IN THE GAUHATI HIGH COURT
THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH

CRIMINAL APPEAL NO. 116 (J) OF 2007

Smt. Manju Lakra ----- Appellant

-Versus-

The State of Assam ----- Respondent

BEFORE
HON'BLE MR. JUSTICE I.A. ANSARI
HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH

For the appellant : Mr. T J Mahanta, *Amicus Curiae*.

For the respondent : Mr. Z Kamar, Public Prosecutor, Assam.

Dates of hearing : 27th of July, 2013

Date of judgment : 5th of August, 2013.

JUDGEMENT AND ORDER

(Ansari, J)

"All anger is not sinful, because some degree of it, and on some occasions, is inevitable. But it becomes sinful and contradicts the rule of Scripture, when it is conceived upon slight and inadequate provocation, and when it continues long."

Wilson Mizner, American playwright

Manju Lakra, the appellant in the present appeal, is one of those Indian housewives, who confront and suffer, day in and day out, unprovoked acts of domestic violence; but, on one occasion, the violence boomeranged and devoured the perpetrator, her husband, Bhadra Lakra.

Tried and convicted for the offence of *murder*, the appellant, Manju Lakra, stands before us posing a question whether her act was sinful or was she just a victim of the circumstances?

2. This appeal is directed against the judgment and order, dated 29-06-2007, passed by the learned Sessions Judge (FTC), Biswanath Chariali, in Sessions Case No. 115 of 2006, convicting the accused-appellant, Smti. Manju Lakra, under Sections 302 IPC and sentencing her to undergo imprisonment for life and pay a fine of Rs.1,000/- and, in default of payment of fine, suffer rigorous imprisonment for a period of two months.

3. The case of the prosecution, as emerged at the trial, may, in brief, be described as under:

(**i**) Deceased Bhadra Lakra was the husband of the accused Smti Manju Lakra. The couple resided with their children in one of the labour quarters of Gahpur Tea Estate. Deceased Bhadra Lakra was in the habit of coming home in drunken state at night and beat his wife.

(**ii**) On 22-01-2006, Bhadra Lakra came home, as usual, in drunken state and started beating his wife, i.e., the accused. As a result of the beating, the accused sustained injuries on her head and also on her eyes. Failing to bear, any longer, the regular beating at the hands of her husband, the accused snatched away the piece of wood with which the accused was beating her, and, by means of the said piece of wood, the accused hit her husband on his legs, head, neck, chest and the abdominal area. As the husband of the accused was drunk, he could not get up on being so assaulted by his wife and, by 5.00 a.m., on 23-01-2006, he succumbed to his injuries.

(**iii**) Leaving her husband dead at their residential quarter, the accused went to Gahpur Police Station and informed the police about the death of her husband. The oral information, so given by the

accused, was recorded, at the said police station, in the form of General Diary Entry No. 539, dated 23-01-2006. Upon making the General Diary, the Investigating Officer (PW5), who was, at the relevant point of time, Officer-in-Charge of the said police station, came to the place of occurrence and held *inquest* over the said dead body, which was also subjected to *post mortem* examination.

(**iv**) On being shown by the accused, the Investigating Officer seized a wooden stick (*lathi*), as the weapon of offence, by Seizure List (Ext.8). Thereafter, the accused, on being produced before a Judicial Magistrate, made a judicial confession, which was accordingly recorded under Section 164 Cr.PC. This apart, on 23-01-2006, when the villagers came to know about the death of Bhadra Lakra, Rajesh Ekka, one of the co-villagers of the said deceased, informed the police by lodging an *Ejahar*, in writing. On an *Ejahar* having been so lodged regarding the occurrence, Gahpur Police Station Case No. 17 of 2006 was registered, under Section 302 IPC, against the accused, treating formally, the said *Ejahar* (Ext.7) as First Information Report (in short, FIR). In course of time, on completion of investigation, police laid *charge-sheet*, under Sections 302 IPC against the accused.

4. At the trial, when a charge, under Section 302 IPC, was framed against the accused, she pleaded not guilty thereto.

5. In support of their case, prosecution examined as many as 5 (five) witnesses. The Court also examined, as a Court Witness, the Judicial Magistrate, who had recorded the judicial confession of the accused. The accused was also examined under Section 313 Cr.P.C. In her examination aforementioned, the accused denied that she had

committed the offence, which she was alleged to have committed, the case of the defence being that of denial. No evidence was adduced by the defence.

6. Having, however, found the present accused-appellant guilty of the offence, which she stood charged with, the learned trial Court convicted her accordingly and passed sentence against her as mentioned above. Aggrieved by her conviction and the sentence passed against her, the accused, as a convicted person, has preferred this appeal.

7. We have heard Mr. TJ Mahanta, learned *Amicus Curiae*, and Mr. Z Kamar, learned Public Prosecutor, Assam.

CONFESSION AND RETRACTED CONFESSION

8. In the present case, the accused made a judicial confession before the Magistrate. It has to be borne in mind that before a confession is acted upon, it must contain either an express acknowledgment of guilt of the offence charged, certain and complete in itself, or it must admit substantially all the facts, which constitute the offence. Thus, mere inculpatory admission, which may fall short of an admission of guilt, cannot amount to confession. The law laid, in this regard, in the case of **Pakala Narayan Swamy vs King Emperor (A.I.R. 1939 P.C. 47)**, has been followed by Supreme Court in **Palvinder Kaur v. State of Punjab (1953 CriLJ 154)** ; **Om Prakash v. State of U.P. (AIR 1960 SC 409)** ; **State of U.P.v. Deoman Upadhyaya (1960 CriLJ 1504)** and **Veera Ibrahim v. State of Maharashtra (1976 CriLJ 860)**.

9. When the prosecution seeks conviction of an accused on the basis of the confession of the accused himself, there is no impediment

in basing the conviction of the accused on his own confession if the Court finds such a confession *voluntary* and *true*; yet, as a rule of practice, it is unsafe to rely upon a confession, particularly, if the confession stands retracted unless the Court is satisfied that the retracted confession is *voluntary* and *true* and the same has been corroborated. We may refer to **Sarwan Singh Rattan Singh Vs. State of Punjab (AIR 1957 SC 637)**, wherein the Supreme Court laid down as follows:

> *"it is, however, true that Sarwan Singh has made a confession and in law,* ***it is always open to the court to convict an accused on his confession itself though he has retracted it at a later stage. Nevertheless usually Courts require some corroboration to the confessional statement before convicting an accused person on such statement****. What amount of corroboration would be necessary in such a case would always be a question of fact to be determined in the light of the circumstances of each case. "*

(Emphasis supplied)

10. With respect to a confession, retracted later, it may be proper, at this stage, to refer to the law, laid down in **Subramania Gounder vs State of Madras (AIR 1958 SC 66)**, wherein the Supreme Court held as follows:

> *"16. The next question is whether there is corroboration of the confession since it has been retracted. A confession of a crime by a person, who has perpetrated it, is usually the outcome of penitence and remorse and in normal circumstances is the best evidence against the maker.* ***The question has very often arisen whether a retracted confession may form the basis of conviction if believed to be true and voluntarily made****. For the purpose of arriving at this conclusion the court has to take into consideration not only the reasons given for making the confession or retracting it, but the attending facts and*

circumstances surrounding the same. It may be remarked that ***there can be no absolute rule that a retracted confession cannot be acted upon unless the same is corroborated materially****. It was laid down in certain cases one such being Kesava Pillai alias Koralan and another and Kesava Pillai alias Thillai Kannu Pillai [I.L.R. 53 Mad. 160.] that if the reasons given by an accused person for retracting a confession are on the face of them false, the confession may be acted upon as it stands and without any corroboration. But the view taken by this court on more occasions than one is that* ***as a matter of prudence and caution which has sanctified itself into a rule of law, a retracted confession cannot be made solely the basis of conviction unless the same is corroborated.*** *One of the latest cases being Balbir Singh Versus State of Punjab 1957 CriLJ 481 ,* ***but it does not necessarily mean that each and every circumstance mentioned in the confession regarding the complicity of the accused must be separately and independently corroborated, nor is it essential that the corroboration must come from facts and circumstances discovered after the confession was made****. It would be sufficient, in our opinion, that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession."*

(Emphasis added)

11. Thus, what follows is that if a statement is made by an accused, before a Magistrate, containing either an express acknowledgment of guilt of the offence charged, certain and complete in itself, or containing admission of substantially all the facts, which constitute the offence, the statement amounts to confession. Such a confession, even if retracted later, can be acted upon. However, the Court has to see whether the circumstances, mentioned in the confession, and the circumstance, otherwise available on record, have a uniform trend in terms of chronology of events. It is not necessary that there should be corroboration in material particulars, it would be sufficient if general

trend of the confession is substantiated by some evidence, which would tally with what is contained in the confession.

