HIGH COURT OF TRIPURA

AGARTALA

CRL A (J) 51 OF 2024

Sri Suman Das,
S/o Sri Gopal Das,
Resident of Murabari near SDM's Office,
P.S. Bishalgarh, District-Sepahijala, Tripura.

….**Convict-Appellant**.

Versus

The State of Tripura

….**Respondent**.

Present:

For the Appellant	:	Mr. Ratan Datta, Advocate. Mr. Sourav Debnath, Advocate. Mr. A.Baidya, Advocate. Mr. D. Debroy, Advocate.
For the Respondent	:	Mr. Raju Datta, P.P.
Date of hearing	:	18.03.2026
Date of delivery of judgment & Order	:	**31.03.2026**
Whether fit for reporting	:	**Yes** ✓ / **No**

HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR.JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

[S. Datta Purkayastha, J]

The judgment and sentence dated 02.09.2023, passed by the learned Additional Sessions Judge, Bishalgarh, Sepahijala in Case No. ST(Type-1) 15 of 2020 are under challenge in this appeal whereby the learned Trial Court convicted the appellant, Suman Das and another Chandan Das under Sections 302/201 of Indian Penal Code (for short- IPC) read with Section 34 of the same, and sentenced them to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- (Rupees ten thousand) each only, and in default of payment of fined, to suffer further R.I. for 1(one) year under Section 302 of IPC, and also to suffer R.I. for 3(three) years along with a fine of Rs.5000/- each only, and in default of fine, to suffer

further R.I. for 6(six) months for commission of offence punishable under Section 201 of IPC.

2. The daughter-in-law (wife of the son) of the deceased Krishna Das lodged the FIR on 27.04.2020 that the deceased, a widow lady would stay alone in her house and she would work as a Cleaner at Bishalgarh Municipal Council Office. For a few days i.e. from 23.04.2020 she did not attend the office. On the previous day of 23.04.2020 she also made a complaint to the Councillor of Ward No.15 against the convicts alleging that they would disturb her during the night and used to kick the doors and windows of her room using abusive languages. Out of suspicion concerning that incident, a search was carried out on 27.04.2020 to find out the deceased and when pressure was given to the said two convicts, they admitted that on 23.04.2020, at around 8:00 pm, in the night they first tide her neck with a belt, then raped her and later on killed her. They also stated that afterwards they had left the dead body in a well. Thereafter, both the convicts were tied up with a rope by the local people and police was informed. Subsequently, they identified the place where the dead body was thrown and police recovered the same from the said well.

3. Based on the said FIR, police investigated the case and submitted the charge sheet against both the convicts under Sections 376(D)/302/201/34 of IPC. Charges against both of them were also framed under Sections 376(D)/302/201 read with Section 34 of IPC to which they denied the allegations.

4. The prosecution examined total 25 nos. of witnesses amongst whom the vital witnesses are PW-1, PW-2, PW-4, PW-5, PW-11, PW-12 and PW-21 to PW-24.

5. Learned Trial Court after considering the materials as placed in the evidence held them guilty and finally convicted them in the terms as stated here-in-above.

6. Learned counsel, Mr. Ratan Datta for the appellant firstly raises the issue that the examination-in-chief of as many as 17 nos. of witnesses were recorded by the learned Trial Court in absence of the learned defence counsel who was at that time detained in a prison, deferring cross-

examination of those witnesses on different dates. According to learned counsel, such process as was adopted by the Ld. Trial Court was illegal and contrary to the decision of Hon'ble Supreme Court in case of ***Ekene Godwin & Anr. vs. State of Tamil Nadu, 2024 SCC OnLine SC 337***. In the said case, while the trial of the case was being proceeded, application for bail of the accused person was rejected by the High Court. The matter was challenged before the Hon'ble Supreme Court and during hearing it was informed to the Court that the Trial Court recorded examination-in-chief of 12 prosecution witnesses one after the other on different dates without recording their cross-examination. The Trial Court was infact in a hurry to dispose of the matter as the High Court directed to complete the trial preferably within four months. The accused persons were though present during recording of examination in chief of said witnesses, but they were completely unrepresented as they did not engage any Advocate in that case on their behalf. In that contexts, Hon'ble Supreme Court observed that Trial Court ought to have provided a legal aid Advocate to the appellant before it proceeded for recording the examination-in-chief of the prosecution witnesses, so that the evidence of prosecution witnesses could have been recorded in presence of the Advocate representing the appellant-accused. It was also observed in that context that when the examination-in-chief of a material prosecution witness was being recorded, the presence of the Advocate for the accused was required. He had a right to object to a leading or irrelevant question being asked to the witnesses. If the trial is conducted in such a manner, an argument of prejudice would be available to the accused person. It was also observed that the normal rule is that witnesses shall be examined in the order laid down in Section 138 of the Indian Evidence Act,1982. Therefore, recording examination-in-chief only of the witnesses without cross-examination was contrary to the law and to avoid any argument of prejudice from the side of defence, learned Trial Court was directed to conduct a *de novo* trial by examining the prosecution witnesses again who were already examined.

