

18.02.2025
Court No.13
Item Nos.29
sp/pk/ap/sudipta

C.R.A. 256 of 2016
With
CRAN 2 of 2025
Asha Singh &Anr.
Vs.
State of West Bengal.

Mr. Soumyajit Das Mahapatra,
Ms. Jeenia Rudra,
Ms. Madhurai Sinha,
Mr. Ranabeer Halder

... for the Appellants.

Mr. Debasis Roy, Id. P.P.
Mr. Rudradipta Nandi, Id. A.P.P.,
Ms. Sreyasi Biswas

.... for the State.

1. The instant appeal is directed against judgment and order of conviction dated 22nd February, 2016 and 25th February, 2016 passed by the Additional District & Sessions Judge, FTC-II, Raiganj, Uttar Dinajpur, in Sessions Trial No. 59 of 2012 arising out of Sessions Case No. 66 of 2012. The Appellants were convicted under Section 302/34 of the Indian Penal Code.

2. The prosecution case in brief is that on 5th October, 2011, on the day of 'Astami' during Durga Puja, the complainant PW-1, Rajesh Mahato came to know from the neighbour of the Appellants, that his sister, the victim, had committed suicide.

3. The victim died within 1½ years of being married to the Appellant no.2 Ajoy Singh, a driver by occupation. In the complaint that was received at about 18.05 hours, the PW-1 stated that since after marriage with the victim, the Appellantno.2, had an illicit affair with the Appellant no.1 Asha Singh. The said Appellant no. 1 was the widow of the 2nd Appellant's deceased elder brother who was a mason. The victim not only came to know of the illicit affair but also saw the Appellants no. 1 and 2 in compromising positions from time to time.

4. The victim often complained to the complainant (PW 1), her mother (PW4), her Uncle (PW13) as also her grandfather (PW3), of torture inflicted by the Appellants and their illicit relationship. The victim was six months pregnant at the time of death. The family of the victim often tried to pacify and patch up the relations between the victim and the Appellant no. 2. A local *Salishi* (a village dispute resolution forum comprising of independent elders) was also held to settle the marital dispute between the Appellant no. 2 and the victim. The complainant alleged that the victim was murdered by the Appellants.

5. It has emerged from the evidence of witnesses that on the fateful day, PW 8, 9, and 10 (Neighbours of the Appellants), at about 9-9:30 AM the Appellant No.2 informed them that the victim has locked herself in her room. When the said neighbours entered the room along with the Appellant No.2 the

victim's body was found lying in a sitting position with a saree tied around her neck. There were some cut marks on the neck of the victim. The said neighbours also saw the rods on the window in the room had been removed.

6. The victim was taken to the hospital by the Appellant No.2 with the help of some neighbours where she was declared dead upon arrival.

7. Upon being notified by the Superintendent of the concerned hospital, Raiganj Police Station started a UD case at the hospital itself. Inquest was held on the body by the Magistrate as well as the police. In course of two inquests the relatives informed that the death may be due to family disturbances ever since the victim and the Appellant no. 2 got married.

8. In course of inquest by the police, however, it was recorded that the victim died as a result of serious harassment by the appellants. It was further recorded by the police that there were matrimonial disputes between the Appellants and the victim and the victim was tortured by the relatives of, and the Appellants.

9. The body was sent for post-mortem. The cause of death was found to be asphyxia, due to strangulation by ligature and throttling. The death was found to be homicidal in nature. The PM Doctor found several other injuries on the lips, front and back of the chest and the abdomen of the victim. Several

statements of several witnesses under Section 161 of the Cr.P.C. were recorded. Investigation was completed and charge sheet was filed against the Appellants. Charges were framed by the Trial Court against the Appellants under Section 302 read with Section 34 of the IPC.

10. PW 1 Rajesh Mahato was the complainant brother of the victim. He deposed that the victim was married to the Appellant no. 1 about one and half years prior to her death. He deposed that the victim detected that the Appellant no. 2 was having an illicit relationship with the Appellant no. 1 and found the Appellants was in a compromising position. Upon the Appellants being confronted, the victim was asked to go back to her father's place, failing which she would be murdered.

11. Since after marriage, the victim visited her father's place and spoke to her mother. Several relatives and local people were also present for the purpose of conciliation between the Appellant no. 2 and the victim.

12. PW 1 stated that he got the news of the death of his sister from the neighbours of the Appellants over the telephone. He rushed to Raiganj Hospital and found the victim lying dead. He found *kalshite*(bruise)nail cut/scratch, marks on the neck of the victim. He deposed that he suspected that the victim was throttled. He signed on the inquest report. He also confirmed having lodged a complaint with the police.

