitted that the judgment should be reversed and the respondent, Nikhil Chandra Mondal, should be adequately punished for the murder of his wife who at the relevant point of time was also pregnant.

3. Mr. Ashis Chakraborty, learned Counsel, appearing for the respondent, disputed the submission of Ms. Gomes. He submitted that the Chowkidar, who at first noticed

the dead body, was not cited as a witness. He relied on a judgment of the Supreme Court reported in [Kora Ghasi Vs. State of Orissa](#), and submitted that mere recovery of the offending weapon was not enough to find the accused guilty. He also submitted that in an appeal against an order of acquittal, the judgment cannot be lightly interfered with. He, therefore, invited this Court to dismiss this appeal.

4. Before we consider the submissions advanced by the, learned Counsel, appearing for the parties, we would like to notice the facts and circumstances of the case in the light of the evidence adduced by the prosecution.

5. From the evidence of the P.W. 11, Pravat Kumar Mishra, who was the Prodhan of Lovpur Anchal, it appears that at the material point of time, Fullora Mela was continuing.

6. From the evidence of the P.W. 10, Manik Pal, it appears that the respondent, Nikhil Chandra Mondal, had gone to Fullora Mela accompanied by his wife and son.

7. From the evidence of the P.W. 18, Dr. Tinkari Das, autopsy surgeon, it appears that the deceased was pregnant and had a twenty weeks old foetus in her womb.

8. From the evidence of the P.W. 9, Ashis Kumar Mondal, (Nikhil's father's sister's son), it appears that Nikhil had reached their house accompanied by a tiny boy. The P.W. 9 informed about the arrival of Nikhil to his father whereupon the father of Nikhil and the villagers called at his house.

9. From the evidence of the P.W. 1, Moni Mohan Mukherjee, Sub-Inspector of Police, the following facts transpired:

On 11-3-83 at about 12.25 hrs. one Chowkidar bearing No. 10/2, Bholanath Das of Gomai gave an oral information that a dead body of an unknown woman was lying on a field adjacent to the railway track at Gomai. Ketugram P.S. U.D. case No. 7/83, dated 11 -3-83 was started by ASIB. Dutta.

10. The P.W. 13, Bhupal Chandra Dutta, has corroborated the aforesaid evidence of the P.W. 1. The P.W. 1 thereafter went to the spot accompanied by constable Sunil Mukherjee, the P.W. 15, saw the deadbody and held inquest which has been corroborated by the P.W. 15, and the P.W. 6, Balaram Ghosh, who is a witness to the inquest and a signatory to the report. After the inquest the deadbody was sent by the P.W. 1 for postmortem to Katwa. The P.W. 15 took the deadbody to Katwa Morgue and identified the same to the autopsy surgeon, the P.W. 18.

11. On 11th March, 1983, the P.W. 10, Manik Pal, and the P.W. 12, "Kanai Chandra Saha, accompanied by Jiten Mondal and Joydeb Mondal went to the house of the P.W. 9, Ashish Kumar Mondal, based on information furnished by the father of the respondent Nikhil that the wife of the latter was missing from the Mela. These people, after reaching the house of the P.W. 9, naturally questioned the respondent (Nikhil) as to the whereabouts of his wife to which Nikhil answered that his wife was

missing and he had " contacted the Prodhan of Lovpur. Nikhil was then taken to the Prodhan of Lovpur who happens to be the P.W. 11. In the house of the Prodhan, the P.W. 11, upon interrogation Nikhil confessed to have killed his wife. The evidence of the P.W. 11 in that regard is as follows:

About 3-4 years back at one night in the last part of Falgoon 4-5 persons came to my house. At that time Fullara Mela was being held within Lovpur-I Gram Panchayat. Along with those 4-5 persons the person standing on the dock named Nikhil Mondal also came to my house. Those 4-5 persons stated that a woman was missing. I told them to inform the police. Nikhil was crying sitting on the verandah of my house. Then I asked Nikhil as to why he was crying. He stated "I myself murdered my wife with a bhojali by the side of the rail line a little away from Ambalgram railway station." I asked them to leave my house and also advised them to hand over Nikhil at the P.S. In presence of those 4-5 persons Nikhil made the confessional statement. After they had left my house I bolted my door. Police from Ketugram P.S. came to my house. I stated to them what I knew.