7. Mr. Datta, learned counsel argues that the learned Trial Court based on the evidence of PW-1, Smt. Lalita Das who is the mother of the present appellant and who had claimed to have heard her son telling to the co-accused that he would divulge the fact of murder of the deceased by said Chandan Das to others. According to learned counsel, neither the appellant confessed the killing of deceased to his mother directly nor had he

confessed such commission of murder by himself. Therefore, the learned Trial Court misapplied the provisions of Section 60 of the Indian Evidence Act that such a part of evidence was direct evidence. He also submits that as per the prosecution case, both the appellant and Chandan Das would always remain under intoxication and would fight with each other. Therefore, uttering of such words by any of them regarding murder of deceased was more suspicious and that the relevant part of the evidence of PW-1 was hearsay evidence.

8. Learned counsel referring to the evidence of PW-2 submits that there was slope near the alleged well wherefrom the dead body was recovered and therefore, possibility of accidental fall by the deceased therein couldnot be ruled out. Learned counsel, Mr. Datta also argues that in a case of circumstantial evidence, the circumstance from which the conclusion of guilt is to be drawn, should be fully established and in a conclusive manner the chain of evidences should be proved so as to exclude any sort of doubt regarding complicity of the offender. In this regard, learned counsel, Mr. Datta relies on a decision of Hon'ble Supreme Court in the case of ***Sharad Birdhi Chand Sarda vs State Of Maharashtra, AIR 1984 SC 1622***.

9. Learned counsel also argues that common intention of both the offenders were not proved in the evidence and as per the evidence of the mother of the present appellant, the present appellant only uttered about complicity of Chandan Das and not of himself in the alleged crime.

10. Learned counsel, Mr. Ratan Datta further challenges the propriety and legality of the impugned judgment submitting that Section 27 of the Indian Evidence Act was not proved in this case as the so called statements of the appellant was secured under pressure and under the influence of investigating authority.

11. Mr. Datta, learned counsel also relies on a decision of Hon'ble Supreme Court in the case of ***Surinder Kumar Khanna vs. Intelligence Officer Directorate of Revenue Intelligence, AIR 2018 SC 3574,*** wherein at Paragraph Nos. 11 and 12 it was held as follows:-

> "***11. In Kashmira Singh v. State of Madhya Pradesh,(1952) SCR 526, this Court relied upon the decision of the Privy Council in Bhuboni Sahu v. The King, AIR 1949 PC 257 and laid down as under:***

"Gurubachan's confession has played an important part in implicating the appellant, and the question at once arises, how far and in what way the confession of an accused person can be used against a co-accused? It is evident that it is not evidence in the ordinary sense of the term because, as the Privy Council say in Bhuboni Sahu v. The King "It does not indeed come within the definition of 'evidence' contained in section 3 of the Evidence Act., It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross- examination." Their Lordships also point out that it is "obviously evidence of a very weak type..... It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities."

They stated in addition that such a confession cannot be made tile foundation of a conviction and can only be used in "support of other evidence." In view of these remarks it would be pointless to cover the same ground, but we feel it is necessary to expound this further as misapprehension still exists. The question is, in what way can it be used in support of other evidence? Can it be used to fill in missing gaps? Can it be used to corroborate an accomplice or, as in the present case, a witness who, though not an accomplice, is placed in the same category regarding credibility because the judge refuses to believe him except in so far as he is corroborated ?

In our opinion, the matter was put succinctly by Sir 'Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbutty [1911] I.L.R.38 CAL.559 at 588 where he said that such a confession can only be used to "lend assurance to other evidence against a co-accused "or, to put it in another way, as Reilly J. did in In re Periyaswami Moopan [1931] I.L.R.54 Mad.75 at 77 "the provision goes no further than this--where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession de- scribed in section 30 may be thrown into the scale as an additional reason for believing that evidence."

Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

12. The law laid down in Kashmira Singh (supra) was approved by a Constitution Bench of this Court in Hari Charan Kurmi and Jogia Hajam v. State of Bihar, AIR 1964 SC 1184 at P.1188 wherein it was observed:

"As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerburty a confession can only be used to "lend assurance to other evidence against a co-accused". In re Periyaswami Moopan (AIR 1931 Mad 177) Reilly. J., observed that the provision of Section 30 goes not further than this: "where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence". In Bhuboni Sahu v. King (supra) the Privy Council has expressed the same view. Sir John Beaumont who spoke for the Board, observed that "a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in Section 3 of the Evidence Act.It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved the case; it can be put into the scale and weighed with the other evidence". It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in Kashmira Singh v. State of Madhya Pradesh where the decision of the Privy Council in Bhuboni Sahu case has been cited with approval."

12. Learned counsel also relies on a decision of Hon'ble Supreme Court in the case of ***Chandrapal vs. State of Chattisgarh***, ***AIR 2022 SC 2542*** wherein at Paragraph No.11 it was observed that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession. It is also observed further that an extra judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra judicial confession.

13. He also relies on ***Nandu Singh vs. State of M.P., (2022) 19 SCC 301,*** wherein it was observed that absence of proving of motive cannot be a ground to reject the prosecution case and if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. It was also observed that absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused.

14. Learned counsel, Mr. Ratan Datta further relies on a decision of ***Rajendra Singh & Ors. vs. State of Uttaranchal, AIR 2025 SC 4764***. In that case while appreciating the evidences of that case, Hon'ble Supreme Court observed that the recovery of one of the swords was made from a garage, and the recovery of another sword and the Kanta was made from bushes in sugarcane field, which was an open space. The weapons were no doubt recovered allegedly on the pointing out of the appellants. However, no effort was made to match the blood on the said weapons with that of the deceased. The weapons were sent for forensic examination but no report of the forensic laboratory was produced to establish that the weapons so recovered were smeared with the blood of the deceased to prove that they were actually used in the murder of the deceased. This decision was referred to by Mr. Ratan Datta, learned counsel indicating that the recovery of the belt from the house of the deceased was not reliable as it was not sent for forensic examination.

15. Learned counsel, Mr. Ratan Datta also argues that the recovery of the dead body at the instance of the appellant and co-accused/convict as alleged cannot also termed as leading to discovery as already the general people gathered there had knowledge that dead body was lying in the well prior to the arrival of the police there.

16. Mr. Ratan Datta, learned counsel also submits that the evidence of PWs-2,4,5 and 12 were also similarly of hearsay nature. Learned counsel further contends that the common intention of committing murder by the co-accused Chandan Das and the present appellant was also not proved. When in the post-mortem report, learned counsel, Mr. Datta continues, no injury was found in the private parts of the deceased and swab analysis report was also negative, the testimonies of PW-1 and other witnesses that after committing rape on her, the deceased was murdered does not find corroborative support with the medical evidence and therefore, the said witnesses were not reliable. Mr. Datta also argues that there were family disputes between the PW-1 and his brother Uttam Das on one part and the appellant on the other part and on several occasions they tried to oust the appellant from the house and for that purpose, he was falsely implicated in this case.

17. Learned counsel, Mr. Ratan Datta also contends that extra-judicial confession was a very weak piece of evidence and in this case such confession was also not consistent. Moreover, it was a case of circumstantial evidence but motive of the crime was not proved which is a decisive factor in the case.

18. Learned P.P., on the other hand argues that in the FIR itself the motive of the crime was indicated that both the appellant and the co-accused would disturb the deceased in the night and would kick her doors and windows of the room and even would use abusive languages towards her and in this regard, she also lodged one complaint to the Councillor of BMC No.15 just on the previous day of the incident, therefore to meet the grudge, the deceased was murdered.

19. Learned P.P. also relies on the evidence of PW-2 as discussed earlier. Further he submits that the belt of the appellant was recovered from the house of the deceased at the instance of the appellant which is a strong

circumstance against him. Moreover, PW-12, Pintulal Das also corroborated with the prosecution case materially in his evidence.

20. Learned P.P. also relies on a decision of the Hon'ble Supreme Court in the case of ***Vinod Kumar vs. State of Punjab, (2015) 3 SCC 220*** in respect of Section 309 of CrPC. It was observed by the Hon'ble Supreme Court in the said case that the cross-examination of prosecution witnesses took place after one year and 8 months allowing ample time to pressurize the witness by adopting all kinds of tactics. In that context, it is was further observed that there was no cavil over the proposition that there had to be a fair and proper trial but the duty of the court while conducting the trial was to be guided by the mandate of the law and the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced and If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It was also observed that the trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. It was further observed that it is not all appreciable to call a witness for cross-examination after such a long span of time and It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time and it is anathema to the concept of proper and fair trial.

21. To appreciate the contentions raised by the parties, the relevant portions of the evidences of the vital witnesses are required to be examined first.

