

Sadashiv Dhondiram Patil

v.

The State of Maharashtra

(Criminal Appeal No. 1718 of 2017)

09 January 2025

[J.B. Pardiwala and R. Mahadevan, JJ]

Issue for Consideration

Issue arose whether Village Police Patil is a Police Officer in terms of s. 25 of the Evidence Act; and whether the High Court erred in holding the appellant guilty of the offence of murder.

Headnotes[†]

Evidence Act, 1872 – ss.25, 106 – Extra judicial confession – Admissibility – Extra judicial confession to Police Patil, if admissible – Appellant-husband charged for the murder of his wife – Extra judicial confession allegedly made by the appellant to the village Police Patil – Trial court acquitted the accused for the offence punishable u/ss.302 and 201 IPC holding that extra judicial confession allegedly made by the appellant to Village Police Patil was inadmissible as per s.25 – High Court set aside the acquittal and held the appellant guilty of the offence of murder – Correctness:

Held: Police Patil of the Village cannot be termed as a Police Officer for the purpose of s.25 – Extra-judicial confession alleged to have been made by the accused before village Police Patil is admissible in evidence and is not hit by s.25 – However, such extra-judicial confession should be found to be true and trustworthy before it is relied upon by the Court to hold the accused guilty – Extra-judicial confession should also be found to be free of any inducement, coercion etc. and should be shown to have been made by the accused on his own free will and volition – What is alleged to have been conveyed cannot be said to be an extra-judicial confession – Very omnibus and vague statement seems to have been made – High Court erred in relying upon the extra-judicial confession even while rightly holding that the

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same was admissible in evidence as Village Police Patil cannot be said to be a Police Officer – Panch witnesses did not support the prosecution case – Just because the panch witnesses have turned hostile does not mean that such discovery should be disbelieved – However, I.O. cannot be said to be proving the contents of the panchnama in accordance with law and the circumstance of discovery cannot be relied upon – Motive cannot be the sole basis for convicting the accused – Prosecution has to prove its case beyond reasonable doubt – Initial burden of proof is always on the prosecution – However, in cases where husband is alleged to have killed his wife in the night hours and that too within the residential house, then undoubtedly the husband has to offer some explanation as to what had actually happened and if he fails to offer any plausible explanation, this can go against him – Prosecution has to first lay the foundational facts before it seeks to invoke s.106 – It cannot straightaway invoke s.106 and throw the entire burden on the accused to establish his innocence – In view thereof, the High Court erred in holding the appellant guilty of the offence of murder – Impugned judgment set aside – Penal Code, 1860 – ss.302, 201. [Paras 27, 31, 36-38, 42, 47-49, 50-51, 55, 56, 58]

Case Law Cited

Rajeshwer S/o Hiraman Mohurle v. State of Maharashtra (2009)
Criminal Law Journal 3816; C.K. Ravindra v. the State of Kerala [1999] Supp. 5 SCR 140 : AIR 2000 SC 369; Ram Singh v. the State of Maharashtra & Anr (1999) Criminal Law Journal 3763; Balwinder Singh v. State of Punjab (1995) Supplementary 4 SCC 259 – referred to.

List of Acts

Evidence Act, 1872; Penal Code, 1860; Code of Criminal Procedure, 1973; Maharashtra Village Police Act, 1967.

List of Keywords

Extra judicial confession; Admissibility of extra judicial confession to Police Patil; Police Patil, if termed as a Police Officer; Panch witnesses; Motive.

Digital Supreme Court Reports**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1718 of 2017

From the Judgment and Order dated 03.07.2015 of the High Court of Judicature at Bombay in CRLA No. 70 of 1994

Appearances for Parties

Sachin Patil, Geo Joseph, Risvi Muhammed, Rishabh Agarwal, Advs. for the Appellant.

Aniruddha Joshi, Sr. Adv., Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Order**

1. This appeal arises from the Judgment and Order passed by the High Court of Judicature at Bombay dated 3-7-2015 in Criminal Appeal No.70/94 by which the High Court allowed the acquittal appeal filed by the State of Maharashtra and thereby set aside the Judgment of the Additional Sessions Judge, Kolhapur dated 13-7-1993 in Sessions Case No.48/91 acquitting the appellant - herein (original accused) for the offence punishable under Sections 302 and 201 respectively of the Indian Penal Code (for short, the “IPC”).
2. The case of the prosecution may be summarized as under:-

The deceased by name Lata was married to the appellant herein. A son was born in the wedlock. However, it appears that marital life was not happy. The appellant – herein was entertaining a doubt in his mind as regards the chastity of his wife. One day all of a sudden, the deceased went missing.

