

(1986) 03 CAL CK 0004

Calcutta High Court

Case No: Criminal Appeal No. 370 of 1979

Tarapada Bauri

APPELLANT

Vs

State

RESPONDENT

Date of Decision: March 18, 1986**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164, 313
- Evidence Act, 1872 - Section 103, 114(g), 14, 32, 6
- Penal Code, 1860 (IPC) - Section 201, 302

Hon'ble Judges: Jitendra Nath Chaudhuri, J; Gobinda Chandra Chatterjee, J**Bench:** Division Bench**Advocate:** Manas Ranjan Chakrabarty, for the Appellant; Anit Krishhna Mukherjee and S.K. Dasgupta, for the Respondent**Final Decision:** Dismissed

Judgement

1. Criminal Appeal No. 370 of 1979 arise out of sessions Trial No. 20 of 1979 (Sessions Case No. 275/1977) held by the Learned Additional Sessions Judge, 3rd Court, Burdwan. In the said trial, the appellant was found guilty of the offence u/s 302 of I.P.C. and sentenced to imprisonment for life, and also to sentence of a fine of Rs. 200/-, in default, to original imprisonment for six months. He was also convicted u/s 201 I.P.C. and sentenced to rigorous imprisonment for seven years and also to a fine of Rs. 200/-, in default, rigorous imprisonment for six months. Both the sentences were ordered to run concurrently.

2. The accused, Tarapada Bauri, was charged u/s 302 of I.P.C. For murdering his wife Sefali Bauri sometime in between 6th January and 8th January 1977 (22nd Pous to 24th Opus, 1383 B.S.) at Ajhapur, District Burdwan. He was also charged u/s 201 I.P.C. for causing evidence of the said offence to disappear, by concealing the dead body of his wife with shrubs and also concealing a "Katari" within the mud and water of an irrigation channel, at Ajhapur, during the period mentioned

hereinbefore, with the intention of screening himself from legal punishment, knowing that the murder of his wife had been committed.

3. The prosecution case, in brief, is as follows: -

From the morning of 7.1.77, Sefali Bauri, wife of the accused was found missing from the accuser's house at Ajhapur, P.S. Jamalpur. In the evening of 8.1.77. some of the local cowherd boys detected some marks of blood, broken churis and some other articles besides a raised portion of the ground covered with leaves of parbles and wild creepers at a field known as "Bhinchikurer Math", within Ajhapur, which they reported to the villagers. On 9.1.77 the informant in this case, Narayan bauri (P.W.I) along with the Chowkidar and other villagers went to the said place, which was then dug up and the body of Sefali, his sister-in-law was recognized by P.W.I. The accused is the younger full brother of P.W.I. along with the Chowkidar went to the Jamalpur police Station and lodged the First Information Report in this case (Ext.9/1). Thereafter, on the basis of the said F.I.R., after drawing up of the formal F.I.R. (Ext.9) the present case being Jamalpur P.S. Case No. 15 dated 9.1.77 was started. P.W. 18-S.I. N. C. Das, the investigating officer in this case thereafter took up investigation and visited " Bhinchikurer Math" along with P.W.I., held an inquest over the dead body, seized some alarmist near the body, as well as some blood-strained earth with control and sent the dead body for post-mortem examination. He prepared a sketch map of the locale with index (Ext. 10) and requisitioned the service of a Photographer. He examined a number of witnesses. The accused was arrested on 12.1.77 by P.W. 15, by S.I. Satya Ghosh Hazra, the Officer-in-charge Jamalpur P.S., at about 2.20 A.M. at Kasirampur. On the statement of the accused, and led by the accused a Katari was produced by the accused being recovered by from the bed of Gopal Dighi tank, Ajhapur in presence of witness. A confessional statement of the accused u/s 164 Cr.P.C. (Ext.6) Was recorded by P.W.17, the learned S.D.J.M., Burdwan on 13.1.77. P.W. 18 in course of investigation sized some wearing apparels of the accused, other alamedas and also obtained his nail cutting. The seized articles were sent to Forensic Science Laboratory for chemical examination. On completion of investigation a charge sheet was submitted on 25.8.77 against the present accused.