13. PW 2 was a scribe of the complaint.

14. PW 3 was the grandfather of the victim. He deposed that after marriage she spent happy conjugal life for few days and became pregnant. He further deposed that disputes and differences cropped up between the couple when family members and some local persons gathered at the house of the Appellants to help the Appellant no. 2 and the victim reconcile. The Appellant no. 2 refused to settle the dispute. PW 3 also noticed nail cut and kalshite (bruise) marks on the neck of the victim, when he reached the hospital, after coming to know of death of the victim and after he reached the hospital,

15. PW 4 was the mother of the victim, Sunita Mahato. She deposed that after about 2-3 months of being married to Ajoy (Appellant no.2), the victim told her that Ajoy had an illicit relationship with the Appellant no. 1 and started to torture the victim physically.

16. PW 4 further deposed that about a month and half before committing suicide, the victim along with the Appellants came to the house of her parents. The Appellant no. 1 asked the victim to abort her foetus which she refused. She said that the Appellants and the victim stayed in the house of the parents for 2-3 days. They were finally convinced and left with the victim. 2 or 3 days after the incident the victim informed her mother that she was happy in the matrimonial house. However, immediately thereafter, the victim called PW4 over

the phone, was crying that the Appellant no. 2 was sleeping with the Appellant no. 1. She refused to come back to her house. She also spoke to the victim over the phone on the day before the incident.

17. The day after the incident the local people informed the victim's family that she was admitted to the Raiganj Hospital. PW4 rushed to the hospital and reached there at about 12 noon accompanied by her father in law, brother in law and son. They found the victim dead and noticed bruise and scratch marks on her neck. In cross examination, she indicated that she had not informed the police of a substantial part of deposition in course of trial.

18. PW 5, Brajo Gopal Dey Sarkar was photographer, who took pictures of the victim in the hospital. PW6 Bimal Satiar was the A.S.I. who performed the inquest. PW 7 Rajkumar Choudhary was another constable who took dead body to morgue, Raiganj Hospital from the Tulsitala.

19. PW 8 Deb Narayan Sharma was the Appellants' neighbour and an independent witness. He deposed that as soon as he was informed about the incident, he rushed to the spot. He stated that he came to know that the victim committed suicide. He was declared hostile by the prosecution.

20. In the course of cross-examination thereafter, the prosecution confronted him wherein he denied that around 9 to 9.30 a.m. Appellant no. 2 told PW 8 that his wife was inside

a room that was closed from inside. Upon the door of the room being open they found the victim Puja was hanging from a fan. He also denied injuries were found on the body of the victim. He denied having told the police that the iron rods or net of the said window were found missing. He also denied that the Appellant was having an illicit relationship with each other and were found compromising position. The evidence of PW 8 is not found reliable by this Court.

21. It appears that from the version of the prosecution that PW8 made a complete U-turn in course of trial from what he informed the I.O. and his statement under Section 161 of the Cr. P. C.

22. PW9 Lila Paswan was another neighbour and an independent witness. She stated that the victim died by hanging herself. She was also declared hostile. The factum of the illicit relationship between the Appellants and the discovery of the body of the victim in a sitting position and torture and assault on the victim throughout the day on 4th of October, 2011 and her being locked up in the room was also denied. She completely reneged from her statement recorded by the police under 161 of the CrPC.

23. PW 10 Gouri Paswan was another neighbour. She stated that she visited the place of occurrence after the victim's body was removed from the residence. She deposed that there was nobody else in the house on the said day except Appellants and

the victim. She, curiously, denied that there was disharmony in the marriage between the Appellant no. 2 and the victim or that frequent quarrels. She also denied that there was any illicit affair between the Appellants or that the victim told her she found the Appellants in a compromising position. She denied having stated before the IO that the Appellants tried to drive the victim away from the matrimonial house or that the Appellants assaulted the victim for the entire day on the 4th October, 2011 after confining her in a room. She denied that the door of the room was opened at the instance of the Appellant no. 2 by other neighbours and found that the dead body of the victim was in a sitting position with a saree wrapped around her neck. She also denied having stated that the iron rods of the window were removed. PW 10 also made a complete U-turn from her statement given to the IO under 161 of the CrPC.

24. PW-11, was Soura Mandal. He was the Sub-Divisional Officer, who held the inquest on the body of the victim. He indicated that the witness to the inquest informed him that the victim may have died due to family disturbances.