3. In such circumstances, the maternal uncle of the deceased by name – Yashwant Ganpati Patil (PW 5) went to the house of Village Police Patial by name Mr. Vasant Dattu Bhosale & informed him that his niece had gone missing.
4. It appears that on 20-10-1990 at about 9.30 p.m. PW 5 brought to the notice to PW 2 that his niece Lata was missing.

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5. The PW – 2, being the Village Police Patil, visited the house of the appellant – herein and found that the dead-body of the deceased lying in one corner of the house. The materials on record further indicate that the brother of the appellant – herein by name Madhukar and his wife Laxmi (PW 4) along with their daughter Mangal (PW 3) were also residing in the same house but separately in one part.
6. Upon recovery of the dead-body of the deceased, the inquest panchnama was drawn. The body of the deceased was sent for postmortem examination. The postmortem examination report noted that the cause of death was asphyxia due to strangulation. It is the case of the prosecution that the appellant – herein strangulated his wife to death with the help of an iron rod.
7. This iron rod is also stated to have been discovered from the place of the incident itself by way of a discovery panchnama drawn by the Investigating Officer in the presence of the panch witnesses.
8. The appellant was arrested in connection with the First Information Report that came to be lodged by the PW-2 himself at the concerned Police Station for the offence of murder.
9. Upon completion of investigation, the Investigating Officer filed charge-sheet for the offence enumerated above.
10. The case being exclusively triable by a Sessions Judge came to be committed to the Court of Sessions.
11. The Trial Court framed charge vide order dated 20.02.1993 which reads thus:

"CHARGE"

I, V. B. Deshmukh, 4th Additional Sessions Judge, Kolhapur hereby charge you accused.

Shri. Sadashiv Dhondiram Patil, Age-33 years, Resident of Takali, Tal. Shirol, Dist. Kolhapur as follows:-

That you accused on or about 25.10.1990 at about 1.00 a.m. at Mouje Sainik Takali, Tal. Shirol, Dist. Kolhapur did commit murder of your wife Sou. Lata Sadashiv Patil, Age-25 years by pressing her neck and thereby committed an offence punishable section 302 of the Indian Penal Code.

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Secondly that you on aforesaid date, time and place knowingly that certain offence, to wit that you committed murder of your wife by pressing her neck and offence punishable with death or imprisonment for life has been committed, did cause of certain evidence of the said offence to disappear to wit. that you put the dead body of your wife in a gunny bag and thrown in the (iso) where the food-grains are preserved with an intention to screening yourself from legal punishment and thereby committed an offence punishable under section 201 of the Indian Penal code, and within my cognizance.

And, hereby I direct you that you be tried by me on aforesaid charges.

Today this 20th day of February, 1993 at Kolhapur.

(V.B.Deshmukh),

4th Additional Sessions Judge,
Kolhapur..”

12. In the course of the trial, the prosecution examined the following witnesses:-
 1. Mr. Yeshvant Govind Chavan Exhibit 13
 2. Mr. Vasant Dattu Bhosale (Patil) Exhibit 16
 3. Ms. Mangal Exhibit 19
 4. Ms. Laxmi wife of Madhukar Patil Exhibit 20
 5. Mr. Yashvant Ganapati Patil Exhibit 21
 6. Mr. Yamnappa Bhimrao Murali Exhibit 22
 7. Mr. Amrut Rama Mane Exhibit 24
 8. Dr. Shashikant Lakshman Pawar Exhibit 32
13. The prosecution also relied upon the following pieces of documentary evidence:-
 1. First Information Report (Exhibit 17)
 2. Inquest Panchnama (Exhibit 8)

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3. Spot Panchnama (Exhibit 10)
 4. Arrest Panchnama (Exhibit 11)
 5. Memorandum of the Statement of accused (Exhibit 14)
 6. Seizure punchnama of iron-rod, Article No.1 (Exhibit 15)
 7. Seizure punchnama of the clothes of the deceased (Exhibit 12)
 8. The Memorandum of Post-mortem examination (Exhibit 33)
 9. Advance Medical Certificate (Exhibit 9)
 10. Seven photographs (Exhibit 37 to 43)
14. Upon closure of the recording of the evidence, the further statement of the appellant – herein was recorded under Section 313 of the Code of Criminal Procedure, 1973
15. In the further statement, the appellant stated as under:-

Q.75 Do you want to say anything more about your defence?

