



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 86 OF 2006

Ku. [REDACTED] U [REDACTED] T [REDACTED],

Aged about 22 years,

R/o. Railway Station Zopadpatti,
Washim, Tq. & Dist. Washim.

APPELLANT

Versus

State of Maharashtra,
Through Police Station Officer,
Washim, Tq. & Dist. Washim.

RESPONDENT

Mr. R.L. Khapre, Senior Advocate a/b Mr. Mandar Deshpande,
Advocate for the Appellant.

Mr. M.J. Khan, APP for the Respondent/State.

CORAM : URMILA JOSHI PHALKE AND
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 29th SEPTEMBER, 2025.

PRONOUNCED ON : 17th OCTOBER 2025.

ORAL JUDGMENT :- (PER : URMILA JOSHI PHALKE, J.)

1. The present appeal is directed against the judgment and order of sentence passed by the II Adhoc Additional

Sessions Judge, Washim in Sessions Trial No. 98/2004 dated 21.12.2005 convicting the present Appellant/accused of the offence punishable under Section 302 of the Indian Penal Code (for short “IPC”) and sentenced to suffer simple imprisonment for life.

2. Brief facts of the prosecution case emerges from the Police papers and recorded evidence are as under:

2(i). The First Information Report (for short “FIR”) came to be registered on the basis of the report lodged by the accused on the contention that she has committed murder of deceased Madhao Gote at her house near Railway Station Slum area as deceased on 22.06.2004 was insisting her to withdraw the criminal case pending against him under Section 376 of IPC in Washim Court instituted on her report. She contended that, the deceased was harassing her and insisting her continuously to withdraw the report filed by her and on the fateful night also he came to her house and was insisting her to withdraw the complaint, therefore she gave a blow of Razor (Ustara) on his neck and by giving blow of Pestle (Khalbatta) on his head. On the basis of the said report, Police have registered the crime

against the present accused.

2(ii). During investigation, the Investigating Officer has drawn the Spot panchnama, recovered the dead body from her house which was in a decomposed condition. Inquest panchnama was also drawn. Blood stained articles were also seized from her house. Clothes of the deceased and clothes of the accused are also seized. On the basis of her statement, said Razor was seized in presence of panchas. All the incriminating articles are forwarded to CA. After completion of the investigation charge-sheet was submitted against the accused.

2(iii). The learned Sessions Judge after committal of the case framed Charge vide Exh. 9. The contents of the charge are read over and explained to the accused in vernacular. She pleaded not guilty and claimed to be tried. In support of the prosecution case, the prosecution had examined in all 5 witnesses as follows.

(i)	PW-1	Bhagwandas Bansilal Doot	Exh.22	Panch
(ii)	PW-2	Ganesh Sadashio Gote	Exh.29	Brother of the deceased.
(iii)	PW-3	Kanhiayya Kunjilal Badhel	Exh.30

(iv)	PW-4	Babarao Kaluji Chauhan	Exh.31	Investigating Officer.
(v)	PW-5	Anandrao Kawarkhe	Exh.44	Medical Officer.

2(iv). Besides oral evidence prosecution placed reliance on Spot panchnama-Exh. 23, Seizure panchnama-Exh. 24, Inquest panchnama-Exh. 25, Seizure memos of the samples-Exh. 26, Memorandum statement of the accused-Exh. 27 and Recovery panchnama-Exh. 28, Report-Exh. 32 and PM Report-Exh.45.

2(v). All the incriminating evidence is put to the accused to obtain her explanation regarding the evidence appearing against her by recording her statement under Section 313 of the Code of Criminal Procedure (for short “Cr.P.C.”). The defence of the accused is of a total denial and of a false implication. The learned Trial Court after appreciating the evidence held the present accused/appellant guilty and convicted her as aforestated. Being aggrieved and dissatisfied with the same, the present Appeal is preferred.

