IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1922 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA Sd/-

and
HONOURABLE MR. JUSTICE R. T. VACHHANI Sd/-

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Approved for Reporting	Yes	No
	Yes	

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BHARTIBEN W/O GUNESHBHAI PREMJIBHAI GAMIT
Versus
STATE OF GUJARAT

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Appearance:
HCLS COMMITTEE(4998) for the Appellant(s) No. 1
MR VINOD M GAMARA(5910) for the Appellant(s) No. 1
MR BHARGAV PANDYA, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 25/02/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. This conviction appeal is directed against the judgment and order of conviction dated 11.01.2012, passed by the learned Additional Sessions Judge, Surat at Vyara, in connection with Sessions Case No. 43 of 2010, by which, the sole accused Bhartiben wife of Guneshbhai Gamit was convicted under Section 302 of Indian Penal Code and sentenced to suffer life imprisonment and fine amount of Rs.100/- and in default in payment of fine, to suffer

rigorous imprisonment of 1 month.

2. The case of the prosecution, leading to conviction of the appellant accused is as follows:

2.1 The appellant accused Bhartiben was the wife of deceased Guneshbhai Gamit and they were staying together at Village Doswada, Songadh, Dist.: Tapi. Their marriage life was disturbed due to matrimonial dispute. The deceased husband was serving with Textile Manufacturing Process in Surat and he was coming at his village once in a week. The husband was having suspicion on the character of the wife. The incident of murder was being occurred on intervening night on 23.05.2010 and 24.05.2010. The husband deceased was sleeping in the outside of the house, whereas the appellant accused went into sleep in the inside the house. On the day of incident, there was quarrel between the husband and wife. Due to the said quarrel, the appellant took one plastic ligature and strangled the deceased by putting ligature around the neck. Not only that, with an iron weapon, she also inflicted injuries on the stomach. The incident was come into notice of one Sampathbhai – PW:6 and accordingly, he transmitted the message to village sarpanch – PW:4 Shankarbhai Gamit. The village sarpanch informed the brother of the deceased and other persons. In the presence of village sarpanch and others, the appellant accused made an extrajudicial confession and explained the manner in which the deceased was done to death. The FIR came to be lodged by PW.3 Manish Gamit before the Songadh Police Station and the same came to be registered as I-C.R.No.48 of 2010 for the offences punishable under Section 302 of

the Indian Penal Code. During the course of investigation, the I.O. went to the place of occurrence and drew the panchnama and collected the necessary samples for chemical analysis, sent the death body for postmortem, recovered the clothes of the accused, seized and recovered the ligature and iron weapon at the disclosure statement made under Section 27 of the Evidence Act, recorded the statements of the witnesses, sent the seized articles to the FSL and after receiving the report thereof, the chargesheet came to be filed against the appellant for the offence punishable under Section 302 of the Indian Penal Code.

3. The case was committed to the Sessions Court. The Trial Court framed the charges which the appellant accused denied the charges and claimed to be tried.

4. The prosecution, in order to examine the case against the accused, examined as many as 13 witnesses and exhibited 15 documents, as per the below mentioned tabular.

Oral evidence – 13

PW 1–Exh.8	Dr. Parehkumar Sunilbhai, Medical officer
PW 2– Exh.11	Dr. Shankarbhai Zinabhai Gamit, Medical officer
PW 3 – Exh.15	Manishbhai Premjibhai Gamit, Complainant
PW 4 – Exh.17	Shankarbhai Reshamabhai Gamit, Sarpanch of village
PW 5 – Exh.20	Savitaben Manishbhai
PW 6 – Exh.21	Sampatbhai Gamit, Panch witness
PW 7 – Exh.30	Hemaben Sampatbhai Gamit
PW 8 – Exh.31	Rajubhai Ajitbhai Gamit
PW 9 – Exh.32	Savitriben Maheshbhai Gamit
PW10– Exh.33	Premilaben Harishbhai Gamit
PW11– Exh.34	Pilajibhai Sukriabhai Gamit, PSO
PW12– Exh.36	Ushaben Dolatram Patil, PSO

