

Form No. J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Rai Chattopadhyay**

**CRA 719 of 2016
With
CRAN 2 of 2026
Manindra Nath Mishri
v.
The State of West Bengal & Anr**

For the Appellant : Mr. Sekhar Kumar Basu, Ld. Sr. Adv.
Mr. Antarikhya Basu,
Miss Madhumita Basak

For the State : Mr. Debasish Roy, ld. P.P.,
Mr. Suman De,
Ms. Trisha Rakshit.

Hearing concluded on: May 7th, 2026.

Judgment on : May 11th, 2026.

Rajasekhar Mantha, J.:

1. The subject appeal is directed against the judgment of conviction dated December 5th, 2016 and order of sentence dated December 6th, 2016 passed by the Additional Sessions Judge, Fast Track Court,

Haldia Purba Medinipur in Sessions Trial No. 89 of 2014. The appellant was convicted under sections 302 and 498A, IPC.

2. For the commission of the offence under Section 302, IPC, the appellant was sentenced to a rigorous imprisonment for life and pay a fine of Rs. 10,000/-. In default, to further undergo a rigorous imprisonment for 6 months.
3. For the offence under Section 498A, IPC, he was sentenced to rigorous imprisonment for 2 years and pay a fine of Rs 10 000/-. In default, he was to further undergo a rigorous imprisonment for 6 months. The 50% of the fine amount, if realized, was directed to be paid to PW 1, the father of the victim.

THE PROSECUTION CASE AND EVIDENCE ON RECORD

4. The husband of the victim strangled the latter to death at her matrimonial home. The victim failed to bring money from her parental home. Prior to the death of the victim, the appellant used to torture her since she protested against the extra-marital affairs of the appellant. The appellant was the permanent employee of the India Oil Corporation.
5. On June 6th, 2013, around 7 A.M., the appellant informed **PW 1, the father of the victim**, over the telephone that the victim had committed suicide. PW 1 reached the PO and found that the victim is lying dead on the floor. He found a napkin is hanging over the ceiling fan.

6. PW 1 came to learn from his **grandson, PW 10**, that the appellant, on the last night, had taken the victim to a separate room, drew them out (children of the victim), and mercilessly beat the victim. The victim was crying for help, which, however, stopped after some time.
7. Based on the above, PW 1 lodged the complaint dated June 7th, 2013. It culminated into the FIR no. 75 of 2013 dated June 7th, 2013, under Section 498A and 302 of the IPC, lodged by Haldia PS, Purba Medinipur.
8. The inquest on the body of the victim and PO was conducted on June 6, 2013, by **PW 8, the ASI of the said Haldia PS**. The inquest report recorded that the appellant found the victim hanging from the ceiling fan. The victim hanged herself by a napkin. It found one black bent mark on the throat of the victim. The victim was found wearing a sanitary pad. A black coloured T-shirt and white pyjama were lying near the body of the victim kept on the floor.
9. The inquest report indicates that the witnesses present at the PO have stated that the victim has committed suicide. PW 1, the father of the victim, was an inquest witness.
10. Post mortem was conducted on June 6th, 2013, by PW 12. He has deposed that the death was caused by violent asphyxia. The death is most likely homicidal. Some scratch marks were found on the right ear. Hyoid bone was, however, found unbroken.
11. Investigation was completed and charge sheet was filed. Charges were framed under Sec. 498A and 302 of the IPC on December 10th, 2014 against the appellant. The trial commenced.

12. **PW 1 was the father of the victim.** He lodged the said complaint dated June 7, 2013 with the Haldia PS. He confirmed the case of the prosecution as narrated in his complaint. There are however some minor omissions in his evidence recorded during the trial.
13. In his complaint, he stated that the appellant had informed him that the victim had committed suicide. During the trial, he, however, has deposed that he received information that the victim had committed suicide. He did not name the person from whom he received the said information.
14. In his complaint, PW 1 has stated that when he reached the PO, **PW 10, his grandson,** told him that the appellant had mercilessly beaten the victim after locking her in a separate room in the night of June 5th, 2013 i.e. one day prior to the fateful day on June 6th, 2013, when the dead body of the victim was found lying on the floor and one ghamcha (towel) was hanging from ceiling fan. During the trial, PW 1 has, however, deposed that PW 10 has simply told him that there was an altercation between the victim and appellant.
15. PW 1 has deposed that he used to frequently visit the victim at her matrimonial house. In fact, he deposed that on 5th, June 2013, the day before the incident, he had lunch at the matrimonial house of the victim.
16. PW 1 also deposed that he gave Rs 8.5 lakhs to the appellant at time of the victim's marriage in addition to the other ornaments and accessories. He has deposed that the appellant used to physically and

mentally torture the victim on the failure of the victim to bring a further sum of Rs 2.5 lakhs from PW 1. PW 1 has deposed that his salary was Rs 8,000 to 10,000. He has deposed that he was an employee of the Excise department, State of West Bengal.

17. PW 1 further deposed that the said torture of the appellant increased when the victim opposed the extramarital relations of the appellant with other women. PW 1 has deposed that he was aware of such affairs. He, however, do not know the name of such women with whom the appellant had such relations.

