

Supreme Court of India

State Of U.P. vs M.K. Anthony on 6 November, 1984

Equivalent citations: AIR 1985 SC 48, 1985 CriLJ 493, 1984 (2) SCALE 728, (1985) 1 SCC 505

Author: D Desai

Bench: D Desai, R Misra

JUDGMENT D.A. Desai, J.

1. Respondent M.K. Anthony was prosecuted for having committed murder of his wife Smt. Anna Kutty and his two children-a son Sajji aged 6 years and a daughter Rita aged 4 years during the night between February 26 and 27, 1973. Learned Sessions Judge, Jhansi convicted him for having committed murder of the afore-mentioned three persons and awarded him maximum penalty under the law. An appeal preferred by the respondent with the reference made by the learned Sessions Judge under Section 366 of the CrPC, 1973 for confirmation of the sentence came up before a division bench of the Allahabad High Court. The High Court gave the respondent the benefit of doubt and acquitted him. Hence this appeal by special leave.

2. Prosecution case briefly stated is that the respondent, a resident of Kerala, was serving as a clerk in the Cash Office of the Central Railway at Jhansi. At the relevant time he was staying with his wife deceased Anna Kutty and two children deceased Sajji and deceased Rita at Jhansi in a quarter of R.P.F. in Laxminagar. Smt. Anna Kutty was admitted in the hospital popularly known as German Hospital for some genealogical disorder. A surgical operation was performed on February 22, 1973. When Smt. Anna Kutty was confined in the hospital the respondent had left his two minor children with one V.S. Radhakrishnan Nair, PW. 1. The minor operation performed on Smt. Anna Kutty revealed that she had a tumor in the uterus and a major operation which may cost around Rs. 600/- was considered necessary. After consulting PW-1-Nair it was decided that Smt. Anna Kutty be taken to Kerala for arranging the major operation. Respondent had to pay the hospital Rs. 206/- in all. As the accused did not have the necessary cash he requested PW-1 Nair to advance a loan but as Nair was not in a position to do so, at his instance Shri Krishana Tiwari PW 14 on February 26, 1973 advanced a loan of Rs. 206/- in two instalments to the respondent. When Smt. Anna Kutty was being brought home from the hospital, on the way the respondent picked up his two children from the house of Nair and requested Sh. Nair to send his wife to the house of the respondent to look after his ailing wife and for preparing food for the children. Accordingly, on February 27, 1973 around 10 A.M. Nair went with his wife and the children to the house of the respondent. He knocked on the door of the quarter in occupation of the respondent but there was no response. Wife of Sh. Nair called out the wife of the respondent but received no response. On pushing the door it was found to be bolted from inside. There was a window by the side of the door covered with a screen. On pushing aside the screen Nair and his wife were struck with horror by the scene as they found Smt. Anna Kutty and the two children of the respondent lying on the ground and their clothes soiled with blood. As the wife of Nair was shocked at the site she was taken to her house and Nair rushed to the office where the respondent was serving and told him what he had seen. One Prabhakar Malyali, a friend of the respondent and a colleague in his office was summoned and he was asked to arrange for ambulance. One Sh. V.M. Phillips PW 12 also a common friend of Nair and the respondent met them on the way and he also accompanied Nair and the respondent to his house. The respondent on reaching his house peeped from the window and started raising screams. In the meantime Phillips

PW 12 went toward the back door and found the three back doors of the house closed but not bolted. Phillips entered the house and opened the latch of the front door. In the meantime Prabhakar Malyali accompanied by the railway doctor arrived with an ambulance. The railway doctor examined Smt. Anna Kutty and the two children of the respondent and declared that they were dead. He also found that there was a cut on the neck of each of the victims. The railway doctor asked Nair to immediately report the matter to the police. The scene did not disclose any tampering with the articles in the house. Nair rushed to police station at Prem Nagar and logged the report at 12.15 noon. Sh. K.B. Dikshit, PW 13 a Sub-Inspector of Police, registered the offence and recorded the statement of Nair and reached the scene of occurrence and commenced investigation. On March 1, 1973 around 7.15 A.M. Nair went to the house of the accused and while they were discussing how the tragedy occurred, in the course of which Nair stated that whoever was responsible for the murder of such charming dear children would not be forgiven by God. At that stage, the respondent started weeping, then got up and went near the photo of Jesus Christ hanging in the room, muttered something and then confessed in Malyalam language to Nair. Nair PW 1 in his evidence reproduces the confession by the respondent in the following words :

My wife had fatal disease and he was in trouble without money. Just now he would have required Rs. 600/- for operation, he was already debted. He had already borrowed Rs. 200/- through me and could not get help anymore from others, therefore he had murdered his wife and children.

