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

C.R.A. 495 of 2017
Ram Chandra Pramanik
Versus
The State of West Bengal.

For the Appellant	:	Mr. Md. Ashraf Ali, Mr. Partha Sarkar.
For the State	:	Mr. Saibal Bapuli, ld. A.P.P., Mr. Bibaswan Bhattacharya, Ms. Sayanti Santra.
Hearing concluded on	:	March 5, 2026.
Judgment on	:	March 5, 2026.

Rajasekhar Mantha, J.:

1. The subject appeal is directed against judgment of conviction and order of sentence dated 22nd March, 2017 and 23rd March, 2017 respectively, passed by the learned Additional Sessions Judge, 2nd Court, Howrah in Sessions Trial No. 207 of 2014. The appellant was convicted under Section 302 of the IPC and was sentenced to life imprisonment and to further pay a fine of Rs. 3,000/-. In default thereof to further undergo a simple imprisonment for 1 year.

THE PROSECUTION CASE, THE EVIDENCE ON RECORD AND ANALYSIS OF THIS COURT

2. On 21st January, 2014, the victim one **Sampa Pramanik @ Fuli** was brutally assaulted by the appellant/husband. **PW 2, the second child/son of the victim**, informed **the victim's father, PW 1,** over telephone that the appellant has killed the victim. PW 2 sent his wife to the place of occurrence and he went to the police station to register a complaint.

3. The said complaint dated January 21, 2014 stated that the appellant was married to the victim. They were married for 10 years before the death of the victim. During the said period of 10 years, the former frequently used to torture the latter. The complaint stated that the torture was the result of the failure of the victim to bring money, demanded by the appellant, from her paternal home.

4. The police arrived at the place of occurrence immediately thereafter and recovered a blood stained nylon rope and a blood stained sabol (shovel). The appellant was arrested at the place of occurrence. The body of the victim was sent for inquest. The same was witnessed by **PW-1, Panchugopal Manna, PW-4, Srikanta Samanto** and **PW-5, Avijit Dalui.**

5. Investigation was conducted by **PW-11, Pranab Mondal**, who examined several witnesses and also recorded the statement of **PW-2, Prasanta Pramanik** before a learned Magistrate, **PW-3, Jaydev Bhattacharyya**).

6. Admittedly, **PW-2**, second son of the victim was 10 years old at the time of recording of such statement. The body was sent for postmortem. Several injuries were found on the body of the victim who was also found to be 18 weeks pregnant.

7. Charges were framed against the appellant under **Section 498A and 302 of the IPC** on 17th September, 2014 by the Trial Court.

8. **PW-1, Panchugopal Manna** was the de facto complainant and the father of the victim. His evidence is mostly hearsay since he heard about the incident from PW-2 and the neighbors of the victim. He was, however, an inquest witness and also a witness to the seizure of nylon rope and Sabol, weapons used in the crime. He identified the said sabol and nylon rope in Court.

9. **PW-2, Prasanta Pramanik** was the star witness of the prosecution. He was 10 years old at the time of trial. The learned Trial Judge put about 11 questions to him to ascertain his ability to depose in the Trial Court. The questions and answers have been set out in the evidence of PW 2 and are available before this Court. Upon perusal of the said questions and answers,we are fully satisfied that PW-2 was capable of giving evidence in the Trial Court.

10. **PW-2** stated before the Trial Court that he saw the appellant assaulting the victim, through a window from of his room. He clearly deposed that the appellant repeatedly assaulted the victim first with the sabol and thereafter tied a nylon rope around her neck and dragged her.

11. The defence could not shake his evidence in cross-examination. Standard suggestions that he was tutored by the prosecution and his maternal grandfather was put to him in cross-examination, which he clearly and unequivocally denied.