12. We may also refer to **Pyare Lal Bhargava Vs. State of Rajasthan**, (**AIR 1963 SC 1094**), wherein the Supreme Court has laid down that a retracted confession may form the legal basis of conviction if the Court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration, though it is not a rule of law; rather, is only a rule of prudence. It may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the Court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars. The relevant observations, made, in this regard, in **Pyare Lal bhargava** (supra), read as under:

> "***a retracted confession may form the legal basis of a conviction if the Court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only a rule of prudence***. *It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for, a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but* ***it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the Court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars***".

(Emphasis supplied)

13. That there is no impediment in law in conviction an accused solely on his own confession, even if retracted, provided that the Court believes such a confession as true has been made clear by the Supreme Court in **Kehar Singh Vs. The State (Delhi administration)**, reported in **AIR 1988 SC 1883**. That no Court can throw away confession merely because the confession is retracted has been clearly laid down in **State of Tamil Nadu Vs. Kutty alias Lakshmi narashinhan, 2001 Crl. L. J. 4168**, too, wherein the Supreme Court has observed and held as follows:

> *"learned Judges of the High Court declined to act on the said confession mainly for two reasons. First is that the confession was retracted by the maker thereof and second is that the recovery of articles was made prior to the confession. We may state at the outset itself that both reasons are too insufficient for overruling the confession. It is not the law that once a confession was retracted the Court should presume that the confession is tainted. As a matter of practical knowledge we can say that non-retracted confession is a rarity in criminal cases. The retract from confession is the right of the confessor and all the accused against confessions were produced by the prosecution have invariably adopted that right. It would be injudicious to jettison a judicial confession on the mere premise that its maker has retracted from it. The Court has a duty to evaluate the evidence concerning the confession by looking at all aspects. The twin test of a confession is to ascertain whether it was voluntary and true. Once these tests are found to be positive the next endeavour is to see whether there is any other reason, which stands in the way of acting on it. Even for that, retraction of the confession is not the ground to throw the confession overboard. "*

14. In **K. I. Parunny Vs Asstt. Collector (HQ), Central Excise collectors, Cochin**, reported in **(1997) 3 SCC 721**, the Supreme court has, in no uncertain words, clarified that in a criminal trial, punishable under the provisions of the IPC, it is, now, well settled legal position that confession can form the sole basis of conviction.

15. After taking into consideration a number of its own decisions, the Supreme Court, in **K. I. Parunny** (supra), has laid down succinctly the law, with regard to basing of conviction of an accused, on his own confession, in the following words:

> *"it would thus be seen that there is no prohibition under the Evidence Act to rely upon the retracted confession to prove the prosecution case or to make the same basis for conviction of the accused. Practice and prudence require that the court could examine the evidence adduced by the prosecution to find out whether there are any other facts and circumstances to corroborate the retracted confession. It is not necessary that there should be corroboration from independent evidence adduced by the prosecution to corroborate each detail contained in the confessional statement. The court is required to examine whether the confessional statement is voluntary; in other words, whether it was not obtained by threat, duress or promise. If the court is satisfied from the evidence that it was voluntary then it is required to examine whether the statement is true. If the court on examination of the evidence finds that the retracted confession is true, that part of the inculpatory portion could be relied upon to base the conviction. However, prudence and practice require that court would seek assurance getting corroboration from other evidence adduced by the prosecution."*

16. What follows from the above discussion, if we may reiterate, is that there is no legal bar in basing the conviction of an accused on his own confession if the confession is found to be *voluntary* and *true*, but safer it is, as a rule of general practice and prudence, that the Court seeks some corroboration from other materials on record and if such corroboration is received, conviction can be safely based on the confession of the accused. We may also point out that when a confession is found to be *voluntary* and *true*, the same cannot be refused to be acted upon merely on the ground that the confession

stands retracted, for, even a retracted confession can form legal basis for conviction if the Court is, as observed in **Pyare lal Bhargava** (supra), satisfied that the confession is *true* and *voluntary*.

17. While considering the present appeal, it needs to be noted that notwithstanding the fact that the appellant has denied that she had made judicial confession *voluntary* and *true*, the unshaken evidence of the sole Court witness (Sri S Hazarika), a Judicial Officer, is that on 24-01-2006, the accused was produced before him by order of the Sub-Divisional Judicial Magistrate, Biswanath Chariali, for recording of her confessional statement and, on the accused being so produced before him, he explained to the accused the consequences of making of confession and sent her to judicial custody. It is in the evidence of Court Witness No.1 that on the following day, i.e., on 25-01-2006, when the accused was, again, brought before him, he explained to her, again, the consequences of her making confession and, in order to make her reflect on the confession, which she proposed to make, she was kept in his chamber in the charge of his office peon, Kamal Barua and after giving the accused adequate time, for reflection after explaining to the accused, once again, the consequence of making confession and upon making to her clear that he (CW1) was not a police officer, he (CW1) recorded the confessional statement of the accused.

18. Coupled with the above, we notice, on careful scrutiny of the evidence of CW1, that he had explained to the accused that he was not a police officer, that she was not bound to make confession and if she made confession, her confession might be used against her and that she should not say anything, because others had asked her to say

and she was at liberty to say whatever she really desired to say and that she should not say anything, which was untrue. To all these precautionary measures, which CW1 had taken, the accused responded by indicating that she understood what was being said to her, but she made it clear that she wanted to confess.

19. We also notice from the record, maintained, with regard to the judicial confession of the accused-appellant, that the Magistrate had clearly asked the accused-appellant as to why she had been brought to him and the accused-appellant replied by saying that she had come before him to speak about the killing of her husband, whereupon the Magistrate, we notice, told the accused-appellant that her left eye was red and asked her if she had any injury and how those injuries were caused to her. In answer to the queries, so made, the accused-appellant replied by saying that on the night of the occurrence, her husband (i.e., the deceased) had come home in drunken state and beat her up and she sustained injury on the back of her head too and she showed the injury on the back of her head to the Magistrate (CW1).

20. We further notice from the record of the judicial confession, maintained by the Judicial Magistrate, that the Magistrate had made it clear to the accused-appellant that he was not a police officer and the accused-appellant would not be handed over to the police even if she chose not to make any confession and in reply thereto, the accused-appellant said that she had understood, but she would speak the truth or else, God would not forgive her. Notwithstanding such a categorical reply from the accused-appellant, the Magistrate further asked the accused if anyone had coerced her to make confession or she was trying to save someone and, in response thereto, the accused

replied by saying that she would speak the truth and it was, then, that the confession of the accused-appellant was recorded, which has been proved as Ext. 6. The judicial confession reads as under:

> *"My name is Manju Lakra. The incident took place last Sunday night. My husband was in the habit of coming home in a drunken state at night and beat me up. On the night of the incident also he came home drunk and beat me up. I sustained injury in my head. Blood came out. Failing to bear it anyone, I beat my husband with that lathi. I hit him in the legs, head and back of the neck. He had been in a drunken state and could not get up again. Later, he died. Subsequently, leaving him at home, I went to the police station and informed of his death. I gave the police the lathi with which I had killed him. The man died at 5.00 a.m. Since husband used to always commit atrocity on me, I killed him out of anger.*
>
> *I have spoken exactly what happened, or else God shall not forgive me."*

21. Having carefully examined the evidence of CW1, who was the Judicial Magistrate, and the record, maintained regarding the judicial confession of the accused-appellant, we are clearly of the view that her confession was *voluntary*. The question still remains if her confession was true?