The respondent was arrested in the course of investigation. After the charge-sheet was submitted, the learned Magistrate committed the case, to the Court of Sessions for trial.

3. Before the learned Sessions Judge, 16 witnesses were examined on the side of the prosecution including PW 1 Nair and PW 9 Jagdish Singh before whom another extra judicial confession was made by the respondent, PW 12 V.M. Phillips who accompanied Nair and the respondent to his house on February 27, 1973, Krishna Kumar Tiwari, PW 14, who advanced a loan of Rs. 206/- to the respondent at the instance of Nair. The respondent did not examine any witness in his defence.

4. The respondent in his defence denied having committed any offence and disclaimed any knowledge as to how his wife and children were murdered. He said that witness Nair was suspected for having participated in committing murder of one Shri S.A. Nair and was under the police pressure. He escaped by giving false evidence. He also alleged that he had a suspicion that Nair might have committed murder of his wife and two children of the respondent. He alleged that PW 9 Jagdish is a bad character and always under the thumb of the police because he was running a gambling den in his house. Same allegation was made against PW 14 Krishna Kumar Tiwari simultaneously denying the loan of Rs. 206/- taken from him as alleged by Sh. Nair. He alleged that witness Nair has misappropriated the ornaments of the respondent and also he has taken away a box in which he had kept Rs. 2,000/- He further stated that during the fateful night between February 26, and 27, 1973 around 3.30 A.M. he had gone to the railway station to arrange for the reservation for the journey of his wife and children and he was not present in the house since then. It was suggested on his behalf that he returned to his house around 1 noon on February 26 1973 when he was informed about the death of his wife and children by a policeman. He did not examine any witness in his defence.

5. The learned Sessions Judge after evaluating the evidence held that the case depends upon two extra-judicial confessions and certain circumstances proved by the prosecution. In Paragraph 185 of the Judgment he has summarised the circumstances held proved by him. The learned Sessions Judge held that the extra-Judicial confessions made to Nair PW 1 and Jagdish Singh PW 9 are satisfactorily proved. He also held that the respondent had the opportunity to commit murder during the night between February 26 and 27, 1973 and that his conduct when he returned with Nair to his quarter after he was informed of what Nair had seen in his quarter, was unnatural inasmuch as he neither knocked on the door when reached his house nor accompanied railway doctor inside the house. It was also held proved that, as no article in the house was disturbed any possibility of theft, robbery or decoity was excluded. Recovery of a knife at the instance of the respondent stained with blood was held proved. He accepted the evidence that nails of the respondent were stained with blood. The learned Judge also believed that the respondent because of his poverty was unable to arrange for the operation of his wife and he was hard pressed and found an escape route by committing murder of his wife and two children and this was clearly the motive for committing murder.

6. The High Court did not accept the evidence of Nair PW 1 and Jagdish Singh PW 9 about the extra-Judicial confession respondent is alleged to have made to them on March 1, 1973. The High Court rejected the submission on behalf of the respondent that as Smt. Anna Kutty was suffering from genealogical disorder and was therefore, disgusted with the life, so she decided to put an end to it and knowing that there would be none to look after her children she first murdered her two children and then committed suicide. The High Court also held that the prosecution had failed to prove that the respondent had a motive to commit crime and that explanation offered by the respondent that he had left his house at 3.30 A.M. during the fateful night was a reasonable explanation. Finding of the blood-stains on the nails of the respondent was considered an innocuous circumstance because it was not established that the blood was of human origin. The High Court held that the fact that the respondent had an opportunity to commit the crime on the fateful night and that his action in not knocking on the door when he returned to his quarter with Nair and not accompanying the doctor inside the house were circumstances of neutral character. The High Court accordingly held that the case is not proved beyond doubt and acquitted the respondent.