PW13– Exh.41	Manharbhai Virsinghbhai Patel, IO

Documentary evidence – 15

Exh.10	MLC of the accused
Exh.13	PM report
Exh.14	Panchnama of place of offence
Exh.16	Complaint
Exh.19	Inquest panchnama
Exh.22	Panchnama of recovery of clothes of accused
Exh.28	Discovery panchnama
Exh.24	Arrest panchnama
Exh.35	Station diary entry regarding FIR
Exh.27	Station diary entry regarding arrest
Exh.39	Map of place of offence
Exh.40	Report of scientific officer
Exh.43	List of articles sent to FSL
Exh.46	FSL report
Exh.47	Serology report

5. After closure of the prosecution evidence, the appellant accused was questioned under Section 313 Cr.P.C., to which, she stated that she is innocent and is falsely implicated in the false charge of murder.

6. Though opportunity was extended, no evidence was tendered from the side of the appellant accused.

Trial Court's finding:

7. The learned Trial Court, after considering the oral and documentary evidence, as well as the submissions made on behalf of the parties, found the appellant guilty under Section 302 of the Indian Penal Code and sentenced her to undergo life imprisonment. The learned Trial Court while recording the conviction mainly

relied upon the evidence of extrajudicial confession allegedly made before the village sarpanch PW:4 and others. The Trial Court found that the extrajudicial confession made is voluntarily and true and made in a fit state of mind and the same was not by any inducement, threat and promise.

8. Being aggrieved by, and dissatisfied with the judgment of conviction and sentence, the appellant has come up with present appeal.

9. **Evidence adduced by the prosecution**:

We would like to have a cursory look at the evidence adduced by the prosecution through its witnesses:

9.1 Dr. Paresh Sunilbhai Tailor (PW:1): This witness being a medical officer, associated with the Kamrej Health Center, Surat had examined the accused. The appellant accused was brought before the doctor on 25.05.2010 at about 10:00 a.m. Upon examination of the accused, there was history of assault and as such, doctor did not find any injury on the body of the accused. The certificate of examination was produced by the doctor at Exh.10.

9.2 Dr. Shankarbhai Jinabhai Gamit (PW:2): This witness had conducted the postmortem of the body of the deceased Guneshbhai Gamit. The witness had noticed the following external and internal injuries on the body of the deceased and the same have been mentioned in the P.M. report Exh.13.

External Injuries:

Column 17 Injury 1. A black color ligature mark passing from the middle part of the throat, running backward, upward to the back of neck. The ligature mark not completely in circle the neck in back.
Ligature mark is 6mm deep and 5mm broad with petechial hemorrhages and dry and compressed white band of tissue in the base of mark.
Injury 2. *A cut injury about 2.5cm in length, deep to the abdominal wall. No bleeding swelling and gapping on right side of umbilicus.*
A cut injury about 1.5cm deep to skin with no bleeding swelling and gapping on the right side of umbilicus

Internal Injuries:

Hyperemia of the trachea and epiglottis. Fracture of thyroid cartilage. Both lungs soft and congested.

In the opinion of the doctor, the cause of death was due to asphyxia resulted by ligature strangulation. It is further opined that this is not a case of suicide but having regard to the nature of injuries, death was homicidal. On seeing the seized articles string, it was opined by the doctor that the ligature as found on the body of the deceased could be possible by the nylon string. In the cross examination, it is stated by the witness doctor that the probable time for death being not opined by him. The doctor admitted that if the person hangs himself, then the death could be possible by ligature.

9.3 Manishbhai Gamit (PW:3): This witness is the elder brother of the deceased. He has stated that the marriage span was 20 years and during the marriage span, his brother was blessed by two kids and at the time of incident, the age of kids were 12 and 8 years respectively. He has stated that his brother was killed by the appellant accused. He has further stated that since long, there was a matrimonial dispute, and the reason for

dispute was illegal relationship of the wife appellant accused. He has further stated that his brother was working at Surat and once in a week, he was coming at the house. On the aspect of incident, he stated that on 24.05.2010 at about 01:30 a.m., the incident was occurred and at that time, he was at his house situated nearby the house of the deceased. He has stated that he was informed by PW:6 Sampathbhai and thereafter, he went to his brother's house where he saw his dead body lying on the cot, found outside the house. The witness has stated that village sarpanch Shankarbhai PW:4 was also present at the place. The witness has further stated that the village sarpanch inquired from the appellant accused about the incident and in response to that, the appellant accused stated that she strangulated to death the deceased who was sleeping in the cot outside the house as on that day, there was quarrel between them and that is why, deceased was sleeping outside the house and she went to sleep inside the house. The witness on the basis of said conversation and being a brother of the deceased, lodged an FIR which he had produced before the Court at Exh.16.