12. From his cross-examination it appears that the confessional statement was made by the accused Nikhil at about 9.30/10 p.m. It also appears from his cross-examination that the P.W. 10, Manik Pal, was a member of the Panchayat.

13. As regards the confession made in presence of the witnesses, the P.W. 10, Manik Pal, deposed as follows:

In presence of Prodhan and all of us Nikhil stated I myself murdered my wife with a bhojali a little away from Ambalgram railway station by the side of the railway. We brought Nikhil to our village. We informed Nanoor P.S. Nikhil had murdered his wife.

14. The P.W. 12, Kanai Chandra Saha, also was present while the confessional statement was made by the respondent. His. evidence on record is as follows:

Thereafter we along with Nikhil went to the house of Prodhan at Chitpur. Prodhan was called and Prodhan interrogated Nikhil. Nikhil stated - "I came from the fair by train and got down at Ambalgram Station. There I went to a little distance by side of the railway line and myself murdered my wife with a bhojali. There was none with me.

15. From the evidence of the P.W. 10 and P.W. 12 it appears that Nanoor police station was informed about the incident and the accused was made over to the custody of the aforesaid P.S.

16. From the evidence of the P.W. 19, K.N. Pal, Sub-Inspector, who was also the investigating officer, it appears that "Nikhil Mondal had been arrested by the police of Nanur P.S. I went to Nanur P.S. I took Nikhil Mondal into custody."

17. From the evidence of the P.W. 19 it further appears that on 12th March, 1983, the father of the deceased accompanied by some villagers met him. They were sent

by the P.W. 19 to Katwa Hospital Morgue. They came back and confirmed that the dead body was that of Chhabirani Mondal, the wife of the respondent. The evidence of the father of the deceased, Chhabirani Mondal, in that regard is as follows:

As directed by police along with Nimai and Sibsankar I went to Katwa morgue with a Constable and saw the dead body of my daughter Chobi Rani.

18. The post-mortem was held by the P.W. 18, Dr. Tinkari Das, on 12th March, 1983, at 10 a.m. The injuries found by the autopsy surgeon and the name of the identifier would appear from his evidence, relevant portion whereof is as follows:

On 12-3-83 at 10 a.m. I held postmortem examination on the deadbody of an unknown female Hindu, aged about 25 years. She was brought by C/2245 Sunil Kr. Mukherjee in connection with Ketugram P.S. U.D. Case No. 7/83, dated 11-3-83 and found the following injuries:

- 1) One incised wound 3" x 1" over right cheek dividing the fessa and muscle underline.
- 2) One incised wound 6" x 4" over the left cheek into bone deep dividing muscles, bones, mouth cavity and upper part of oropharings incisors, canine, premolar and moral teeth of the left upper jaw is lost.
- 3) One incised wound 3"x 1 1/2" over the root of neck left side dividing skin, fessa, muscles and vessels.
- 4) One incised would 2" x 1" bone deep over dorsum of left wrist cutting the fessa, muscles and bonds underline.
- 5) One incised wound 2" x 1" x bone deep 1" above and parallel to injury No. 4.
- 6) One incised wound 3" x 1" bone deep 1" above and parallel to injury No. 5 cutting fessa, muscles, bones and muscles.
- 7) One abrasion 1" x 1/2 over anterior aspect of left knee joint.

Death in my opinion is due to shock and haemorrhage as a result of injuries described above which are ante mortem and homicidal in nature.

The injuries were sufficient to cause death, injury Nos. 2 and 3 were individually sufficient to cause death. The injuries were caused by sharp cutting instrument. All the injuries except injury No. 7 may be caused by a weapon like this bhojali (the witness is shown Mat. Ext. III).

19. After the accused was taken into custody, by the P.W. 19, S.I., K. N. Pal, attached to Ketugram P.S., he was interrogated. He made a statement to the police which led to the discovery of the offending weapon. The evidence of the P.W. 19 in that regard is as follows:

He made a statement before me at the thana. Thereafter he led me to a chuya within Gomai mouza, dated 14-3-83 at 1.1.45 hours. He brought out a bhojali from the chuya where some water and mud were there in presence of witnesses. I seized that bhojali in presence of witnesses under a S/L which was prepared by me. This is the S/L marked Ext. 5/2.