7. This being an appeal against an order of acquittal by the High Court, it would be necessary to find out whether the view taken by the High Court of the evidence as well as circumstances proved by the prosecution is reasonable or as such as would not call for interference by this court in an appeal under Article 136. It must also be remembered that the most important piece of evidence against the respondent is of extra-judicial confession alleged to have been made by him to PW 1 Nair and PW 9 Jagdish Singh on March 1, 1973. If the High Court committed a serious error in evaluating the evidence of afore-mentioned two witnesses and if we hold that the evidence given by the aforementioned two witnesses is reliable, credible and trustworthy, the next question is whether conviction can be based on extra-judicial confession or they need corroboration. If corroboration is considered necessary whether the circumstances held proved by the prosecution provide incriminating evidence against the respondent as would render some corroboration to the evidence of PW 1 Nair and PW 9 Jagdish Singh.

8. PW 1 Nair was at the relevant time serving as a senior clerk in the Accounts Office in the Central Railway at Jhansi. The respondent was at that time a clerk in the Cash Office. The wife of Sh. Nair and deceased Anna Kutty, wife of the respondent both belonged to Kadayanacedu District Alpha in Kerala State. Nair says since the arrival of the family members of the respondent at Jhansi seven to eight months prior to the occurrence they were on friendly terms and the families were on visiting terms. He then speaks about the fact that Smt. Anna Kutty was admitted in the hospital Known as German Hospital on February 21, 1973. He deposed that on the same day in the evening respondent came to his house accompanied by his son and daughter and requested him to keep the children at his house as the wife of the respondent was admitted in the hospital. He speaks about the minor operation performed on Smt. Anna Kutty, on the next day which revealed a tumor in her uterus and the suggested major operation involving a cost of Rs. 600/-. He speaks about two loans one in the amount of Rs. 100/- on February 22, 1973 and another in the amount of Rs. 106/- on February 26, 1973, and as he himself was short of funds, at his request PW 14 Krishan Kumar Tiwari advanced the loan. PW 14, Krishan Kumar Tiwari has given evidence to that effect. He also speaks about the respondent accompanied by his wife coming to his house on February 26, 1973, in the evening around 7.30 P.M. and then he left with both his children for his house. While leaving the respondent told Nair that since Smt. Anna Kutty's condition was serious Nair's wife should go to his house to cook food for the children. The distance between the two houses is about a furlong and a half. On the next day around 10 AM he went to the house of the respondent with his wife and children and then what transpired has been stated by him and which has been reproduced, a little while earlier. He stated in his evidence that on March 1, 1973 around 7.30 A.M. he went to the house of the accused and when both of them were talking about the murder of the wife of the respondent and the two children, he just asked him what must have happened. He then stated that he spoke that whoever committed the murder of such charming lovely children would not be forgiven by God. Thereupon, according to him the respondent started weeping, stood up, went near the photo of Christ and then he spoke to him in Malayalam language which has been translated and extracted hereinbefore. He further stated that the respondent told him that after the murder of his wife he was worried who would look after his children and how he would maintain them and he then killed his Child red also. Evidence shows that respondent and Nair were on friendly terms. Nair went out of his way to help the respondent in procuring the loans from Sh. Krishan Kumar Tiwari. That part of his evidence is borne out by the evidence of PW 14 Krishan Kumar Tiwari because there is no reason to disbelieve either Nair or Tiwari on this point. It is in evidence that while returning with Smt. Anna Kutty from the Hospital on the previous evening, the respondent on the way went to the house of Nair to pick up his children and at that time requested Nair to send his wife to the house of the respondent on the next day in the morning to help ailing Anna Kutty and to look after the children. Nair agreed and when he accompanied by his wife went to the quarter of the respondent on February 27, 1973 in the morning at 10 A.M. this ghastly crime came to light. In the cross-examination it was suggested that one S.A. Nair was murdered some-time back and that the witness Nair was suspected of having participated in the murder of S.A. Nair and that he was under pressure from the police. There is absolutely no substance in the first part of of the suggestion and the learned Sessions Judge rightly rejected the same and therefore the second part becomes meaningless. Similarly there was no substance in the suggestion that Nair misappropriated the ornaments of the wife of the respondent.