22. The question, now, is if the judicial confession of the accused appellant, in the present case, was *true*? How to ascertain if a voluntarily made judicial confession can be relied upon as true too, one can recall the decision in **Shankaria v. State of Rajasthan (AIR 1978 SC 1248)**, wherein the Supreme Court observed thus :

> *"For judging the reliability of such a confession, or for that matter of any substantive piece of evidence, there is no rigid cannon of universal application. Even so, one broad method, which may be useful in most cases for evaluating a confession may be indicated. The court should carefully examine the confession and compare it*

with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test."

23. In the present case, in order to determine if the judicial confessions made by the accused-appellant, is true, let us, now, in the light of the law laid down in **Shankaria** (supra), ascertain if the confessional statement, made by the accused-appellant, has received necessary corroboration from the remaining evidence on record.

CONFESSION-GENERAL CORROBORATION

24. Our quest for an answer to the question, as to whether the confession of the accused-appellant was or was not true, brings us to the evidence of the doctor (PW4), who had, admittedly, conducted, on 23-01-2006, *post mortem* examination on the dead body of the accused-appellant's husband, Bhadra Lakra, and found as follows:

"External appearance : Average built. Rigor mortis present, eyes and mouth closed.
External Injury : 1. One lacerated injury over the face lateral to left eye measuring ½" x ¼" x skin deep.
2. Lacerated injury over right temporal region of head posterior to right ear measuring 1" x ¼" x skin deep.
3. 2 Nos. of lacerated injury over the right leg size 1" x ¼" x skin deep and ¾" x ¼" x skin deep.
4. 4 Nos. of lacerated in injury over left leg size 1" ¼", ½" x ¼", ¾" x ¼" & ¾" x 1". All are skin deep.
5. Multiple bruises over the left lateral chest and abdomen of various size and shapes.
Cranium and spinal cannel : Lacerated injury over scalp as described earlier.
Scalp, vertebra and membrane : Healthy. Brain: congested.

Thorax : Bruise over the chest wall as described earlier.
Fracture of ribs found over 4th to 9 of the left side.
Pleurae lacerated and contained blood.
Heart empty and other organ of the chest found congested.
Abdomen : Bruise over the abdominal wall as described earlier.
Stomach contained little food. Liver and spleen found lacerated. Other organ of the abdomen found congested. All the injuries were ante mortem in nature.”

25. In the opinion of the doctor (PW2), all the injuries were *ante mortem* and the death was due to shock and hemorrhage as a result of injuries sustained, the injuries having been caused by blunt object and that the injuries, found on abdomen and chest, were sufficient to cause death of the deceased in ordinary course of nature.

26. Though the doctor (PW2) was put to cross-examination by the defence, we do not find that anything was elicited from the doctor to show that the findings of the doctor and/or his opinion, with regard to the cause of death of the said deceased, were improbable or incorrect. This apart, we do not find anything inherently improbable or incorrect in the findings of the doctor and/or his opinion with regard to the cause of death of the said deceased.

27. Situated thus, we have no hesitation in concluding that multiple lacerated injuries were found on the said dead body and apart from fracture of ribs as described by the doctor, there were multiple bruises over the left lateral chest and abdominal area and that the liver and spleen were found lacerated, all the injuries being *ante mortem* in nature.

28. In the face of the injuries, which were found on the said dead body, we have no reason to doubt the correctness of the opinion of

the doctor that the injuries were caused by blunt object and that the injuries, which had been found on the abdomen and chest, were sufficient to cause death in the ordinary course of nature.

29. Moreover, when the number of injuries found on the said dead body coupled with the nature of injuries and the part of the body, where injuries were found to have been caused, are considered, there remains no room for doubt that these injuries, found on the dead body of the said deceased, corroborate the judicial confession of the accused-appellant that she had assaulted her husband by means of a *lathi* on his legs, head, back of the neck and that her husband died.

30. The accused-appellant has, however, clearly stated, in her confession, that she killed her husband out of anger, because her husband had been committing atrocity on her and he used to come at night in drunken state and, on the night of the occurrence, too, he came drunk and beat her and she sustained injuries, which had, in fact, been noticed, as already pointed out above, even by the Judicial Magistrate, who had recorded the judicial confession.

31. What emerges from the above discussion is that the judicial confession of the accused-appellant was **voluntary** and **true**.

32. Having found that the confession was not only voluntary but also true we may now look into, as rule of prudence, whether the confession receives a general corroboration from the other relevant materials on record.

33. As the occurrence, in the light of the judicial confession, had taken place at home, outsiders might not have come to know about the occurrence, when the occurrence had taken place inasmuch as

the deceased was in drunken state and, as the confession of the accused-appellant reflects, he had fallen on the ground on being assaulted by the accused-appellant and could not get up thereafter. It is quite possible in such a situation that the husband of the accused-appellant did not cry out for help and even if he did so, no one, at night, heard his cries.

34. No wonder, therefore, that PW1, daughter of the said accused, who was 9 years old at the time of giving evidence and a student of Class-III, has deposed that she had gone to sleep at 8.00 p.m. and, on the following day morning, she found her father lying dead in the courtyard.

35. What is of immense importance to note in the evidence of PW1 is that according to her evidence, her father, under the influence of liquor, used to always quarrel with her mother and chased her around the garden (i.e., the tea estate) with *dao* in his hand in order to cut her and that her father used to drink liquor all the time and abused all of them and that after getting dunk, her father used to become unsteady.

36. The evidence, so given by PW1, daughter of the said deceased, too, lends credible corroboration to the confession of the accused-appellant inasmuch as PW1 has also deposed, in tune with the confession of her mother, that the said deceased used to drink liquor all the time and abuse his wife and children after getting drunk and, in drunken state, he not only became unsteady, but used to always quarrel with her mother and even chased her around the garden with a *dao* in his hand in order to cut her.

37. We may pause here to point out that in the light of the decision, in **Shankaria**'s case (supra), the confession of the accused-appellant having received corroboration from the medical evidence, as given by the doctor (PW2), and by the oral evidence, as given by PW1, the confession, in question, has to be held not only voluntary, but true as well.

38. As far as PW3 is concerned, his evidence is not of much value inasmuch as he had merely seen the accused at the police station, when he had gone to the police station in connection with a case involving his vehicle. Even the evidence of PW4 is not of much value inasmuch as although he is shown as a witness to the seizure of the *lathi*, which is claimed to be the weapon of offence, PW4 has clearly deposed that he had not seen wherefrom the *lathi* was seized by the police and that he was asked to put his signature on the seizure list and he had accordingly put his signature on the seizure list.

39. With regard to the Investigating Officer, we may point out that he has deposed that the accused, on 23-01-2006, at about 9.50 a.m., appeared at Gahpur Police Station and informed him that on the previous day evening, when her husband had taken up quarrel under the influence of liquor, she gave blows with a *lathi* and her husband died and that this information was reduced into writing in the form of GD Entry No. 539, dated 23-01-2006, and that after making the said GD Entry, he went to the place of occurrence, examined witnesses, held *inquest* over the dead body and, on being shown by the accused, he made seizure of the weapon, which was a *lathi*, the Seizure List being Ext. 8.

40. From a bare reading of the evidence of PW5, who is the Investigating Officer, it clearly transpires that his evidence, too, supports confession made by the accused-appellant inasmuch as in her confessional statement, the accused-appellant had clearly stated that she had gone to the police station and reported there that she had killed her husband and she had also given to the police the *lathi* with which she had killed her husband.

41. What crystallizes from the above discussion is that the medical evidence on record as well as the evidence of PW1, daughter of the accused-appellant and the said deceased, as well as the evidence of the Investigating Officer lends corroboration and support to the confessional statement of the accused-appellant proving thereby, in the light of the evidence of Judicial Magistrate and the record of the judicial confession (which we have discussed above), that the judicial confession of the accused-appellant was voluntary and true and since the judicial confession, in question, stands well corroborated by other evidence on record including medical evidence, we are clearly of the view that the judicial confession can be safely relied upon.