20. The wearing apparels of the accused respondent contained blood stains which were also seized by the P.W. 19 vide seizure list marked Exhibit 7. Those wearing apparels and the offending weapon were sent to the Forensic Laboratory. The report received goes to show that each one of the aforesaid items contained human blood. The offending weapon was seized in the presence of the P.W. 4, Mahima Ch. Pathak, and the P.W. 5, Samiran Konar. The P.W. 4, Mahima Ch. Pathak, deposed as follows:

About 3 years" back in the last part of Falgoon possibly on the 26th Falgoon I saw a deadbody of a woman lying by the side of the railway line at Gomai. Police came. About 3 days thereafter police came with a person where the deadbody was lying. I was also present there. I was (saw?) the person who was brought by the police to pick up an iron bhojali from a place where there was some water and mud. I cannot definitely say whether the weapon shown to me the very weapon picked up by the person brought by the police it was like this weapon. (The witness is shown a bhojali without handle.) Police took my signature in a document prepared by the police. Signature is marked Ext. 5. The person who was brought by the police and who picked up that weapon is present in Court (idfd).

21. The P.W. 5, Sairan Konar, deposed as follows:

On 14-3-83 at about 11/11-30 a.m. police came with a person under arrest by the side of the railway line. In my presence and in presence of police the said person accompanying the police brought out a bhojali from a "chuya". By "Chuya" I mean the dug out portion by the side of the railway line. I shall be able to identify the person who brought out that bhojali (idfd). I shall be able to identify the bhojali. This is the bhojali which the accd. brought out marked Mat. Ext. III. I do not remember if Daroga prepared any document after the recovery of the bhojali. This is my signature marked Ext. 5/1.1 put my signature after the Daroga prepared the document.

22. The P.W. 18, Tinkari Das, autopsy surgeon, during his evidence was shown the weapon recovered at the instance of the accused and he deposed that the injury found on the body of the deceased could have been inflicted by that weapon. He denied the suggestion that the injuries found by him could not have been inflicted by that weapon.

23. It is in this background that we have to consider the submission of Mr. Chakraborty, learned Counsel, for the respondent, that the Chowkidar, who had at the first instance noticed the deadbody of the deceased, has not been examined. It

is true that the Chowkidar had not been examined but we are unable to see any significance nor could Mr. Chakraborty, learned Counsel, for the respondent, indicate any reason as to why was his evidence material for a just decision of the case. We, therefore, reject this submission of Mr. Chakraborty.

24. As regards the applicability of the judgment in the case of [Kora Ghasi Vs. State of Orissa](#), relied upon by Mr. Chakraborty, we shall express our views while examining the reasons advanced by the learned trial Judge in recording a finding of acquittal. The reasons advanced by the learned trial Judge are as follows:

The Court is unable to come to an unerring conclusion that the two dead bodies i.e. one seen by P.W. 14 at the morgue and the dead body seen by the P.W. 1 by the side of the railway track are identical. In my view P.W. 1 has committed grave error in not taking the photograph of dead body. He should have sent a man to bring a photographer. In absence of photograph, P.W. 19 could send P.W. 15 along with P.W. 14 to the morgue for identification of the deadbody. It may be mentioned here that P.W. 15 was present at the time of inquest by P.W. 1. There has been serious lapse on the part of the investigation agency for establishment of the identity of the deadbody. Therefore, it cannot be stated beyond reasonable shadow of doubt that P.W. 18 held postmortem examination over the deadbody of Chabirani the wife of the accd. and daughter of P.W. 14 and inquest held by P.W. 1 was on the dead body of Chabirani.

25. This finding of the learned trial Judge displays lack of perception, to say the least. The P.W. 15, constable, Sunil Mukherjee, accompanied the P.W. 1, Moni Mohan Mukherjee, to the place where the dead body was lying. In the presence of the P.W. 15 the inquest was held, the dead body was thereafter entrusted to him for the purpose of shifting to Katwa Morgue and he identified the dead body to the autopsy surgeon. Therefore, there is no scope to think that the postmortem may not have been held on the selfsame body which was found by the P.W. 1 near the railway track nor is there any scope to think that the dead body found in the railway track may not have been the, dead body of the wife, of the accused respondent. The dead body has been identified at the Katwa morgue by the father of the deceased. Therefore the learned trial Judge was clearly wrong in entertaining the doubt.