18. PW 1 has deposed that upon his arrival at the PO, **one Uma Patra, PW 3**, has told him that she heard the hue and cry of the victim. During trial, PW 3 has, however, deposed that she simply heard a hue and cry. She did not name whose hue and cry it was. He denied the suggestion that the victim was sentimental, which led her to commit suicide. He confirmed that he was an inquest witness. During investigation, he was however not examined by the police

19. **PW 2 was the housemaid in the victim's matrimonial home.** She has deposed that on the fateful day, she came to work and found the door of the house closed. She opened the door and saw that the victim was lying unconscious. She tried to wake up the victim on the assumption that the victim is asleep. The victim, however, did not respond. PW 2 then realized that the victim had died, and thus she raised a hue and cry.

20. In cross-examination by the defence, PW 2 has deposed that the appellant was not present at the house, when she arrived. She denied

the suggestion that the appellant was sleeping with the children in the other room at that time. PW 2, however, in her statement to the police has stated that after realizing that the victim has died, she rushed to the other room of the house and alerted the appellant, who was sleeping with his minor daughter and son, PW 10.

21. **PW 3 was Uma Patra, the neighbour of the victim.** The appellant and husband of PW 3 were colleagues at the Indian Oil Corporation. She has deposed that on June 6th, 2013, she heard a hue and cry emanating from the house of the victim. She did not name the person whose hue and cry it was. She rushed to the house of the victim and saw her lying on the floor. PW 3's house was one house after that of the victim's.

22. **PW 4 was the brother of the victim.** He confirmed that the appellant had extramarital affairs with other women. He knew the names of such women. He, however, did not disclose the identity and whereabouts of such women to the police during interrogation.

23. PW 4 has deposed that victim came to learn of such extra marital affairs after 6-7 months of her marriage. The victim also came back to her parental house. PW 1 advised the victim not go back to her matrimonial home. However, after persuasion from well-wishers and family friends, the victim went back to her matrimonial home. The dispute between the appellant and victim however persisted, and the victim frequently used to come back to her parental home after each three-four months.

24. PW 4 has deposed that the appellant used to torture the victim for unable bring money from her parental house. He used to visit the matrimonial house of the victim. The appellant never misbehaved with him during such visits. PW 4 has deposed that PW 1 invested money for building a house for the appellant.

25. **PW 5 was another neighbour of the victim.** The children of the victim and the son of PW 5 used to study in the same school. She used to visit the house of the victim on her way back to home from the said school. The victim also visited the house of PW 5 to collect school notes.

26. PW 5 has deposed that on the fateful day, she received the news of the death of the victim. She arrived at the house of the victim and heard that the latter had committed suicide. She did not enter in the said house. She was declared hostile by prosecution. In cross examination by the prosecution, PW 5 has denied that she and the victim were good friends. She denied that the victim ever confided in her that the appellant used to torture and had extra-marital relations with other women. She denied that the victim had ever shown her any bruise inflicted by the appellant.

27. PW 5 denied having gone with the victim to the function, organised by Indian Oil Corporation on June 5th, 2013, the day before the incident. **PW 13, the IO of the case**, has however confirmed that PW 5 in her statement to the police has stated that the victim has told her that the appellant used to torture the victim when the latter protested against the extra-marital affairs of the former.

28. **PW 6 was the husband of PW 5.** He was the office colleague of the appellant. PW 6 and PW 5 used to reside in the same building where the appellant and the victim resided. PW 6 knew the victim. He has deposed that he had seen the victim visiting their house. He has, however, deposed that he did not know whether the victim and her wife, PW 5, were friends. He has deposed along the lines of PW 5. He was declared hostile by the prosecution.

29. In cross examination by the prosecution, PW 6 denied the suggestion that the victim had ever confided to his wife, PW 5, that the appellant had illicit relations with the other women. He has, however, deposed that whenever the victim sought his help, he had tried to help her. **PW 13, the IO of the case,** has confirmed that PW 6 has stated to the police that the victim has told him that the appellant used to torture the victim when the latter protested against the extra-marital affairs of the former.

30. **PW 7 was another neighbour of the victim.** She was the acquaintance of the victim. The daughter of PW 7 and the son of the victim used to study in the same school. Upon receiving news of the death of the victim, she arrived at the doorstep of the victim. She however did not enter the victim's house. She was declared hostile by the prosecution.

31. In cross examination by the prosecution, PW 7 denied the suggestion that the victim had confided in her that the appellant had any illicit relations with other women. She deposed along the lines of other neighbours, PW 5 and PW 6. **PW 13, the IO of the case,** has

confirmed that PW 6 has stated to the police that the victim has told her that the appellant used to torture the victim when the latter protested against the extra-marital affairs of the former.

32. **PW 8 was the inquest officer.**

33. **PW 9 was one constable of the Haldia PS.** He has deposed that he brought down the dead body of the deceased hanging from the ceiling fan. He was declared hostile by the prosecution. In cross examination, he has deposed that he did not reveal to the police that he has brought down the dead body of the victim. He accompanied PW 8 to the PO for conducting the inquest.

34. **PW 10 was the minor son born from the marriage between the victim and appellant.** He was about 9 years when he deposed in the trial. His evidence indicates that the trial judge has put questions to him to assess his ability to depose in the Court. The questions and the answers given thereto are, however, not recorded by the Trial Court.

35. The purpose of recording the said questions and answers is to enable the appellate Court to examine whether the trial Court has correctly assessed the capability of the minor witness to depose.

36. In the absence of such a recording by the Trial Court, the appellate Court may not ipso facto discard the evidence. The Court ought to consider the tenor and flow of the evidence tendered by the minor witness, and find due corroboration.