4. The prosecution examined 18 witnesses. The defense did not examine any witness. The defense case, as can be gathered from the cross examination and the answers in the examination of the accused u/s 313 Cr.P.C. was that he had been falsely implicated. According to the defense, the accused had been forced to make a confessional statement under threat by the police and that he did not bring out any Katari from Gopal Dighi Tank.

5. P.W.7 - Paresh Bauri, a resident of Ajhapur, deposed that along with some cowherd boys, he went to graze cows in a field known as "Binchikureer Math". He notices the cows to smell something in the field, and they appeared to be disturbed. When he went to ascertain why they were disturbed, he noticed some blood some

heirs and one Shankha lying there. Thereafter, he returned and reported what he had found to the villagers. In cross-examination, he stated that at about 3 P.M. he found the articles abovementioned and at about 4 P.M. he reported to the villagers about what he had found. The villagers in a body thereafter, went to see for themselves. His village is about two miles from the field where the said articles were found.

6. P.W.6 - Gopal Bauri, a day laborer also resides in the bank land of Thakur Pukur at Ajahapur, in the same village as P.W.7 P.W.6's house is about 10/12 cubit from the house of the accused. The accused used to work at Calcutta, and was married to Sefali. Sefali used to occasionally work as a day laborer and used to reside in the house of the accused. He got an engagement of Sefali to work in the house of Kalikpada Laha at Adampur for a few days. He himself worked in the same house. Since Thursday in the month of Posh about the two years ago (the witness deposed on the 30th May, 1979) Sefali was missing from her house. He went to her father's place on Saturday next, but did not find her. Her dead body was found at "Banchikurer Math". P.W.7 reported that her body was lying in that field. Thereafter, the Darogababu brought he accused to the village. P.W.6, along with the accused and others accompanied Darogababu to Gopal Dighi and Katari as he could see from a distance. P.W.6 was behind the accused and the Daroga and he did not hear the accused to say anything to the Daroga. Darogababu disclosed that the accused brought but this Katari. On being shown Ext. 1 the witness deposed that a weapon of similar nature was produced on that occasion. A found some red marks on the Katari on that occasion. A seizure list was prepared by the police on that occasion after the seizure of the said Katari and the witness put his left thumb impression on such list. The accused used to address the witness as "DA - DA" by village courtesy.

7. In cross examination, he stated that he and P.W.1 (Narayan Bauri), were made to stand at a distance and after sometime Daroababu brought one Katari and stated about the recovery of such weapon. The Katari was full of quagmire. The witness told about this occurrence to some of the villagers.

8. P.W.5 - Sm. Gouri Bauri is a resident of Ajhapur, beside Thakur Pukur. The accused is her nephew (husband's sister's son). The accused who was married to Sefali used to work at Calcutta. About two years ago on a Thursday in the month of Pous (the witness deposed on 30th May, 1979) she went to collect some rice in the house of the accused. Sefali was preparing some rice in the house of the accused. Sefali was preparing food. When the witness went to ask for rice, at that time sons one crossed her by the door of that house, whereupon he asked Sefali as to who that person was, and was told by her "it is your nephew". She thereafter, took the rice and went away. On the next day, at about 12 noon on her return from work she did not find Sefali in the house, Since then, Sefali was missing.

9. In cross-examination, he stated that she had no talk with any body over the incident. The accused did not have good relation with his brothers and they were

not on speaking terms with each other. She further deposed "I came back after taking rice Bouma and I had no talks with her thereafter. (Then says) I only took rice from Sefali and had no talks with her." Sefali used to reside in her house alone, while the accused used to work at Calcutta. Her house being a bit away from the house of Sefali, She could not say whether anybody else visited Sefali.