36. The second reason advanced by the learned trial Judge is as follows:

There is no evidence when actually the, deceased Chabirani was last seen alive. Postmortem examination was held on 12-3-83 at 10 a.m. From the evidence of P.W. 18 it does not appear actually at what time the death took place.

27. From the evidence of the P.W. 10 we find that the accused accompanied by his wife and son had gone to the Fullora Mela, in the last part of Falgoon. On 26th Falgoon equivalent to 11th March, 1983, at about 12-25 p.m. the dead body was noticed by the Chowkidar and the P.W. 1 was informed. There is no suggestion that in the last part of the month of Falgoon, Nikhil did not go to the Mela. There is no

suggestion that Nikhil was not accompanied by his wife and the son. We also gather from the evidence of P.W. 10, Manik Pal, that he came to know from the father of the accused that his daughter-in-law; the wife of the accused, was missing from the Mela. He (P.W. 10) thereafter, accompanied by Kanai Laha of Belgram, Kanai Lal Saha (P.W. 12), Jiten Mondal and Joydeb Mondal went to the house of the P.W. 9. We already have noticed from the evidence of the P.W. 9, who happens to be Nikhil's father's sister's son, that Nikhil had reached their house accompanied by a tiny boy and the former had sent information with regard thereto to Nikhil's father. P.W. 10 and P.W. 12 went to the house of the P.W. 9 on 11th March, 1983, and met the accused Nikhil Mondal who told the P.W. 10 that his wife was missing and he had contacted the Pradhan of Lovpur whereupon the P.W. 10 and P.W. 12 took Nikhil to the house of the Pradhan of Lovpur. The charge is that the murder took place in the night of 10th and 11th March, 1983. The dead body was noticed in the morning of 11th March, 1983. There is no scope for any doubt that the murder did, in fact, take place in the night of 10th and 11th March, 1983. The vacillation displayed by the learned trial Judge was not warranted by the evidence on the record. He was clearly wrong in doing that.

28. The third reason advanced by the learned trial Judge is as follows:

P.W. 11, however, did not state before the police in the same language as stated in the Court regarding the confessional statement made by the accused.

29. We do not think that this reason advanced by the learned trial Judge is sound in law. Reference in this regard maybe made to a high authority in the case of Nur Muhammad v. The Crown reported in AIR 1924 Lah 498 : 1924 Cri LJ 914 wherein the following view was expressed:

The confession was not reduced to writing, and it is urged that, as the witness Nur Muhammad has not reproduced the actual words uttered by the prisoner, his evidence can be treated as a mere statement of the conclusion at which he himself arrived from the answers which the accused gave to the questions put to him. Now, there can be little doubt that if the statement made by the witness presented merely the impression conveyed to his mind by what was said by the prisoner, it would be insufficient to prove the alleged confession. But I am not prepared to accede to the contention that in no case can an extra-judicial confession, not reduced to writing, be held to be proved unless the Court has before it the exact words used by the petitioner. In support of this contention our attention has been invited to the observations of Phear, J., in *Queen v. Soobjan* (1) which undoubtedly emphasized the necessity of proving the precise words alleged to have been spoken by an accused, but I do not think that the learned Judge intended to lay down any hard and fast rule. A perusal of the judgment shows that the learned Judge did not reject the evidence relating to confession on the ground that it did not reproduce the actual words used by the prisoner, but examined it and found it to be unreliable and inclusive. The duty of the Court, before which an extra-judicial confession, not

incorporated in a document, is relied upon, is to scrutinise the whole of the material before it, and then to decide whether there is sufficient evidence to prove the confession. As I have already said, a mere general statement to the effect that the prisoner had confessed is too uncertain a foundation to sustain a finding against him, and I consider that the trial Court ought to ascertain, as far as possible, the very words spoken by an accused who is said to have confessed. There may, however, be cases in which the evidence gives the substance, though not the actual words of the statement made by the accused, and if that evidence is reliable, there is no rule of law which precludes the Court from holding that the confession has been proved.

30. This judgment was followed by a Division Bench of Patna High Court in the case of [Krishna Nandan Prasad Verma Vs. The State](#), .