12. PW 2 has deposed that he resides with his maternal grandfather, PW 1, and the brother of the victim and is under the latter's care. It is quite normal that after the death of one's mother at her matrimonial home, her children would be residing with the mother's family. There is no evidence on record to indicate that the paternal grand-parents of the PW 2 were available to take care of him.

13. Thus, PW 2 was residing with the family of the victim out of necessity. This would not, ipso facto, render the evidence of PW 2 unreliable. PW 2 had no reason to falsely implicate the appellant who was his own father.

14. The evidence of PW 2 gains more significance in view of the evidence of PW 4. **PW 4, the neighbor of PW 1,** has deposed that upon his arrival at the PO, PW 2 has told him that the appellant has murdered the victim. PW 2 thus informed the same to PW 4 just after the commission of the crime. PW 2, therefore, has identified and named his father as the assailant of his mother at the PO itself. PW 2 did not have the time and mental state to falsely conjure up the name of the appellant at the PO. There was no time for anyone to tutor him.

15. One needs to ascertain the *'voluntariness in the expression'* of a child witness to decide whether reliance can be placed thereon. The statement of PW 2, under section 164 of the CrPC before the magistrate could be some proof of the credibility of his evidence. The reason is that the precondition for recording a statement under Section 164, CrPC, is the assessment of the voluntariness of the maker of the statement by the magistrate. In ***The State Of Madhya Pradesh v. Balveer Singh, reported in 2025 INSC 261,*** it was held as follows:-

> 35- While appreciating the testimony of a child witness the courts are required to assess whether the evidence of such witness ***is its voluntary expression*** and not borne out of the influence of others and whether the testimony inspires confidence……'

16. Whether a child witness is tutored or not is ascertained by applying a two-fold test formulated by the Hon'ble Supreme Court in ***Balveer Singh(supra)***. The first test is 'Opportunity of Tutoring of the Child Witness in question'. The second test is 'Reasonable likelihood of tutoring'. Under the first test, it must be demonstrated that there was an opportunity available to tutor the child. PW 2 took the name of the appellant before PW 4 at the PO. PW 2 informed PW 1 about the appellant just after the incident. Thus, there was no scope for tutoring.

17. The said opportunity of tutoring must be demonstrated by showing there was an unexplained delay in the recording of the statement of the child witness. The statement of PW 2 was recorded by the police and magistrate without any delay. PW 2 thus has succeeded in the first test.

18. Under the second test, which is equally mandatory, the defense has a higher duty to demonstrate that the child had motives to falsely implicate the accused. Mere delay in recording the statement of a child witness will not be sufficient to negate the second test. Para no. 58 of ***Balveer Singh(supra)*** is set out below**:-**

> 58. (ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors have to be established being as under: -
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> ▪**Opportunity of Tutoring of the Child Witness in question**- ***whereby certain foundational facts suggesting or demonstrating*** the probability that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. ***However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.***
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> ▪***Reasonable likelihood of tutoring*** wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or **by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.**
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> Emphasis applied

19. In the present case, the foundational facts leading to an inference that PW 2 was tutored have not been established. On the contrary, PW 2 has confidently reaffirmed his evidence tendered in examination in chief during his cross-examination. PW 2 has candidly admitted that he is under the care of the family of the victim. In the same breath, he has deposed that such an association with his deceased mother's family has not influenced him to depose about the guilt of his father, the appellant. He reaffirmed in cross-examination, what he saw on that fateful night.

20. The evidence of the sole eye-witness and star witness of the prosecution has withstood the test of common sense and cross examination. The same stands unimpeached.

21. **PW-3, Dhubojyoti Bhattacharyay**, was a Judicial Magistrate who recorded the statement of **PW-2** under **Section 164 of the Cr. P.C.** He proved the contents thereof.

22. **PW-4, Srikanta Samanto** and **PW-5, Avijit Dalui** are the neighbors of **PW-1.** They arrived at the place of occurrence after the incident along with **PW-1.** They are not eye-witnesses to the incident. They, however, corroborated the statement of **PW-11, Pranab Mondal** of the presence of sabol and nylon rope next to the victim and the appellant at the place of occurrence.