10. P.W. 1 - Narayan Bauri, the informant in this case, is the elder brother of the accused. He is a resident of Ajhapur. The accused used to live in a house, which the accused had built beside his house. The accused lived there with his wife Sefali. The accused was vendor of flowers at Calcutta and seldom used to come to his house. P.W.6 of the locality was requested by the accused to look after Sefali during his absence. Sefali used to work in the house of P.W.3 of Adampur. In the month of Pous, on a Thursday about two years ago (the witness deposed on the 28th May, 1979) Sefali returned back home and arranged for cooking and took her meal. Before he went to bed he saw Sefali closing the door of her house from inside. On returning from work on Friday he did not find Sefali in her house, the door of which, was lying ajar. He did not find her on search. P.W.6 went to search for her in her father's place at Kasirampur, but did not find her there. On Saturday evening the cowherd boys reported having seen some bloodstained articles near the land where the witness drew parable. The next morning, he along with Chowkidar Mahananda went to that place in "Benchikurer Math" and noticed blood marks and some raised up ground covered with leaves of purple creepers. On the place being dug up he recognized the dead body of his sister-in-law Sefali. Thereafter, he along with the Chowkidar went to the police station and lodged the F.I.R. Thereafter, with the Police he went to the place where Sefali's body was found. On his stating that thereafter he did not go anywhere else along with the accused and the police, the witness was declared hostile by the prosecution and was permitted to be cross examined by the prosecution.

11. In cross-examination by the prosecution he denied having stated before the I.O. that when P.W.5 went to borrow rice from Sefali, on being asked by P.W.5, Sefali disclosed that P.W.5's nephew covering himself with a white chadder had just crossed her when she entered the room. P.W.18, the I.O. of the case, provided the said contradiction. He admitted that that he along with Darogababu, P.W.3, the accused and one Shyam Mondal went to the north eastern corner of Gopal Dighi at Ajhapur about 2/3 days after the discovery of Sefali's body. The accused brought out a Katari from the northeast corner of the bed of the Dighi. The Katari when produced was stained with mud and blood marks. He admitted that the Katari, Ext. I appeared to be like the one produced by the accused on that occasion. The police after sizing the Katari prepared a seizure list and he put his left thumb impression on the said list. He denied that as his own brother was involved he was not disclosing the facts clearly.

12. In Cross-examination by the defense he stated that he was an illiterate person. The accused was a vendor of flowers at Calcutta and mostly resided there. P.W.6 who was the Bhasur of Sefali used to visit her house as her guardian. Sefali who was quite good looking used to reside alone in the house. The witness was not on talking terms with her. While the Darogababu took the accused, himself and other to the bank of the tank he kept at a distance from the accused with whom the Daroga was engaged in talking. Darogababu brought out a Katari after some time. He did not see the Katari before it was brought by the Daroga from the bed of Gopal Dighi.

13. P.W. 3, Kalipada Laha is a resident of Adampur. P.W.6 was his labourers. P.W.6 engaged the wife of the accused of cultivation work in his house on daily wages or a day or two. She worked for the last time on 22nd Opus. On 25th Opus he was called by the Darogababu and along with him, P.W.I, P.W.6, the accused and one Shyamapada Mondal all went to the bank of Gopal Dighi. "Darogababu asked Tarapada to produce the weapon with which he killed his wife. Tarapada Brought out the Katari from the bed of Gopal Dighi in our village. Daogababu seized such Katari by preparing a seizure list in our presence." On being shown Ext. I (Katari) the witness stated that some weapon of the similar nature was produced, but he could not say in his particular weapon was produced since he saw it from a distance. He identified the signature in the said seizure list (marked Ext.1/2).

14. In cross examination, he stated that P.W.I, P.W.6 and Shyampada were made to stand a bit away while the Darogababu took the accused Tarapada to the site Wherefrom the Katari was recovered. After sometime the Darogababu brought out one Katari and told them that this weapon was recovered.

15. P. W. 2, Ramani Ranjan Mitra, a resident of Ajhapur, saw the dead body of Sefali after it was already dug out at "Banchikurer Math." P.W.I identified the dead body to be hat of the wife of his brother Tarapada. He found multiple injuries on her person and recognized the dead body to be that of Sefali, wife of he accused. He notices some pieces of broken Choories and blood, and dried up leaves of parable leaves lying beside the dead body. The police seized the articles lying there, and he signed the seizure list. Cross-examination was declined.