CONFESSION-LEADING TO DISCOVERY OF FACT

42. Moreover, in the present case, the investigation commenced with FIR lodged by the accused-appellant herself. The law, regarding value and use of the *First Information Report*, lodged by an accused, has been succinctly laid down by the Supreme Court, in **Aghnoo Nagasia v. State of Bihar (AIR 1996 SC 119)**, wherein the relevant observations read as follows:

"The first information report recorded under Section 154 Code of Criminal Procedure as such is not substantive evidence, but may be used to corroborate the informant under Section 157 of the Evidence Act or to contradict him under Section 145 of the Act, if the informant is called as a witness, where the accused himself gives the first information the fact of his giving the information is admissible against him as evidence of his conduct under Section 8 of the Evidence Act. ***If the information is non-confessional, it is admissible against the accused as an admission under Section 21 of the Evidence Act and is relevant. But a confessional first information report by the accused to a police officer cannot be used against him in view of Section 25 of the Evidence Act****.*

Where the first information report is given by the accused to a police officer and amounts to a confessional statements proof of the confession is prohibited by Section 25. The confession includes not only the admission of the offence, but all other admissions of incriminating facts related to the offence contained in the confessional statement. ***No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27****.*

The test of severability, namely that if a part of the report is properly severable from the strict confessional part. Then the severable part could be tendered in evidence is misleading and the entire confessional statement is hit by Section 25 and save and except as provided by Section 27 and save and except the formal part identifying the accused as the maker of the report, no part of it could be tendered m evidence."

(Emphasis is added)

43. A careful reading of the above observations, made in **Aghnoo Nagasia** (supra), reflects the position of law thus: First Information Report, recorded under Section 154 Code of Criminal Procedure, is

not substantive evidence; but the same maybe used to corroborate the informant under Section 157 of the Evidence Act or to contradict him under Section 145 of the Act if the informant is called as a witness at the trial. Where the accused himself gives the First Information, the fact of his giving the information will be admissible against him as evidence of his conduct under Section 8 of the Evidence Act. If the information is non-confessional, it is admissible against the accused as an admission under Section 21 of the Evidence Act and is relevant; but if the first information report, given by the accused to a police officer, is confessional in nature, the same cannot be used against him, because of the bar imposed by Section 25 of the Evidence Act except to the extent as envisaged by Section 26 of the Evidence Act. Such a confession will include not only the admission of the offence, but all other admissions of incriminating facts relating to the offence contained in the confessional statement. No part of such confessional statement can be received in evidence except to the extent that the ban of Section 25 is lifted by Section 27 of the Evidence Act.

44. Explaining the concept of severability of a confessional statement into incriminating and non-incriminating components, the Supreme Court, in **Aghnoo Nagasia** (supra), has also laid down that the test of severability, namely, that if a part of the report is properly severable from the strict confessional part, then, the separable part could be tendered in evidence against the accused is misconceived and that such a confessional statement will, in its entirely, be hit by Section 25 save and except the extent to which the ban, imposed by Section 25, is lifted by Section 27. That apart, save and except the

formal part of such confession, which identifies the accused as the maker of the report, no part of such confessional statement can be tendered in evidence.

45. The accused, as the facts of the case shows, set the criminal law into motion by visiting the police station and by informing the police about the death of her husband. The evidence of the Investigating Officer shows that upon receipt of information from the accused, he entered the information in the form of GD Entry No. 539, dated 23-01-2006, and that after making the said GD Entry, he went to the place of occurrence, examined witnesses, held *inquest* over the dead body and, on being shown by the accused, he made seizure of the weapon, which was a *lathi*, the Seizure List being Ext. 8.

46. It may be pointed out here that the contents of GD Entry 539 have not been exhibited in Court; yet, the fact remains that the police officer, to whom the information was given, has been examined in Court. In this regard, a reference may be made of the case of **Rajiv Phukan vs State of Assam,** reported in **2009 (2) GLT 414,** wherein the question involved was *whether the law makes it mandatory to have a written record of the disclosure statement, which an accused, facing trial, may be claimed by the prosecution to have made*?

47. Having examined the provisions of Code of Criminal Procedure as well as the Evidence Act, a Full Bench of this Court, in **Rajiv Phukan** (supra), deriving strength from the case of **State (NCT) of Delhi vs. Navjot Sandhu**, reported in (**2005**) **11 SCC 600**, held that since none of the provisions of the Code of Criminal Procedure or of the Evidence

Act makes it mandatory for a police officer to reduce into writing the statement, which an accused may have made, it is not only difficult, but also impossible to hold that a '*disclosure statement*' cannot be proved at all if the '*disclosure statement*' has not been recorded or when the written record of the '*disclosure statement*' has not been introduced into evidence.

48. It has been further held, in **Rajiv Phukan**'s case (supra), that a Court cannot refuse to bring on record a *disclosure statement* on the ground that it has not been reduced into writing and it is quite possible that, in a given case, no written record of *disclosure statement* has been produced, but the investigating officer's deposition in the Court that the accused had made the statement, which had led to the discovery of a fact, is found believable or is not even disputed. Questions the Court, in **Rajiv Phukan**'s (supra), would it be possible to discard such a statement of the investigating officer only on the ground that he had not reduced into writing the said *disclosure statement*? Such an approach to a piece of evidence, observes the Court in **Rajiv Phukan**'s case (supra), is not possible to be accepted as correct, particularly, when the statute has, in the language used therein, given no such mandatory indication.

49. Having ascertained that even an oral *information*, if it leads to the discovery of a fact, can be acted upon, when found to be trustworthy, safe and believable, it would be, now, necessary to take into the account the law on Section 27 Evidence Act. The scope of Section 27, in the light of several authoritative pronouncements, may be stated as follows:

i. *The fact must have been discovered;*
ii. *The discovery must have been in consequence of some information received from the accused and not by the accused's own act;*
iii. *The person giving the information must be accused of any offence;*
iv. *He must be in the custody of a police officer;*
v. *The discovery of a fact, in consequence of information received from an accused in custody, must be deposed to.*

50. Thereupon, only that portion of the *information*, which relates distinctly or strictly to the fact discovered, can be proved. The rest is inadmissible

51. Applying the law, as discussed above, when we look into the present case, the first aspect, which we need to consider is whether any such statement was made by accused to police, which led to the discovery of the fact. Keeping the evidence of Investigating Officer aside for a while, when we look into the *judicial confession*, made by the accused-appellant under Section 164 Cr.P.C., we find that in her confession, the accused-appellant has stated that after beating her husband by a *lathi*, she went to police station and informed the police about the death of her husband.

52. It has already been held, hereinbefore, that confession, made by the accused-appellant before the Magistrate, was *voluntary* and *true*. Thus, the contents of the confession may be acted upon.

53. In the light of the *judicial confession* of the accused-appellant, when we read the evidence of the Investigating Officer, we find that the Investigating Officer supports the fact that accused came to the police station.

54. In view of the uniformity in the facts, stated in the *judicial confession* about the visit of the accused-appellant to the police station and making of a statement by the accused-appellant to the effect that she had handed over the *lathi*, there remains no doubt in our mind that an oral statement was, indeed, made to the Investigating Officer by the accused-appellant and, on being handed over by her, the investigating officer (PW5) did seize the said *lathi*.

SEIZURE

55. The weapon, used in this case, was a *lathi*. It has been deposed to by Investigating Officer that accused took him to the place of occurrence and, on being shown by her, he seized the *lathi*. In this regard, even though the seizure witness deposed that he had signed the seizure list at the police station, there is no reason for us to disbelieve or discard the evidence given by the Investigating Officer (PW5) as regards the seizure of the *lathi* on the *lathi* being shown by the accused-appellant herself.

56. Thus, in the light of the decision, in **Rajiv Phukan** (supra), the evidence of Investigating Officer that he seized the *lathi*, in consequence of the *information* provided by the accused, can be safely believed in or relied upon.