37. PW 10 has deposed that he studied in the second standard at the time of the victim's death. He has deposed that he has come to the trial Court to state the events relating to his mother's death. PW 10, therefore, was conscious of the purpose for which he was present in the Court.

38. The statement of PW 10 about the death of his mother was recorded under section 164, CRPC. **PW 11, a judicial magistrate,** has ascertained the capability of PW 10 to truthfully state the facts. The capability of PW 10 to truthfully depose was thus judicially examined by PW 11. This inspires confidence in the mind of this Court that PW 10 was indeed capable of deposing in the trial.

39. PW 10 has deposed that on June 5th, 2013, the victim took PW 10 and his sister to a function organised by the India Oil Corporation. They returned home at 10:00 P.M. PW 10 went to take a bath. The appellant also arrived at that time. PW 10 was asked to have his dinner. He then saw that the victim and appellant, quarrelling. PW 10, his sister, and the appellant thereafter retired to bed for the day.

40. PW 10 has deposed that on the fateful day i.e. June 6th, 2013, he woke up around 8:00 to 9:00 A.M. He did not find his father, the appellant, on the bed, where they slept on the night of June 5th, 2013. PW 10 saw a gathering at the house. He however did not see his father, the appellant, in the gathering. He was thereafter taken to the house of his Jethimaa (Aunt). He was not allowed to see his mother.

PW 10 has deposed that he was taken to the magistrate and the Trial Court by his Jethimaa. After the death of the victim, he resided with his Jethimaa.

41. PW 10 has deposed that the victim used to rebuke the appellant and children. The victim also used to rebuke her own father, brother and his wife, the victim's sister in law. On the contrary, PW 10 has deposed that the appellant loved him and his family. He used to take the victim and children for social outings. He has deposed that the appellant never assaulted the victim.

42. **PW 11 was the Judicial Magistrate.** He recorded the statement of PW 10 under Section 164, CRPC. He gave a certificate of fitness that PW 10 is capable of truthfully stating the facts. PW 11 has deposed that during examination of PW 10 under Section 164, CRPC, PW 10 did not state that he, his sister and the appellant together retired to bed on the night of June 5th, 2013. PW 10 also stated to the magistrate that he saw the appellant in the gathering assembled at the PO to see his mother.

43. **PW 12 was the post-mortem doctor.** He has deposed that the death of the victim is most likely homicidal. It may not have been caused by hanging. The injuries found on the dead body of the victim are as follows:-

On examination: Average built of deceased, rigor mortis present, sub conjunctival haemorrhage's detected on both eyes, cyanosed both lips, over tip off nose & nail beds both hands detected, bleeding and **scratch marks detected on right pinna (ear lobule)** mild swelling on back of right occipital region of scalp detected) **no dribbling marks of saliva**

from angle of mouth orifice) no stool detected around peri-anal region, bleeding from vaginal orifices detected.

Marks of ligature on neck 1) One ligature mark at anterior aspect of neck detected 2) horizontal and almost complete around neck 3) no elongation of neck detected 4) base of ligature mark found reddish & not hard 5) few ill-defined abrasions on neck detected 6) On dissection: Soft tissue contused, 7) intact thyroid and cricoid cartilages, 8) no bleeding from mouth orifice and nostril detected 9) hyoid found intact and unbroken.

Stomach: approximate 150 ml, bile stained material with few undigested food particles detected, fishy odour, no granules detected, small intestine found congested with gaseous materials with few undigested food material detected,...

PM diagnosis: Death may be due to ante mortem asphyxial death due to violent asphyxia resulting from constriction of neck with ligature or by other means of constricting force, not being the weight of body and vagal inhibition, cerebral apoplexy and cerebral anemia with resultant obstruction of air passages and instantaneous death

Upon shown the viscera report death is ante-mortem in nature and Asphyxial death 2) mostly homicidal with findings as noted at PM examination report elaborately resulting from constriction of neck with ligature like constricting force with vagal inhibition and cerebral apoplexy...In my opinion this death may not cause due to hanging.

44. **PW 13 was the Investigating officer of the case.** He has deposed that he has not investigated as to who brought the victim down from the ceiling fan. He did not seize the gamcha, which may have been used in the death of the victim.

45. PW 13 has confirmed that PW 5, 6, and 7 have stated during police interrogation that the victim had confided in them that the appellant had extramarital affairs with the other woman. The victim was beaten by the appellant when the latter protested against such affairs. The victim showed them the injuries on her person caused by the appellant. PW 5, 6, and 7 have stated to PW 13 that the appellant may have killed the victim

46. PW 13 has deposed PW 7 stated that she, the victim, and the victim's family attended a function organised by Indian Oil Corporation on June 5th, 2013. PW 13 has deposed that PW 2, the housemaid, told him during interrogation that the appellant was found sleeping with the children after she arrived at the PO and realised that the victim had died.

47. The appellant was examined under section 313 of the CRPC. The appellant stated that he was part of gathering assembled in the morning of June 6th, 2013 to see the dead body of the victim. He was with the Police. He confirmed that the PW 10, and his minor daughter are residing with him. He was granted bail after 54 days from the date of his arrest. The appellant/ defence has examined 7 witnesses.

48. **DW 1 was the owner of the jewellery shop at the fancy market, Haldia.** The appellant purchased a gold ring from his shop. The memo receipt in this regard is memo no. 824 dated November 18, 2006. The gold ring costed Rs 4,453/-. In cross-examination, DW 1 has clarified that he does not have accounts and documents as regards the said cash memo.