22. PW-1, Smt. Lalita Das states that the appellant is her son and Chandan Das is the friend of her son. Six months prior to the said incident, Chandan Das started staying in her house along with the appellant and they would take some intoxicated drugs and whenever they would not be allowed to stay in the said house they would stay here and there. On 26.06.2020, in the night after she went to sleep, she heard quarrel between the appellant and Chandan and at that time, Chandan called her out and she found that

the quarrel was going on between them regarding one mobile phone. Chandan was telling Suman to return his mobile phone as he wanted to go to his house and the appellant was telling him that he had broken down his mobile phone and therefore, he would not return the same. Then the appellant also told Chandan that if Chandan would leave their house to go to his house back, then he would go out to the road and tell everybody that he had killed the deceased. The witness also found Chandan to tie the mouth of Suman by a 'gamcha' (napkin). Thereafter Chandan told her that the appellant had killed the deceased. Thereafter on the following morning she went to the house of Ex-Councillor Basana Das (PW-5) and told her everything. Thereafter, the present Councillor Amar Sarkar (PW-4), met her in the house of Basana Das and other two persons, namely, Pintu Das (PW-12) and Samarjit Ghosh (PW-2) also came there and she narrated the entire incident to them. Thereafter, they came to her house and local people detained Chandan and Suman thereafter and handed over them to the police. She also stated that the deceased would stay alone in her house. Her cross-examination mainly consists of denials.

23. PW-5, Smt. Basana Das, the Ex-Councillor of that Ward corroborating with PW-1 stated that on 27.04.2020, at about 7:00 am, PW-1 came to her house and informed that Suman Das and Chandan Das had killed the deceased and that Suman Das had told her about the said fact on the previous night. Meanwhile, Amar Sarkar along with two others also came there and thereafter PW-1 also told them that Suman Das and Chandan Das were sleeping in her house at that time. Thereafter, Amar Sarkar and others along with PW-1 went to her house and later on, she came to know that Suman Das and Chandan Das were detained and dead body of the deceased was recovered. In her cross-examination, she admits that Amar Sarkar is her relative and the appellant Suman Das is her neighbour. She also admits that the deceased was her cousin, but she did not have any visiting relation or any conversation with the deceased prior to her death.

24. PW-4, Amar Sarkar, the present Councillor of Ward No.15 wherein the deceased would reside states that from 23.04.2020 the deceased was absent from her duty in the office and she was stated to be missing. On 27.04.2020, the elder brother of the present appellant informed him over phone that on the previous night, the appellant was heard crying and telling that they had murdered the deceased. Thereafter, he called

Pintulal Das (PW-12) and Samarjit Ghosh (PW-2) who were the Booth Presidents and along with them some other youths of the locality came to the house of Basana Das where they found PW-1. PW-1 told them that the appellant along with his friend Chandan Das had killed the deceased and she came to know the said fact on the previous night from the appellant. Thereafter they went to the house of PW-1 and found both Suman Das and Chandan Das there and on being asked, they first did not admit anything but after some time Chandan Das had confessed that the appellant at first tried to kill the deceased but Chandan attempted to prevent him, but later on, both of them raped upon the deceased and then they killed her. They further told that they had thrown the dead body into a well. Thereafter, PW-4 informed the police and on arrival of police they along with the police went to the site of the well led by the convict Chandan Das and found that it was an abandoned kutcha well and thereafter the dead body was recovered from there. Police arranged to bring out the dead body from the well. This witness also states that on the same day police seized a pair of earrings, keys and a mobile phone of the deceased from the possession of the offenders and he put his signature in the seizure list. He also further states that on 03.05.2020, in the afternoon, police seized some keys and obtained his signature in the seizure list. He also identifies those items in the Court. In his cross-examination, he admitted that witness Basana Das was the mother-in-law of his daughter and Basana had a bad relation with the appellant on the issue of falling of ‘Ekasia’ tree of Basana Das over the land of appellant’s family.

25. PW-12, Pintulal Das states that the Councillor of their Ward namely, Amar Sarkar informed him over phone that on 27.04.2020 in the morning that perhaps the deceased was killed and he requested the PW-12 to come to the house of Basana Das. Thereafter he along with Samarjit Ghosh went there and found Amar Sarkar, Basana Das, Lalita Das were also present. He also corroborates with PW-4 to have heard the version of the mother of the appellant and thereafter they went to the house of Lalita Das and asked both Suman Das and Chandan Das about the deceased and then they told that 3 days earlier the appellant had tied the neck of the deceased with a belt and killed her in her house and concealed the dead body in an unused kutcha well in a rubber garden. Thereafter, Chandan took them to that well and there they found the dead body of deceased inside the well. Police were informed and after arrival of the police, they handed over

the appellant and his associate to them and the dead body was also recovered thereafter from the well. There is no material cross-examination of this witness regarding said part of his evidence.