Answer : I am giving written statement.

**WRITTEN STATEMENT OF THE ACCUSED
UNDER SECTION 313 of Cr. P.C.**

Few months prior to death of my wife, I became disciple of Shri Rane of Shirol. He told me not to sleep at home for 6 months. Therefore I used to stay at night generally at Shirol. If I am at Takali, then I used to sleep at Kalleshwar temple. 2-3 days prior to missing of my wife from the home, I was at Shirol. When I returned on Thursday or Friday, I came to know about missing of my wife from the home. I enquired with, her maternal uncle, but she did not go there. I am implicated in the present case only on the basis of doubt.

16. The Trial Court upon appreciation of the oral as well as the documentary evidence on record came to the conclusion that the

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prosecution had failed to prove its case beyond reasonable doubt. The Trial Court accordingly acquitted the appellant – herein.

17. It may not be out of place to state that at this stage that the Trial Court looked into only one piece of circumstance, i.e., the extra judicial confession alleged to have been made by the appellant – herein before the (PW 2), i.e., the village Police Patil in the presence of his sister-in-law (PW 4) – Laxmi.
18. It is also important to note that Madhukar (brother of the accused) passed away during the course of trial and he could not have been examined as one of the prosecution witnesses.
19. The Trial Court took the view that the extra-judicial confession alleged to have been by the appellant – herein before (PW 2) could not be said to be admissible in evidence being hit by Section 25 of the Indian Evidence Act.
20. The Trial Court also disbelieved the discovery of the iron rod under Section 27 of the Indian Evidence Act.
21. The State, being dissatisfied with the Judgment and Order of acquittal passed by the Trial Court, went in appeal before the High Court.
22. The High Court reversed the acquittal and held the appellant – herein guilty of the offence of murder and accordingly sentenced him to undergo life imprisonment.
23. In such circumstances, referred to above, the appellant is here before this Court with the present appeal.
24. We have heard Mr. Sachin Patil, the learned counsel appearing for the appellant and Mr. Aniruddha Joshi, the learned Senior counsel appearing for the respondent – State.
25. We take notice of the fact that the entire case hinges on circumstantial evidence. The High Court relied upon the four pieces of incriminating evidence for the purpose of holding the accused guilty of the offence of murder of his wife:-
 - (i) extra-judicial confession alleged to have been made by the appellant before (PW 2) on 29-10-1990
 - (ii) discovery of the weapon of offence, i.e., the iron rod;
 - (iii) motive to commit crime;

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- (iv) the incident occurred inside the house and, therefore, the appellant could be said to be within the special knowledge as to what had happened on the fateful day of the incident.
26. The High Court while reversing the acquittal invoked Section 106 of the Evidence Act and shifted the burden on the appellant – herein to establish or rather explain what exactly had happened with his wife.
27. It appears that when the Trial Court acquitted the appellant – herein, the position of law as regards the admissibility of an extra-judicial confession said to have been made before the Village Police Patil was something different. A Division Bench of the High Court in “Ram Singh vs. the State of Maharashtra & Anr” (1999) Criminal Law Journal 3763 had held that a village Police Patil is a Police officer and, therefore, any confession made to him is inadmissible in evidence in view of Section 25 of the Evidence Act.
28. In the said Judgment, the Division Bench also looked into & discussed Section 14 of the Maharashtra Village Police Act, 1967, under which a Police Patil is appointed.
29. We quote the relevant observations of the said Judgment as under:-

13. Section 14 of the Maharashtra Village Police Act, 1967, provides inter alia:

“(1) The Police Patil shall apprehend any person within the limits of his village who he may have reason to believe has committed any serious offence, and shall forward such person, together with all articles likely to be useful as evidence, to the Station Officer.

(2) Every person so apprehended shall within 24 hours be produced before the nearest Magistrate, excluding the time necessary for the journey from the place where he is apprehended to the Court of the Magistrate.”