31. The fourth reason-advanced by the learned trial Judge for recording a finding of "not guilty" is as follows:

From the evidence of P.Ws. 11 and 12 we get that the accused was taken to the house of P.W. 11 in the night at about 9-30/10 p.m. If that be the evidence of P.Ws. 11 and 12 then the evidence of P.W. 10 that the accused made the confessional statement on 10-3-83 cannot be accepted as true. At the same time the accused was taken to the house of P.W. 11 the incident of causing the death of Chabirani might not have taken place.

32. This finding of the learned trial Judge is equally wrong. The confessional statement was made in the presence of three witnesses, P.Ws. 10, 11 and 12. When was the statement made is a question which has to be answered not on the basis of a mistaken answer given by one of the witnesses several years after the incident during the trial. It is true that the P.W. 10 deposed that the confessional statement was made on 10th March, 1983 but sight cannot be lost of the fact that he according to him was accompanied by Kanai Saha, Kanailal Saha, Jiten Mondal and Joydev Mondal. The confessional statement was made in the presence of everyone. When did these persons go to the house of P.W. 9 has not been specifically deposed to by him. By approximation he deposed that they had gone in the last part of Falgoon. Others have deposed that it was 26th Falgoon. Therefore the confessional statement could not have been made before 26th Falgoon. The witness in cross-examination deposed that it was 10th March, 1983 which evidently is wrong because 26th Falgoon 1389 B.S. was 11th March, 1983. The P.W. 12 Kanailal Saha deposed as follows:

On 26th Falgoon 1389 B.S. I came to know that wife of Nikhil was missing. So, I Manik Pal, Kanai Saha, Jiten Mondal and Joydeb Mondal went to village Ladda in the house of Pishima of Nikhil. Nikhil was called. He stated that he went to Mela and from the Mela his wife was missing. He also stated that he went to Prodhan at Chitpur in order to make a diary at the P.S. Thereafter we along with Nikhil went to

the house of Prodhan at Chitur. Prodhan was called and Prodhan interrogated Nikhil. Nikhil stated - I came from the fair by train and got down at Ambalgram Station. There I went to a little distance by side of the railway line and myself murdered my wife with a bhojali. There was none with me.

33. There is no dispute that 26th Falgoon 1389 B.S. was 11th March, 1983. Before us no one has disputed as to the correction of this fact. It is not the evidence of Manik Pal that any confessional statement was made to him separately. Therefore, when Manik Pal deposed that he had gone to the village, Ladda on 10th March, 1983, and on that date the accused made the confession, he must have made a mistake. We could have understood that the P.W. 12 was cross-examined as to the correctness of the date on which the confessional statement was made. There is no suggestion that a confessional statement was made on 10th March, 1983 or that no confessional statement was made on 26th Falgoon 1389 B.S. On the contrary, during his cross-examination the following answer was elicited by the learned cross-examining counsel:

I do not remember if I heard about the missing of Nikhil's wife on 10-3-83.

34. This provides adequate assurance to the Court that the confessional statement was, in fact, made on 11th March, 1983, which was 26th Falgoon. The P.W. 12 does not even remember whether he had heard about the fact that the wife of the accused was missing on 10th March, 1983. In the night of 10th and 11th March, 1983, the victim was killed. Thereafter the accused accompanied by his little son went to the house of the P.W. 9. P.W. 9 sent information to the father of the accused. He thereafter must have informed the people of his village that his daughter-in-law was missing and his son was in the house of the P.W. 9 and then on 11th March, 1983, they went to the house of the P.W. 9; interrogated the accused and thereafter took him to the house of Prodhan where the confessional statement was made. The learned trial Judge was clearly wrong in taking a contrary view.

35. The fifth reason advanced by the learned trial Judge for recording a finding of acquittal is as follows:

Evidence of P.W. 12 discloses that after coming from the house of P.W. 11 the accused was kept in a club room at Feugram. Nanur thana was informed. From his cross-examination we get that police came and took Nikhil from the clubroom. Thus, we find that P.Ws. 10 and 12 contradicted each other regarding what the witnesses had done after they left the house of P.W. 11. The contradiction is vital because it discredits P.W. 10, P.W. 11, P.W. 12. The entire story of confessional statement as stated by P.Ws. 10, 11 and 12 becomes doubtful.