16. P. W. 4 - a police officer, attached to the Photographic Cell, Burdwan D.I.B., on requisition took photographs of the dead body of Sefali. P.W.8 - Sadhan Bauri, is a resident of Ajhapur and resides in he bank land of Thakurpukur. He deposed that Sefali, the wife of the accused could not be traced from Friday in the month of Pous about two and a half years ago (the witness deposed on the 30th may, 1979). P.W.6 went in search of her at her father"s place, but she was not traced there. On Saturday cowherds found some broken Choories, some hairs and some blood lying at Benchikurer Math and reported the same to the villagers. On the next morning, P.W.1, the Chowkidar and the witness went to the spot in question and found a dead body after removing some leaves of parable trees a raised site nearby. He could identify he body to be that of Sefali. P.W.1 and he Chowkidar went to inform the

police asking them to keep watch on the body. Thereafter, Daogababu came, held an inquest over the dead body and seized the articles lying there. In cross-examination, he stated that the police arrested P.W.1 on the date when the body was recovered. The witness's house intervened by a pond from the house of the accused. P.W.6's house to visit the accused's house. He denied that the villagers suspected Sefali's relation with P.W.6.

17. P. W. 10 - Nirmal Sarkar, is an agent of India Steam Laundry having his shop at 67/5/1, Strand Bank Road, Calcutta. He knew the accused for a long time as working in a flower market at Jagannath Ghat Road. The accused used to have his clothes washed in his laundry for a long time. On 7.1.77 the accused gave one Terry Cotton pant and Shirt for washing, as would appear from the carbon copy of the cash memo, the original of which was made over the accused. While giving the marks of the laundry upon the clothier so received, he found blood marks on the Terry Cotton shirt of the accused. The police seized those clothes under a seizure list, which he signed. The witness identified the shirt in question in court. He made a statement before a Magistrate at Burdwan u/s 164 Cr.P.C. and was also examined by the I.O.

18. In cross-examination, he stated that he recorded the name of the customer as Tarapada only. Tarapada also gave one lady's chadder for washing, but he could not remember if there were any marks of blood on that chadder. Both the shirt and pant given by the accused for washing were washed before the police officer seized the same. He denied that he did not see marks of blood, and that the shirt was not given for washing by the accused. He denied that he had deposed as a witness tutored by the police. The accused was giving his clothes for washing at his laundry for 2 1/2 to 3 years before this occurrence. After 7.1.77 he did not give clothes for washing in his shop.

19. P. W. 16, Bhim Ch. Mondal is a resident of Basuli Danga, P.S. Diamond Harbor. About 2 1/2 years prior to June 1979 (the witness deposed on 12th June, 1979) he used to work in a shop of Sunil Mukherjee under the old Howrah Bridge. The accused Tarapada also worked in the same shop and both of them used to put up in the shop after working hours. At that time the accused took Rs. 2/- from him and left the shop at about 2 1/2.30 P.M. Stating that he would go to the cinema. He did not return to the shop that night, but came back at 7/7.30 A.M. next morning and asked the witness to bring a soap and after he brought the accused started washing his clothes. About 4/5 days later a police officer came to the shop and examined him.

20. In cross-examination, he stated that he had no other place to reside in Calcutta besides the said shop room, at that time. He denied that he did not sleep in the shop room, at that time. He denied that he did not sleep in the shop room on the relevant night. A contradiction was brought on record by the defence that he stated to the I.O. That he did not sleep in that shop that night since he was alone. He denied that he had deposed falsely about the accused's taking Rs. 2/- from him. The witness had given up the job about one year ago. He denied the suggestion that he did not sleep

in the shop room on the relevant night but that the accused Tarapada slept there.

21. P. W. 11 was the driver of a private jeep at the time when he deposed in may, 1979 and previous to that, was a home guard. The nail cuttings and clothes of the accused were seized in his presence by the police under two seizure lists (Exts. 4 and 4/1), which he signed. He identified the loongi, genji and under pant, being the wearing apparels of the accused seized on that occasion (Ext. 11 collectively). Cross-examination was declined.

22. P. W. 12 - a constable bearing No. C/1614 of Jamalpur P.S. at the relevant time, identified the dead body of Sefali to P.W.9 who held the post-mortem examination in connection with this case. In cross-examination he denied that he did not identify he dead body to the doctor.