14. Sub-section (1) of S. 13 of the Maharashtra Village Police Act, 1967, provides:

“The Police Patil shall forthwith proceed to the place of incident and call upon two or more intelligent persons belonging to the village or neighbourhood, who shall investigate the causes of death and all the circumstances of the case, and

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make a written report of the same, which the Police Patil shall cause to be forthwith delivered to the Station Officer.”

15. Section 15 of the Maharashtra Village Police Act, 1967, provides inter alia:

“(1) The Police Patil, in making any investigation coming within the scope of his duty, shall have authority to call and examine witnesses, and record their statement, and to search for concealed articles, taking care that no search be made in a dwelling-house between sunset and sunrise without urgent occasion.

(2) The Police Patil shall also have authority, in carrying out any search or any pursuit of supposed criminal, to enter and act within the limits of other villages, being bound however to have immediate information to the Police Patil thereof, who shall afford him all the assistance in his power, and be immediately responsible for continuing the search and pursuit.”

16. On plain reading of these provisions under the Maharashtra Village Police Act, 1967, it will be clear that the Police Patil has power to apprehend a person, if he suspects that a person has committed serious offence. He has to send report to the Police Station and the person is required to be produced within 24 hours from the time and Police Patil apprehend such person. Not only that a preliminary investigation with respect to such crime also can be made by the Police Patil and he can even chase the accused and apprehend the accused. So, it is obvious that the observations of the learned Additional Sessions Judge quoted above are made without reading the appropriate provisions. Before making any such observations in the judgment, the Judge, at least, of the cadre of Additional Sessions Judge, is expected to go through the relevant provisions of law. Sweeping observations should not be made just to boost the reasoning which is being given in the judgment.

17. In the light of the provisions of the Maharashtra Village Police Act, 1967, it has to be seen whether any confession made before the Police Patil is hit by Section 25 of the

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Evidence Act. The powers of the Police Patil which are referred to above clearly indicate that when any offence takes place, he can act as a Police Officer. He is not a mere spectator or informant. So, for all practical purposes, he is a Police Officer and, therefore, any confession made before the Police Patil would become inadmissible in evidence as being made before a Police Officer.

18. In this respect, we would like to refer two rulings of our High Court. The first is, in the case of Queen Empress v. Bhima ((1894) ILR 17 Bom 485), and the other is in the case of Vistari Narayan Shebe v. The State of Maharashtra 1978 Cri LJ 891. It is observed in the case of Vistari Narayan Shebe by the Division Bench, as follows (at page 895):

“In our opinion, it is fairly well established that the police patil is a police officer within the meaning of Sec. 25 of the Evidence Act. As early as in 1893 this Court held in Queen Empress v. Bhima ((1894) ILR 17 Bom 485), that a police patil is a police officer within the meaning of Ss. 25 and 26 of the Indian Evidence Act. A confession made to a police patil is inadmissible in evidence. It must be remembered that the words “a police officer” found in S. 25 of the Indian Evidence Act should not be read in any strict technical sense but according to its more comprehensive and more popular meaning. Nor is the term confined to a person actually in charge of investigating the offence under the Cr. P.C.”

19. Thus, it will be very clear that any confessional statement made by the accused before the Police Patil is not admissible in evidence. If the learned Additional Sessions Judge had considered this aspect in that perspective, he would not have relied upon the evidence of the Police Patil to hold that the extra judicial confession made by the accused before the Police Patil could be sufficient to convict the accused. The deposition of the Police Patil as well as the F.I.R. which include this confessional statement are inadmissible in evidence and, therefore, this evidence brought on record by the prosecution has to be excluded altogether”.

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30. In the year 2009, a Full Bench of the Bombay High Court, answered a reference titled “Rajeshwer S/o Hiraman Mohurle vs. State of Maharashtra” reported in (2009) Criminal Law Journal 3816. The Full Bench was called upon to answer whether a Village Police Patil is a Police Officer within the meaning of Section 25 of the Evidence Act or not.
31. The Full Bench of the High Court overruled the above referred Division Bench Judgment and took the view that a Village Police Patil is not a Police Officer within the meaning of Section 25 of the Evidence Act and any confession made before him would be admissible in evidence as an extra-judicial confession. We may quote the relevant paragraphs of the said Full-Bench Judgment as under:-