9. Was the High Court justified in rejecting the evidence of Nair ? The High Court rejected the evidence of this witness on the ground that there was an omission with respect to the reason why respondent committed murder of his two children in that in his evidence in the committing Magistrate's Court he had not stated that the respondent told him the reason why he committed murder of his children. Another reason was that, according to the witness, respondent while making the confession stated that he would need Rs. 600/-for the operation of his wife, while PW 6 Dr. Faustian who attended on Smt. Anna Kutty in German Hospital stated in her evidence that she had told the respondent to be prepared with a sum of Rs. 200/-to Rs. 400/-in connection with the operation of his wife and therefore, according to the High Court the respondent could have never told Nair that he would need Rs. 600/- in connection with the operation of his wife. Another reason which persuaded the High Court not to accept the evidence of this witness was that witness Nair admitted in his cross-examination that after the respondent confessed before him he conveyed this information to the investigating officer who came to his house around 9 AM and the investigating officer recorded his statement and obtained his signature thereon and this was contrary to the mandatory provision of Section 162 of the CrPC because the investigating officer is not entitled to obtain signature of a witness on the statement made in course of the investigation. Yet another reason which persuaded the High Court to reject the evidence of Nair is that Nair admitted in his cross-examination that he went to the quarter of the accused on March 1, 1973 as he had heard a rumour that the respondent was confessing to his having killed his wife and children but there is no material on record to show that there was such a rumour in the locality. From this circumstance the High Court concluded that there was no reason for Nair to go to the house of the respondent on March 1, 1973 around 7.30 AM when the respondent was alleged to have made the confession. The High Court concluded that the witness has given no explanation for being present at the quarter at the time of alleged confession made to him and therefore no reliance could be placed on his evidence. Are these reasons valid and weighty to reject the evidence of Nair ? In our opinion, the reasons which impelled the High Court to reject the testimony of witness Nair are apart from being irrelevant are wholly un-convincing and unacceptable. Let it not be forgotten that despite all protestation to the contrary evidence of Nair shows that he was a good friend of the respondent. His wife and deceased Anna Kutty hailed from the same village. Both the families were on friendly terms and were visiting each other. Their houses were at a distance of a kilometer and a half. Both were serving at the same place and in the same establishment but in two different branches. Nair was the one to whom the respondent approached in his dire necessity of money to pay the bill of the German Hospital and even though Nair did not have the necessary cash he went out of his way to request PW 14 Krishan Kumar Tiwari to lend the amount. At the request of the respondent, Nair went to his house on February 27, 1973 to leave his wife and children to assist Smt. Anna Kutty and to prepare food for her and her children. If the allegation of police pressure as he was suspected for having participated in the murder of S.A.Nair or that Nair him-self was a suspect for the murder of Smt. Anna Kutty and her two children being utterly devoid of sense and substance are rejected as a fulminations of the accused trying to throw dust on an otherwise reliable and trustworthy witness, the evidence of witness Nair a close dear friend of the accused was rightly treated by the learned Sessions Judge as truthful and reliable, convincing and trustworthy. If the investigating officer did obtain the signature of Nar an intimate friend of the respondent speaking about the confession of the respondent, it may be that it may be a violation of Section 162 of the CrPC but no attempt was made to verify this fact by referring to the case diary. The court is always entitled to look into the

case diary. Assuming that Nair's admission that his signature was obtained on the statement recorded by the investigating officer on March 1, 1973, is correct, it does not render his evidence inadmissible. It merely puts the court on caution and may necessitate in depth scrutiny of the evidence. But the evidence on this account cannot be rejected outright. Section 162 of the CrPC does not provide that evidence of a witness given in the court becomes inadmissible if it is found that the statement of the witness recorded in course of the investigation was signed by the witness at the instance of the investigating officer. Such is not the effect of Contravention of Section 162 CrPC. Similarly the reason for rejecting his evidence why Nair went to the house of the respondent as being induced by a rumour is not convincing and is equally untenable, because Nair being a friend would visit the house of the respondent as frequently as possible as a great calamity had befallen the respondent. Rumour or no rumour one cannot reject the testimony of an otherwise reliable witness on such flimsy ground. Lastly some minor variations in the language used by the witness while giving evidence before the committing Magistrate and before the Sessions court in respect of the extra judicial confession, if there is a substantial reproduction, could not permit a total rejection of his evidence.

10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the : root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned Counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible.