49. **DW 2 was an employee of a wrist watch shop.** In trial, he produced two purchase receipts for one gent's wrist watch of Rs 1, 695/- and a lady's wrist watch of Rs 1, 895/-. The said receipts were issued in name of the appellant.

50. **DW 3 was the owner of the jewellery shop, Radhashyam Mahapravu Jeweller.** He produced two purchase receipts issued in name of the appellant. The first one relates to the purchase of the

Mangalsutra (auspicious thread) at Rs 20, 346/-and the second one relates to an ear ring at Rs 2, 050/-.

51. **DW 4 runs a jewellery shop.** He produced the following purchase receipts issued in name of the appellant:-

- i) Receipt dated 13.03.05 for bronze and gold Churi (bangles) at Rs Rs.5,065/.
- ii) Receipt dated 08.07.05 for a hand sankha (conch shell bangles) fitted with gold at Rs.1, 669/-.
- iii) Receipt dated 08.12.06 for an ear ring at Rs.4,952/-
- iv) Receipt dated 07.11.07 for a small ear ring of Rs.2,339/-
- v) Receipt dated 22.07.08 for one hand sankha fitted with gold on consideration of handing over of old gold by the appellant having market value of Rs.3,674/-
- vi) Receipt dated 12.09.08 for an ear ring at Rs 12, 071/-.
- vii) Receipt dated 18.04.10 for one Mantasa (hand-wear ornament for women) at Rs.45, 779/.
- viii) Receipt dated 12.09.10 for a zodiac power ring at Rs.1,500/-
- ix) Receipt dated 26.08.11 for one chain at Rs.48, 181/- on payment of Rs11,879/- . The balance sum was paid by handing over old gold ornaments by the appellant.

52. **DW 5 was the branch manager of the Indian Oil Corporation,** Haldia. The appellant was the employee thereof. In trial, he has produced the account statement of the appellant maintained with the

State bank for credit of salary. The account statement was from March 7th, 2008 to December 8th, 2010.

53. **DW 6 was the administrative officer at the Indian Oil Corporation, Haldia.** He has deposed that the appellant was the permanent employee thereof. He produced the letter dated February 22nd, 2001 sanctioning a loan of Rs44, 303/- for purchase of a two-wheeler, in favour of the appellant.

54. **DW 7 was the deputy manager at the Indian Oil Corporation, Haldia.** He has produced the following letters in the trial-

- i. Letter issued for the service year of the appellant, 2001 to 2002. The said letter stated that the appellant availed her earned leave for visiting Andaman with his wife.
- ii. In 2003 2004, the appellant encashed the leave from June 13th, 2004 to June 17th, 2004.
- iii. Next, the appellant availed the leave for 16 days from October 21st, 2007, to November 6th, 2007, for visiting Chennai and Kanyakumari with his wife.
- iv. From 2014 to 2017, the appellant availed several financial assistance from the employer.

55. Based on the above, the Ld. Trial Court convicted the appellant and sentenced as sated above. The trial court held that the medical evidence has established that the victim died of strangulation. The oral evidence has established that the appellant

and children were with the victim in the night of June 5th, 2013. The appellant and victim had a quarrel at that night. The appellant thus was the only person at the PO who had capability to strangle the victim to death. The appellant had thus killed the victim. He did so to silence the victim who protested against her alleged extra-marital affair.

ANALYSIS OF THIS COURT

56. Mr. Sekhar Basu, Ld. Senior Advocate, assisted by Mr. Antarikhya Basu, Ld. Advocate, has first argued that the police did not examine the complainant, PW 1, during investigation. The scribe of the said complaint was also not examined during trial. Thus, the complaint of the PW1 is suspect. This is fatal to the prosecution case.

57. Ld. Senior Advocate has, however, not demonstrated any illegality or serious defects in the investigation caused by the non-examination of PW 1 and the scribe of the said complaint. He was further unable to demonstrate any prejudice caused to the appellant. The appellant has not confronted the IO of the case, PW 13 with the aspect of non-examination of PW 1. The said argument therefore falls flat before it could take off.

58. The complaint of PW 1 to the police must be deemed to be the statement recorded by the police. It is the investigative prerogative of the police as to whether the complainant needs to be interrogated during investigation.

59. A complainant is ordinarily interrogated when his complaint is found contradictory and may be unbelievable to the statements of other witnesses recorded and evidence collected during investigation. Ld. Senior Counsel for the appellant could not demonstrate that the complaint of PW 1 is contradictory to the other evidence on record. In the trial, PW 1 has confirmed the contents of the complaint. The non-examination of PW1 during the investigation is thus not fatal to the prosecution's case.

60. From another point of view, it may be noted that since PW 1 was not interrogated during police investigation, there was no chance of PW 1 being tutored by the Police. The same may add authenticity to the evidence tendered by PW1 in the trial.

61. Mr. Basu has next argued that the inquest report did not name the appellant as the accused. The FIR named him so. Thus, the appellant has been falsely roped in the FIR. Our attention has been drawn to the list of the inquest witness. PW 1, the father of the victim, signed on the inquest report as an inquest witness. Reliance is placed on the decisions in ***Mobarak Sk. @ Mobarak Hossain and Ors v. State of UP and Ors reported in (2011) SCC Online Cal 190, Thanedar Singh v. state of M.P. reported in (2002) 1 SCC 487,*** and ***Meheraj Singh v. State of UP with Kalu v. State of UP and Ors, reported in (1994) 5 SCC 188.***

62. The ratio of the aforesaid decisions is two fold- First, when FIR is lodged prior to the commencement of the inquest proceedings, the latter should ordinarily refer to the piece of information, recorded in

the FIR. Thus, it was held that *ordinarily* when an FIR (lodged prior to the conduction of inquest) has named the accused persons, the inquest officer (conducted post-lodging of the FIR) is expected to equally name them.

