KUSUMA ANKAMA RAO

v.

STATE OF ANDHRA PRADESH

(Criminal Appeal No. 185 of 2005)

JULY 7, 2008

[DR. ARIJIT PASAYAT AND P.SATHASIVAM, JJ.]

Penal Code, 1860: s.302 – Last seen theory – Accused and deceased had illegal intimacy – Accused last seen with the deceased – Dead body of deceased found next day – Accused made extra-judicial confession before Village Administrative Officer – Circumstantial evidence point guilt towards accused – No infirmity in conviction ordered by Courts below.

Evidence Act, 1872 : Extra judicial confession – Evidentiary value of.

Prosecution case was that the appellant-accused had illegal intimacy with the deceased. On the fateful day, the accused met PW-1, son of the deceased and asked him to bring bottle of liquor and a beedi packet. PW-1 brought the said items. Thereafter the accused asked the whereabouts of the deceased. PW-1 went with the accused to meet deceased. The deceased met accused and PW-1 and they went towards fields. The accused then asked, PW-1 not to follow them and to stop there. PW-1 waited for them for sometime and thereafter returned to the hotel where he was working. Next morning he realized that his mother had not returned home. In the meanwhile, they heard the people saying that a dead body was found in a field. PW-1 and 2 saw the dead body of the deceased.

The trial court convicted the accused under s.302 IPC. High Court dismissed the appeal holding that evidence of PWs 1 and 2 to the effect that the accused and

A deceased were last seen, together, the extra judicial confession made before the Village Administrative Officer and evidence clearly established the guilt of the accused. Hence the present appeal.

Dismissing the appeal, the Court

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HELD : 1. Where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the C accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. [Para 5] [96-D,E & F] D

Hukam Singh v. State of Rajasthan AIR (1977) SC 1063; *Eradu and Ors. v. State of Hyderabad* AIR (1956) SC 316; *Earabhadrappa v. State of Karnataka* AIR (1983) SC 446; *State of U.P. v. Sukhbasi and Ors.* AIR (1985) SC 1224; E *Balwinder Singh v. State of Punjab* AIR (1987) SC 350; *Ashok Kumar Chatterjee v. State of M.P.* AIR (1989) SC 1890; *Bhagat Ram v. State of Punjab* AIR (1954) SC 621; *C. Chenga Reddy and Ors. v. State of A.P.* (1996) 10 SCC 193 ; *Padala Veera Reddy v. State of A.P. and Ors.* AIR (1990) SC 79; *State of* F *U.P. v. Ashok Kumar Srivastava* (1992) Crl.LJ 1104 – relied on.

State of Haryana v. Ved Prakash AIR (1994) SC 468; *Kailash Potlia v. State of Andhra Pradesh* AIR (1996) SC 66 – referred to.

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2.1. Confessions may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a Magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than H

before a Magistrate or court. Extra-judicial confessions are generally those that are made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under s.164 Cr.P.C. or a Magistrate so empowered but receiving the confession at a stage when s.164 does not apply. As the section enacts, a confession made by an accused person is irrelevant in criminal proceedings, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of s.24. [Para 17] [101-A,B,C,D,E,F,G & H]

2.2. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible in evidence. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the court is satisfied that in its opinion the impression caused

A by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt. It is not to be conceived that a man would be induced to make a free and voluntary confes-
B sion of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. Every inducement, threat or promise does not vitiate a confession. Since
C the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the court is to determine the absence or presence of an inducement,
D promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would
E gain any advantage or avoid any evil, it is enough to exclude the confession. The words "appear to him" in the last part of the section refer to the mentality of the accused. [Para 17] [102-A,B,C,D,E; 103-A,B,C & D]

Woodroffe's Evidence, 9th Edn., p. 284 – referred to.

F 2.3. 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 veracity of the witness
G to whom it has been made. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to
H such a confession. Such a confession can be relied upon

and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses 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 an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and 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. [Para 18] [103-D,E,F,G,H; 104-A & B]

State of Rajasthan v. Raja Ram **(2003) 8 SCC 180 – relied on.**

3. If the factual scenario is considered it is seen that the prosecution clearly established the guilt of the accused. There is no infirmity in the judgment of the trial Court as affirmed by the High Court. [Para 19] [104-B & C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 185 of 2005

From the final Judgment and Order dated 2.9.2004 of the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No. 867 of 2002

Sudhir Kulshreshtha for the Appellant.

Debojit Borkakati and D. Bharathi Reddy for the Respondent.

Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Andhra Pradesh High Court upholding the appellant's conviction for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') for committing murder of one Gottapu Adilakshmi

A (hereinafter referred to as the 'deceased') by strangulating her with a towel on 22.2.2001. Learned VI Additional Sessions Judge (Fast Track Court), Machilipatnam had found the accused guilty and convicted and sentenced him to imprisonment for life and fine.

B 2. Prosecution case as unfolded during trial is as follows:

Kusuma Ankama Rao (hereinafter referred to as 'accused') was a resident of Pedaveedhi of Gudivada Town. He was a fruit vendor. Sankara Rao (PW-1) and Rama Swamy (PW-
C 2) are the son and husband of the deceased respectively. The deceased stayed with her family in the house of M. Simhachalam (PW-3) in Padamata Veedhi at Gudivada. Accused was having illegal intimacy with the deceased. On 22.2.2001 at about 6.30 p.m., the accused met PW-1(son of the deceased) and
D asked him to get a quarter bottle of liquor and a beedi packet and paid Rs.50/- for the purpose. Accordingly, PW-1 brought the said items. Thereafter, the accused asked the whereabouts of the deceased. PW-1 took the accused to Gopalakrishna (A.C.) theatre, where the deceased was working as a labourer on that day. On their way to the theatre, they found the deceased
E and some others coming in the opposite direction. At that point of time, the accused talked with the deceased; and the accused, deceased and PW-1 went to the by-pass road leading to Eluru and thereafter they further went to the black gram field of one N. Narasimha Rao. At that point of time the accused asked PW-1
F not to follow them and to stop there. Accordingly, PW-1 waited there for half an hour or so and as the deceased and accused did not return, he returned to the hotel where he was working. Thereafter, he went to the house late in the night. In the morning when he found that her mother had not returned home, he stated
G the above facts to his father. In the meanwhile, they heard the people saying that there was a dead body in the field of N. Narsimha Rao. Then PWs 1 and 2 went there and saw the dead body of the deceased and PW-2 asked PW-1 to give complaint to the police. Accordingly, PW-1 went to Town Police,
H Gudivada and gave Ex.P-1 report. On the basis of the said re-

port, FIR was registered by PW-11. The investigating officer (PW-12) on receipt of the FIR went to the place of offence and conducted Panchanama of scene of offence and thereafter held inquest over the dead body of the deceased. He also examined the witnesses and seized the towel and other material objects. In the meanwhile, the accused made an extra judicial confession before PW-6, the village Administrative Officer to the effect that he had committed murder of the deceased by strangulation. Immediately, thereafter PW-6 recorded the statement of the accused duly attested the same by PW-8, the village servant. He took the accused to the Police Station along with the report. The C.I. of police examined Village Administrative Officer. After completion of investigation, charge sheet was filed before the learned Additional Judicial First Class Magistrate, Gudivada, who registered the same as P.R.C. No.30 of 2001. Since the offence punishable under Section 302 IPC is exclusively triable by the Court of Sessions, he committed the same to the Court of Session, Machilipatnam, who registered the case as S.C.No.211 of 2001. Thereafter, the case was made over to the learned VI Additional District and Sessions Judge, Machilipatnam for trial and disposal in accordance with law.

In order to establish its version, prosecution examined 12 witnesses and marked as Exh. P-1 to P-14 documents and M.Os. 1 to 19 were also marked. The trial Court after considering the evidence on record found the accused guilty and sentenced him as afore-stated. The conviction was challenged before the High Court. The stand before the High Court was that the prosecution case was based on circumstantial evidence and the circumstances highlighted do not establish the guilt of the accused. The State on the other hand referred to the evidence of PWs 1 and 2 and the extra judicial confession made before Village Administrative Officer (PW-6) to the effect that accused and the deceased were last seen together, and the evidence clearly established the guilt of the accused. The High Court accepted the stand of the State and dismissed the appeal.

A 3. In support of the appeal, learned counsel for the appellant submitted that the last seen concept is not applicable to the present case. The so called extra judicial confession was before a stranger. There is no reason as to why the accused would make confession before a stranger. Reliance is placed on a B decision of this Court in *State of Haryana v. Ved Prakash* (AIR 1994 SC 468) and *Kailash Potlia v. State of Andhra Pradesh* (AIR 1996 SC 66).

4. Learned counsel for the respondent-State on the other hand submitted that the three witnesses i.e. PW 1 (son of the C deceased) PWs 4 and 5 had seen the deceased and the accused going together and, thereafter the dead body was recovered. The Village Administrative Officer was not a stranger but he was incharge of the village and was a person of authority in that sense.