11. The next witness who speaks about the dying declaration is witness PW 9 Jagdish Singh. He stated in his evidence that he was occupying the quarter adjacent to the quarter in which the respondent was staying with his family. He came to know about the murder of Smt. Anna Kutty and two children of respondent on February 27, 1973 at about 10.30. A.M. He also deposed that he knew that Smt. Anna Kutty was taken to the hospital. He stated that on March I, 1973 in the morning

between 8.15 A.M. and 8.30 A.M. he went to the quarter of the respondent as he saw women and children standing in the varandah. He saw Nair leaving the quarter at about that time. He described Nair as a friend and well-wisher of the respondent, and stated that he often used to visit the respondent's house. He then stated that the respondent was seen sitting in the adjoining room of his quarter and witness approached and asked him what has been found about the murder. He then deposed that the respondent exclaimed to God to excuse him that he had committed mistake as he had murdered his wife and two children. The witness asked him why he had done so when the respondent replied that he was disappointed by the disease of his wife, therefore he had done so. The witness stated that he left the place immediately thereafter. The learned Sessions Judge has reproduced the extra-judicial oral confession made by the respondent to witness Jagdish Singh as under :

Oh God Pardon me, I have done blunder, I have murdered my wife and children.... Being disappointed by the disease of my wife, I have done so.

While scrutinising the evidence the learned Sessions Judge also observed that the witness has reproduced the exact words and he was satisfied that it was a truthful reproduction of what the respondent uttered. He then proceeded to examine the allegation made in the cross-examination of the witness and denied by him that as the witness was running a gambling den he was always under the police pressure. An commission was brought on record with reference to his statement recorded in the course of the investigation that he had not stated that he heard a rumour in the locality that respondent has confessed his crime. After taking note of these aspects of his evidence, the learned Judge held that he was satisfied that the evidence of the witness is reliable and that the respondent did make the extra-judicial oral confession to him.

12.The High Court rejected the evidence of this witness on the ground that he had not stated in his statement in the course of investigation that he had heard a rumour that the respondent was confessing that he has killed his wife and children. The High Court, in our opinion, erred in reaching a substantive conclusion about the absence of rumour in the locality from the omission in the police statement. For this reason alone, the High Court held that the witness has given inconsistent version for being present at the quarter of the accused at the time of alleged confession made to him and since no reliance can be placed on the evidence of this witness for his being present at the house of the accused at the time of the alleged confession made to him, it would, according to the High Court not be safe to rely upon his evidence that the accused confessed to him that he had killed his wife and two children. This is hardly a valid reason for rejecting the evidence of a neighbour to whom a stray unsupported by evidence suggestion that he was running a gambling den, studiously denied was thrown. The common course of human conduct would show that where the calamity has befallen a neighbour, persons who would be visiting the victim of the calamity are neighbours and friends not strangers, outsiders or enemies. And the cccccccccccccccommission is on a point which has hardly any significance. The witness is a colleague and a neighbour and no Suggestion is made that he is inimical to the respondent. Therefore, in our opinion, the High Court was in error in rejecting the evidence of this witness.

13. Once we accept the evidence of PW 1 Nair and PW 9 Jagdish Singh, it is satisfactorily established that on March 1, 1973 between 7.30 and 8.30 A.M. on two different occasions before two independent persons the accused confessed having committed murder of his wife and two children. He confessed the motive for committing the murder. Undoubtedly the motive is economic destitution, the utter helplessness of a person belonging to lower middle class to provide for the operation of his wife. It is not a motive for gain or for satisfying lust or wreaking Vengeance but it is none-the-less a motivation for committing the crime. It is thus satisfactorily established that the respondent frankly confessed having committed murder of his wife and two children to his friend and a neighbour and gave reasons for that dastardly crime.

14. The next question is whether the evidence as to extra-judicial confession is by itself trustworthy and credible or are there any circumstances which may tend to devalue its credibility and hence the need for corroboration to the extra-judicial confession before placing implicit reliance on them.