57. From the case of **Aghnoo Nagasia** (supra), it is clear that conduct of an accused, who lodges FIR, is relevant under Section 8 of the Evidence Act. In the context of the facts of the case at hand, as surfaced from the evidence on record, the *information*, which was derived by the Investigating Officer, as regards the place, where the *lathi* was kept, would be admissible in evidence. In this regard, it may

be noted that admittedly, at the time of making of the statement, the accused-appellant was not in *actual police custody*. Can the accused-appellant be regarded to have been in *constructive police custody*, when she appeared at the police station, and gave oral *information* to the police (i.e., PW8) with regard to the occurrence.

58. In the case of **State of UP Vs. Deomond Upadhyay (AIR 1960 SC 1125)**, the Supreme Court has held, "*when a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact having a bearing on the charge, which may be made against him, he may appropriately be deemed to have surrendered himself to the police and may be deemed to be in the custody of the police officer within the meaning of Section 27 of the Evidence Act. In the case of Aghnoo (supra), it was assumed that the appellant was constructively in police custody.*"

59. What becomes abundantly clear from the law, laid down in **Deomond Upadhyay** (supra), is that when a person, not being in *actual police custody*, approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, which has a bearing on the charge, which may be made against him, he may be deemed to have surrendered himself to the police and may be deemed to be in the *constructive custody* of the police officer within the meaning of Section 27 of the Evidence Act.

60. In the case at hand, therefore, it is not difficult to conclude that when the accused-appellant provided the *information*, as regards the occurrence leading to the seizure of the *lathi*, she was in police

custody and the evidence on record that she showed the *lathi* and, upon being shown by her, *lathi* was seized is admissible in evidence and can be safely relied upon.

61. We, therefore, have the following circumstances:

- *Accused surrendered herself to the police custody;*
- *She made an oral statement before the Police;*
- *She admitted making of such a statement before the police in her judicial confession;*
- *Police, acting on the oral information, given by the accused-appellant, went to the place of occurrence;*
- *On arriving at the house of the accused-appellant, police found her husband's dead body lying there. Police seized the lathi, which was used as a weapon;*
- *Prior to the giving of information to police, by the accused-appellant, police did not have any knowledge or information regarding the death of deceased and the lathi, in question;*
- *That the deceased was killed by a lathi is one of the facts in issue in the present case.*

62. It is, thus, seen that all the attributes of leading to discovery of fact are present in the instant case and, thus, the statement of the Investigating Officer that he seized the *lathi* pursuant to the information given by the accused is admissible in evidence and can be used against the accused.

63. Thus, on an analysis of the evidence, the following circumstances emerge:

- *Judicial Confession, made by the accused, was voluntary and true;*
- *Corroboration of statement, made in the confession, with the medical report as regards the cause of death and the evidence of the Investigating Officer;*

- *Corroboration of the circumstances, stated in the confession, with regard to the commission of offence, by the evidence of PW1, the daughter of the deceased, that deceased used to come home in drunken condition and used to beat up accused;*

- *Seizure of lathi, used as weapon, consequent upon the statement made by the accused, while in the constructive custody of police.*

64. Situated thus, we can have no escape from the conclusion that it was the accused-appellant, who had assaulted and killed her husband. Was the killing of her husband by the accused-appellant a *murder* is, now, the question for determination?

65. We cannot, while answering the question, posed above, be oblivious of the surrounding circumstances, whereunder the accused-appellant happened to have assaulted her husband, which caused injuries on his person resulting into his death. If not *murder*, what offence, if any, the accused-appellant has committed is the question, which falls for consideration before us.

GRAVE AND SUDDEN PROVOCATION

66. To find answer to the question, posed above, what becomes necessary to consider is that the deceased used to remain drunk and in drunken state, he used to pick up quarrel and beat the accused-appellant and, at times, he used to chase the accused-appellant in order to cut her by means of *dao.* Thus, their relationship, as the evidence establishes, was sour and marred by marital discord.

67. In the light of the evidence of PW1, the daughter of the accused-appellant and the deceased, it becomes clear that the circumstances of the present case show that if not *cruelty* within the meaning of

Section 498A, the circumstances, prevailing in the family of accused, were nothing short of *domestic violence* as conceived under the Protection of Women from Domestic Violence Act, 2005.

68. Section 300 IPC, by its four limbs, lays down the circumstances when *homicide* can be termed as *murder* and when *homicide* cannot be termed as *murder*, though punishable. One of the circumstances, when a *culpable homicide amounting to murder* is reduced to an offence of *culpable homicide not amounting to murder*, is Exception 1 to Section 300, which provides as follows:

> *"Exception 1.-When culpable homicide is not murder.-Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.*
>
> *The above exception is subject to the following provisos:-*
>
> *First.-That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.*
>
> *Secondly.-That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.*
>
> *Thirdly.-That the provocation is not given by anything done in the lawful exercise of the right of private defence.*
>
> *Explanation.-Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact."*

69. In order to ascertain whether the proven facts of the present case give rise to an offence of *murder* or an offence of *culpable homicide not amounting to murder*, it would be necessary to undertake

an exercise of appreciation of evidence from the perspective as to whether there was *provocation* from the end of the deceased and if so, whether the '*provocation*' was '*grave and sudden*' enough so as to deprive the accused-appellant of her power of self control.

70. *Provocation* has been long recognised as a mitigating factor in determining the extent of *mens rea*, which a person might have possessed, while committing an offence.

71. One needs to bear in mind that the Indian Penal Code is a collection of negative injunctions regulating the human conduct and behaviour and urging upon them not to commit breach of these negative injunctions or else, such a breach would ensue penal action from the end of the State. While imposing the injunction, as the Indian Penal Code envisages, law presumes a set standard of behaviour in a given circumstances.

72. It is in the above perspective that while appreciating a case of *murder*, the Courts ascertain the immediately preceding circumstances, which evoked a breach of conduct, prohibited by Section 300 IPC. At times, the conduct may be wholly justifiable, for instance, *private defence*, and, hence, in such a case, the Courts would acquit the accused, because the injunction does not stretch to the extent of laying down that the victim must not raise his hands even if the attack on him by an assailant or a group of assailants causes imminent danger of loss of life to him or to his near and dear ones.

73. At the same time, there may be circumstances, existing in a case preceding the offence of *murder*, when the Court may find that the deceased did some act, which ignited such intense rage, in the mind

of the accused, which made him lose his mental balance leading him to cause fatal assault on the aggressor. The Courts recognise these preceding circumstances as *culpable homicide not amounting to murder* and impose lesser sentence for the offence considering, in fiction, that the deceased had facilitated his own death by inviting fatal response from the accused.

74. In order to, however, make *provocation* available to an accused as a means of his defence so as to make his act fall within the definition of *culpable homicide not amounting to murder*, *provocation* has to be '*grave and sudden*'. The term '*grave and sudden*' qualifies the *provocation* and the consequence is loss of '*self control*'.

75. Thus, what needs to be ascertained, in a *murder* trial, is whether, at the time of commission of the offence, the accused was deprived of his power of *self control*. This inquiry of loss of *self control* is required to be preceded by the circumstances, which are '*grave and sudden*'. The question, therefore, is: Whether the '*grave and sudden*' circumstances should be immediately preceding the *murder* or the time lag can be stretched to a date long before the date of *murder*?

76. In other words, under the Explanation to First Exception to Section 300 IPC, the question of fact would remain whether the *provocation* was '*grave and sudden*'. Naturally, when *provocation* is not '*grave and sudden*', the question of applying the First Exception does not arise. What has, however, not been categorically mentioned, in Section 300 IPC, is the process of '*grave and sudden*' *provocation* potential enough to deprive a person of his or her power of *self control*.

77. An examination of the following part of the sentence may make the question clearer: ***"whilst deprived of the power of self-control by 'grave and sudden' provocation,"***

78. It will be seen that the basic premise, in the above sentence, is deprivation of the *power of self control.* Necessarily, the temperament conceived of, here, is of an ordinary human and not of a person, who suffers from outrageous fits even at the drop of a hat. The *loss of control* is directly connected with the commission of offence and, therefore, the *loss of control* has to be immediately preceding the *murder.* Now, if we look into the circumstances, which resulted in the loss of self-control, it, undoubtedly, should be *'grave and sudden';* but does it necessarily mean that the entire set of *'grave and sudden'* provocative circumstances shall be immediately preceding the *murder*?