23. **PW-6** was **Dr. Joydipta Chattapadhyay** who conducted the postmortem on the victim. He found the following injuries on the victim.

1) One lacerated wound 2" X ½" X bone over right and mid chin extending up to mid mandibular border.

2) Bruise 3" X 2" over right anterior shoulder.

3) Bruise 6" X 2" over right lower neck extending up to upper chest wall adjoining anterior mid line.

4) Bruise 7" X 4" of anterior left shoulder.

5) 3 scratch abrasions 1/2 " over an area of 3" X 2" & 1/2" over right lower neck, 3" & 1/2 " below right mid mandibular border.

On the Dissection following injuries were found-

a) Chest wall hematoma in the mid line extending on either side measuring 8" X 5".

b) Extensive extravasation of blood around the whole soft tissues of the neck surrounding the thyroid cartilage and hyoid bone with fracture of the left cornu of the hyoid bone.

Signs of vital reaction present, no other injuries detected. No foreign body detected. Preserved the visceras, hair nail and blood. In the column of external and internal genitalia it has been noted that I found uterus measuring 8" X 7" X 3" & ½". On dissection a dead fetus of approximately 18 weeks found.

In my opinion death was due to throttling as noted above which is ante mortem and homicidal in nature. This is my said report prepared by me in duplicate carbon process and it bears y carbon signature and seal. PM Report marked exbt. 7.

24. The opinion of PW 9 clearly indicates that there was a homicidal assault on the victim and ante mortem in nature. The bruises and lacerated wounds on the victim clearly indicate that the appellant has strangulated her. The fracture of the hyoid bone beyond reasonable doubt establishes a case of throttling.

25. The evidence of **PW-6, Dr. Joydipta Chattapadhyay** thus substantially corroborates the evidence of **PW-2**, the sole eye-witness, that the appellant assaulted the victim repeatedly with a sabol and thereafter tied a nylon

rope around her neck and dragged her for some time with a view to throttling her.

26. **PW-7** to **PW-11** are official witnesses. **PW-11, Pranab Mondal** was the Investigating Officer. He narrated all steps taken in course of investigation.

27. Apart from confronting some of the prosecution witnesses including **PW-11** that the sabol and nylon rope are easily available in the market, there has been no other serious cross-examination of the witnesses of the prosecution by the defense. The police found the said weapons at the PO immediate upon their arrival. There was thus no time and opportunity for any person to plant the said weapons at the PO.

28. Learned counsel for the appellant would argue that none of the neighbors of the victim were examined by the police or cited as witnesses for the prosecution. Suchneighbors claimed to have heard the hue and cry of the victim on the early hours of 21st January, 2014.

29. It is well settled that the quantity/number of the witnesses is irrelevant to the authenticity of the case of the prosecution. Instead, the prosecution case is based on the quality of the witnesses examined. This Court is of the view that the prosecution case is established by the evidence of **PW-2** which has been corroborated by the evidence of **PW-6,** the Postmortem Doctor and the Investigating Officer and PW 4.

30. Learned counsel for the appellant next argued that while the prosecution case and the evidence of some of the witnesses indicates that

the place of occurrence of assault on the victim was in front of a *varanda* and a toilet, the sketch map, however, does not show any toilet/lavatory.

31. This Court notes that such a minor omission on the part of the Investigating Officer to describe the toilet is not so serious as to demolish the prosecution case. PW 2 has deposed that the appellant strangulated that the victim near the bathroom. The PO therefore should be understood to be the entire room where the appellant and the victim stayed.

32. Learned counsel for the appellant further argued that **PW-4** and **PW-5**, neighbors of **PW-1** were not examined by the Investigating Officer at the initial stage of investigation. They deposed for the first time in the Trial Court.