In the cross examination, he has stated that, he does not have any information about the illicit relation of the appellant accused. The witness has denied that, the deceased was not suspecting on the character of the appellant accused. The witness has admitted that on the day to day affairs of the family, the relations of the husband and wife were not cordial. The witness has admitted that in the summer season, generally, the village people preferred to sleep nearby the house in the open place. The witness has admitted that the neighbour of his brother also used to sleep near their house in the open space. The witness has admitted that the neighbours who were sleeping near the house of his brother did not have heard the

screaming of his brother. The witness has admitted the facts that, the village people, in absence of his brother, doubting and seeing the appellant accused on the other way and that facts were being in the knowledge of deceased brother. It is denied by the witness that, someone had quarrel with the deceased and that person had killed him. It is also denied that, in order to teach the lesson to the appellant accused and under emotion of sad demise of his brother, he is telling lie against the appellant.

9.4 Shankarbhai Reshmabhai Gamit (PW:4:) This witness at the time of incident, was serving as a Village Sarpanch and on the day of incident, in the midnight, he received a phone call from Shantilal Bhikhabhai and was informed that the deceased has been killed. The witness in his chief examination has stated that he immediately rushed to the place of incident. He saw the dead body of the deceased lying on the cot near the house. The witness has further stated that he asked the appellant accused that where were you and where was the husband in the night. In response to the question, the appellant accused has stated that she was in the house and deceased was sleeping in the outside the house. The witness has further stated that he has asked the appellant accused that what happened and explain the incident. The witness has further stated that the appellant accused told him that there was a quarrel between her and deceased before the incident and both are suspecting character of each other. The witness has further stated that the appellant has disclosed before him that in the night hours, she was having nylon string and by using it, the deceased was strangulated to death and at that time, deceased was sleeping on the cot and the said incident has occurred at about 01:30 a.m. The witness has further stated that after knowing the facts of the

incident from the appellant accused, he went to Songadh Police Station and informed the police about the incident and the police thereafter came to the village and arrested the appellant accused and took her to the police station and at the police station, the brother of the deceased Manishbhai lodged an FIR. The witness has further stated that she is knowing the accused and further stated that the injury found on the stomach being inflicted by the appellant as at the relevant time, she had informed about it.

In the cross examination, the witness has stated that the informer Shantilal is the brother in law of the deceased. The witness has further stated that there were 10 to 12 persons present when he reached at the place of occurrence. The witness has further stated that his statement was recorded in the noon hours on the same day and after recording the statement, it was not read over to him. It is denied by the witness that the appellant had never confessed before him about the facts of the incident whatever stated in the chief examination. It is also denied that due to holding of office of village sarpanch, a false complaint through his brother being filed at his instance.

9.5 Savitaben Manishbhai Gamit (PW:5): This witness was present when the appellant accused made an extrajudicial confession before PW:4 Village Sarpanch. The witness in his chief examination has stated that, the appellant, in the presence of village sarpanch, had stated that due to dispute with the husband, she got annoyed and killed the deceased by strangulation with the aid of Nylon String and also caused injuries with the iron weapon on the stomach.

In the cross examination, it is denied by the witness that the village sarpanch PW:4 was dictating the facts of the police statements of all the persons. It is also denied by the witness that she had no cordial relation with the appellant accused and that is why, she deposing against her.