15. There is neither any rule of law nor of prudence that evidence furnished by extra-judicial confession cannot be relied upon unless corroborated by some other credible evidence. The courts have considered the evidence of extra-judicial confession a weak piece of evidence. See *Jagta v. State of Haryana* and *State of Punjab v. Bhajan Singh and Ors.* In *Sahoo v. State of U.P.*, it was held that 'an extra-judicial confession may be an expression of conflict of emotion, a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime.' Before evidence in this behalf is accepted, it must be established by cogent evidence what were the exact words used by the accused. The Court proceeded to state that even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It may be used only as a corroborative piece of evidence. In that case, the evidence was that after the commission of murder the accused was heard muttering to himself that he has finished the deceased. The High Court did not interfere with the conviction observing that the evidence of extra-judicial confession is corroborated by circumstantial evidence. However, in *Pyara Singh v. State of Punjab* (1978) 1 SCR 661, this Court observed that the law does not require that evidence of an extra-judicial confession should in all cases be corroborated. It thus appears that extra-judicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extra-judicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trust-worthy and beyond reproach the same can be relied upon and a conviction can be founded thereon.



16. We find the evidence of PW 1 Nair and PW 9 Jagdish Singh speaking about the extra-judicial confession wholly trustworthy and reliable.

17. However, as the High Court has taken a different view of the evidence, as a measure of abundant caution and to put the matter beyond the slightest pale of controversy, we now proceed to examine the circumstantial evidence which would lend assurance to the extra-judicial confession spoken to by the afore-mentioned two witnesses.

18. The first circumstance is the plight of helplessness in which the respondent was found at the relevant time on account of the illness of his wife, the necessity for an operation, non-availability of funds for the same and the loans taken by him for payment to the German Hospital where the deceased was kept for a few days just preceding the day of occurrence; impelling the respondent to commit murders. Evidence of PW 1 Nair and PW 14 Krishan Kumar Tiwari would unquestionably establish that the respondent was hard-pressed for funds and he had to borrow a small sum like Rs. 200/- to pay to the German Hospital for treatment given to his wife. Evidence in this behalf is trustworthy and reliable and would lend assurance to the fact that the suggested operation and need for Rs. 600/- would render the respondent so helpless that in his exasperation he found the way out by putting an end to his wife's life and in her absence, the emerging situation would Impel him to commit murder of his two young kinds. This part of the prosecution case is satisfactorily established and would provide motivation and would lend assurance to the evidence furnished by the extra-judicial confession.

19. The second circumstance relied upon by the prosecution is that the respondent had the opportunity to commit murder of his wife and children during the night between February 26 and 27, 1973. Mrs. Anna Kutty the wife of the respondent was brought from the hospital to his quarter in the evening on February 26, 1973. During the period Smt. Anna Kutty was kept in the hospital, the two children of the respondent were left at the house of PW 1 Nair. While returning from the hospital to his quarter with his wife, according to the evidence of PW 1 Nair, the respondent came to his quarter to pick up his two children and then all of them went to the quarter of the respondent and at that time he told Nair that he should send his wife to his quarter on the next day in the morning to look after the ailing Smt. Anna Kutty and to cook food for the children. When this part of the evidence of Nair was put to the respondent in his statement under Section 313 the only reply was that the statement is incorrect. There is hardly any cross-examination of witness Nair on this part of his evidence. Once this part of the evidence of Nair is accepted, it is satisfactorily established that the respondent returned with his wife and two children to his quarter in the evening on February 26, 1973. It must be remembered that Smt. Anna Kutty and the two children were found murdered in the quarter of the respondent during the night between February 26 and 27, 1973. And the crime came to light around 10 A.M. on the next day i.e. February 27, 1973. During the night the respondent had the opportunity to commit murder of his wife and children. In this connection, the respondent has stated that he had left his house around 3.30 A.M. during the fateful night and he went to the railway station at Jhansi in connection with reservation for his wife and after obtaining the reservation he went directly to his office and around 1 P.M. in the noon he was informed by a policeman that his wife and children were murdered. The prosecution has led evidence to show that the respondent applied for reservation for the journey of his wife from Jhansi to Kerala on February