23. P. W. 9 - Dr. S. L. Bhattacharjee, was the Medical Officer attached to B. C. Hospital, Medical College, Burdwan at he relevant time. On 10.1.77 at 2.10 P.M. He held the post-mortem examination on the body of Sefali Bauri, Hindu female aged 19 years of Ajhapur, Thakurpukur, jamalpur P.S. On being brought and identified by constable No. C/1614 and another constable No. C/1266 with reference to Jamalpur P.S. Case No. 5 dated 9.1.77 (which is the present case). He detected the following injuries on her person: -

1) Two insides wounds in the scalp, 3" x 1/2" and 3" x 1/2" x 1/2" over the main parietal region obliquely placed.

2) One incised would over the dorsum in between the scapulae obliquity placed - 2" x 1/2".

3) Most part of the leg (right side) and upper part of chest mussel and neck kidnapped by wild animals. Hyoid bones broken left side. Seminal discharges at vagina with matting of public hair detected. Multiple hemorrhagic spot seen. The body was decomposed.

24. The death was due to throttling, manual strangulation, and ante mortem and homicidal in nature. The incised injuries described may be caused by sharp cutting weapon like the Katari shown to him in court. Fracture of hyoid bones and conjectures of both the lungs leads him to opine about strangulation and throttling. Seminal discharge might have been due to cohabitation with a male person. The dead body was found quite identifiable. In cross examination, only one question was put in answer to which, the witness replied "it is a fact that the body was identified by the constable before me."

25. P. W. 17 - Sri D. Chakraborty, as S.D.J.M., Burdwan on 13.1.77 recorded the confessional statement of the accused u/s 164 Cr. P.C. (Ext.6). When he deposed in June 1979 he was the additional Sessions judge, Assansol. On 13.1.77 the accused was produced at 10.30 a.m. When he examined the accused and found him willing to make a confessional statement in this case. He sent the accused to Burdwan jail

with a direction that he be produced at 3 P.M. on that date for the purpose of recording the statement. He gave the necessary caution to the accused that he was not bound to make a statement as evidence and he may even be sentenced to death, so that he should think whether he would make any confession. He told the accused that he was a Magistrate and that the accused would not be remanded to police Custody if he refused to make any confessional statement. On that date at 3 P.M. the accused Taapada Bauri was again produced before him from Burdwan jail. He again reminded the accused about the effect of making any confessional statement. He kept the accused about the effect of making any confessional statement. He kept the accused in his chamber in charge of his orderly peon to give the accused time for further reflection. No outsider or police was allowed to enter his chamber. Thereafter, at 4.30 P.M. After putting the preliminary questions mentioned in Ext.6 and being of the view that the accused was willing to make a voluntary statement, he recorded the confessional statement of the accused (Ext.6). The said statement was read-over to the accused that admitted the correctness thereof and put his L.I.T. On each page of the statement. The witness appended a necessary certificate after recording the confessional statement.

26. He also recorded on the same date a statement u/s 164 Cr.P.C. of P.W.10, Nirmal Sarkar. On 15.1.77 he also recorded a statement u/s 164 Cr.P.C. of one Sunil Mukherji.

27. In cross-examination, he stated that he verified from the police report and also from the accused that he was produced from the jail custody at 3 P.M. on 13.1.77. He denied that the statement of the accused was not voluntarily made. No police personnel were visible from his chamber when his statement was recorded.

28. P. W. 13 is a formal witness who took over charge of the case from the I.O., P.W. 18, on his transfer. He made over charge of the case to P.W.14, and he took no part in the investigation. Cross-examination was declined. P.W. 14 submitted the charge sheet in this case on 15.8.77. After completion of investigation. Cross-examination was declined.

29. P. W. 15, Satyabrata Ghosh Hazra, the C.I. (Sadar), Malda, at the time when he deposed, was the O.C. Jamalpur on 9.1.77. He seized the full-sleeved shirt from the shop of P.W.10 and a cash memo receipt (copy) standing in the name of the accused. He arrested the accused at Kasirampur at the house of his father-in-Law on 12.1.77. At 2.20 A.M. He met the I.O. (P.W.18) and was present when the I.O. recorded the statement of the accused u/s 161 Cr.P.C., wherein the accused stated that he would produce the Dao from the bed of Gopal Dighi, Ajhapur. He accompanied P.W.18 and went to the spot on the bed on the north-eastern corner of Gopal Dighi as led by the accused, wherefrom the accused produced the Dao (Ext III). In cross-examination he denied that the real culprit was not implicated in this case.