26. PW-2, Samarjit Ghosh told that on that day as per asking of Amar Sarkar he went to the house of Basana Das and there Lalita Das told about a quarrel between the appellant and Chandan Das on the previous night and during quarrel they were talking about the killing of the deceased. According to him also, they thereafter detained and pressurised Chandan Das and the appellant about the deceased, but at first they did not divulge anything and subsequently, the appellant told them that the deceased could be found in the rubber garden. Then they took both the appellant and Chandan Das to that place and they showed a well there wherein the dead body of the deceased was seen. He also stated that both the offenders would intake drugs and would disturb the deceased. There is also no material of the cross-examination on the above said evidence of the witness. However, in his cross-examination, he stated that the well was situated on the side of a tilla on a slope.

27. P.W.11, Rakesh Bhadra, a PLV of Sub Divisional Legal Services Committee, Bishalgarh being a seizure witness states that on 07.05.2020 he went to Bishalgarh P.S. Legal Aid Clinic and on that day at about 12:05 pm, he went to the dwelling house of the deceased along with Sub-Inspector of Police, Raju Bhowmik and the appellant was also taken there and in the said house, the appellant brought out one belt from a room and said belt was stained with mud and the I.O. thereafter seized the same. He also identifies the said belt in the Court. His cross-examination contains only certain denial.

28. PW-23, Dr. Rajib Sarkar is the Autopsy Surgeon and he deposed that the post-mortem over the dead body of the deceased was conducted by him with another Dr. Piyali Debbbarma jointly and they found one brownish colour abrated ligature mark on the side of the neck below the level of thyroid cartilage and on dissection bruising was also found present in the muscles of the neck underneath the ligature mark and on the left side of neck. Epiglottis was congested, however, hyoid bone, thyroid and cricoid cartilages were found intact. Post-mortem staining could not be ascertained due to decomposition and no physical injuries were found on the private

parts. They opined that the time of the death was 5/6 days prior to the post-mortem examination and after receipt of SFSL report they finally opined that there was no associate poisoning or intoxication and though there was evidence of penetration of vagina by adult penis or penis sized object but time of penetration could not be ascertained. There was no presence of spermatozoa/seminal fluid. According to them, the cause of death was as a result of asphyxia due to strangulation by a ligature and the injuries were ante-mortem in nature and it was a case of homicidal death. In his cross-examination, he confirmed that in case of suicidal attempt by jumping into the well, there would not be any ligature mark like the present case.

29. Now, we first proceed to examine the point as raised by learned counsel, Mr. Datta that the case is required to be remanded back for *de novo* trial from the stage of evidence as the evidence was recorded in absence of the learned Advocate of the appellant.

30. In this regard, provision of Section 309, CrPC requires a reference which mandates that in every inquiry or trial, the proceeding shall be continued on day-to-day basis until all the witnesses in attendance are examined, and unless the Court finds the adjournment of the same beyond the following day to be necessary reasons to be recorded. The said provision also stipulates that when the witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing, provided further that no adjournment shall be granted at the request of the party, except where circumstances are beyond the control of that party. Even, this provision of section 309, Cr.P.C. also enables the Court to record the statements of witnesses where a witness is present in the Court but a party or his pleader are not present or the party or his pleader though present in Court, are not ready to examine or cross-examine the witness, by dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

31. In the case in hand, we find that the cross-examination was done at a belated stage almost after one year of the examination-in-chief of the witnesses but that was so done due to lockdown imposed for Covid-19 pandemic.

32. In ***State of U.P. vs. Shambhu Nath Singh & Ors., (2001) 4 SCC 667,*** at Paragraph No. 12 the Hon'ble Supreme Court held that once examination of witnesses has started, Court has to continue the trial on day-to-day basis unless and until all the witnesses in attendance are examined (except those whom the party has given up), and the Court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in Court, as the requirement then is that the Court has to examine them. Only if there are special reasons which reasons should find a place in the order for adjournment that alone can confer jurisdiction on the Court to adjourn the case without examination of witnesses who are present in the Court.

33. Later on, again in ***Akil alias Javed vs. State of NCT of Delhi, 2013 CRI.L.J.571,*** the said principle was reiterated. Reference was also made to the said earlier decision of ***Shambhu Nath*** (supra) in that case.