27, 1973 around 9.30 A.M PW 7 Sukh Darshan Singh deposed that he was a clerk in charge of third-class reservation at Jhansi railway station in February, 1973 He had brought the reservation register and after referring to the enter) he deposed that on February 27, 1973 at about 9.30 A.M. Mr. M.K Anthony (that is the name of the respondent) had filed an application which he produced. He also produced the railway pass on which the witness put the endorsement about the journey and the number of train Exh. KA-15. On the strength of this endorsement he issued the reservation slip KA-16. He also deposed that the reservation hours are from 9 A.M. to 4.30 P.M. With reference to the evidence of this witness, the respondent stated in his statement that what he has stated is not correct and reiterated that he applied for reservation at 3.30 A.M. In this connection it is also necessary to refer to the evidence of one Vinod Kumar Roosia PW 11 who was examined to prove the inquest panchnama. In the cross-examination a suggestion was made to him that the respondent was keen to take his wife to Kerala and therefore he had got the pass issued and obtained reservation. He deposed that on February 27, 1973 about 6-6.30 A.M., a quarrel had taken place between respondent and the ticket collector about he time when the application was presented. It is very surprising that this-wit ness should have been asked these questions though obviously he was not a witness called by the prosecution to prove anything with regard to the reservation obtained by the respondent. It was however contended before the learned Sessions Judge that if the evidence of witness Roosia is believed it would bear out the statement of the respondent that he had gone for reservation very early in the morning as he had to stand in the queue and a quarrel had taken place between him and the ticket collector. The learned Sessions Judge after meticulously examining the evidence of witness Roosia rejected it and after rejecting this part of the defence version the learned Sessions Judge accepted the evidence of PW 7 Sukh Darshan Singh and held that the application for reservation was presented at about 9.35 A.M. Apart from this evidence unless it is shown that at the railway station Jhansi third class reservation office is open round the clock, it is impossible to believe that the respondent would leave his house at the unearthly hour of 3.30 A.M. in order to stand in the queue for obtaining the reservation for his wife and children. Let it not be forgotten that he was a railway employee and he must be aware when the reservation office would open. If the reservation office was to open around 9 A.M. it is difficult to believe that from 3.30 A.M. the respondent would be standing in a queue for obtaining reservation. Therefore the learned Sessions Judge rightly rejected the statement of the respondent that he had left his house at about 3.30 A.M. The High Court while dealing with this aspect of the case first referred to the statement made in the First Information Report lodged by Nair that the respondent had gone to attend his duty at 3.30 A M. during the fateful night. The High Court then called in aid the statement made by PW 11 Roosia that he had seen a quarrel taking place around 6-6.30 A.M. between the respondent and a ticket collector. The High Court also referred to the evidence of Roosia in which he has stated that the respondent claimed before the reservation clerk that he had made an application for reservation around 12 mid-night. The High Court overlooked this fact that witness Roosia was examined for proving the inquest panchanama and that he had gone out of his way to make a statement which may help the respondent. At its best, the evidence of PW 11 Roosia that the respondent was at the railway station around 6.30 A.M. is of an innocuous nature, though we must frankly confess that that part of his evidence fails to inspire confidence and the reasons given by the learned Sessions Judge for rejecting the same are convincing. Even the High Court making a passing observation about this evidence observed that even if the evidence of PW 11 Roosia fell short of proving affirmatively that the respondent left his residence at about 3.30 A.M. certainly did not rule out the

reasonableness of the explanation of the respondent. We fail to make out whether the High Court holds the evidence of PW 11 Roosia acceptable or otherwise. However, in order to bolster up this evidence the High Court called in aid the statement made in the First Information Report lodged by PW 1 Nair in which it was stated that the respondent had left his quarter around 3 30 A M and this was treated as prosecution case itself. Let it not be forgotten that the First Information Report was lodged after 10 A.M. on February 27 1973 when after the respondent on being informed by Nair about the murder of Smt Anna Kutty and her two children came to his house. Thereafter PW 1 Nair went to lodge information of the offence and obviously the fact that respondent was alleged to have left his house around 3.30 A.M. during the night was given to him by none other than the respondent himself, Nair obviously had no reason to suspect the bonafides of the respondent at that time. The statement thus found its place in the First Information Report as the self-serving declaration of the respondent himself for preparing in advance his defence and would have no probative value. Once the evidence of PW 11 Roosia and the statement in the First Information Report are excluded as unworthy of credit the explanation of the respondent that he had left his house at 3.30 A.M. could not be accepted because it seems contrary to the credible evidence of PW 7 Sukh Darshan Singh The High Court in our opinion, was in error in holding that the explanation offered by the respondent for being not present at his house is reasonable. In fact the explanation is an attempt by the respondent to extricate himself from the inconvenient position in which he found himself and must be rejected as unworthy of credit It is thus satisfactorily established that the respondent had the opportunity to commit murder of his wife and two children during the night between February 26 and 27, 1973. This would provide further corroboration to the evidence furnished by the dying declaration. Therefore the reasons which weighed with the High Court for holding that the prosecution has failed to establish that respondent had a motive to commit the murder and that he made the extra-judicial confession and that the explanation offered was reasonable do not carry conviction.