30. No question was put in cross-examination to this witnesses at all relating to his evidence against the accused as noted above.

31. P. W. 18 - S.I. N. C. Das is the first investigating officer of this case. On 9.1.77 at about 11.30 A.M. He recorded the F.I.R. Verbally lodged by P.W.1 at the Jamalpur police station (Ext 9/II). He drew up the formal F.I.R. On the basis of the said F.I.R. and started the present case. Formal F.I.R. Marked as (Ext.9). He took up investigation and held an inquest our dead body in presence of witness at Benchikurer Math, Ajhapur. He seized one blood stained Satranchi, one broken choori of red color, one broken piece of Sakha in iron cord, some hair some dried up leaves of parables and some white cush grass with which the body was cored. He also sized some blood stained blouse, a blood-stained (torn) printed saree; one sky color petticoat and ear ring under tow seizure lists (Exts.1/3 and 1/4 respectively). He identified the wearing apparels in court (Ext. IV collectively). He send the body for post-mortem examination escorted by P.W.12 and another constable No. C/1266. He prepared a rough sketch map of the local wealth index (Ext.10). He requisitioned the services of photographer and examined witness. The accused, after being arrested by P. W.15 on 12.1.77 made a statement in consequence of which a katari was recovered from Gopal Dighi, as led by the accused. The same was recovered in the presence of witnesses and the seizure list was drawn up. He identified the Katari being (Exdt. III). He forwarded the accused for recording his confessional statement. Thereafter, he seized one under-wear, one half sleeve net genji, a lungi and some nail cuttings of he accused fewer than two seizure lists (Exts.v/3 and 4/4). On 14.1.77 he seized a lady"s chuddar from the laundry of P.W.10 with the connected receipt under a seizure list (Ext.3/1). He identified the chuddar (Ext. VI). He collected the post-mortem report and submitted a prayer for recording the statements of P.W.10 and one Sunil Mukherji u/s 164 Cr.P.C. He sent the seized almost for examination by the Forensic Science 164 Cr.P.C. He sent the sized almost for examination by the Forensic Science Laboratory. On his transfer, on 6.2.77 he made over charge of investigation to P.W.13.

32. In cross examination, he denied that the F.I.R. was not recorded as per dictation of the deponent or that the same was not read over to the deponent. He denied that the accused was assaulted severely and them produced in Court. He denied that he tutored the accused to make a confessional statement or that the accused was forced to make such a confession under threat by the police. In cross examination, he further stated that "the seizure list was prepared after the Katari was recovered. The katari was produced by the accused. The accused made a statement and in fact, led to the recovery of the Katari from the spot himself". He did not arrest any other person besides the accused in connection with this case. he denied that he did truthfully record the statements of the witness u/s 161 Cr.P.C. he denied that the accused was arrested at Kashirampur on 10.1.77 by the O.C. of the Police station.

33. In his examination u/s 313 Cr.P.C. he stated that although it was true that the Darogababu took him to the north-eastern bank of Gopal Dighi, he did not bring out any Katari (chopper). He denied that he had come to his house as deposed to by P.W.5. He denied that he had come to his house as deposed to by P.W.5. He denied that he did not return at night to the shop room as deposed to by P.W.16, but stated that he was there in the shop room on that night in question. He denied further that he took any money from P.W.16, but stated that he was there in the shop room on that night in question. He denied further that he took any money from P.W.16 or that he asked for any soap from P.W.16. He stated, "I washed my own articles with my own soap". With regard to the confessional statement made before P.W.17 he stated, "Darogahabu beat me severely and tutored me to confess the guilt and further said that if I did not say accordingly he would beat me again. I was compelled to make that statement out of fear".