3. Heard Mr. Khapre, learned Senior Counsel for the accused, who submitted that, as far as the confession on the basis of which the crime is registered, is not admissible as hit by

the Sections 24 and 25 of the Indian Evidence Act. The conviction is entirely based upon the FIR which is lodged by the accused herself.

3(i). In view of the decision of Hon'ble Apex Court in the case of *Aghnoo Nagesia Vs. State of Bihar, AIR 1966 SC 119*, wherein the law regarding confession is discussed by the Hon'ble Apex Court and it is held that, it is not admissible against the accused.

3(ii). He further submitted that, even accepting the prosecution case as it is, the deceased was insisting her to withdraw the complaint which was lodged by her as she was subjected for forceful sexual assault by the deceased. Therefore, the act of accused would cover under Exception 1 of Section 300 of IPC. He submitted that, the evidence in the nature of extra judicial confession is also a weak type of evidence and would not be helpful to the prosecution to prove the charges against the accused.

3(iii). In support of his contention, he placed reliance on *Aghnoo Nagesia* (supra), *Gopal Son of Kehari Vs. State, 1977*

Cri LJ 358, Vetal Bhagwan Mandle Vs. State of Maharashtra, 2006 ALL.M.R. (Cri) 367, State of Madhya Pradesh Vs. Ramprakash & Ors., 1989 Cri LJ 1585, Kishore Chand Vs. State of H.P, AIR 1990 SC 2140, Heramba Brahma & Ors., Vs. State of Assam, AIR 1982 SC 1595 and Ramu Appa Mahapatra Vs. State of Maharashtra, (2025) 3 SCC 565.

4. *Per contra*, learned APP submitted that, the entire case is rested on the circumstantial evidence. The circumstances that there was acquaintance between the deceased and accused, the accused prosecuted the deceased for the offence punishable under Section 376 of IPC which can be a motive for her to commit the murder of the deceased, the dead body of the deceased was found in the house of the accused in a decomposed condition and the blood stained weapons were also seized at her instance and extra judicial confession made by the accused to PW-3/Kanhiayya Badhel sufficiently shows her involvement in the alleged offence. The prosecution has established the said circumstances, and therefore, no interference is called for.

5. In support of his contention he placed reliance on

Maghar Singh Vs. State of Punjab, (1975) 4 SCC 234, Gura Singh Vs. State of Rajasthan, (2001) 2 SCC 205 and Rameshwar s/o Dinaji Dhawde Vs. State of Maharashtra, 2016 (4) Mh.L.J (Cri.) 127.

6. As per the prosecution, the death of the deceased is homicidal one. To prove the homicidal death of the deceased the prosecution mainly placed reliance on the evidence of Medical Officer PW-5/Anandrao Kawarkhe, who has conducted the postmortem on the dead body of the deceased. His evidence shows that, on 25.06.2004 he was serving as a Medical Officer at Civil Hospital Washim. On that day he conducted the postmortem on the dead body of the deceased Madhao Gote. On examination he found the following external injuries.

1. Incised wound over neck transfer 3 inch length sharp cut tracheal ring is opened antericy 2 inch depth.
2. Incised wound over neck 1 inch below the first injury $3\frac{1}{2}$ inch x 2 inch length depth tracheal ring is opened anterriary.
3. Contusion over right temporal region 3 inch length $2\frac{1}{2}$ inch length depth.

He also noted the internal injuries which are

Haematoma over right temporal region and crack fracture right side temporal bone of skull corresponding with external injury No.3. His evidence further shows that, the injuries noted in the postmortem examination are sufficient to cause death. The cause of death of the deceased was due injury to trachea. Accordingly, he issued the PM notes Exh. 45. He further deposed that, injury No.3 possible by instrument like Article No.15-Pester (Khalbatta) and injury Nos. 1 and 2 (external) are possible by Razor (Ustara). His evidence further shows that the time since death till postmortem examination for about 60 to 72 hours.

7. His cross-examination shows that, the dead body was in a complete decomposed condition. There was megots seen on the body. Injury No.3 also can be possible by forcibly fallen on the stone.