9.6 Sampathbhai Gamit (PW:6): This witness being a neighbour of the deceased has stated in his chief examination that on the day of incident, at about 09:00 p.m., he had heard the screaming of deceased and his wife as due to matrimonial dispute, they were quarreling and thereafter, in the midnight, he heard that the appellant was crying and he along with his wife went to the house of the appellant and at that time, he saw the presence of village sarpanch and others gathered at the house. The witness has further stated that he was instructed by village sarpanch to call upon the brother of the deceased and accordingly, he went to the house PW:2 Manishbhai and he came at the place of occurrence. The witness has further stated that on the aspect of incident, i.e. how it was occurred, the appellant narrated the facts of the incident before the village sarpanch and by admitting his guilty, she has stated that she had killed the deceased by strangulation. The witness has referred the inquest panchnama and seizure of the clothes of the deceased Exhs.19 and 22 and after referring both the panchnamas, he identified his signature put as a panch witness. The witness has also referred the discovery panchnama at Exh.23 and has further stated that the police after preparing the first part of the panchnama, took his signature on it and on the second part of the panchnama, his signature being taken at the police station and seized and recovered the nylon string near the house of the appellant. In the cross examination, the witness has stated that in his police statement, he had not disclosed about hearing the screaming of the appellant at the

midnight. The witness has also admitted that he has no personal knowledge about the extramarital affairs of the appellant. The witness has also admitted that the deceased was having habit to consume liquor. The witness has stated that he has no personal knowledge that under the influence of the liquor, the deceased was used to quarrel with the appellant. The witness has further stated that before coming to the Court, he had meeting with village sarpanch and at his instance, he is deposing in the Court.

9.7 Hemaben Sampatbhai (PW.7), Rajubhai Ajitbhai (PW.8), Savitriben Maheshbhai Gamit (PW.9), Premilaben Harishbhai (PW.10):

All the witnesses being residents of Village: Doswada, have deposed against the appellant on the line of witness (PW.4) Shankarbhai Gamit. The witnesses on the aspect of extrajudicial confession, have stated that, the appellant-accused had pleaded his guilt before the Village Sarpanch (PW.4). In such circumstances, we do not deem it fit to refer their entire oral testimony.

9.8 Manhar Virsingh Patel (PW.13): This witness being a P.S.I., Songadh Police Station, had investigated the case and after due investigation, he filed the chargesheet against the appellant. In the chief-examination, the I.O. has stated that, he was informed by the PW.4 on his mobile phone about the present case of murder and after receiving the message, he along with the supporting staff, went to the Village: Doswada. The witness I.O. has further stated that, the brother of the deceased PW.3 – Manish Gamit lodged an FIR before him at the place and the said FIR was sent to Police Station for registration of the offence

and thereafter, he was entrusted with the investigation. During the investigation, he prepared an inquest and sent the dead body for post-mortem and prepared a spot panchnama in the presence of Mobile FSL Officer, recorded the statements of witnesses, seized the clothes of the deceased, arrested the appellant-accused, seized the nylon string at the disclosure statement of the appellant and drew the panchnama in terms of Section 27 of the Evidence Act. The I.O. has specifically stated that, he had recorded the statement of deceased's daughter, sent the seized articles to the FSL for forensic analysis and lastly, upon completion of investigation, he laid the chargesheet before the court.

In the cross-examination, the I.O. has admitted that, he noticed the nail marks injury on the body of the accused. The I.O. has denied that, from the registration of the FIR and filing of the chargesheet, the PW.4 – Village Sarpanch had accompanied him. It is also denied that, the complaint was not filed by the complainant, but it was filed by him. It is also denied that, at the behest of Sarpanch, the false case being registered against the appellant and as such, no any confessional statement being made by the appellant either before the Sarpanch or anyone.

Submissions:

10. Mr. Vinod Gamara, learned counsel appearing for and on behalf of the appellant-accused while assailing the impugned judgment and order of sentence, made the following submissions:

10.1 Learned trial court grossly erred while convicting the accused, without appreciating the evidence in the right prospective.

10.2 That, the entire case largely based on the extra judicial confession

allegedly made by the accused before PW.4 – Shankarbhai Gamit who at relevant time, was serving as a Village Sarpanch and having dominance on the entire village and at his instance, the brother of the deceased (PW.3) lodged an FIR. It is the case of prosecution that, the appellant confessed her guilt before PW.4 and while at that time, the family members, neighbours and villagers were present at the scene of occurrence. In such circumstances, the alleged confession before the Sarpanch is not free from local influence, pressure or bias and therefore, the so called confession is not voluntary, true and credible and the evidence of Village Sarpanch and others does not inspire confidence on the aspect of extra judicial confession of the accused and conviction solely on the basis of extra judicial confession without there being any corroboration, it is unsafe to rely on such kind of evidence and conviction on the sole basis of confession is not sustainable in the eye of law and on this ground alone, the judgment of conviction require to be set aside. In support of the said submission, heavy reliance being placed on the judgment of Supreme Court delivered in the case of ***Sahadevan and Anr. Vs. State of Tamilnadu (2012) 6 SCC 403)***, ***S.K.Yusuf vs. State of Bengal (2011) 11 SCC 754)*** *and* ***Prabhatbhai Aatabhai Dabhi vs. State of Gujarat (2023 14 SCC 228)***.