34. Mr. Chakrobarty, learned Advocate for the accused has submitted that the evidence in this case was insufficient to bring home the charge leveled against the accused. He has further submitted that the evidence with regard to the recovery of that Katari is not consistent. With regard to the confessional statement of the accused, recorded by P.W.17, he has submitted that since the accused has retracted the same the Court should only rely upon the same if it was satisfied that he confession was in fact, voluntary, true and received corroboration from other evidence. He has further submitted that an adverse inference u/s 114(g) of the evidence Act should be drawn against the prosecution for the non-examination of Sunil Mukherji.

35. Mr. Mukherji, learned Advocate appearing on behalf of the State, has submitted that the retraction of the confession is a belated one and the said statement received sufficient corroboration from other evidence and circumstances. He has submitted that the recovery of the Katari from the tank in consequence of the statement of the accused and his act of leading the police to that place, speak volumes.

36. In his confessional statement (Ext.6) the accused has very clearly stated that he killed his wife Sefali, with the help of a Katari, since he was absolutely certain that she had been unfaithful to him, having had sexual intercourse with his step brother. Suddenly on returning to his village residence on "7th Pours last" he became certain that Sefali had just had sexual intercourse with his step brother, whom he saw coming out of the house. Next day he had his katari sharpened and kept it in his house. He went to Calcutta. He came back from Calcutta after a few days on "last Thursday". He had left his place of work in Calcutta on the pretext of witnessing a cinema show. That night, he woke up Sefali in the early hours of the morning on the pretext of taking her to her father who he had told Sefali falsely, was seriously ill. He set out with her on the pretext of taking her to her father and on the way he starched her with the chopper, which he had carried with him concealed. She fell down

unconscious. He lifted her on his shoulder and when they reached "Banchikurer math" he laid her down on the ground. He found Sefali gassing at him and he struck her with the help of the chopper, and Sefali died. He then covered the dead body of Sefali with parable creepers, grass etc. Then, he kept the katari hidden inside the water of Gopa Dighi. He washed his hand and feet at the Railways Station and reached Calcutta by train. At his place in Calcutta he washed the blood stains of his wearing apparels. After a few days a person came to him from his father-in-law's house and informed him about the murder not Sefali. Then, he went to his father-in-law's house. The O.C. of the police station came in a jeep and took him to the police station from his father-in-law's house. In Ext.6 the accused stated that I confessed everything and I brought the Katari from the pond and gave it to the Darogababu".

37. Human blood was detected on the sari, sara and blouse of the deceased, as well as the earth seized from the place where Sefali's body was found. The Katari in question, the loongi and the nail cuttings of the accused contained bloodstains, which were disintegrated and their origin could not be determined by the Serologist and Chemical Examiner to the Government of India.

38. We have carefully considered the confessional statement of the accused (Ext.6.) We are fully satisfied that the said confession of the accused was both voluntary and true. We are satisfied that the learned Magistrate (P.W.17) appropriately questioned the accused to satisfy himself that the confession was voluntary and true. The retraction of the confession is a bloated one, the retraction being at the sessions trial. No complaint regarding any coercion, threat or any inducement was filed before any authority at any prior point of time.

39. It has been held by the Supreme Court in the case reported in [Ram Chander Prasad Sharma Vs. State of Bihar and Another](#), that a conviction based on retracted confession without corroboration is not illegal. In paragraph ii of the said judgment the Supreme Court has observed as follows :-

In Pyralal Bhargav v. The State of Rajasthan, AIR 1963 SC 1994 this Court, while pointing out that ordinarily corroboration is required, it is not a rule of law, but only a rule of prudence. It is also said that it is not an inflexible rule or practice or prudence that in no circumstances such a conviction can be based without corroboration on a retracted confession.

40. It is clear that the facts stated in the confession of the accused (Ext. 6) are by themselves sufficient for upholding the conviction of the accused u/s 302 and 201 IPC. In this case the said confession receives ample corroboration from the evidence already discussed, which, in our view, is also reliable. Further, even if we are to exclude the said confession (Ext.6) wholly from our consideration, the circumstantial evidence on record is sufficient for upholding the conviction of the accused, both u/s 302 and 201 IPC.