34. We find in the case in hand that when the witnesses appeared before the learned Trial Court on every date of recording of evidences, petitions were filed on behalf of the accused persons by different Advocates stating that their engaged counsel was in custody in connection with one criminal case and therefore, it was not possible to do the cross-examination of the witnesses. Thus, prayer was made to adjourn the proceeding. Maximum of such petitions were filed on the same ground for fixing other dates for cross-examination of the witnesses who were being examined by the Court. Nowhere it was stated in the petition that if the examination-in-chief of the witnesses who were in attendance, is recorded by the Trial Court, the defence will suffer prejudice or that prosecution will take the chance of the absence of the learned defence counsel by putting leading questions, etc. It is also not clear from those petitions since when the learned defence counsel was in custody and whether the accused persons got the scope to engage another counsel on their behalf in advance to represent them in the Court. It also appears to us that when their counsel was in jail, they were in touch of other Advocates at that time who filed such petitions for adjourning the cross-examination. Even, most disturbing fact as come to our notice is that on 21.05.2022, the investigating officer, Sri Raju Bhowmik appeared as witness in that case, but on that day, the learned defence counsel was not found present in the Court when the case was first taken up. Again, after half an hour the matter was taken up by the learned

Trial Court but at that time also, the learned defence counsel did not turn up on call, and thereafter one relative of the learned defence counsel informed the Presiding Judge that the learned defence counsel had gone to Udaipur. It is surprising to us as to how an Advocate can left the station when he has accepted the brief and the date is fixed of recording of evidence of witnesses. In case, he is required to leave the station, certainly it is his duty to make necessary arrangement so that witness is not returned without examination, else on any unanticipated special ground which compels him to leave the station, he can inform the matter to the court and seek adjournment. Learned Trial Court on that day observed that as the accused persons were facing custody trial, it was not wise to defer the case without examination of the witness present and accordingly, examination-in-chief of the said witness was recorded on that day with the intimation to the said relative of the learned defence counsel and waited for the learned defence counsel on that day if he would appear, but till 4:25 pm on that day, learned defence counsel did not appear. Thereafter, learned Trial Court fixed another date on 23.05.2022 at 3:20 pm for recording the cross-examination of said witness. On the next date i.e. on 23.05.2022, when the investigating officer again appeared, learned defence counsel submitted one petition under Section 311 of Cr.P.C for cross-examination of PW-1 and also submitted that he was not inclined to cross-examine said witness as he had not received copy of the examination-in-chief of the said witness. Immediately, the learned Trial Court furnished him the copy of examination-in-chief and requested the learned defence counsel to take up the cross-examination after half an hour, but despite the same, again learned defence counsel denied to cross-examine the said witness on that day. Learned Trial Court further assured learned defence counsel that if he did the cross examination and missed anything in such cross-examination, still the same would be considered later, on his approach but despite the same, learned defence counsel remained stubborn in his approach by non-cooperating with the court and did not cross-examine the witness on that day. Such conduct of the defence counsel is liable to be deprecated. A Court should not give such indulgence repeatedly by adjourning the case when it is the duty of the defence counsel to remain present and ready on the date fixed for cross-examination of a witness. Therefore, we find that learned Trial Court rightly closed the cross-examination of said investigating officer on that day.

35. In the case of *Ekene* ***Godwin*** (supra), the examination-in-chief of the witnesses were recorded by learned Trial Court on different dates, when the accused persons even did not engage any Advocate on their behalf and were totally unrepresented, and in such a situation, the evidence of witnesses were recorded by the learned Trial Court as because the High Court directed to complete the trial within the period of four months. In that contexts, the Hon'ble Supreme Court observed that the Trial Court ought to have provided a Legal-aid Advocate to the appellants so that the evidence of the prosecution witnesses could have been recorded in presence of the Advocate representing the accused and that if the trial is conducted in such a manner, an argument of prejudice might be available to the accused. Therefore, ultimately there was an order of direction for *de novo* trial by examining the prosecution witnesses again. But in the present case in hand, situation is otherwise.

36. In the instant case, learned Trial Court duly fixed another date for examination of the witnesses whose examination-in-chief were recorded earlier and during that phase, learned defence counsel also cross-examined the witnesses to the full extent and did not raise any question that recording of the examination-in-chief of said witnesses in his absence had caused prejudice to the accused persons. Therefore, in the appellate stage, the appellant cannot be permitted to argue the same.

37. Here, in this case, PW-1, the mother of the appellant disclosed to other witnesses i.e. PWs 2, 4, 5 and 12 that in the night of 26.04.2020 following a quarrel between the two accused persons, the appellant told the co-accused that if the co-accused left their house to go to his own house then he would go to the road and tell everybody that he had killed the deceased and thereafter, the co-accused tried to stop him by pressing a napkin on his mouth. Then, on query by PW-1, the co-accused told her that the appellant had killed the deceased. Therefore, it appears that one was blaming the other holding responsible for the death of the deceased which is exculpatory in nature. There was no material cross-examination of the PW.1 on this point.