8. Besides the evidence of PW-5, PW-1 who acted as a Panch on the Inquest panchnama also shows that there was injury on his throat, head and on knees. Thus, the evidence of PW-5 Medical officer and PW-1 categorically stated about the injuries found on the person of the deceased. As far as the

evidence adduced by the prosecution is concerned, which sufficiently shows that the death of the deceased is caused due to the injuries sustained by him. Thus, the death of the deceased is homicidal one.

9. Admittedly, the entire case of the prosecution is rested on circumstantial evidence. As per the prosecution case, the deceased was prosecuted on the basis of the report lodged by accused on an allegation that he has subjected her for forceful sexual assault and subsequently he denied to perform marriage with her. He was insisting the accused to withdraw the complaint, and therefore, the accused has committed his murder. Admittedly, no direct evidence is available, and therefore, the prosecution placed reliance on various circumstances.

10. Before touching to the merits of the case, it is necessary to see the settled law on circumstantial evidence. The law is settled regarding the circumstantial evidence which are as under:

“(i) The circumstances from which an inference of guilt is sought to be drawn must be cogently and

firmly established.

(ii) Though circumstances should be of a definite tendency, unerringly pointing towards the guilt of the accused.

(iii) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

(iv) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of a guilt of the accused and such evidence should not only be consistent with the guilt of the accused, but should be inconsistent with his innocence.”

11. Accordingly, to Sir Alfred Wills in his admirable book “Wills’ Circumstantial Evidence” (Chapter VI) lays down the following rules specially to be observed in case of circumstantial evidence which are as under :

(1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum of probandum;

(2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;

(3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits;

(4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt,

(5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."

12. In the present case, the prosecution relied upon on following circumstances.

(i). The accused and deceased were acquainted with each other and accused has prosecuted the deceased of the offence punishable under Section 376 of IPC.

(ii). The deceased was insisting her to withdraw the complaint, and therefore, on the fateful night of 22.06.2004 he had been to the house of the accused and insisting her to withdraw the complaint.

(iii). The dead body of the deceased was found in the house of the accused in a decomposed condition alongwith the blood stained Pestle lying near the dead body and blood stains in the house.

(iv) The FIR lodged by the accused contending that she has committed murder of the deceased.

(v). Extra judicial confession made to PW-3/Kanhiayya Badhel.

(vi). Medical evidence and scientific evidence in the nature of CA reports.

13. Coming to the first circumstance that, there was acquaintance between the deceased and the accused. The prosecution had examined PW-2/Ganesh Gote brother of the deceased, whose evidence shows that, there was love affair between the accused and the deceased. The father of the accused had lodged report to the Police Station. Police arrested him. As per the report, the deceased has subjected the accused for forceful sexual assault, and therefore, he was prosecuted under Section 376 of IPC. On the day of incident, the deceased left the house and not returned back. He made enquiry but the deceased was not found. On 25.06.2004, he came to know that the dead body of the deceased was lying in the house of the accused. There were injuries on his body. The injury was sustained by him on his throat and head.

14. His cross-examination shows that, there was love affair between the accused and the deceased. They have decided to marry. They belonged to different castes and the family members of the deceased were not ready for the said marriage. Thus, the evidence of PW-2 shows that, there was love affair between the accused and the deceased and the accused has prosecuted the deceased for the offence punishable under Section 376 of IPC.

15. The circumstance that the accused had made extra judicial confession, the prosecution placed reliance on the evidence of PW-3/Kanhiayya Badhel which shows that, the accused made a confessional statement to him "Kaka, that Madhao was asking her to withdraw the case against him, hence she cut throat of Madhao by Wastara & also crushed his head by Khalbatta."

16. The cross-examination of this witness shows that, he never talks with lady members. Accused was with the Police and she came and informed to him. Thus, on the basis of this cross-examination attempt was made to show that, there was no reason for the accused to made statement to PW-3 as she was

not having confidence of such a nature that she will approach to him and disclosed the incidence.