20. The prosecution also relied upon an additional piece of evidence namely that after the respondent was arrested on March 1, 1973 the investigating officer PW 13 K.D. Dixit interrogated the respondent and on the information given by the respondent he examined the hands of the respondent and felt that there was some reddish spots on his nails whereupon he got cut the nails of the respondent with the help of barber Lal Ram. The nails were kept in a sealed envelope and were sent to the chemical analyser whose report Exh. KA-41 shows that the nails were stained with blood. However the nails appear not to have been sent to Serologist and therefore it could not be said that the blood was of human origin. Obviously it would be far felicitous to hold that the blood stains found on the nails of the respondent were of blood of animal origin. As the High Court has attached no importance to this aspect for the reasons herein mentioned we do not propose to call in aid this statement.

21. So far as the recovery of knife is concerned the same was recovered on the information given by the respondent after he was arrested on March 1, 1973. The knife was recovered from what is described as Jali above the water tank the water of which had a reddish tinge. The knife was wrapped in a piece of cotton cloth. This knife is shown to be stained with human blood. However the High Court while examining this part of the prosecution case observed that the witness Kailash Narain PW 5 who was examined to prove the recovery of Knife, stated that he was occupying

Quarter No. 780 but the witness admitted that the quarter was not allotted to him. The witness also admitted that a quarrel had taken place between his father and the the kedar in August, 1972 and therefore he came to occupy Quarter No. 780 without an allotment order. The High Court found this circumstance sufficient to come to the conclusion that the witness could not be staying in Quarter No. 780 and therefore he could not be present and could not have been summoned to be a witness. Frankly the reasons for which the evidence of the witness is rejected are hardly convincing. The learned Sessions Judge had accepted the evidence of the witness and we are in agreement with him. It is thus satisfactorily established that that the blood stained knife was recovered on the information given by the respondent from the very quarter in which Smt. Anna Kutty and her two children were murdered.

22. There are other circumstances not weighty enough to engage our attention because on the evidence as herein discussed, we are wholly satisfied that the respondent was responsible for committing murder of his wife and two children. Two dying declarations themselves provide credible evidence against the respondent. To put the matter beyond the pale of controversy the circumstantial evidence herein discussed render them wholly reliable and the charge is brought home to the respondent beyond the slightest shadow of doubt. The evaluation of the evidence by the High Court is improper and its view is utterly unreasonable and has to be discarded. The High Court was accordingly in error in interfering with the conviction of the respondent as recorded by the learned Sessions Judge.

23. The last question is what sentence should be imposed upon the respondent. The learned Sessions Judge has imposed maximum penalty that could be imposed under the law namely sentence of death. The murder of near and dear ones including two innocent kids is gruesome. We must however be careful lest the shocking nature of crime may induce an Instinctive reaction to the dispassionate analysis of the evidence both as to offence and the sentence. One Circumstance that stands out in favour of the respondent for not awarding capital punishment is that the respondent did not commit murder of his near and dear ones actuated by any lust, sense of vengeance or for gain. The plight of an economic have-not sometimes becomes so tragic that the only escape route is crime. The respondent committed murder because in his utter helplessness he could not find few chips to help his ailing wife and he saw the escape route by putting an end to their lives. This one circumstance is of such an overwhelming character that even though the crime is detestable we would refrain from imposing capital punishment. The respondent should accordingly be sentenced to suffer imprisonment for life.

24. Accordingly this appeal succeeds and is allowed and the judgment and order of the High Court acquitting the respondent is quashed and set aside and the order convicting the respondent made by the learned Sessions Judge is restored but the sentence is commuted to one for life imprisonment. The respondent shall suffer imprisonment for life. He shall surrender to custody to serve out the sentence.