36. We find from the evidence of the P.W. 11 Probhat Kumar Mishra, who was the Prodhan of Lovpur Anchal that he told Manik Pal and others to hand over the accused to the police. He thereafter bolted his house and did not participate in the matter any longer. We have already discussed the evidence to show that the

accused was arrested by Nanur Police Station and thereafter the P.W. 19 arrested him. The finding of the learned trial Judge that what actually happened after returning from the house of the P.W. 11 is not clear and, therefore, the evidence of P.Ws. 10, 11 and 12 as regards the confessional statement becomes doubtful is unreasonable, to say the least. If the evidence as to what happened after the P.Ws. 10 and 12 accompanied by the accused returned from the house of the P.W. 11 is uncertain, how could the evidence as regards the episode before returning from the house of the P.W. 11 could become doubtful has not been appreciated by us. This is an unreasonable approach displayed by the learned Trial Judge. After the confessional statement was made whether the accused was detained in a club or was directly made over to the police is not a matter of much significance. When we have evidence before us that he was made over to the Nanur Police Station and from Nanur Police Station the P.W. 19, an officer attached to Ketugram Police Station, arrested him. He thereafter was interrogated. He led the police to the discovery of the offending weapon. His wearing apparels and other belongings were seized by the police which contained blood stains, which, according to the F.S.L. report, contained human blood. We are really at a loss to follow why did the learned Trial Judge indulge in a fanciful thinking, which, according to us, is clearly wrong and cannot be sustained.

37. The sixth reason advanced by the learned trial Judge is as follows:

The place from which the recovery took place is accessible to Mere recovery of the bhojali at the instance of the accused does not prove that the accused was the perpetrator of the crime. In a case of similar nature I am seized of their Lordship of the Supreme Court in a case reported in [Kora Ghasi Vs. State of Orissa](#), acquitted the accused. In trial case prosecution relied upon retracted confession of the accused together with recovery of a knife as pointed out by the accused their Lordships held that the place from which the knife was recovered was accessible to all and in such a case of retracted confession corroboration was required.

38. This finding of the learned trial Judge is equally unmeritorious. The judgment in the case of [Kora Ghasi Vs. State of Orissa](#), has no manner of application to the facts and circumstances of this case. It is not that the Apex Court refused to attach any importance to the recovery of the weapon because the place of recovery was accessible to all. There were other reasons and it would only be proper to set out those reasons from the judgment itself which are as follows:

This confession has been held to be voluntary both by the High Court and Sessions Court and nevertheless as the confession was retracted corroboration was necessary. According to the prosecution the confession was clearly corroborated by the fact that the appellant pointed out the weapon. These are the two main pieces of evidence against the appellant. It was also suggested that three witnesses P.Ws. 2, 4 and 5 had last seen the deceased and accused together. An important fact which has not been noticed by the High Court is that whereas in the FIR lodged by

Hantal Podu P.W. 9 there is clear mention of the names of P.Ws. 2, 4 and 5, the name of the appellant is not disclosed in the FIR. On the other hand the names of P.Ws. 2, 4 and 5 are mentioned in the FIR as being suspected of killing the deceased. So far as the recovery is concerned we cannot attach much importance to this fact as it was from an open place accessible to all. At any rate after going through the judgment of the High Court and Court below it cannot be said that the view taken by the Sessions Judge was not reasonably possible in the circumstances of this case. It was not open to the High Court in the circumstances of this case to reverse the order of acquittal even if it was possible to take a different view.

39. In the present case, the extra-judicial confession has been corroborated unlike the case before the Apex Court. In the case before the Apex Court, the appellant was not even named as a suspect in the F.I.R. In that case, the suspects turned out to be the witness of the prosecution and the appellant was found guilty. That was another circumstance which their Lordships took into consideration and lastly what is more important is that their Lordships were convinced that the view taken by the learned Trial Judge was a reasonable view.

40. These circumstances are altogether absent in the present case. What is the value of the offending weapon on the basis of information furnished by the accused in police custody has been settled by the Privy Council in the case of Pulukuri Kottaya and Ors. v. Emperor reported in AIR 1947 PC 67 : 1947 Cri LJ 533. Their Lordships in that judgment held as follows:

In their Lordships' view it is fallacious to treat the "fact discovered" within the Section as equivalent to the object produced; 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.