10.3 The case of prosecution rests on circumstantial evidence and in the case of circumstantial evidence, the motive assumes significance. In the present case, the deceased was suspecting that, his wife had an affair with someone and on this ground, the quarrel being occurred off and on between the appellant and deceased. The witnesses have made general allegations that, deceased was having suspicion on the character of the appellant, but with whom she had an extra marital affair, that has not

come on record and therefore, motive is not established by the prosecution for the appellant to commit murder of her husband.

10.4 The discovery and recovery of nylon string is not proved and established as mandated under Section 27 of the Evidence Act. Neither the panchas of the panchnama (Exh.23) have deposed as per the contents of the panchnama, nor the I.O. has deposed that, at the voluntary disclosure statement of the accused, the nylon string being discovered at the instance of the accused. It is necessity of the law that, the I.O. has to depose the exact words uttered by the accused at the police station and thereafter, it is obligatory on his part to prove the contents of the discovery panchnama. Thus, the discovery of nylon string cannot be taken into consideration as the discovery panchnama as well as disclosure statement has not been proved in accordance with law.

10.5 The conviction is based only on suspicion which cannot be sustain as suspicion cannot replace the proof.

11. In such circumstances as referred above, Mr. Gamara, learned counsel has submitted that the prosecution failed to prove the charge of murder against the accused by adducing cogent and credible evidence beyond reasonable doubt and therefore, he prayed that, there being merits in the appeal and same may be allowed and further requested that, the judgment of conviction and order of sentence be set aside and the appellant may be acquitted of the charge of murder.

12. On the other hand, opposing the appeal, Mr. Bhargav Pandya, learned Additional Public Prosecutor, submitted that, the trial court has not committed any error in holding the appellant-accused guilty of the

offence. on the fateful night, the appellant was annoyed on the aspect of suspecting his character by the accused and with premeditated mind, she procured the nylon string in her possession and when the deceased was in deep sleep, he was strangulated to death. The neighbours heard the screaming and assembled at the place. The presence of Village Sarpanch (PW.4) was natural and being a Head of the village, it was his duty to inquire from the appellant about the incident and in natural way, the appellant confessed before him that, she had killed her husband because of day-to-day matrimonial disputes as the deceased was suspecting her character. Therefore, the confession before the Village Sarpanch cannot be termed to be under pressure or it was an outcome of influence. There is no reason or motive for the Sarpanch (PW.4) to falsely implicate the appellant-accused and therefore, the confession being made voluntarily and it reflects the true affairs of the incident as on the fateful night, the appellant being a wife, was in the house and despite of this, she did not offer any explanation about the manner of incident. The seizure of nylon string would further strengthen the prosecution case and the evidence of extra judicial confession would corroborated by such seizure of nylon string and all the witnesses consistently stated that, the deceased was having suspicion on the character of the accused and on this ground, there was a matrimonial dispute between the husband and wife and it was the motive to kill the deceased. In such circumstances, it is prayed that, the prosecution has succeed in proving the charge of murder by adducing cogent and credible evidence and thus, it was further urged that, there being no merits in the appeal and same may be dismissed.

Analysis & Discussion:

13. We have considered the submissions advanced by learned advocates appearing for the respective parties, perused the case records and impugned judgment.

14. In the facts of the present case, the prosecution has relied upon (a) extra judicial confession of the accused allegedly made before PW.4 – Shankarbhai Gamit and other witnesses, (b) recovery of nylon string at the instance of the appellant-accused, (c) the evidence of motive that the deceased had a quarrel with the appellant with respect to her extra marital affair which was the reason for family dispute and the appellant was annoyed and fed up with such kind of allegations.

15. It is necessary to briefly examine law relating to extra judicial confession as the basis of conviction is mainly on the extra judicial confession made before PW.4 and others.

