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Cr1.A.No. 1047 OF 2001
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ITEM No.107 Court No. 09 SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Cr1. Appeal No.1047 of 2001

Dharma Radaka Walvi Appellant (s)
VERSUS

State of Maharashtra Respondent (s)
(With office report)

Date : 07/08/2002 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE BISHESHWAR PRASAD SINGH

For Appellant (s)
Mr. G. Prakash, Adv.

For Respondent (s)
Mr. V.N. Raghupathy, Adv.

UPON hearing counsel the Court made the following
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The appeal fails and the same is dismissed in terms of
the signed order.

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(Pawan Kumar) (Jasbir Singh)
Court Master Court Master

(signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1047 OF 2001@@
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Dharma Radaka Walvi ..Appellant
Vs.

O R D E R@@
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.SP2

The appellant was convicted for the offence punishable under Sections 302 IPC and 201 IPC and sentenced to undergo imprisonment for life on the substantive part of the charge under Section 302 IPC. He was also sentenced to undergo for a period of two years on the charge under Section 201 IPC by Addl.Sessions Judge, Thane for having committed the murder of his wife on the intervening night of 1.6.1992 and 2.6.1992. The said conviction and sentence having been upheld by the High Court of Judicature at Bombay, the appellant is before us in this appeal.

Briefly, the prosecution case is that the relationship between the appellant and his wife-deceased was not cordial since the appellant was addicted to alcohol and he was suspecting the character of his wife. Consequent upon that at one point of time she left the appellant and started residing with her father. Thereafter, there was a settlement pursuant
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to which deceased came back to the appellant's house. It is the further case of the prosecution that on the night between 1st and 2nd June, 1992 there was a quarrel between the appellant and the deceased. During the said quarrel between husband and wife the appellant, it is alleged, strangled her which resulted in her death. Thereafter, he dragged the dead body of the deceased out of his house upto a distance of 500 ft. and left it by the side of a Nala. He then supposed to have called PWs.4 and PW.9 who were working as watchman and superintendent respectively of the Ashram Shala and told them that his wife was abducted by 5 or 6 persons and they had taken her away in a truck. The said witnesses persuaded the appellant to make a complaint but the appellant did not to do and said that his wife would return on her own in the next morning. According to the prosecution, next morning he told PWs.4 & 9 that whatever was said by the appellant to the witnesses on the previous night is incorrect. As a matter of fact he had murdered his wife during the quarrel and he was in intoxicated condition. This extra judicial confession was not only made to the PWs.4 & 9 but also it was made in the presence of PWs.1, 3, 4 and 7. Thereafter, it is stated that the appellant lodged a complaint in the Police Station - Exh.31 in which he confessed that he had committed the murder of his wife. On the basis of this complaint a case was also
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registered and after investigation he was charged for the offences as stated above.

In support of its case the prosecution relied upon the evidence of PW.8, father of the deceased, who stated that frequently suspecting the character of his daughter there used to be quarrel between the appellant and the deceased as also the appellant was addicted to alcohol. The prosecution also relied on the witness of appellant's child Sachin, PW.5 who at the time of the incident was about 4 & 1/2 years old. It also relied upon the witnesses PWs.1, 3, 4, 7 and 9 to establish the extra-judicial confession made by the appellant to them. On the said basis of witness and the eye-witness-child PW.5 learned Sessions Judge found the appellant guilty of said charges and sentenced him as stated above.

The High Court as a matter of abundant caution did not rely upon extra-judicial confession made to PW.7 on the ground that he is a police patil and under Section 27 of the Evidence Act it may not be admissible. It also took note of the fact of PW.4 and 9 did not fully support the prosecution case in regard to the said extra-judicial confession. However, the court relied upon the evidence of PWs.1 and 3 to whom a similar confession was made by the appellant and relying upon the said evidence as also on the evidence PW.8 for the motive and also taking note of the conduct of the appellant inasmuch
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as he had not given a police complaint even when he was asked to do so by PWs.4 and 9 and noticing the injuries on the body of the deceased which was not in conformity with the case of the appellant that his wife was abducted by some people came to the conclusion that the circumstantial evidence produced by the prosecution was sufficient to convict the appellant and accordingly it confirmed the sentence imposed by the learned Addl. Sessions Judge.

Mr. G. Prakash, learned counsel appearing for the appellant, contended before us that the High Court having rejected the evidence of PW.5 could not have relied upon the evidence of this child to support the prosecution case as to the motive. Assuming it is correct we find still there is the evidence of PW.8 in regard to motive which has gone unchallenged and the same is sufficient to establish the fact that there was constant quarrel between the appellant and the deceased and at one point of time she had also left his house and that he used to suspect the conduct of the deceased and was addicted to alcohol. It also relied on the circumstantial evidence of PWs.1 and 3 before whom the appellant had made an extra-judicial confession.

We find that the High Court after carefully scrutinising the evidence on record came to the conclusion that the evidence of PWs.1 and 3 in regard to the
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extra-judicial confession made by the appellant was acceptable and on reconsideration we too are in agreement with the same. The High Court also relied upon the circumstantial evidence in

regard to the conduct of the appellant on the night between 1st and 2nd June, 1992. It noticed the fact that at the first instance the appellant on that night had told PWs.4 & 9 that his wife was abducted by 5 or 6 persons in a truck thereafter when the said witnesses asked him to lodge a police complaint but he did not agree to do so on the ground that she would return on her own. However, in the morning, it is seen from prosecution evidence that the appellant went to PWs.4 & 9 and in the presence of PWs.1, 3 and 7 made extra-judicial confession admitting his guilt as to the murder of his wife. This change in the stand taken by the appellant was taken as a circumstance against the appellant by the High Court. The High Court also took notice of the fact that the injuries on the deceased's body clearly showed that deceased was dragged in the ground which injury was not in conformity with the theory of abduction. The High Court also noticed that there was no sexual assault on the deceased which was more in conformity with the prosecution case that the appellant had strangled the deceased and dragged her about 500 ft.

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Thus, having considered the judgment of the Courts below as also the material on record and having heard the counsel, we are in agreement with the Courts below in accepting the circumstantial evidence and we find no infirmity in the same.

In the reasons stated above the appeal fails and the same is dismissed.

.SP1

.....J.
(N. SANTOSH HEGDE)

.....J.
(BISHESHWAR PRASAD SINGH)

New Delhi,
August 7, 2002.