79. In a quest for an answer to the query, so posed, it would be necessary to visit some of the decided cases on this issue.

80. In **R v Duffy, [1949] 1 All ER 932,** the appellant attacked and killed her husband with a hammer and a hatchet, whilst he was sleeping on bed. Her husband had subjected her to violence throughout their marital life. Devlin J, while delivering the judgment, gave the definition of *provocation* as follows:

> *"Provocation is some act, or series of acts, done (or words spoken)... which would cause in any reasonable person and actually causes, in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her, for the moment, not master of his or her mind."*

81. In the light of what stand bserved in **Duffy's** case (supra), *provocation* may be an act or series of acts, which, by their very

nature, would induce sudden and temporary '*loss of self-control*' in a reasonable man so that it can be said that he is no longer master of his own mind. The span of series of acts may differ from case to case; but the law does recognise the series of acts as cumulative circumstances sufficient to constitute *provocation*.

82. In **Boya Munigadu v. The Queen,** reported in **ILR (1881) 3 Mad 33**, the Court upheld the plea of '*grave and sudden*' *provocation* in the following circumstances: The accused saw the deceased, when she had cohabitation with his bitter enemy; that night he had no meals; next morning, he went to the *rayots* to get his wages from them and, at that time, he saw his wife eating food along with her paramour; he killed the paramour with a bill-hook.

83. The learned Judges, in the circumstances indicated above, held, in **Boya Munigadu** (supra), that the accused had sufficient *provocation* to bring the case within the First Exception to Section 300 of the Indian Penal Code.

84. The relevant observations, appearing in **Boya Munigadu** (supra), read:

> *"............If having witnessed the act of adultery, he connected this subsequent conduct as he could not fail to connect it, with that act, it would be conduct of a character highly exasperating to him, implying as it must, that all concealment of their criminal relations and all regard for his feelings were abandoned and that they purposely continued their course of misconduct in his house. This, we think, amounted to provocation, grave enough and sudden enough to deprive him of his self- control and reduce the offence from murder to culpable homicide not amounting to murder."*

85. The case of **Boya Munigadu** (supra) illustrates that the state of mind of the accused, having regard to the earlier conduct of the deceased, may be taken into consideration in determining whether the subsequent act of the deceased would be sufficient *provocation* to bring the case within the First Exception to Section 300 IPC.

86. The decisions, in **Duffy** (supra) and **Boya Munigadu** (supra), were considered in **K.M Nanavati vs State of Maharashtra (AIR1962 SC 605),** and, on an analysis of the *ratio*, the Supreme Court evolved the following illustrative parameters:

1) *The test of "'grave and sudden'" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed, would be so provoked as to lose his self-control.*
2) *In India, words and gestures may also, under certain circumstances, cause 'grave and sudden' provocation to an accused so as to bring his act within the First Exception to Section 300 of the Indian Penal Code.*
3) ***The mental background, created by the previous act of the victim, may be taken into consideration in ascertaining whether the subsequent act caused 'grave and sudden' provocation for committing the offence.***
4) ***The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise, giving room and scope for pre-meditation and calculation.***

(Emphasis supplied)

87. The principles, enumerated at Serial Nos. 3 and 4, are relevant for our decision in the present appeal and one of the logical deductions of principle no. 3 would be that in a case, where the circumstance, immediately preceding the fatal strike, may not be, independent of the

previous acts, treated so *provocative* as to make a man lose his power of self-control, yet when the series of provocative circumstances, preceding the fatal strike, were sufficient to deprive an ordinary man of his power of self-control, it may, perhaps, not be a proper appreciation of plea of *provocation* if the immediate *provocative* conduct, preceding the causing of death, is taken into account excluding altogether the previous series of acts, which were, apart from being *provocative*, inextricably connected with the ultimate act of *provocation* leading to the causing of death.

88. The principle No. 3, as reproduced above, enables the Court to take into account all those acts, which started building potential rage in the mind of an accused, culminating into the last *provocative act* immediately preceding the causing of death, though the *provocative* act, immediately preceding the causing of death, may not, by itself, be '*grave and sudden*' within the meaning of the expression '*grave and sudden*' occurring in First Exception to Section 300 IPC. In such cases, the sentence, '***whilst deprived of the power of self-control by 'grave and sudden' provocation'*** may have to be read as ***'whilst deprived of the power of self-control by series of acts constituting 'grave and sudden' provocation'.***

89. It would be relevant to quote here the decision, in **Jan Muhammad v. Emperor**, **ILR [1929] Lah 861**, relied upon in **Nanavati** (supra), wherein the facts were that the wife was leading a notoriously immoral life and, on the previous night, she mysteriously disappeared from the bedside of her husband and when the husband protested against her conduct, she abused him, whereupon the husband lost his self-control, picked up a rough stick, which happened to be close by,

and struck her by the stick resulting into her death. Lahore High Court, in **Jan Muhammad** (supra), had held that the case was governed by the First Exception to Section 300 IPC. The following observations, made in **Jan Muhammad** (supra), are of great relevance and, therefore, reproduced below:

> ***"In the present case, my view is that, in judging the conduct of the accused, one must not confine himself to the actual moment, when the blow, which ultimately proved to be fatal, was struck, that is to say, one must not take into consideration only the event, which took place immediately before the fatal blow was struck. We must take into consideration the previous conduct of the woman. As stated above, the whole unfortunate affair should be looked at as one prolonged agony on the part of the husband which must have been preying upon his mind and led to the assault upon the woman, resulting in her death."***

90. The discussion on principle No. 3, laid down in **Nanavati's** case (supra), would be incomplete without discussing the principle No. 4, which lays down that the fatal blow should be clearly traceable to the influence of passion arising out of the previous *provocation* and not after the passion had cooled down by lapse of time, or otherwise, giving room and scope for premeditation and calculation. This principle was the answer to the question, which the Supreme Court posed unto itself regarding the time lag and as to what is the effect of the time lag between the act of *provocation* and the commission of offence.

91. Thus, what the principle No. 4 lays down is an extension of the principle No. 3. In other words, it would be necessary for the Courts to ascertain the proximity between the first act, in the entire series of acts, along with the immediate act, which preceded the act of causing of

death. If the Court is able to connect even an innocuous provocative act preceding the causing of death with a series of acts, which, when taken together, constitute, in its entirety, *'grave and sudden' provocation'*, the Court would be justified in extending the benefit of First Exception to Section 300 IPC. The series of acts, which together constitute *'grave and sudden' provocation*, must be such acts of *provocation*, which never really allowed the accused to calm down and the act, immediately preceding the killing, was the culmination of the previous *provocative acts* as mentioned hereinbefore.

92. It would be apt to mention here the decision, in **Suyambukani -vs- State of Tamil Nadu, 1989 L.W (Crl.) 86**, a Division Bench of Madras High Court observed and held as follows:

> *".......the master draftsman, Lord Macaulay, had a very uphill task in moulding in the form of a Code the entire case-law which were spread in a number of volumes on the subject and such a maiden attempt in spite of the genius of the person concerned cannot be a perfect piece of legislation. It was further observed by the learned Judges of the Division Bench that the draftsman did not resort to frame the Code in the form of broad principles which would accept interpretations according to the needs of time and that he knew that the Code had to be applied not by professional Judges but by natives and English Officers of various ranks and that is why he introduced in the Code along with the main provisions, explanations, exceptions and illustrations. The learned Judges further held that though Lord Macaulay took pains to get informed of the conditions in India and had made provisions accordingly whenever he got reliable information, did not appear to have been informed of the Nallathangal's syndrome. In the view of the learned Judges, important architects of the Indian codification that Anglo-Indian Codes, which were the first experiments in English language in the art of codification, in spite of their immense value, are far from being perfect and were*

> *intended to be overhauled from time to time and therefore, though technically the exceptions to S.300 I.P.C., appear to be limitative they can no longer be considered so, after efflux of time and courts have added one more exception known as 'sustained provocation."*

93. The Division Bench further held, in **Suyambukani** (supra), that from an analysis of all the Exceptions, it would be found that in all the Exceptions, either premeditation or ill-will is absent and, therefore, when both are present, it will be impossible to consider the matter as an exception and, ultimately, came to the conclusion that there is a cardinal difference between *provocation*, as defined under Exception 1, and *sustained provocation* and the only word, which is common to both — '*provocation*' and '*sustained provocation*' — is *provocation* and what Exception 1 contemplates is *'grave and sudden' provocation;* whereas the ingredient of **sustained *provocation* is a series of acts, more or less grave, spread over a certain period of time, the last of which act being the last straw breaking the camel's back, which may even be a very trifling one**. The Division Bench, in **Suyambukani** (supra), further held that far from *'grave and sudden' provocation*, contemplated under Exception 1 to Section 300 IPC, *sustained provocation* is, undoubtedly, an addition by Courts as anticipated by the architects of the Indian Penal Code.