38. What is further noticeable is that according to PW-4, Amar Sarkar, after getting information from the mother of the appellant when they asked the appellant and the co-accused, the co-accused confessed that

both of them killed the deceased after committing rape upon her and they also told them that they had thrown the dead body of the deceased into an well. Thereafter, on being informed police arrived there and the **co-accused led them** and the police to the said well and thereafter the said dead body was recovered there from. Whereas in dis-corroboration with PW.4, witness Pintulal Das (PW-12) stated that on their asking, both the appellant as well as the co-accused told that they had killed the deceased in her house and concealed the dead body in the unused kutcha well in a rubber garden. Thereafter, the co-accused took them to the well and the dead body was found inside the said well and thereafter the police was informed.

39. PW-2, Samarjit Ghosh, a Booth President in his turn stated that when they pressurized the appellant and the co-accused, they did not divulge anything first but, later on, the appellant told them that the deceased could be found in a rubber garden and thereafter they took both of them to that place and they showed a well in which the dead body of deceased was seen and then police was informed; whereas, according to PW.12, prior to arrival of police, the co-accused took them to the well wherein the dead body was seen. PW.2 further stated that He also stated that both the appellant and the co-accused would disturb the deceased for which the deceased complained to them on several occasions against the said accused persons.

40. From the evidence of the I.O. (PW-24) also, it appears that before his arrival at the spot already the dead body of the deceased was noticed by the villagers and after arriving there, he only took out the body from the well and made inquest thereafter. Therefore, it cannot be treated as a case of leading to discovery in terms of section 27 of the Evidence Act.

41. The I.O. also stated that on arrival on the spot he found that dwelling hut of the deceased was under lock and key and the said abandoned well was situated about 50 meters away from the said hut. Both the accused persons were detained by the police and on personal search he found two gold earrings of the deceased identified by her daughter-in-law [informant], four nos. of silver colour keys and black colour Nokia mobile phone of the deceased from the possession of the co-accused Chandan Das. Thereafter, by the said keys, he tried to open the lock in the dwelling hut of the deceased and with the aid of such keys, the lock was opened but without entering into the hut, he again locked the door. Therefore, according

to the prosecution itself, nothing was recovered from the custody of the appellant at the point of time. PW-3 who identified the earrings and mobile phone to be of the deceased, also corroborated with the I.O. that those were recovered from the possession of Chandan Das and she also signed in the seizure list.

42. According to the I.O., on 28.04.2020 he again visited the place of occurrence in the dwelling house of the deceased to recover the weapon of offence if any, but found nothing there, and again on 03.05.2020 he visited said house of the deceased and seized two nos. of locks of the house by a seizure list. He did not say that on that day he again locked the door of that house which means, said hut was kept in unlocked condition having accessibility to others. According to him, on 07.05.2020 on interrogation, the appellant disclosed that after committing the murder of the deceased he had thrown the belt of his waist below the cot of the deceased in her house by which she was strangulated. He accordingly recorded the disclosure statement of the appellant and along with Executive Magistrate and the appellant, he went to the house of the deceased. Thereafter, he opened the door of the dwelling hut of the deceased and the appellant had shown them pointing out the belt which was partly seen under the dugout mud and the appellant brought out the belt from that place. Thereafter, he also seized the same by preparing seizure list at about 1205 hours. PW-11 and PW-18 are the witnesses of seizure of the said belt. Both of them stated that the said belt was brought out from the house of the deceased by the appellant which was stained with mud.

43. However, in the light of the above said evidences, we are constrained to observe that the sanctity of recovery at the instance of appellant has been impaired in this case and it is unsafe to rely upon the said evidence, inasmuch as prior to recovery of said belt on three occasions the I.O. visited the house of the deceased and key of the lock of that house was lying with the investigating officer. He himself stated that during his second time visit on 28.4.2020, he himself searched the weapon of offence in that house but did not find anything. Therefore, suddenly recovery of said belt at the instance of the appellant on 07.05.2020 creates a suspicion as there was ample scope to keep the said belt in the said room by somebody else other than the accused.

44. Regarding the alleged extrajudicial confession, it came out from the evidence of PW-2 that they pressurized the accused persons to know about the deceased and at first the appellant or the co-accused did not divulge anything but later on, the appellant told that the deceased could be found in the rubber garden and both of them showed the well to them. On the other hand, PW-4 who was present at that time on the spot stated that at first both the accused persons did not tell anything but after sometime Chandan Das (*emphasis laid*) confessed about commission of murder by both of them and that at first Suman Das, the appellant tried to kill her to which he prevented the appellant from doing so.