17. As far as the another circumstance that the dead body of the deceased was found in the house of accused, the evidence of PW-1/Bhagwandas Doot who acted as a panch shows that, he alongwith another panch went to the house of the accused. The accused had opened the door of the house and they witnessed that the clothes lying there were stained with blood. The dead body of the deceased was lying. There was injury on throat, head and knees. The dead body was on the bed and the clothes including white Salwar Kamij, blue coloured odhani chappal, four corners lungi and stony khalbatta were stained with blood. They have collected blood stained mud and simple mud from the said place. Thus, his evidence shows that, the dead body was found in the house of the accused. On this aspect, the cross-examination nowhere shatters the evidence as far as the recovery of the dead body from the house of the accused. Hence, cross-examination only shows that, the dead body was not in a position to be removed from the place as it was in a decomposed condition. He further admits that, the

dead body was kept lying and it was brought from another place and kept in one room. Thus, the attempt was made to show that, the incident has not occurred in the house but somebody has brought the dead body at the said place.

18. PW-1/Bhagwandas Doot is also witness on the memorandum statement of the accused and discovery at her instance of a Razor. He deposed that, the accused disclosed that the Razor is at her house and shown her readiness to show it, and therefore, she took them at her house and produced the Razor of a Supermax company having blood stains by producing the same from her purse. Accordingly, panchnama Exh. 28 was drawn. As to the recovery of weapon at her instance, witness is not cross-examined and the evidence remained unchallenged.

19. The evidence of PW-4/Babarao Chauhan Investigating Officer also corroborates the said fact that she made a voluntary statement and at her instance the said Razor was seized. Accordingly, panchnama was drawn. The Investigating Officer is also not cross-examined as to the seizure of the weapon at her instance. The evidence of Investigating Officer further shows that all the incriminating articles were

forwarded to CA. The CA report is at Exh. 19 which shows that, Exh.6 Blade Vastara, Exh. 8 pair of Chappal, Exh.11 Belt, Exh. 12 wrist watch, Exh. 14 Morta and Exh. 15 Pestel were stained with blood and Exh.7 Full shirt of the accused was also stained with blood but the blood group is not determined. As per Exh. 20 the blood group of the deceased is 'A', whereas the blood group of the accused was not determined.

20. First and foremost question is whether the prosecution succeeded in proving that the death of the deceased is caused by the accused. For that purpose, the prosecution mainly placed reliance on the confessional FIR lodged by the accused. There is no dispute as to the fact that, the criminal law is set in motion on the basis of the FIR lodged by the accused. Evidence of PW-4 Investigating Officer also shows that on 23.06.2004 when he was at Station diary incharge the accused came in the Police Station and informed that she has committed murder of Madhao Gote at her house near Railway Station slum area. She disclosed that she murdered Madhao on 22.06.2004 as he was insisting her to withdraw criminal case pending against him under Section 376 of IPC in Washim Court

instituted on her report. This evidence is not shattered during the cross-examination. It remained unchallenged. Now, only issue is whether the report lodged by the accused would be admissible or hit by Section 25 of the Indian Evidence Act.

21. Learned Senior Counsel placed reliance on the case of *Aghnoo Nagesia* (supra), wherein the law regarding confession is discussed by the Hon'ble Apex Court in para No.18 which is as under:

“18. If the first information report is given by the accused to a Police Officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25. The confession not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27.”

22. The Hon'ble Apex Court has also held that the confession in the nature of first information report is not admissible against the appellant and appeal was allowed by acquitting the accused.

23. The similar view is taken in the case of *Rohidas Manik Kasrale Vs. State of Maharashtra, Criminal Appeal No.*

1496/2003 decided on 07.12.2011, wherein it is held that the first circumstance sought to be proved against the appellant is that he had confessed about his guilt. There is no doubt that the first information report lodged by him, being confessional in nature, cannot be used against him in view of the provisions of Section 25 of the Evidence Act. The legal position being very clear and undisputed on this point, this aspect does not need any further discussion.