41. What is important is the knowledge of the accused that the weapon is lying at such and such place. When the weapon is found from the place shown by the accused his guilty knowledge is established unless he offers an explanation as to any other source, of his knowledge. Another important thing is that the weapon in this case was not lying in the open. It was under mud and water unlike the case before their Lordships. On the top of that, the dagger recovered on the basis of the information furnished by the accused was blood stained which, according to the F.S.L., contained human blood. According to the evidence of the autopsy surgeon, P.W. 18, the injuries found on the dead body of the deceased could have been inflicted by the weapon. Therefore, we are of the view that the judgment in the case of Kora Ghasi 1983 Cri LJ 692 (2) (supra) has no manner of application.

42. In the present case, we have the following circumstances against the accused proved by the prosecution:

(a) the accused accompanied by his wife and son had gone to the Fullora Mela;

(b) the wife at that point of time was pregnant;

(c) there was already discontent between the husband and the wife which would appear from the suggestion given to the P.W. 10, Manik Pal, which reads as follows:

I do not know if there was Salish in the village over her going to her father's place. Nikhil used to live separately with his wife from his father.

From the Fullora Mela the accused accompanied by his son went to the house of the P.W. 9, his wife no longer accompanied him. Her dead body was found beside the railway track on 11th March, 1983 around noon.

(d) upon interrogation by the P.Ws. 10 and 12 in the house of the P.W. 9, the accused told them that his wife was missing from the Mela which to his knowledge was utter falsehood. He also stated that he had informed the matter to the Prodhan of Lovpur whereupon he was taken to the house of the Prodhan, the P.W. 11. In the presence of the P.Ws. 11, 10 and 12 he confessed to have killed his wife at the place where her dead body had been already detected in the presence of P.Ws. 4 and 5;

(e) the accused was thereafter handed over to the Nanur police station and ultimately to S.I. of Ketugram police station, P.W. 19.

(f) P. W. 19 seized the wearing apparels of the accused which contained blood stain which, according to the report of the F.S.L., was human blood. The accused made a statement on the basis whereof the offending weapon was recovered which also contained human blood which according to the autopsy surgeon could have been used for the purpose of inflicting the wounds found in the dead body of the deceased.

Therefore, the facts of this case are quite different from those before the Apex Court in the case of Kora Ghasi 1983 Cri LJ 692 (2) (supra). The learned trial Judge clearly erred in relying on that judgment for the purpose of recording the order of acquittal.

(g) Lack of any explanation by the accused as to what happened to his wife so long as she was in his company would raise a presumption against him. Reference in this regard may be made to the judgment in the case of [State of West Bengal Vs. Mir Mohammad Omar and Others etc.](#), wherein their Lordships expressed the following view:

When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to Mahesh at least until he was in their custody.

43. We are clearly of the view for the reasons aforesaid that the prosecution has proved the charge u/s 302 of the Indian Penal Code against the accused respondent Nikhil Chandra Mondal beyond any reasonable doubt and he is, therefore, convicted.

44. We have asked Mr. Chakraborty, learned Counsel, for the respondent, as regards the quantum of punishment. He submitted that the respondent is now fifty years old and a lenient view should be taken.

45. Considering that the conviction is u/s 302 of the Indian Penal Code and the minimum punishment is imprisonment for life, we sentence the accused respondent, Nikhil Chandra Mondal, to suffer imprisonment for life as also to pay fine of Rs. 2,000/-, in default to undergo further imprisonment for a period of six months.

46. The appeal is, thus, allowed.

47. The records reveal that the accused-respondent was rearrested and released on bail. His bail bond is cancelled. He is directed to surrender to his bail bond at once. In this regard he is also given notice through his learned Counsel. The 4th Additional Sessions Judge at Burdwan is directed to take steps to apprehend the accused respondent, Nikhil Chandra Mondal, in connection with Sessions Trial No. 33A/86 arising out of Sessions Case No. 411 of 1985 so that he may serve out the sentence inflicted by this order.

48. Let a copy of this judgment and the lower Court records be sent down forthwith to the concerned learned Trial Court for information and necessary action

49. Let urgent xerox certified copy of this judgment, if applied for, be delivered to the learned Counsel, for the parties, upon compliance of all usual formalities.

Kishore Kumar Prasad, J.

50. I agree.