In the case of ***Pawankumar Chaurasia vs. State of Bihar (2023 SCC Online SC 259),*** in paragraph-5, it was held thus:

> *"5. As far as extra judicial confession is concerned, the law is well settled. Generally, it is a weak piece of evidence. However, a conviction can be sustained on the basis of extra judicial confession provided that the confession is proved to be voluntary and truthful. It should be free from any inducement. The evidentiary value of such confession also depends on the person to whom it is made. Going by natural course of human conduct, normally a person would confide about a crime committed by him only with such a person in whom he has implicit faith. Normally, a person would not make a confession to someone who is totally stranger to him. Moreover, the court has to be satisfied with the*

reliability of the confession keeping in view the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extra judicial confession is corroborated by other evidence on record, it acquires more credibility."

In the case of ***Prabhatbhai Aatabhai Dabhi vs. State of Gujarat (2023 14 SCC 228)***, in para-7 of the judgment, the Supreme Court held and observed that,

"*When prosecution relies upon the evidence of extra judicial confession, normally, the court will expect that, the evidence of the person before whom extra judicial confession is allegedly made, must be of sterling quality."*

In the case of ***S. Arul Raja vs. State of Tamilnadu (2010 8 SCC 233)***, in para-55 of the judgment, the Supreme Court laid down that,

"An extra judicial confession is a weak piece of evidence. Though it can be made the basis of conviction, due care and caution must be exercised by the courts to ascertain the truthfulness of the confession. Rules of caution must be applied before accepting an extra judicial confession. Before the court proceed to act on the basis of an extra judicial confession, the circumstances under which it is made, the manner in which it is made and the person to whom it is made, must be considered along with the two rules of caution: (i) whether the evidence of confession is reliable and (ii) whether it finds corroboration?"

16. Reverting to the case in hand, the issue arise for our consideration whether the extra judicial confession of an offence made by the accused

before PW.4 does inspire confidence, truthful and can be basis for conviction.

17. There is no dispute that, on the fateful night, the deceased Guneshbhai was sleeping on the cot at the front side of his house and the appellant being a wife was sleeping inside the house. The marriage span was 20 years or more. The elder daughter was also there in the house and as per the testimony of the I.O., her statement was also recorded. We have understood the topography of the place from the sketch prepared by the Revenue Officer. The map shows that, nearby the place of incident, people of the village residing in their respective houses and the area was thickly populated. According to prosecution case, the deceased was strangulated to death by nylon string and while strangulating the deceased, he might have screamed and tried to escape from the clutches of the appellant-accused. The witnesses who were residing adjacent to the house of the deceased, did not have stated in clear terms that, in the midnight, they heard the screaming of the deceased. On the contrary, they have heard the crying of the appellant and after hearing the voice of the appellant, they went to the house of the appellant. In these background facts, the persons who were gathered near the house of the appellant, waited till arrival of Village Sarpanch (PW.4) and during that period, no one had asked the appellant that what was happen and who had killed the deceased. Admittedly, PW.4 being a Village Sarpanch, having influence over the local villagers and after his arrival, the appellant, in the presence of 10 to 15 people, alleged to have confessed her guilt i.e. made confessional statement stating that she had killed the deceased by strangulation. In our opinion, we have serious doubt about the genuineness and truthfulness of the prosecution case regarding evidence

of extra judicial confession. At the first point of time, before the neighbours, the appellant did not have disclosed anything, nor she was asked to disclose the true facts of the incident and when the Village Sarpanch arrived at the home, she made a confession before him. This shows that, under the influence and pressure of PW.4, she made an extra judicial confession. If Village Sarpanch would not have arrived at the place of incident, then she might not have confessed her guilt by making extra judicial confession. Thus, the surrounding circumstances and the manner in which the alleged confession being made before the PW.4, the reasonable inference would arise that, the appellant was under pressure and made a statement under the influence of PW.4 and if that is so, then, the extra judicial confession cannot be said to be voluntary, free and truthful and therefore, when the extra judicial confession is not supported by a chain of cogent circumstances and corroborated by other prosecution evidence, the conviction for the offence of murder cannot be made on the evidence of extra judicial confession. In nutshell, our conclusion is that, the evidence of extra judicial confession made before PW.4 does not inspire confidence and cannot be relied upon.