“18. Upon objective analysis of the principles aforesated, it can be stated with some certainty that merely because a person is appointed to a post which vests him with limited powers of Investigation and inquiry or any power ancillary thereto or empowers him to prevent commission of crime in an area would not per se make him a Police Officer in law so as to attract the bar contained in section 25 of the Evidence Act. We have already noticed in some detail that the powers vested in Police Patil under the Village Police Act are expected to be exercised for performance of duties and functions stated under section 6 of that Act. The duties and functions of the Police Patil are of a very restricted nature and do not vest in him all the powers including the power to file a charge-sheet under section 173 of the Criminal Procedure Code which a Police Officer under the Code possess. On the contrary, he is expected to assist the Police Officers when called upon by them in performance of their duties. He has to act under the orders of the District Magistrate and even is expected to collect and communicate to the Station Officer intelligence affecting the public peace. The basic and primary distinction between the powers of the Police Officer under the Code and the power and duties of the Police Patil under the Village Police Act, is that while the investigating officer or Police Officer in charge of a Police Station is duty bound in, law to conduct inquiry or, investigation in a just, proper and fair manner independently being uninfluenced by

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any other facts. There the restricted duties and powers relating to investigation and even otherwise vested in the Police Patil are to be exercised under the supervision of higher authorities as indicated in the provisions of the Village Police Act. Police Patil is required to perform his functions and discharge his duties subject to the orders of the Magistrate and is also required to assist and help the Police Officers in discharge of their duties. In these circumstances, it will be a far fetched submission that the Police Patil has to be treated as a Police Officer in law for all intent and purposes. The consistent view of the Supreme Court as is evident from the above referred judgments is that the officer, other than a police officer, invested with powers of an officer -In-charge of a Police Station is not entitled, to exercise all the powers under Chapter XII of the Code Including the power to submit a report or charge-sheet/challan under section 173 of the Code. This feature has been the hallmark and is held to be determinative factor by the Supreme Court. Once this aspect is missing from the ambit of the powers vested in the officer, he cannot be stated to be a Police Officer for the purposes of section 25 of the Indian Evidence Act. The Police Patil under the Village Police Act is also not a Police Officer on the deeming fiction of law as there is no provision in the Statute which specifically or even otherwise requires the Police Patil to be treated as a Police Officer for all intent and purpose.

19. It will be useful to refer to the reasoning recorded by the Supreme Court in the case of Badku Joti Savant (*supra*) even at the cost of repetition. In paragraph 9 while discussing section 21 of the Central Excise Act which states that a Central Excise Officer under the Act has all the powers of an officer in-charge of a Police Station under Chapter XIV of the Criminal Procedure Code, the Court rejected the contention that therefore he should be deemed to be a Police Officer within the meaning of section 25 of the Evidence Act. Reference was made to the provisions of section 78(3) of the Bihar and Orissa Excise Act, 1955 and section 77 of that Act which stated that Excise Officer empowered under the provisions shall be deemed to be

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the officer in-charge of a Police Station and shall have the power of such officer to investigate a cognizable case. But even there the Supreme Court held that this power does not include the power to submit a charge-sheet under section 173 of the Criminal Procedure Code under the Excise Act unlike the Bihar and Orissa Act and thus held that Central Excise Officer is not an officer deemed to be in-charge of a Police Station. In other words, the Supreme Court declined to accept the applicability of the deemed fiction of law to the extent of terming the Central Excise Officer as a Police Officer for the purpose of section 25 of the Evidence Act.

20. The distinction between the powers of investigation given to a Police Officer under the Code and that of a Police Patil under the Village Police Act is quite obvious from the provisions of the two Statutes. Police Patil has been vested with very limited powers that too under the control and for the benefit of the Executive Magistrate/ Police Officer and his duties are primarily to ensure that offences and public nuisance are not committed in the village and to bring the offenders to justice. The expression “bringing the offenders to justice” appearing in section 6 of the Village Police Act along with its other provisions has to be given its normal and plain meaning. There is no need, keeping in view the scheme of the Act or the legislative intent, to expand the meaning of this expression and enlarge the scope of provisions of this section on certain presumption of law. The powers of the Police Patil as stated under section 13 to 15 of the Village Police Act, are to be read and construed ejusdem generis to the provisions of section 6. The bare reading of these provisions show that Police Patil is not vested with the powers of preparing and filing a charge-sheet before the Court of competent jurisdiction. The powers of Police Patil to investigate and control over the apprehended persons are very limited in contradistinction to powers of a Police Officer under the Code. In terms of section 156 of the Code, a Police Officer is vested with the power to investigate any cognizable case under the provisions of Chapter XIII even without orders of the Magistrate. On the other hand, when a Police Patil