24. In the case of ***Om Prakash Vs. State of U.P, AIR 1960 SC 409***, also this aspect is considered and by referring the judgment of Privy Council in ***Pakala Narayana Swami Vs. Emperor***, and held that a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession, for example an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession. Some confusion appears to have been caused by the definition of 'confession' in Article 22 of Stephen's 'Digest of the

Law of Evidence' which defines a confession as an admission made at any time by a person charged charged with a crime stating or suggesting the inference that he committed that crime. If the surrounding circumstances are examined it will be apparent that the learned Author after dealing with admissions generally is applying himself to admissions in criminal cases, and for this purpose defines confessions so as to cover all such admissions, in order to have a general term for use in the three following Articles, confession secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872 and in that Act, it would not be consistent with the natural use of language to construe confession as a statement by an accused 'suggesting the inference that he committed' the crime. Thus, now it is well settled law that the confession by the accused before the Police Officer cannot be used against the accused.

25. Thus, it is well settled that, the confession by the accused before the Police Officer cannot be used against the accused.

26. The another evidence on which prosecution is relied

upon the confessional statement of the accused to PW-3/Kanhiaya Badhel to the extent that “Kaka, that Madhao was asking her to withdraw the case against him, hence she cut throat of Madhao by Wastara & also crushed his head by Khalbatta”. The evidence of PW-3 shows that he is neighbour. She made voluntary statement to him admitting that she caused the death of the deceased. The evidence shows that, the accused approached and made extra judicial confession. The law regarding extra judicial confession is also settled that, while appreciating the evidence of a witness on extra judicial confession, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed the evidence is to be scrutinized. There is neither any rule of law nor of a prudence that evidence furnished by extra judicial confession cannot be relied upon unless corroborated by some other credible evidence.

27. It was held in the case of *State of U.P Vs. M.K. Anthony, (1985) 1 SCC 505* by referring the judgment of *Sahoo Vs. State of U.P, AIR 1966 SC 40* that “an extra judicial confession may be an expression of conflict of emotion, a

conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime". Before evidence in this behalf is accepted, it must be established by cogent evidence what were the exact words used by the accused. The Court proceeded to state that even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence.

28. Thus, it appears that the extra judicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated.

29. In a recent decision of *Ramu Appa Mahapatra* (supra) the Hon'ble Apex Court observed that, extra judicial confession of an offence made by the Accused before a witness is one of the several instances of circumstantial evidence; there are other circumstances, such as, the theory of last seen together; conduct of the Accused before or immediately after the incident; human blood being found on the clothes or the

person of the Accused leading to discovery, the chain must be complete and each fact can legally inferred or presumed. It is further held that, an extra judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession like any other evidence depends upon the reliability of the witness to whom it is made and who gives the evidence. Extra judicial confession can be relied upon and conviction can be based thereon if the evidence about the confession comes from a witness who appear to be unbiased, not even remotely inimical to the Accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing and untruthful statement to the accused. The words spoken by the witness should be clear, unambiguous and unmistakably convey that the Accused is the perpetrator of the crime and that nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

30. After referring the various judgments the Hon'ble Apex Court laid down the following principles which are as under:

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

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

(iii) It should inspire confidence.

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

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

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

31. On appreciation of the evidence of PW-3/Kanhayya Badhel, in light of the above principles laid down it would show that the accused voluntarily made statement to PW-3 who is her neighbour, not inimical and in clear words, unambiguous statement. Therefore, the said evidence in light of the fact that it is corroborated by other circumstances like recovery of dead body from her house, blood stained clothes and blood stained articles recovered from the house as well as incriminating blood stained weapons seized at her instance. Therefore, the said

evidence deserves to be accepted.