45. PW-12 did not specify as to who had told them about the culpability. According to him, both the accused persons told that the appellant had tied the neck of the deceased with the belt and killed her and thereafter they concealed the body in the unused well in the rubber garden and Chandan Das (*emphasis underscored*) led them for recovery of the dead body.

46. Generally, the extrajudicial confession are treated as weak piece of evidence and in the instant case under pressure of the villagers such facts were divulged by the accused persons subsequently and there are also dis-corroborations amongst the said above three witnesses in this regard and it is not the appellant rather the co-accused who led the villagers to the well.

47. Now, if we summarize the entire evidences as discussed above, it appears that both the accused persons would stay in the house of the deceased prior to the alleged incident and they would disturb the deceased often for which the deceased lodged complaint against them to the local leaders. According to the complainant, accused Chandan Das told her that the appellant had killed the deceased and the appellant blamed Chandan for the same. So, it was not direct extrajudicial confession of the appellant to his mother implicating him in the commission of crime.

48. As per the evidences of PW.4 and PW-12, the co-accused led them to the well wherein the dead body was found and not the present appellant. The keys of the house of the deceased and her ornaments were also found from the possession of the co-accused and not from the

appellant. The recovery of the belt at the instance of the appellant has also become doubtful. Therefore, according to us benefit of doubt ought to have been given to the appellant in absence of satisfactory chain link beyond reasonable shadow of doubt and also regarding common intention of both the convicts as well as the complicity of the present appellant in committing murder of the deceased.

49. An extrajudicial confession, if voluntary and true and is made in a fit state of mind, same can be relied upon by the Court to base conviction, however same shall have to be proved like other facts. It depends upon the reliability of the witness to whom it is made and who gives the evidence. At any cost such confession should be voluntary and rule of caution is also required to be applied. It should pass the taste of Section 24 of the Evidence Act,1872.

50. In ***S. Arul Raja v. State of T.N.*, (2010) 8 SCC 233,** the Apex Court held as follows:

> **"55. In view of the above case law, it is made clear 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 proceeds 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 persons to whom it is made must be considered along with the two rules of caution: first, whether the evidence of confession is reliable and second, whether it finds corroboration."**

51. In ***Nikhil Chandra Mondal v. State of West Bengal, [2023] 2 S.C.R. 20,*** the following observations were made by the Apex Court at paragraph no.15:

> **15. It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been held that it is well-settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence. Reliance in this respect could be placed on the judgment of this Court in the case of Sahadevan and Another v. State of Tamil Nadu. This Court, in the said case, after referring to various earlier judgments on the point, observed thus:**
>
> > **"16. Upon a proper analysis of the above referred judgments of this Court, it will be appropriate**

to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

(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 2 (2012) 6 SCC 403 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."

52. In ***Union of India & Ors. Vs. Major R. Metri No.08585N, Criminal Appeal Nos. 537-538 of 2017*****,** decided on 04.04.2022, it was again reiterated by Hon'ble Supreme Court that extrajudicial confession is a weak piece of evidence. Unless such a confession is found to be voluntary, trustworthy and reliable, the conviction solely on the basis of the same, without corroboration, would not be justified.

53. In the instant case, as per the prosecution witnesses, the extra-judicial confession was not voluntary. Such confession was made when the alleged offenders were put under pressure by the locals. Learned Trial Court on the basis of evidence of PW-1 held that both the accused persons were friend of each other. They used to stay in the house of PW-1 most of the time and they were talking about the death of the deceased with each other which was not known to anybody else. Consequently, it was observed by learned Trial Court that *prima facie* there were common intention in commission of the murder of the deceased and then again held that both of them had committed murder of the deceased. Learned trial Court committed serious error in holding guilty of the crime based on such *prima facie* observation. The knowledge of the appellant that his friend had committed murder is not sufficient enough to draw the presumption of common intention of both of them in commission of crime just because they were close friends and often would stay together.

54. Considering thus, it is held that the appellant is entitled to get benefit of doubt. Accordingly, the appeal succeeds. The impugned judgment and order of sentence as passed in respect of the present appellant is hereby set aside, however, this decision will have no bearing in the matter of conviction and sentence passed against convict Chandan Das as he is not in appeal before us.

The appellant be set at liberty forthwith. Issue release warrant.

Return the LC records along with a copy of this judgment.

S.DATTA PURKAYASTHA, J **DR.T. AMARNATH GOUD, J**