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apprehends a person in exercise of his powers vested under section 14(i) of the Village Police Act, he has to forward such person to the Station Officer, who in turn shall produce such person before the Magistrate within twenty four hours. Thus Legislative intent behind section 6 appears to be that Police Patil is a person responsible primarily for village surveillance, prevention of crime and providing his assistance and help to the police in discharge of his duties. Even above all this, his duties and functions have been made subject to orders of the District Magistrate. The Police Patil does not enjoy absolute freedom in relation to investigation, apprehending the suspect and even in exercise of other powers vested in him under law. The powers to be exercised and duties and functions to be performed by him are under the supervisory control of the stated authorities. The duties, functions and powers vested in an authority by a Statute are relatable to the source which prescribes such functions and powers. The ambit, scope and effect of exercise of such power can be tested by two different concepts i.e. quo modo and actio quaelibet it suia via. In what manner the powers are to be exercised as per the prescribed procedure, the performance or action must follow its prescribed procedure. On applying the above stated principles and testing them with reference to the maxims stated (*supra*), it is not possible for the Court to hold that either the manner of functions and powers of Police Patil or method in which they are to be performed are equitable to the authority, powers and functions of a Police Officer, in law. Therefore, we are unable to contribute to the view that Police Patil is a Police Officer in law for all intent and purpose and confession before him would attract the bar contemplated under section 25 of the Indian Evidence Act, 1872.

21. In view of our above discussion, now we proceed to record the answer to the question of law framed by the Division Bench. Our answer is as follows:-

“We are of the considered view that the Police Patil appointed under the Maharashtra Village Police Act, 1967 is not a ‘Police Officer’ for the purposes of section 25 of the Indian Evidence Act, 1872”.

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32. It appears that the High Court while reversing the acquittal relied upon the above-referred Full Bench Decision for the purpose of taking the view that the extra-judicial confession made by the appellant – herein before PW 2 could be said to be admissible in evidence.
33. One interesting question that arises for our consideration at this stage is that at the relevant point of time i.e., in 1993 when the Trial Court acquitted the appellant – herein the position of law was that an extra-judicial confession said to have been made by an accused before a village Police Patil could be said to be inadmissible in evidence being hit by Section 25 of the Evidence Act.
34. In the year 2009, the Full Bench of the Bombay High Court while answering a reference held that a Village Police Patil is not a Police Officer. Therefore, if the accused herein had stood acquitted having regard to the position of law prevailing at the relevant point of time then relying on a subsequent decision taking a contrary view whether the accused could have been held guilty?
35. It could be argued that the Full Bench decision of the Bombay High Court came to be delivered in the year 2009 whereas the appellant was acquitted by the Trial Court sometime in the year 1993. The position of law till 2009 was that a Village Police is a Police Officer and therefore, any confession made to him would be inadmissible in evidence in view of Section 25 of the Evidence Act, more particularly in view of the Division Bench decision of the Bombay High Court rendered in Ram Singh (supra). We do not propose to consider the question whether the High Court could have relied upon the Full Bench decision after the appellant came to be acquitted by the Trial Court in 1993 thereby giving retrospective effect as regards its applicability.
36. We proceed on the footing that PW 2 – Vasant Dattu Bhosale, Police Patil of the Village cannot be termed as a Police Officer for the purpose of Section 25 of the Evidence Act. We also proceed on the footing that the extra-judicial confession alleged to have been made by the accused before PW 2 is admissible in evidence and is not hit by Section 25 of the Evidence Act. However, such extra-judicial confession should be found to be true & trustworthy before it is relied upon by the Court to hold the accused guilty.
37. Besides, the above such extra-judicial confession should also be found to be free of any inducement, coercion etc. and it should be shown to have been made by the accused on his own free will and volition.