32. Now, only question remains as to the recovery of dead body from the house of the accused in a decomposed condition, the evidence of PW-2/Ganesh Gote the brother of the deceased and the evidence of PW-4/Babaraao Chauhan the Investigating Officer are relevant.

33. The evidence of PW-2/Ganesh Gote shows that, there was a love affair between the deceased and the accused. Deceased was prosecuted on the basis of a report lodged by the father of the accused. The family members of the deceased were against the inter caste marriage. On 22.06.2004, the deceased left the house and not returned back. On the next day itself on 23.06.2004, the dead body of the deceased was found in the house of the accused in a decomposed condition, which is corroborated by the circumstances that various articles seized from the spot were stained with blood accompanied with the fact that the recovery of the blood stained Pestel at the time of drawing the spot panchnama and recovery of Razor at the instance of the accused.

34. The evidence of PW-1/Bhagwandas Doot shows that it was the accused who shown the spot of incident. She opened the door of the house wherein the dead body of the deceased was found and relatives of the deceased identified the same. There was injury on the person. The articles i.e. clothes of the deceased, his foot wears, the Pestel seized from the spot were blood stained and the Razor was seized at the instance of the accused on the basis of her statement.

35. The evidence of PW-1 and PW-4 as to the memorandum statement and recovery of the weapon at her instance is not shattered during the cross-examination. The evidence of PW-4 specifically shows that the accused made a voluntary statement in presence of panchas. Accordingly, her statement was recorded. On the basis of the said statement, she led them towards her house and produced the Razor from her purse which was seized and sealed in presence of panchas. As far as this evidence of recovery of the weapon is concerned, which is not shattered during the cross-examination.

36. Section 27 of the Indian Evidence Act is interpreted by the Hon'ble Apex Court in the case of ***Subramanya Vs. State***

of Karnataka, reported in 2022 LiveLaw (SC) 887 and held that the conditions necessary for the applicability of Section 27 of the Act are broadly discussed as under:

“(1) Discovery of facts in consequence of an information received from accused;

(2) Discovery of such fact to be deposed to;

(3) The accused must be in police custody when he gave information; and

(4) So much of information as relates distinctively to the fact thereby discovered is admissible.”

37. In the light of the above well settled legal position the evidence of PW-4 Investigating Officer shows that on the basis of the voluntary statement made by the accused the Razor was seized which was blood stained. This fact is further corroborated by the CA report which shows that, blade Vastara, shirt of the deceased seized from the house of the accused, pair of chappal seized from the house of the accused, belt of the accused, wrist watch of the accused, Marta and Pester seized from the a house of the accused were stained with blood. Though blood group of the blood stains which were found on the incriminating articles were not determined but mere absence of evidence regarding blood group cannot be fatal to the prosecution especially in the light of the fact that alongwith

the dead body all these articles were seized from the house of the accused.

38. Now, only question remains whether the act of the accused is covered under the Exception 1 i.e. grave and sudden provocation. Section 300 of the IPC read as under:

“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

Exception 1 - When culpable homicide is not murder. - Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

First.- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.- That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact."

39. The aforesaid Section provides 5 Exceptions, wherein the culpable homicide would not amount to murder. Under Exception 1 an injury resulting into death of the person would not be considered as murder when the offender has lost his self control due to the grave and sudden provocation. It is also important to note that the provisions itself makes it clear by the explanation that what would constitute grave and sudden provocation, which would be enough to prevent the offence from culpable amounting to murder is a question of a fact. Provocation is an external stimulus which can result into loss of self control. Such provocation and the resulting reaction needs to be measured from the surrounding circumstances. The provocation must be such as will upset not merely a hasty and hot-tempered or hypersensitive person, but also a person with calm nature and ordinary sense. What is sought by the law by creating the exception is that to take into consideration situations wherein a persons with normal behavior reacting to the given incidence of provocation. Thus, the protection extended by the exception is to the normal person acting

normally in the given situation.