94. We may, however, point out, at this juncture, that even though we agree with the proposition of law, laid down in **Suyambukani** (supra), that "***sustained provocation is a series of acts, more or less grave, spread over a certain period of time, the last of which act being the last straw breaking the camel's back may even be a very trifling one***"**,** yet, we are, respectfully, unable to persuade ourselves to agree

with the concluding observations, in **Suyambukani** (supra), that *sustained provocation* is an addition to First Exception to Section 300 IPC by Courts as anticipated by the architects of the Indian Penal Code. Such an interpretation, in our considered view, amounts to making legislating or enacting a law, which is beyond the scope of judicial functions.

95. We are of the opinion that basic feature of the First Exception to Section 300 IPC is to provide a mitigating circumstance, but for which the offence would be *murder* within the meaning of Section 300 IPC. *Loss of control*, by *'grave and sudden' provocation*, is the central spirit of this basic feature. As held in **Nanavati** (supra), the Courts are under an obligation to ascertain whether the time lag between the *provocation* and the immediate act, preceding the *murder*, was sufficient to act as coolant so that it could be said that the accused was not under the influence of *provocation*.

96. Thus, if facts exist to show that circumstances, in bits and pieces, played a pivotal role in building up the edifice of *'grave and sudden' provocation*, the Courts can extend the benefit of First Exception to Section 300 IPC. *Sustained provocation*, we believe, is only an expression, which conveys the idea behind the principles nos. 3 and 4 of **Nanavati**'s case (supra) and not an addition to the various existing Exceptions to Section 300 IPC.

97. In our considered opinion, while it is permissible to deduce more than one reasonable meaning from the plain words used in a statute, it would be impermissible to add to the statute a meaning, which the legislature did not intend to convey. Thus, interpretation of statute

would require that a word, in a given statute, is interpreted in a manner, which is permissible to interpret. Bearing in mind the purpose of legislation, one may attribute more than one interpretation to a given word in a statute. If a new meaning is sought to be given to a word used in a statute, which legislature never intended to convey, such an act would amount to legislation, which is impermissible in law.

98. There, indeed, lies a fine line of distinction between deduction of an interpretation from the existing law, on the one hand, and the deduction of interpretation, which amounts to enactment of a legislation, on the other. An act of legislation essentially regulates the behaviour or set of norms; whereas an interpretation is only another form of expression of an existing law. It must be borne in mind that it would be unjust to expect that one would be able to conceive all possible circumstances, which a particular law seeks to achieve. Hence, if, without mutilating the basic character of law, a new meaning is possible to be given to a given provisions of a statute, it would be treated as a part of the existing statute and not an act of legislation.

99. In the discussion, hitherto, we have laid emphasis on the acts of husband killing his wife or his wife's paramour for the reasons of infidelity. There may be cases, where the victim seemingly is the husband and the aggressor is the wife; but, in reality, it is the wife, who is the victim.

100. **R v Ahluwalia, (1993) 96 Cr App R 133,** is one of the leading cases, which has taken into account certain circumstances diminishing the responsibility of the perpetrator of crime from *murder* to *manslaughter*.

The accused appellant, in this case, had poured petrol and caustic soda on her husband and, then, set him to fire. The husband died six days later from the injuries sustained. The couple had an arranged marriage and the husband had been violent and abusive throughout the married life. He was also drunkard and womaniser and, at the relevant point of time, he had been carrying on an affair with another woman. On the night of the killing, he had threatened to hit *Ahluwalia* with an iron and told her that he would beat her the next day if she did not provide him with money. At her trial, *Ahluwalia* admitted killing her husband, but took the defence of *provocation.* However; the jury convicted her of *murder*. She appealed on the ground that the judge's direction to the jury, relating to *provocation*, was wrong and she also raised the defence of diminished responsibility.

101. Though the appeal, on the ground of *provocation*, was unsuccessful, yet the appeal was allowed on the ground of **diminished responsibility**. One of the most important observations made by the Court of Appeal, in ***R vs Ahluwalia*** (supra), needs a special mention here and is, therefore, quoted below:

> *"Ordinarily, of course, any available defences should be advanced at trial. Accordingly, if medical evidence is available to support a plea of diminished responsibility, it should be adduced at the trial."*

102. The case of **Ahluwalia** (supra), in a way, recognized the concept of *battered women syndrome*, a defence plea, raised primarily in jurisdictions like Australia and United States. *Battered woman syndrome* was introduced to help explain the reasonableness of a woman's actions in self-defense against her abuser. It was pioneered by Dr.

Lenore Walker and was developed to allow experts to testify, at trials, most commonly, where a woman was on trial for killing her batterer and was alleging self-defence. The expert explains why a battered woman had special knowledge of the imminence of an attack and as to why retreat was not a reasonable alternative.

103. Walker hypothesised that spousal abuse generally occurred in cycles characterised by varying degrees of severity. She argued that in the first 'tension building' stage, the victim will be exposed to verbal and/or emotional abuse and minor incidents of physical violence, such as, slapping. In response, the victim may attempt to pacify her abuser utilising techniques, which have been effective in the past. Walker theorised that although the woman's primary objective is to avoid future conflict and her actions, during this phase, are aimed at furthering this objective, her passivity will, most often, reinforce the abuser's violent tendencies and the tension, in the relationship, will continue to build until it culminates in the second stage – the acute battering incident. Although Walker acknowledged that the severity of violence, used in this phase, would vary, she argued that it was at this stage that a victim's sense of fear and perceptions of danger were at their most heightened state as was the risk of death or serious injury. The discharge of tension, in the second stage, would invariably, according to Walker, lead to a third phase of '*loving contrition*' in which the batterer would exhibit conciliatory behaviour and may attempt to convince the victim of his intentions to change. Although it was not clear from the results of the study precisely how many times a victim must go through this cycle before they might be classified as suffering from *Battered Women Syndrome*, Walker has since argued that once is

sufficient for symptoms, characteristic of the syndrome, to appear and for the victim to fall into pattern of behaviour, she identified as indicative of "*learned helplessness*".

104. Let us now, in the perspective of *battered women syndrome*, examine the circumstances mentioned in Section 304B IPC.

> ***"304B. Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death."***

105. Section 304B speaks of circumstances leading to the unnatural death of a wife. What has been conceived of, here, is that soon before the death of the wife, there existed circumstances, which led to the death of wife, let us assume, by suicide. A lot many factors would govern the reaction of the victim, at the brink of those moments, when she decides to vent her reactions to the abetment given to her. When the perpetrator of the abetment is present nearby; it cannot be considered to be an improbable reaction if, instead of causing injury or death to herself, she commits an act of aggression.