63. In the present case, the inquest proceedings commenced prior to the lodging of the FIR i.e. the inquest commenced on June 6th, 2013 from 09:45 A.M and ended on 11.05 A.M. and the FIR came to be lodged thereafter on June 7th, 2013 at 12.55 P.M. Thus, the inquest officer did not have the first information report before him during conduction of the inquest. PW 1 did not take name of the appellant before the inquest officer as the appellant was his son in law.

64. The second line of ratio thereof is that an adverse inference will be drawn against the State when it has manufactured the time and date of the lodging of the FIR to cover up the delay, committed by the police to lodge the same. In the present case, there is no such allegation. Thus, the aforesaid decisions are not applicable the present case.

65. PW 1 and PW 4 are the father and brother of the victim respectively. They have collectively deposed that the appellant used to torture the victim when the latter protested against the former's extramarital affair. Such evidence is, however, hearsay since PW 1 and PW 4 have heard the same from the victim. The said evidence thus needs to find corroboration from the other prosecution witnesses.

66. The neighbours of the victim, PWs 5, 6, and 7 have stated before the Police that the victim had confided in them about the said extramarital affair of the appellant and the latter was beaten by the former when she protested.

67. In course of trial, the said witnesses, however, have deposed that the victim never told them about the said torture and extramarital affair. What is, however, significant is that none of the PWs 5, 6, and 7 has deposed that they were coerced by the police to accuse the appellant of the said torture and extramarital affair in their statement to the police.

68. On the contrary, PWs 5, 6, and 7 have deposed that they knew the victim. They have deposed that their children and that of the victim studied in the same school. The victim used to visit their respective houses and vice- versa. The purpose of such visits was the exchange of school-related information between the parents of minor children. Thus, it cannot be ruled that the victim had confided in them about the disturbance in the marital life of the appellant and victim.

69. PW 6 was the office colleague of the appellant. In that connection, PW 5, the wife of PW 6, came to know the victim. They lived in the same quarters allotted by the employer. PW 5, being the wife of the office colleague of the husband of the victim, was a reliable witness, that the victim disclosed the condition of her relationship with the appellant. She has done so since PW 5 could

persuade PW 6 to make the appellant understand about restoration of peace in married life of the victim and appellant.

70. PW 6 has stated to the Police that he has tried to mediate between the appellant and victim regarding the said torture on the victim by the appellant and the latter's extramarital affair. PW 6 has however denied the same in the trial. Notwithstanding the said retraction, PW 6 has deposed that the victim has sought his help. He has tried to help her to the extent possible. This clearly indicates that the victim has revealed something about the appellant to PW 6, which persuaded PW 6 to help out the victim

71. The relationship between the victim and said prosecution witness therefore has been clearly established. Significantly, each of PWs 5, 6, and 7 arrived at the house of the victim upon receiving news of the death of the victim. During the trial however, they have deposed that they did not enter the house of the victim. Clearly, therefore, the said PWs have tried to distance themselves from the death of the victim, where one of their own, namely the appellant, is the accused.

72. The statement given to the police by the said witnesses that the victim had revealed to them that the appellant used to torture the victim when the latter protested against the extramarital affair of the appellant thus cannot be ruled out. The evidence of PW 5, 6, 7 to the extent that the victim had never confided to them about the same stands clearly contradicted by the statements made by them under Section 161, CRPC.

73. In view of the above, this court is of the view that the prosecution has been able to establish that the victim told the said prosecution witnesses, PWs 5, 6, and 7 that the appellant indulged in extramarital affairs and when she protested against the same, the appellant tortured her.

74. PW 10, the minor son of the victim and appellant, has deposed that the victim used to rebuke the appellant, her father and brother.

75. PW 10 has deposed that his mother incessantly quarrelled with the appellant. The evidence of PW 10 has also established that the relationship between the appellant and victim was not cordial and was rather sour. The motive of the appellant to end the life of the victim, or abetment of suicide by the victim thus, cannot be ruled out. This is the first link in the chain of circumstances

76. The second link in the chain of circumstances is the fateful night of June 5th, 2013. The victim was found dead in the early morning of June 6th, 2013.

77. PW 10 has deposed that the victim and children including PW 10 attended a function organised by the Indian Oil Corporation on June 5th, 2013. They reached home around 10:00 P.M. PW 10 was asked by the victim to have dinner. His father also reached home at that time. PW 10 then saw that the victim and appellant were quarrelling with each other. Thus, the appellant and victim indeed had a quarrel in the night of June 5th, 2013.

78. PW 10 told his maternal grandfather, PW 1, that the appellant had mercilessly beaten the victim the previous night, when PW 1 arrived at the PO in the morning of June 6th, 2013. This is stated in the complaint of PW 1 to the police.

79. PW 1, however, has deposed in trial that PW 10 has told him that the victim and appellant had an altercation the previous night. Thus, in the trial, neither PW 1 nor PW 10 has described the exact nature of the altercation between the appellant and victim on the night of June 5th, 2013.