33. **PW-4** and **PW 5** are not eye-witnesses to the incident. They came to the place of occurrence along with the **PW-1** after the incident. They described whatever little they saw thereafter. Whereas PW 2 was the only eye-witness to the crime. The IO therefore has prioritized the evidence of PW 2 over the PW 4 and PW 5.

34. The evidence of PW 4 and PW 5 stand on the same footing as that of PW-1. Thus, the IO having examined PW 1 has elicited what PW 4 and 5 had to depose. The direct production of a witness during the trial is not prohibited. Such a witness may be viewed with doubt when he introduces a new case.

35. Learned counsel for the appellant lastly argued that the Investigating Officer has not stated as to whether there was electricity in

the house at the time of occurrence or generally at the place of occurrence. This according to learned counsel for the appellant is fatal to the evidence of **PW-2.** Counsel would argue that on a winter morning in a rural area it is unlikely that there would be enough natural light for **PW-2** to have witnessed the entire incidentof assault of his mother by the appellant father.

36. This Court notes that **PW-2** was not even remotely cross-examined on the issue by the defence. **PW-11** was however cross-examined on this score. PW 11 deposed in his cross examination that he has not indicated in the sketch map or the charge sheet that there was electricity at the place and time of occurrence.

37. PW 2 has deposed that, he saw the appellant strangulating the victim at dawn implying that he clearly saw the incident. The complaint of the PW 1 to the police stated that at 6 A.M., PW 1 has come to learn that the appellant has murdered the victim. The FIR was lodged at 9.05. A.M. The inquest was conducted at 9:10 A.M. The crime therefore, took place early in the morning. There was thus sufficient natural night for PW 2 to witness the incident.

38. Further, PW 2 witnessed the crime at his own house; every nook and corner whereof was known to him. The crime was committed by his father on his mother. Their physical features were thus unmistakably known to PW 2. The evidence of PW 2 therefore cannot be doubted.

39. It is now well-settled that it is for the party who alleges the occurrence of a fact to prove the same. There could be a presumption drawn here that there was sufficient light via electricity at the place and time of occurrence. Admittedly, the appellant was a barber by profession. While it is true that the economic condition of the appellant was not very sound as deposed by **PW-1**, the same would not negate the existence of electricity supply of the residence. The incident is of 2014. Electricity, therefore, should be presumed to have reached the house of the appellant in view of the growth of the country.

CONCLUSION:

40. Having regard to the aforesaid discussion, this Court is of the view that the conviction of the appellant under Section 302 of the IPC for life calls for no interference.

41. The victim was admittedly 18 weeks pregnant at that relevant point of time. While it is true that there was some alcohol found in the viscera of the victim by the PM Doctor and the victim might have been slightly inebriated, the same cannot be a justification for the appellant to assault his wife repeatedly with a sabol. The appellant must be presumed to have been aware of the pregnancy of the victim. The appellant, therefore, has taken two lives. He has been reckless and inhuman.

42. The appellant did not stop after assaulting his wife repeatedly with a sabol. He thereafter tied a nylon rope around her neck and dragged her for some time clearly with a view to strangle her and end her life.

43. In the facts and circumstances of the case, this Court is also of the view that the appellant is a cold blooded killer. The incident is not stated to have occurred in the heat of the moment. The nature of the assault on the victim indicates that it happened over at least 20 to 30 minutes leading to the death of the victim. The trial court has rightly sentenced and convicted the appellant under Section 302 of the IPC. The prosecution has failed to establish the charge under Section 498A of the IPC. The appellant was not convicted thereunder.

44. Having regard to the above, CRA 495 of 2017 fails and hereby dismissed. Consequently, all connected pending applications, if any, are also disposed of.

45. Let the TCR along with a copy of this judgement be returned back to the trial Court for necessary action.

46. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Rajasekhar Mantha, J.)

I agree.

(Rai Chattopadhyay, J.)