41. The evidence of P.W.5 makes it clear that the accused wanted to conceal the fact that he had come to his village residence very shortly before Sefali was found missing. The evidence of P.W.16 shows that the accused did not return to the shop on the night mentioned by the witness. On coming back next morning the accused washed his clothes with soap and safer. He has deposed, as already noted hereinbefore, that he accused had left on the pretext of going to a cinemas after taking Rs. 2/-. P.W.10 has deposed that he found blood mark splits on the terry-cotton shirt of that accused given to him for washing by the accused.

42. The fact that the Katari in question was recovered from Gopal Dighi, the police having been led to the place of recovery by the accused, has been deposed by P.Ws. 1, 3, 6, 15 and 18. In this case, the evidence of the said five witness reliably show that it was the accused who led the police to the particular place where the Katari had been kept concealed. Even though P.W.15 and P.W.18 stated in their evidence that the3 accused led the police and produced the Katari from the spot himself. No suggestion that this was not so, was given to them in cross examination. The confession of the accused (Ext.6) received full corroboration from the evidence of these five witnesses regarding the recovery of the Katari, on being produced by the accused, after the accused had led the police to the place of recovery. P.W.I has admitted in cross examination by the learned assistant public Prosecutor (after he was declared hostile) that "I along with the Darogababu, Kalipada Laha, Shyam Mondal went to the north-east comer of Gopal Deghi at Ajhapur about 2/3 days after the occurrence. Tarapada was also with us and he brought out a Katari from the north-each corner of the bed of such Dighi". In the case of Sat Paul v. Delhi Administration, 1979(1) SCC 727 the Supreme Court has clearly laid down that when a witnesses cross examined and contradicted with the leave of the Court, by the party calling him, his evidence can not, as a matter of law, be treated as washed off the record altogether. It is for the judge of facts to consider in each case, whether as a result of such cross examination and contradicted with the leave of the Court, by tea party calling him, his evidence cannot, as a matter of law, be treated as washed of the record altogether. It is for the judge of facts to consider in each case, whether as a result of such cross examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. We do not find that as a result of his cross examination by the prosecution, P.W.I stands so thoroughly discredited that not part of his testimony can be believed.

43. The deceased Sefali was last seen in her house while the accused was there, as deposed to by P.W.5, who stated " when I went to ask for rice from her, at that time some one crossed me by the door of their house. I asked Bowma who was that person. Bowma told me that it is your nephew." From the confessional statement of the accused (Ext. 6) it is clear that the accused had come back to his village home with the definite plan of murdering his wife.

The aforesaid statement of the deceased P.W.5 is admissible u/s 32 sub-section (1) of the Evidence Act since it relates to the circumstances of the transaction which resulted in her death. Moreover from both in the cases reported in [Goloke Behari Takal and Others Vs. Emperor](#), which is a decision of the Division Bench and [Allijan Munshi Vs. State](#), which is also the decision of a Division bench, it is clear that Section 32 of the evidence Act is not a complete code relating to the admissibility of statement made by persons who are dead. We may point out that illustration (a) to Illustration (j) and (k) to Section 6 (the "by-standers", may not be alive at the time of the trial). Illustration (j) and (k) to Section 8, and illustration (i) to section 14 of the Evidence Act, go to show that.

44. The plea of alibi taken by the accused in one of his answers in his examination u/s 313 Cr.P.C. and in his suggestion in cross examination of P.W.16 has not been proved on the balance of probabilities by the accused. u/s 103 of the Evidence Act, and in particular under illustration (a) thereof the onus of proof of the alibi lies on the accused.

45. The accused in this case, as the evidence shows, after murdering his wife concealed her dead body. The provocation in this case given by the deceased's conduct in having an adulterous relationship with the accuser's stepbrother was certainly grave but not sudden. The accused even after he came to realize with certainty that his wife was being unfaithful to him waited and very carefully planned her murder.

46. We are satisfied on the materials on record that the prosecution has succeeded in proving beyond all reasonable doubt the charges u/s 302 and 201 I.P.C. against the accused. We accordingly uphold the conviction and sentences both u/s 302 and Section 201 I.P.C., and affirm the judgment and order of the Trial Court.

This appeal is dismissed.

Gobindra Chandra Chatterji, J.

47. I agree.

Appeal dismissed.