D 5. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See E *Hukam Singh v. State of Rajasthan* AIR (1977 SC 1063); *Eradu and Ors. v. State of Hyderabad* (AIR 1956 SC 316); *Earabhadrappa v. State of Karnataka* (AIR 1983 SC 446); *State of U.P. v. Sukhbasi and Ors.* (AIR 1985 SC 1224); *Balwinder Singh v. State of Punjab* (AIR 1987 SC 350); *Ashok Kumar* F *Chatterjee v. State of M.P.* (AIR 1989 SC 1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram* G *v. State of Punjab* (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

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6. We may also make a reference to a decision of this Court in *C. Chenga Reddy and Ors. v. State of A.P.* (1996) 10 SCC 193, wherein it has been observed thus:

> "In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".

7. In *Padala Veera Reddy v. State of A.P. and Ors.* (AIR 1990 SC 79), it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

> "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
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> (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
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> (3) 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; and
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> (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the 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.

8. In *State of U.P. v. Ashok Kumar Srivastava,* (1992 Crl.LJ 1104), it was pointed out that great care must be taken in evalu-

A ating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so estab-
B lished must be consistent only with the hypothesis of guilt.

9. Sir Alfred Wills in his admirable book "Wills' Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be
C clearly proved and beyond reasonable doubt connected with the factum 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 na-
D ture 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
E as of right to be acquitted".

10. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.
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11. In *Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh,* (AIR 1952 SC 343), wherein it was observed thus:

> "It is well to remember that in cases where the evidence
G is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should
H be of a conclusive nature and tendency and they should

be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused." A B

12. A reference may be made to a later decision in *Sharad Birdhichand Sarda v. State of Maharashtra,* (AIR 1984 SC 1622). Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are: C D

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;

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(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency; F

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. G

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A 13. These aspects were highlighted in *State of Rajasthan v. Rajaram* (2003 (8) SCC 180), *State of Haryana v. Jagbir Singh and Anr.* (2003 (11) SCC 261).

14. So far as the last seen aspect is concerned it is necessary to take note of two decisions of this court. In *State of* B *U.P. v. Satish* [2005 (3) SCC 114] it was noted as follows:

"22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is C found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other D positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, E in addition to the evidence of PW-2."

15. In *Ramreddy Rajesh Khanna Reddy v. State of A.P.* [2006 (10) SCC 172] it was noted as follows:

"**27.** The last-seen theory, furthermore, comes into play F where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts G should look for some corroboration".

(See also *Bodhraj* v. *State of J&K (2002(8) SCC 45).*)"

16. A similar view was also taken in *Jaswant Gir v. State of Punjab* [2005(12) SCC 438].

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17. Confessions may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a Magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or court. Extra-judicial confessions are generally those that are made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the Code of Criminal Procedure, 1973 (in short the 'Code') or a Magistrate so empowered but receiving the confession at a stage when Section 164 does not apply. As to extra-judicial confessions, two questions arise: (*i*) were they made voluntarily? and (*ii*) are they true? As the section enacts, a confession made by an accused person is irrelevant in criminal proceedings, if the making of the confession appears to the court to have been caused by any inducement, threat or promise, (*1*) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (*a*) does not have reference to the charge against the accused person; or (*b*) it does not proceed from a person in authority; or (*c*) it is not sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24. The law is clear that a confession cannot be

A used against an accused person unless the court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may B refuse to act upon the confession, even if it is admissible in evidence. One important question, in regard to which the court has to be satisfied with is, whether when the accused made the confession, he was a free man or his movements were controlled by the police either by themselves or through some other C agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling D of threat, inducement or promise, must be considered before deciding whether the court is satisfied that in its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt. It is not to be conceived that a E man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which F is not the result of the free will of the maker of it. So where the statement is made as a result of harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or G of a threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See: *Woodroffe's Evidence*, 9th Edn., p. 284.) A promise is always attached to the confession alternative while a threat is always attached to the silence alterna- H tive; thus, in one case the prisoner is measuring the net advan-

tage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the court is to determine the absence or presence of an inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words "appear to him" in the last part of the section refer to the mentality of the accused.

18. 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 veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses 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 an untruthful state-

A ment to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and 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
B credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility. (See *State of Rajasthan v. Raja Ram* (2003 (8) SCC 180).

19. If the factual scenario is considered it is seen that the prosecution clearly established the guilt of the accused. There
C is no infirmity in the judgment of the trial Court as affirmed by the High Court. The appeal is without merit, deserves dismissal which we direct.

D.G. Appeal dismissed.