80. From a plain reading of the evidence of PW 1 and PW 10 along with the complaint of PW 1 to the police, it is however clear that the appellant and victim had quarrelled with each other on the night of June 5th, 2013. The said quarrel may have escalated to a physical altercation. The post mortem report of the victim has in fact found some scratch marks on the right ear of the victim.

81. PW 10 has deposed that his father never assaulted his mother. The appellant instead was on the receiving end of the rebuke of her mother. In essence, PW 10 has deposed about the good conduct of the appellant towards the victim. The said evidence must be appreciated from the life of PW 10 after the death of his mother.

82. After death of the victim, PW 10 and his sister resided with family of the appellant. Initially, PW 10 was taken by his Jethimaa (wife of the brother of the appellant) to her house after dead body of the victim was discovered at the victim's matrimonial house in the

morning of June 6th, 2013. PW 10 has deposed that he was not allowed to see his mother by the said Jethimaa.

83. The defence evidence that the appellant bought gold ornaments from the defence witnesses does not establish that he had given them to his wife or pampered. The defence has not sought discovery or production of the same from the family of the victim or their witnesses. On the contrary the evidence on record clearly shows that the appellant had several extra-marital affairs. The possibility of the appellant giving such ornaments to his paramours cannot be ruled out.

84. The appellant in his examination under section 313, CRPC has deposed that he was granted bail on 54th day of his arrest. The appellant upon the release started residing with his son, PW 10, and minor daughter. PW 10 aged about 9 years at the time of trial. It is but natural that they would depose in favour of their father.

85. The prosecution, therefore, has been able to establish that the appellant had a quarrel with the victim in the night of the 5th June, 2013.

86. The third link in the chain of circumstances is that the PO had four inmates in the night of June 5th, 2013. The two of them were minor children of 2 and 7 years of age. Thus, they could not murder the victim. The other two were the victim and appellant. Thus, the person who had the physical capability and motive to kill the victim was her husband. The appellant has not denied his presence at the PO in the night of June 5th, 2013.

87. The decision in **M. Nageshwar Rao v. State of A.P reported in (2011) 2 SCC 188**, cited by Mr Basu, is also not applicable to the present case, since the prosecution has proved the case beyond reasonable doubt. A reasonable inference clearly flows from the evidence on record, which the appellant has also not disputed, that the appellant resided with the victim on that fateful night. Thus, the decisions in **Md. Anowar Hussainv. State of Assam reported in (2022) 19 SCC 264** and **Shambhu Nath Mehra v. State of Ajmer, reported in AIR (1956) SC 404**, cited by the appellant, therefore, in fact support the prosecution case that the victim was with the appellant under the same roof on that fateful night.

88. The victim died in the night of 5th June, 2013 after having her dinner. In this regard, the post-mortem report of the victim has found undigested food in the stomach of the victim. The digestive system of the victim therefore did not get the required time to complete the digestion. PW 10 has deposed that the victim and family reached home from the function at 10:00. P.M. of June 5th, 2013. PW 10 was asked to have his dinner. Thus, it can be easily inferred that the victim also had dinner around that time.

89. Thus, the prosecution has been able to establish that the victim died in the night of June 5th, 2013. What now remains to be examined as to whether the death of the victim was homicidal or suicidal.

90. The conduct of the appellant in the morning of June 6th, 2013 needs to be examined before we discuss the medical evidence. The said conduct is fourth link in the chain of circumstances.
91. PW 2 was the housemaid at the matrimonial home of the victim. She has deposed that that she arrived around 7-8 A.M. in the morning of June 6th, 2013. She found the door closed. Upon opening the door, she found the victim is lying on the floor and a ghamcha (towel) is hanging from the ceiling fan. PW 1 has also deposed about the said ghamcha hanging from the ceiling fan.
92. PW 2 initially thought the victim is asleep. Later she realized that the victim has died. Thus, PW 2 upon her arrival around 7 to 8A.M. in the morning of June 6th, 2013 found that the victim dead.
93. PW 2 upon realizing that the victim is dead went to the next room of the house, which is adjacent to the PO. She has stated to the police that she found that the appellant is sleeping with the children in that room. PW 2, however, in trial has denied that she found the appellant sleeping with children.
94. PW 10, the minor son of the victim and appellant, has deposed that he woke up around 8-9 A.M. i.e. in and around when PW 2 arrived at the PO. PW 10 has deposed he has also not found his father sleeping with him and his sister. Thus, the appellant was awake by the time PW 2 arrived at the PO and PW 10 woke up. The aforesaid conduct of the appellant indicates that he was aware before everyone as to what transpired in the next room, the PO.

95. The fourth link in the chain of circumstances is the post-mortem report of the victim. The last seen theory has already put the appellant at the PO in the night of June 5th, 2013. What now remains to be seen that whether the death of the victim was due to hanging or strangulation.

96. In ***Javed Abdul Rajjaq Shaikh v. State of Maharashtra, reported in (2019) 10 SCC 778***, the Court alluded to the difference between hanging and strangulation as follows:-

28. The differences between hanging and strangulation have been highlighted by Modi on Medical Jurisprudence and Toxicology, 25th Edn., as follows:

Hanging		Strangulation	
1.	Most suicidal.	1.	Mostly homicidal.
2.	Face—Usual pale and petechiae rare.	2.	Face—Congested, livid and marked with petechiae.
3.	<i>Saliva—Dribbling out of mouth down on the chin and chest.</i>	3.	<i>Saliva—No such dribbling.</i>
4.	<i>Neck—Stretched and elongated in fresh bodies.</i>	4.	Neck—Not so
5.	External signs of asphyxia usually not well marked.	5.	External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect)
6.	<i>Ligature mark—Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.</i>	6.	<i>Ligature mark—Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.</i>
7.	Abrasions and ecchymoses round about the edges of the ligature mark, rare.	7.	Abrasions and ecchymoses round about the edges of the ligature mark, common.
8.	Subcutaneous tissues Under the mark—White, hard and glistening.	8.	Subcutaneous tissues under the mark—Ecchymosed.