18. The another circumstance relied upon by the prosecution is the discovery and recovery of nylon string. We have carefully examine the evidence of panch witnesses of discovery panchnama (Ex.23). The appellant was under police custody. According to prosecution case, on the basis of voluntary statement of the accused, she pointed out the place where the nylon string was being thrown by her and on her statement, there was a recovery of nylon string allegedly used in the commission of crime. The panch witnesses have not stated that, the accused while in the police custody, on her own free will and volition made a statement that,

she would like to point out the place where she had threw the nylon string and after recording the said statement in the preliminary panchnama, the appellant-accused pointed out the place and same proceedings being reduced into writing in the second part of the panchnama. The I.O. (PW.13) has also not deposed that the accused at the preliminary stage, made a voluntary statement to point out the place where the nylon string was thrown by her. It is thus clear that, the recovery of nylon string cannot be relied upon as no confessional statement of the appellant-accused is proved under Section 27 of the Evidence Act. In this regard, we may profitably refer the case of ***Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh (2022 SC Online 1396)***. It is relevant to refer para-51 to 56 which reads as under:

> *"51. It is the case of the prosecution that on 24.01.2010 the accused appellant was picked up by the investigating officer from nearby a bus stand and was arrested in connection with the alleged crime. After the arrest of the accused appellant and while he being in the custody at the police station, he is said to have on his own free will and volition made a statement that he would like to point out the place where he had hidden the weapon of offence (Banka) and his bloodstained clothes after the commission of the alleged crime. According to him, after such statement was made by the accused appellant, he along with his subordinates set forth for the place as led by the accused. There is something very unusual, that we have noticed in the oral evidence of the investigating officer. According to him while the police party along with the accused were on their way, all of a sudden, the investigating officer realized that he should have two independent witnesses with him for the purpose of drawing the panchnama of discovery. In such circumstances, while on the way the investigating officer picked up PW-2, Chhatarpal Raidas and Pratap to act as the panch witnesses. According to the investigating officer the accused led them to a coriander field and from a bush he took out the weapon of offence (Banka) and the bloodstained clothes. The weapon of offence and the bloodstained clothes were collected in the presence of the two panch witnesses and the panchnama Exh. 5 was accordingly drawn. The weapon of offence and the blood stained clothes thereafter were sent for the Serological Test to the Forensic Science laboratory. We are of the view that the Courts below committed a serious error in relying*

upon this piece of evidence of discovery of a fact, i.e., the weapon & clothes at the instance of the accused as one of the incriminating circumstances in the chain of other circumstances. We shall explain here below why we are saying so.

52. Section 27 of the Evidence Act, 1872 reads thus:

"27. How much of information received from accused may be proved. —Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

53. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence along with his blood stained clothes then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence. When the accused while in custody makes such statement before the two independent witnesses (panch witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden. Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter.

54. The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the investigating officer in his oral evidence has not said about the exact words uttered by the accused at the police station. The second reason to discard the evidence of discovery is that the investigating officer has failed to prove the contents of the discovery panchnama. The third reason to discard the evidence is that even if the entire oral evidence of the investigating officer is accepted as it is, what is lacking is the authorship of concealment. The fourth reason to discard the evidence of the discovery is that although one of the panch witnesses PW2, Chhatarpal Raidas was examined by the prosecution in the course of the trial, yet has not said a word that he had also acted as a panch witness for the purpose of discovery of the weapon of offence and the blood stained clothes. The second panch witness namely Pratap though available was not examined by the prosecution for some reason. Therefore, we are now left with the evidence of the investigating officer so far as the discovery of the weapon of offence and the blood stained clothes as one of the incriminating pieces of circumstances is concerned. We are conscious of the position of law that even if the independent witnesses to the discovery panchnama are not examined or if no witness was present at the time of discovery or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the discovery evidence unreliable. In such circumstances, the Court has to consider the evidence of the investigating officer who deposed to the fact of discovery based on the statement elicited from the accused on its own worth.

55. Applying the aforesaid principle of law, we find the evidence of the investigating officer not only unreliable but we can go to the extent to saying that the same does not constitute legal evidence.