40. By applying the test if the evidence in the present case is taken into consideration it shows that the deceased was prosecuted on the basis of a report lodged by the accused under Section 376 of IPC. PW-2 brother of the deceased also accepted these facts. He further admitted that, the family members were not ready to accept the said relationship. Under these circumstances there was no reason for the deceased to be at the house of accused. It is not the case of the prosecution that accused had been to the house of the deceased at any point of time after she lodged the report. The extra judicial confession made by her to PW-3 shows that the deceased was insisting her to withdraw the case, and therefore, she committed murder of the deceased. The prosecution case is also rested upon the fact that as deceased was insisting to withdraw the complaint and on the fateful night also he had been to her house for insisting her to withdraw the compliant, and therefore, he did not returned back and his dead body was found. Therefore, there is substance in the contention of the learned Senior Counsel that the case would fall under Exception 1. As deceased was

repeatedly insisting her to withdraw the complaint due to which she fed up and on the fateful night also deceased visited her house and insisted her to withdraw the complaint, therefore she lost her control and committed the murder of the deceased with the weapons which were available in her house. Admittedly, there was no intention on her part and she has not exceeded the act by causing various injuries to the deceased. From the evidence it can be inferred that, the accused due to the act of the deceased lost her control and caused the death of the deceased. Admittedly, there was no intention on her part to commit the murder of the deceased. It was because she was subjected for sexual assault by the deceased on the promise of marriage and subsequently shown his inability to perform the marriage and insisting her to withdraw the complaint. On the fateful night also he visited the house with intention to insist the deceased to withdraw the complaint due to which she lost the self-control and caused the death of the deceased.

41. The culpable homicide is defined in Section 299 of the Indian Penal Code and it is genus. Whereas, the murder defined in Section 300 of the Indian Penal Code and it is specie.

Under Section 299 of the Indian Penal Code, whoever causes death with an intention or knowledge specified in that Section, commits offence of culpable homicide. However, since culpable homicide is only genus, it includes two forms; one is a graver offence which amounts to 'murder' and lesser one which does not amount to 'murder'. It can be seen that, therefore, though the offence of culpable homicide is defined, the said provision does not provide any punishment for that offence as such and, for the purpose of punishment, the court has to examine facts and find out whether the offence falls or does not fall under the definition of murder under Section 300 of the Indian Penal Code. In view of this scheme, therefore, every act of homicide falls within the definition of culpable homicide under Section 299 of the Indian Penal Code. Section 300 of the Indian Penal Code on the one hand mentions that a homicide is murder. However, in that section five exceptions have been given and these exceptions lay down the circumstances in which the act causing death is not murder even though it may have been done with the intention or knowledge specified in Section 300 of the Indian Penal Code. Therefore, it has to be seen; (1) what was the intention or knowledge with which the act was done and

what are circumstances in which it was done, (2) if it is established that the offence is culpable homicide, but it does not fall within the definition of murder and if it falls under any of exceptions to that Section, the offence is punishable under Section 304 of the Indian Penal Code. Once, it is held that the offence falls under Section 304 of the Indian Penal Code, the punishment differs, depending upon whether the death is caused with an intention or only with the knowledge and, therefore, if the element of intention exists, the offence is punishable under Part-I of Section 304 of the Indian Penal Code, otherwise, the offence falls under Part-II of Section 304 of the Indian Penal Code.

42. In the case of *Anbazhagan Vs. State represented by the Inspector of Police, 2023 SCC OnLine SC 857* also, while considering the aspect of "intention" and "knowledge", the Hon'ble Apex Court observed that the word "intent" is derived from the word archery or aim. The "act" attempted to must be with "intention" of killing a man. Intention, which is a state of mind, can never be precisely proved by direct evidence as a fact; it can only be deduced or inferred from other facts which are

proved. The intention may be proved by res gestae, by acts or events previous or subsequent to the incident or occurrence, on admission. Intention of a person cannot be proved by direct evidence but is to be deduced from the facts and circumstances of a case. There are various relevant circumstances from which the intention can be gathered. Some relevant considerations are that 1. the nature of the weapon used; 2. the place where the injuries were inflicted; 3. the nature of the injuries caused, and 4. the opportunity available which the accused gets.