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38. We requested the learned counsel appearing for the State to show us from the oral evidence on record, more particularly, the deposition of PW 2 as well as the deposition of PW 5, the exact words alleged to have been uttered by the appellant – herein in the form of an extra-judicial confession.
39. We on our own also looked into and are convinced that what is alleged to have been conveyed cannot be said to be an extra-judicial confession. A very omnibus & vague statement seems to have been made as deposed by both the witnesses in their oral evidence.
40. This Court in "[C.K. Ravindra vs. the State of Kerala](#)" AIR 2000 SC 369 had held that before placing reliance upon the extra-judicial confession, the Court must be convinced as regards the exact words or even the words as nearly as possible. This Court took the view that it would be difficult to rely upon the extra-judicial confession if the exact words or even the words as nearly as possible have not been reproduced, the said statement cannot be said to be voluntary. In such circumstances, the same may have to be excluded from the purview of consideration.
41. This Court in "Balwinder Singh vs. State of Punjab" (1995) Supplementary 4 SCC 259 had held that an extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and would lose its importance.
42. In such circumstances, referred to above, we are of the view that the High Court fell in error in relying upon the extra-judicial confession even while rightly holding that the same was admissible in evidence as Village Police Patil cannot be said to be a Police Officer.
43. We now come to the second piece of the circumstance relied upon.
44. It is the case of the prosecution that after the arrest of the appellant – herein, he is said to have on his own free will and volition made a statement before the Investigating Officer and he was ready and willing to point out the place where he had concealed the weapon, i.e., the iron rod.
45. Accordingly, the Investigating Officer along with two independent witnesses in the form of panchas went to the place as led by the appellant – herein.

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46. The place was the house itself where the incident had occurred. According to the Investigating Officer, the appellant pointed out the iron rod which was lying in one corner of the house. The same was seized in the presence of the panch witnsses and was sent to the Forensic Science Laboratory for chemical analysis.
47. In this regard, we may only say that panch witnesses have not supported the case of the prosecution. They failed to prove the contents of the discovery panchnama.
48. If the panch witnesses are declared hostile then the prosecution is obliged to prove the contents of the said discovery panchnama through the evidence of the Investigating Officer. The question is how is the I.O. expected to prove the contents of the panchnama.
49. The position of law in this regard is very clear. Just because the panch witnesses have turned hostile does not mean that such discovery should be disbelieved. From the plain reading of the oral evidence of the Investigating Officer if the discovery is believable and inspires confidence, the same can definitely be looked into as one of the incriminating pieces of evidence against the accused.
50. However, unfortunately in the case on hand, all that the I.O. did was to depose that he had drawn the panchnama and in the end identified his signature on the same and that of the panch witnesses. This cannot be said to be proving the contents of the panchnama in accordance with law. In such circumstances, the circumstance of discovery also cannot be relied upon.
51. We are now left with motive. Motive is a double-edged weapon. Motive cannot be the sole basis for convicting the accused and that too for a serious offence like murder. Motive may be considered along with other pieces of reliable evidence in the form of incriminating circumstances.
52. We now come to the last part of the matter.
53. The learned counsel appearing for the State submitted that the dead body of the deceased was recovered from the house itself, i.e., the place where the family was residing. He would submit that in normal circumstances, the husband could be said to be the best person to explain as to what had happened to his wife on the date of the incident.

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54. According to the learned counsel, when an offence is committed within the four walls of the house and that too in secrecy, it is difficult for the prosecution to establish its case beyond reasonable doubt and, therefore, under Section 106 of the Evidence Act, it is for the accused to explain what had actually happened and in the absence of any such explanation, it could be said that the accused committed the crime as alleged.
55. The law in the aforesaid regard is well-settled. Prosecution has to prove its case beyond reasonable doubt & that too on its own legs. The initial burden of proof is always on the prosecution. However, in cases where husband is alleged to have killed his wife in the night hours & that too within the residential house, then undoubtedly the husband has to offer some explanation as to what had actually happened and if he fails to offer any plausible explanation, this can go against him. However, Section 106 of the Evidence Act is subject to one well-settled principle of law. The prosecution has to first lay the foundational facts before it seeks to invoke Section 106 of the Evidence Act. If the prosecution has not been able to lay the foundational facts for the purpose of invoking Section 106 of the Evidence Act, it cannot straightforwardly invoke the said Section and throw the entire burden on the accused to establish his innocence.
56. In the overall view of the matter, we are convinced that the High Court committed error in holding the appellant guilty of the offence of murder.
57. In the result, this appeal succeeds and is hereby allowed.
58. The impugned Judgment and Order passed by the High Court is hereby set aside.
59. We are informed that the appellant has been enlarged on bail by this Court. His bail bonds stand discharged.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Nidhi Jain