	8.		
9.	Injury to the muscles of neck—Rare.	9.	Injury to the muscles of the neck—Common.
10.	Carotid arteries, internal coats ruptured in	10.	Carotid arteries, internal coats ordinarily ruptured.
11.	Fracture of the larynx and trachea—Very rare and may be found that too in judicial hanging.	11.	Fracture of the larynx, trachea and hyoid bone.
12.	Fracture—dislocation of the cervical vertebrae—Common in judicial hanging.	12.	Fracture—dislocation of the the cervical vertebrae—Rare.
13.	Scratches, abrasions and bruises on the face, neck and other parts of the body—Usually not present.	13.	Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body—Usually present
14.	No evidence of sexual assault.	14.	No evidence of sexual assault.
15.	Emphysematous bullae on surface of the lungs—Not present.	15.	Emphysematous bullae on the surface of the lungs — May be present

29. As to what is the distinction between strangulation and throttling is also dealt within the selfsame work:

“Definition.—Strangulation is defined as the compression of the neck by a force other than hanging. **Weight of the body has nothing to do with strangulation.**

Ligature strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body.

When constriction is produced by the pressure of the fingers and palms upon the throat, it is called as throttling. When strangulation is brought about by compressing the throat with a foot, knee, bend of elbow, or some other solid substances, it is known as mugging (strangle hold).

97. In **Ravirala Laxmaiah v. State of A.P., (2013) 9 SCC 283** the

Court held the following on the degree of probability of the fracture of hyoid bone in strangulation:-

18. So far as the medical evidence is concerned, the issue involved herein is no more res integra. This Court dealt with the issue in Ponnusamy v. State of

T.N. [Ponnusamy v. State of T.N., (2008) 5 SCC 587 : (2008) 2 SCC (Cri) 656 : AIR 2008 SC 2110] and observed as under : (SCC pp. 594-96, paras 23-26)

23. It is true that the autopsy surgeon, PW 17, did not find any fracture on the hyoid bone. **Existence of such a fracture leads to a conclusive proof of strangulation but absence thereof does not prove the contra.** In Taylor's Principles and Practice of Medical Jurisprudence, 13th Edn., pp. 307-08, it is stated:

The hyoid bone is "U" shaped and composed of five parts : the body, two greater and two lesser horns. It is relatively protected, lying at the root of the tongue where the body is difficult to feel. The greater horn, which can be felt more easily, lies behind the front part of the strip muscles (sternomastoid), 3 cm below the angle of the lower jaw and 1.5 cm from the midline. The bone ossifies from six centres, a pair for the body and one for each horn. The greater horns are, in early life, connected to the body by cartilage but after middle life they are usually united by bone. The lesser horns are situated close to the junction of the greater horns in the body. They are connected to the body of the bone by fibrous tissue and occasionally to the greater horns by synovial joints which usually persist throughout life but occasionally become ankylosed.

Our own findings suggest that although the hardening of the bone is related to age there can be considerable variation and elderly people sometimes show only slight ossification.

From the above consideration of the anatomy it will be appreciated that while injuries to the body are unlikely, a grip high up on the neck may readily produce fractures of the greater horns. Sometimes it would appear that the local pressure from the thumb causes a fracture on one side only. While the amount of force in manual strangulation would often appear to be greatly in excess of that required to cause death, the application of such force, as evidenced by extensive external and soft tissue injuries, **make it unusual to find fractures of the hyoid bone in a person under the age of 40 years.**

As stated, even in older people in which ossification is incomplete, considerable violence may leave this bone intact.

24. In Journal of Forensic Sciences, Vol. 41 under the title — Fracture of the Hyoid Bone in Strangulation : Comparison of Fractured and Unfractured Hyoids from Victims of Strangulation, it is stated:

The hyoid is the U-shaped bone of the neck **that is fractured in one-third of all homicides by strangulation.** On this basis, post-mortem detection of hyoid fracture is relevant to the diagnosis of strangulation. **However, since many cases**

lack a hyoid fracture, the absence of this finding does not exclude strangulation as a cause of death. The reasons why some hyoids fracture and others do not may relate to the nature and magnitude of force applied to the neck, age of the victim, nature of the instrument (ligature or hands) used to strangle, and intrinsic anatomic features of the hyoid bone. We compared the case profiles and xeroradiographic appearance of the hyoids of 20 victims of homicidal strangulation with and without hyoid fracture (n = 10, each). The fractured hyoids occurred in older victims of strangulation (39 ± 14 years) when compared to the victims with unfractured hyoids (30 ± 10 years). The age dependency of hyoid fracture correlated with the degree of ossification or fusion of the hyoid synchondroses. The hyoid was fused in older victims of strangulation (41 ± 12 years) whereas the unfused hyoids were found in the younger victims (28 ± 10 years). In addition, the hyoid bone was ossified or fused in 70% of all fractured hyoids, but, only 30% of the unfractured hyoids were fused. The shape of the hyoid bone was also found to differentiate fractured and unfractured hyoids. Fractured hyoids were longer in the anterior-posterior plane and were more steeply sloping when compared with unfractured hyoids. These data indicate that hyoids of strangulation victims, with and without fracture, are distinguished by various indices of shape and rigidity. On this basis, it may be possible to explain why some victims of strangulation do not have fractured hyoid bones.'