43. By referring its earlier decision in the case of *Smt. Mathri Vs. State of Punjab, AIR 1964 SC 986*, the Hon'ble Apex Court observed that the word "intent" by its etymology, seems to have metaphorical allusion to archery, and implies "aim" and thus connotes not a casual or merely possible result-foreseen perhaps as a not improbable incident, but not desired-but rather connotes the one object for which the effort is made-and thus has reference to what has been called the dominant motive, without which, the action would not have been taken. While distinguishing between "motive", "intention" and "knowledge", "motive" is something which prompts a man to

form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this had led to a certain amount of confusion. A man's intention has to be inferred from what he does. The degree of guilt depends upon intention and the intention to be inferred must be gathered from the facts proved. Sometimes an act is committed which would not in an ordinary case inflict injury sufficient in the ordinary course of nature to cause death. Proof of such knowledge throws light upon his intention. On the other hand, awareness is termed as "knowledge". The knowledge of the consequences which may result in the doing of an act is not the same thing as the intention that such consequences should ensue. Except in cases where *mens rea* is not required in order to prove that a person had certain knowledge, he must have been aware that certain specified harmful consequences would or could follow, the

knowledge that specified consequences would result or could result by doing an act is not the same thing as the intention that such consequences should ensue. If an act is done by a man with the knowledge that certain consequences may follow or will follow, it does not necessarily mean that he intended such consequences and acted with such intention. Intention requires something more than a mere foresight of the consequences. It requires a purposeful doing of a thing to achieve a particular end.

44. With the above proposition, if the evidence in the present case is taken into consideration and the attending circumstances are looked into, admittedly which shows that the deceased was prosecuted on the basis of a report lodged by the accused under Section 376 of IPC and on fateful night he visited the house of the accused and insisted her to withdraw the complaint which came on record. The extra judicial confession by the accused to PW-3 and corroborated by the circumstances like recovery of dead body from the house of the accused, recovery of blood stained clothes of deceased and accused, recovery of blood stained weapons at the instance of

the accused, recovery of blood stained weapon lying near the dead body of the deceased at the house of the accused, medical evidence and scientific evidence showing blood stains on the said articles. Thus, the extra judicial confession is corroborated by the circumstantial evidence. Admittedly, there was no intention of the accused to cause the death of the deceased but the circumstances are such due to which she lost her self-control and caused the death of the deceased with a knowledge that the act would cause the death.

45. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was

any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows.

46. Difference between two parts of Section 304 is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC. The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the Court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

47. After applying the above principles and while determining the question, admittedly the act of the accused would cover under Exception 1 of Section 300 of IPC that the death of the deceased is caused by her under the grave and sudden provocation without having an intention to commit the murder, therefore the said act would cover under Section 304-II of IPC.

48. In view of the discussion above the appeal deserves to be allowed partly. In view of that we proceed to pass following order.

O R D E R

- i. The Criminal Appeal is **partly allowed**.
- ii. The judgment and order dated 21.12.2005 passed by the II Adhoc Additional Sessions Judge, Washim in Sessions Trial No.98/2004 is modified and the accused is convicted under Section 304-II of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 10 years and fine of Rs. 5,000/- in default to suffer rigorous imprisonment for 3 months.
- iii. The accused is entitled for set off under Section 428 of Cr.P.C.

- iv. The accused Ku. Panchashila Uttam Thorat, is directed to surrender before the Superintendent District Prison, Washim on 27.10.2025 to undergo the jail sentence.
- v. The bail bonds of the accused stand cancelled.
- vi. R & P be sent back to the Trial Court.

49. Pending application/s, if any, shall stand disposed of accordingly.

(NANDESH S. DESHPANDE, J.) (URMILA JOSHI PHALKE, J.)

S.D.Bhimte