56. The requirement of law that needs to be fulfilled before accepting the evidence of discovery is that by proving the contents of the panchnama. The investigating officer in his deposition is obliged in law to prove the contents of the panchnama and it is only if the investigating officer has successfully proved the contents of the discovery panchnama in accordance with law, then in that case the prosecution may be justified in relying upon such evidence and the trial court may also accept the evidence. In the present case, what we have noticed from the oral evidence of the investigating officer, PW7, Yogendra Singh is that he has not proved the contents of the discovery panchnama and all that he has deposed is that as the accused expressed his willingness to point out the weapon of offence the same was discovered under a panchnama. We have minutely gone through this part of the evidence of the investigating officer and are convinced that by no stretch of imagination it could be said that the investigating officer has proved the contents of the discovery panchnama (Exh.5). There is a reason why we are laying emphasis on proving the contents

of the panchnama at the end of the investigating officer, more particularly when the independent panch witnesses though examined yet have not said a word about such discovery or turned hostile and have not supported the prosecution. In order to enable the Court to safely rely upon the evidence of the investigating officer, it is necessary that the exact words attributed to an accused, as statement made by him, be brought on record and, for this purpose the investigating officer is obliged to depose in his evidence the exact statement and not by merely saying that a discovery panchnama of weapon of offence was drawn as the accused was willing to take it out from a particular place."

Applying the aforesaid principle of law to the facts of the present case, we find that, the recovery of nylon string on the basis of confessional statement made in terms of Section 27 of Evidence Act having not been proved and established pointing towards the involvement of the applicant in the alleged crime.

19. The third circumstance as relied by the prosecution is the motive to kill the deceased. It is the case of prosecution that, the deceased had suspicion in his mind that, the appellant-wife was maintaining extra marital affair and on this ground, the relationship of the husband-wife were not cordial and due to this allegation, the appellant-wife got annoyed and decided to kill the deceased. The prosecution case rests on the circumstantial evidence as no one had witnessed the incident. It is settled position of law that, where there is a clear proof for the crime, that lends additional support to the findings of the court that the accused was guilty, but absence of clear motive, does not necessarily lead to the contrary conclusion. The motive looses all its importance in case where direct evidence of eye witness is available. However, in a case based on circumstantial evidence, motive assumes pertinent significance as existence of the motive is an enlightening factor in a process of presumptive reasoning in such a case. ***The absence of motive, however,***

***puts the court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjectures do not take place of legal proof.* (*Munish Mubar vs. State of Haryana (2012 10 SCC 464)*.**

20. Reverting back to the facts of the present case, the deceased was working at Surat and was coming once in a week at his village Doswada and the appellant-wife with two kids, remained at the village. None of the witnesses have clarified that, with whom the appellant was maintaining relationship. It is no doubt true that, since long, the relations of the husband-wife were not cordial, but at the same time, when the prosecution is coming with a specific case that the husband deceased was having suspicion on the character of the wife, then, bald allegation of character is not sufficient, but it should be proved by cogent evidence that, in absence of deceased husband, she used to visit xyz house or xyz person were coming to the house of the appellant. In such circumstances, in our opinion, the allegation of character being made on the basis of suspicion which in our opinion, cannot take place of proof. Thus, the motive on the part of the appellant to kill the deceased has not been proved by leading acceptable evidence.

21. For the aforementioned reasons, we are of the view that, the prosecution miserably failed to prove the charge of murder against the appellant by acceptable, cogent and credible evidence. The judgment of conviction and order of sentence passed against the appellant-accused is not sustainable in law and accordingly deserves to be set aside and are hereby set aside.

22. In the result, the conviction appeal filed by the appellant stands allowed. The judgment of conviction and order of sentence dated

11.01.2012, passed in Sessions Case No.43 of 2010 is hereby set aside. The appellant-accused stands acquitted of the offence under Section 302 Indian Penal Code. The appellant-accused is on bail. The bail bond stands cancelled and surety is discharged. There is no need for the appellant to surrender to the jail authority. The fine amount, if deposited, be refunded to the appellant. R & P be sent back forthwith to the trial court.

Sd/-
(ILESH J. VORA,J)

Sd/-

(R. T. VACHHANI, J)

TAUSIF SAIYED

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: TAUSIFAHMED SAIYED(HC01401), PRIVATE SECRETARY, at High Court of Gujarat on 25/02/2026 17:15:29