26. A bare perusal of the opinion of the learned author by itself does not lead to the conclusion that fracture of hyoid bone, is a must in all the cases.

98. Learned Senior Counsel for the appellant has argued that the hyoid bone of the victim has remained unbroken. Thus, the strangulation of the victim can be ruled out.

99. The fracture of the hyoid bone is not a rule of thumb in every case of strangulation as held in ***Ravirala Laxmaiah (supra)***. Medical science has it that the hyoid bone may not be fractured when the age of the victim is below 40 years, as held in ***Ravirala Laxmaiah (supra)***. It is a strong bone.

100. In the present case, the age of the victim was 30 years at the time of her death at which stage the Hyoid bone completes development. Thus, the chance of breaking the hyoid bone was minimal. The breaking of the hyoid bone further depends on the level of pressure applied by the assailant. The intensity of pressure is a variable component.

101. The nature of the injuries found on the victim has established that the victim was strangled to death. In addition thereto, the opinion of the post-mortem doctor, PW 12, has been that the death of the victim may not be due to hanging; the death of the victim must therefore be homicidal.

102. The injuries recorded by the post-mortem doctor in his report and deposed by him in the trial and the findings of this Court thereon are discussed herein below.

103. The PM report found that saliva did *not* dribble out from the mouth of the victim. In ***Javed Abdul (supra)*** it was held that saliva dribbles out when a person hangs herself to death. When a person hangs herself, she cannot resist the pressure arising from self-hanging. In a case of hanging, the entire body weight travels downwards via the brain. This leads to the dribbling out of saliva from the mouth.

104. In strangulation, the victim resists the external force applied by her assailant. While the assailant primarily applies force on the neck of the victim, the former does also have to engage with other body

parts of the latter, which the victim brings into action to escape from her assailant.

105. In strangulation, the victim thus channelizes her energy against the force generated by his assailant. Thus, the flow of the body weight of the victim faced with an act of strangulation does *not* run in a linear direction from the brain to the feet. Hence, no saliva dribbles out. The absence of saliva in the present case indicates that the victim was strangled to death.

106. Next, the shape of the injury found in the neck of the victim was horizontal and continuous. The said shape is found in a case of strangulation as held in ***Javed Abdul (supra)***. This indicates a person pulled the neck of the victim from the back with a piece of cloth. One ghamcha was found by the prosecution witnesses hanging from the ceiling fan.

107. Thirdly, the neck of the victim did not elongate. In hanging, the flow of body weight from the brain to the feet enhances the length of the neck. The size of the victim's neck herein did not increase. The victim was thus strangled to death.

108. Fourthly, the neck of the victim was found to be reddish and soft. In hanging, the entire body weight flows from the brain and reaches the feet via the neck. Thus, the force does not get restricted to the neck. In strangulation, all the force is applied to the neck. This renders the neck reddish.

109. Fifthly, the force applied to the neck of the victim causing the death did not originate from the body weight of the victim. The PM

report found that the weight of the body did not generate the constricting force on the neck of the victim. This force causes the death of the victim. This indicates that an external force was responsible for the death. The victim thus died by human intervention.

110. The post-mortem doctor found that the victim had succumbed to violent asphyxia. The presence of violence indicates that the victim was strangled to death. Thus, a perusal of the injuries noted in the post-mortem report and the opinion of the PM doctor clearly establishes that the victim was subjected to strangulation.

111. The husband of the victim was the only person present at the PO on the night of June 5th, 2013, who had the physical capability and motive to end the life of the victim. Therefore, the irresistible conclusion that flows from the medical evidence, evidence of PW 1, 2, 4, 5, 6, and 7 and the last seen theory is that the appellant has committed the murder of the victim.

112. Mr. Basu has argued that the post-mortem report cannot form the sole basis of conviction for the offence of murder. The prosecution must first establish the chain of circumstances to build a prima facie case in its favour. Reliance is placed on the decisions in ***Nagendra Sah v. State of Bihar reported in (2021) 10 SCC 725, Balaji Gunthu Dhule, reported in (2012) 11 SCC 685, and judgement dated January 18th, 2023 in the case of Bulu Bag and ORS v. state of West Bengal case no being CRA 20 of 2016.***

113. As discussed above, the prosecution has established the sour relationship between the appellant and the victim, the extra-marital

affair of the appellant and the quarrel between them on the fateful night. The prosecution thus has laid a strong foundation against the appellant as regards his conduct and actions towards the victim. The post-mortem report has just confirmed that the death of the victim was homicidal. The nature of injuries discussed above has established the victim was strangled to death. The appellant resided with the victim on the fateful night. Thus, the appellant has strangled the victim to death.

CONCLUSIONS:-

114. Having regard to the above discussions this court is of the clear view that the appellant has killed his wife. The impugned judgement of conviction and sentence is upheld. CRA 719 of 2016 fails and is hereby dismissed. Consequently, all connected applications, if any, shall stand dismissed.

115. There shall however be no order as to costs.

116. Urgent photostat certified copy to the parties if applied for.

(Rajasekhar Mantha, J.)

I Agree.

(Rai Chattopadhyay, J.)