106. The expression '*soon before her death*', used in the substantive part of Section 304B I.P.C. and also appearing in Section 113B of the Evidence Act, conveys the idea of proximity. Naturally, no definite period could have been indicated to explain '*soon before her death*'. No wonder, therefore, that the expression '*soon before her death*',

appearing in Section 304B IPC, has not been defined. The determination of the period, which can fall within the term '*soon before*', is left to be determined by the courts depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression '*soon before*' would normally imply that the interval must not be long between the *cruelty* or harassment, on the one hand, and the death, in question, on the other. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence **(Kaliyaperumal v. State of Tamil Nadu (AIR 2003 SC 3828).** See also **Yashoda v. State of Madhya Pradesh, (2004) 3 SCC 98).**

107. It will, thus, be seen that the principle of cause and effect, as laid down in **Nanavati's** case (supra), has been squarely applied in the legislation of *dowry death*. The observations, made by the Supreme Court, in **Kaliyaperumal**(supra), take in the shape of the principle Nos. 3 and 4 laid down in **Nanavati's case**(supra), which we have already as discussed above.

108. What is required to be realised is that life is one of the treasured asset of every human being. A very rich person may, if circumstances arise, even beg to sustain his life and some extremely strong stimulus must be required, when a person decides to terminate his life. Such state of stimulus must be accompanied by a level of *grave provocation*. If circumstances create a level of *provocation* so much so that the person feels that nothing but an end to his/her life would be a solution, then, the offence may, depending upon the circumstances,

be one under Section 304 B or Section 306 IPC. However, the question is, if, instead of committing suicide, the victim takes the life of her aggressor, whether the case can be brought within Exception I to Section 300.

109. What we have concluded, on the strength of the discussions, made above, is that if circumstances, potential enough to provoke a person to commit suicide, has been recognised, it should be equally recognised, going by the victim's level of trauma, that the same set of circumstances are potential enough to turn her into an aggressor so much so that she kills her husband or kills any of her provocateur.

110. Thus, in the circumstances, envisaged in Section 304 B, if the victim, under the influence of ***sustained provocation***, *'grave and sudden'* enough to deprive her of her power of self-control, becomes an aggressor, such circumstances would definitely fall within the First Exception to Section 300 IPC. While we arrive at such a conclusion, we are not oblivious of the fact that the circumstances, with respect to *sustained provocation*, have been conceived of bearing in mind the reactions of a woman, which is natural and in keeping with her social environment. In this regard, it may be worth quoting the observations, made by the Supreme Court, in **State Of West Bengal vs Orilal Jaiswal (AIR 1994 SC 1418),** which run as follows:

> *"If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not*

be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

111. In the light of the discussions, made hereinbefore, when we revert to the present case, we find, as held before, that the confession, made by the accused-appellant, was voluntary and contained a truthful account of the events. Thus, the confession may be taken as one of the circumstances in determining the offence of the accused-appellant.

112. In her confession, accused has stated that her husband was a drunkard and he was in the habit of turning up late at night and beat her up. On the day of occurrence, too, her husband, according to the confessional statement of the accused-appellant, came home drunk, beat her and, failing to bear any more her husband's conduct and torture, she snatched away from her husband the *lathi*, which her husband was holding and beating her with, and, then, started beating her husband on his legs, head, neck, chest and on the abdominal area and, as her husband was in drunken state, he could not get up again and, later on, he died.

113. The other circumstance is the evidence of PW1 (i.e., the daughter of the accused-appellant), who has deposed that her father, under the influence of liquor, used to always quarrel with her mother and chased her around the garden with a *dao* in his hand in order to cut her and that her father used to drink liquor all the time and abused all of them and that after getting dunk, her father used to become unsteady.

114. Under the circumstances, as indicated above, if, instead of putting an end to the life of her husband, the accused had committed suicide, a case against the accused, for his trial, for the offence under

Section 306 IPC *prima facie* may well have been made out. Thus, the circumstances, pointed out above, lead to a probable belief that more than the intention to kill her husband, the intention of the accused was to put an end to the continuing violent acts of her husband and as a consequence whereof, she felt that nothing short of putting an end to the life of her husband would be a solution. The continuous turmoil in the domestic life of the accused-appellant, created by the violent conduct of the deceased husband, was potential enough to create a fear in the mind of the accused-appellant. The fear was not only *real,* because even before the date of occurrence, accused was beaten up by the deceased in a drunken condition, but also *perceived* in the sense of imminent threat to life and safety of the accused-appellant that tonight, too, she would have to bear the usual cruel treatment at the hands of her husband. Such perceived fear is possible only when continuous ill-treatment is shown to exist and such continuous ill-treatment did exist in the present case.

115. Thus, the events, which took place on the date of occurrence, were not the only event, which need to be considered; rather, the acts of the deceased in coming home late at night, beating the accused, chasing her with a *dao* are all circumstances, which slowly and gradually, without there being any phase of peace, was building a deep sense of rage in the mind of accused, a rage, which found its vent on the date of occurrence leading to the death of her husband. The *provocation* was, therefore, *sustained* and well within the scope of principle no. 3 and 4, as laid down in the case of **Nanavati** (supra), depriving the accused-appellant of her power of self control.

116. To put it a little differently, the conduct of the accused-appellant's husband (since deceased) had been building up, inside the accused-appellant, strong resentment and rage. Though she had been controlling and suppressing the rage and the resentment, which had been building up inside her, her rage and resentment were waiting to erupt at any further violent conduct of her husband. The accused-appellant had been, thus, sitting on a volcano of resentment and rage, which had been continuously building up and boiling inside, waiting to burst open and even a small flicker of any further intolerable behaviour of her husband could have made the volcano erupt and that is precisely what happened on the fateful evening, when her husband, having come home in drunken state, as usually he did, started beating her up. The *provocation*, which the conduct of the accused-appellant's husband so provided to the accused-appellant, was not only *grave*, but can be perceived as *sudden*, too, inasmuch as the night might have passed without her husband having beaten her up and, in that event, nothing further would have happened; but when her husband took, as usually he did, recourse to beating her up, she, having lost the power of self-control, reacted by snatching away the *lathi* from the hands of her husband and started beating him up without realizing that he was likely to die. No wonder, therefore, that she hit her husband even on his legs apart from, of course, head and back of his neck. What, however, proved fatal was the beating by the accused-appellant of her husband on the latter's chest and the abdominal area.

117. The catalogue of events, when considered realistically and dispassionately, squarely brings the case of the accused-appellant

within the *First Exception* to Section 300 IPC and the accused-appellant, instead of being held guilty of *murder*, ought to have been held guilty of the offence of *culpable homicide not amounting to murder*. The evidence on record reveals that the accused-appellant did not want to cause death of her husband, but she was merely concerned with stopping of the violence, which her husband had been perpetrating on her, and give him a lesson without really intending to put an end to his life. The facts of the case, thus, bring the case within the First Exception to Section 300 and accused-appellant ought to have been found guilty not of *murder*, but of *culpable homicide not amounting to murder*.

118. Situated thus, it is clear that the acts of the accused-appellant fell within the ambit of Section 304 (Part-II) IPC and she ought to have been convicted accordingly.

119. To put it a little more precisely, the nature of injuries, sustained by the deceased, and the tool (*lathi*), used as weapon, go to show that accused-appellant inflicted injuries, on the person of her husband, with the knowledge that her act was, likely to cause death, but without any intention to cause death, or to cause such bodily injury as was likely to cause death. In either case, the offence falls under Section 304 (Part II) IPC. We, therefore, hold the accused-appellant guilty of the offence punishable under Section 304 (Part-II) IPC.

120. In the result and for the reasons discussed above, this appeal partly succeeds. While the conviction of the accused-appellant, under Section 302 IPC, and the sentence, which has been passed against her, in this regard, are hereby set aside and the accused-appellant is

hereby held guilty and convicted accordingly of offence punishable under Section 304 (Part-II) IPC.

121. Having considered the backdrop of the events, which led to the death of the accused-appellant's husband, and the surrounding circumstances, we are of the considered view that in the facts and attending circumstances of the present case, rigorous imprisonment, for period of 5 years, would be adequate punishment and would meet the ends of justice. We accordingly sentence the accused-appellant to suffer rigorous imprisonment for a period of 5 years and direct that she be released if she has already undergone the said period of imprisonment unless she is required to be detained in connection with any other case.

122. With the above observations and directions, this appeal stands disposed of.

123. Let the learned *amicus curiae* be paid a sum of Rs. 5,000/- for his valuable assistance rendered to the Court.

124. Send back the LCR.

JUDGE **JUDGE**

Paul