25. PW-12, was the Post Mortem Doctor. He conducted the post mortem on the victim and found the following injuries on the body:

“On examination, I found that one small abrasion was present on right side of upper lip of the deceased. One small abrasion on the right side of face of the deceased. Another small abrasion on lateral side of right eye of the

*deceased. Four linear abrasion on left side of the neck of the deceased. Irregular echymosis on right side of her neck. There were multiple abrasions on posterior chest wall and abdominal wall. Two indistinct ligature marks were found around neck without any gapping in the middle of neck. Mark was brownish and abraded. Extra vasation of blood was found in the soft tissues of neck and underneath the ligature mark. Uterus was gravid of 8 weeks size and was containing embryo. In my opinion immediate cause of death of the deceased was asphyxia due to strangulation by ligature and throttling and all injuries were ante mortem in nature. **Manner of causation of injury was homicidal in nature.***

26. PW-13 was the uncle of the victim, Santosh Mahato. He confirmed that the victim complained about the illicit relationship between the Appellants whenever she visited his house.. He also confirmed the victim had informed them that she found the Appellants in a compromising position, with each other and she protested the same with her husband. She confirmed that the Appellants tortured her on a regular basis. He arrived at the Hospital after being informed of the death of the victim and found nail cut injury on the throat and neck of the victim. He further deposed that the victim was murdered by the Appellants and was six months pregnant at the relevant point of time. To the Trial Court, PW-13 confirmed that the victim informed him that the Appellant tortured her after she found the Appellants in a compromising position. He tried to settle the marital disputes between the Appellant no.2 and the victim but in vain. His evidence could be shaken in cross-examination.

27. PW-14 is the Investigating Officer of the case, Krishnendu Das. He, inter alia, deposed that PW-9,10 and 11

had stated to him in course of investigation that the victim was not happy in her matrimonial house and confirmed the illicit affairs between the Appellants herein. He also indicated that PW-9 informed him in course of investigation that the illicit affairs between the Appellants resulted in serious quarrel between the victim and the Appellants. He further stated that PW 9, 10, and 11 informed him that the Appellants tried to drive the victim out from the matrimonial house and was pregnant at the relevant point of time.

28. He further confirmed that at about 9:00 to 9:30 A.M. on 4th October, 2011, the Appellant no.2 told him that the door of the room that his wife was closed from inside and after the door was opened, she found the body of the victim in a sitting position with a Saree wrapped around her neck. He further confirmed and also found that the PW-9 Lila Paswan found that the iron rods of the window of the room was removed. He further deposed that the PW-9 also found scratch marks on the neck of the victim. The Appellant no.2 had fled away from the residence on that date.

29. He next confirmed that PW-10 Gouri Paswan stated before him of the case everything that was stated by PW-9. In cross-examination, the Appellants could not shake the evidence of the I.O. He, however, admitted that the neighbours of the Appellants were not examined u/s 161 by him.

30. The Trial Court thereafter examined the victim under Section 313 of the Code of Criminal Procedure. Most of the

circumstances were found to be against the Appellants in course of trial were confronted to them. Particular reference is made to question nos.15 and 16 when it was confronted to the Appellants that in course of inquest by the Sub-Divisional Officer, cut marks were found of 1½ inches were found on both the sides of the neck of the victim. The Appellant denied nothing of the same. In question no.16, the entire post-mortem report was confronted to the Appellants, the Appellants denied knowing anything in that regard.

31. The Trial Judge, analyzing the entire evidence on record, found that the Appellants could be convicted on the basis of the circumstantial evidence, chain whereof was found to have been complete.

32. Learned Counsel for the Appellants has argued assailing the impugned judgment and order of conviction on the following grounds:

- (a) the persons allegedly present in the Salishi were not brought to depose in the trial;
- (b) the independent witnesses ie the neighbour have turned hostile;
- (c) the Appellants could not therefore have been convicted on the basis of the evidence of the mother and the uncle, who must be deemed as interested witness.

33. This Court, however, notes that the mother of the victim is not an interested witness but a natural and related witness. The version of the mother has not been shaken in cross-examination. PW-4 the mother of the victim has clearly deposed of the victim informing her of the marital discord

between the Appellant no.2 and her daughter due to the illicit relationship between the Appellants. She herself tried to pacify her daughter and son-in-law and may have partially succeeded for a few days. The Appellants were still found having physical relations by the victim herself and when she protested, the Appellants tried to drive out of the house.

34. PW 4 confirmed that the victim informed her of the above incident over the telephone and refused to come back to her matrimonial house. She confirmed having spoken to the victim the day before the incident. Her evidence is appropriately corroborated by the evidence of PW-13. In this regard the decision of the Supreme Court in ***Baban Shankar Daphal & Ors. Versus The State Of Maharashtra*** reported in ***2025 INSC 97*** may be referred to for the distinction between interested and related witness:-

28. In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinized. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labeling them as untrustworthy.

29. The distinction between "interested" and "related" witnesses has been clarified in *Dalip Singh v. State of Punjab* CrI. Appeal No.1675 of 2015, where this Court emphasized that a close relative is usually the last person to falsely implicate an innocent person. Therefore, in evaluating the evidence of a related witness, the court should focus on the consistency and credibility of their testimony. This approach ensures that the evidence is not discarded merely due to

familial ties, but is instead assessed based on its inherent reliability and consistency with other evidence in the case.

Emphasis Applied

35. The prosecution need not bring any person from the Salishi Sabha given the fact that the relatives of the victim have deposed that there was a marital dispute between the appellant no. 2 and the victim due to the illicit relationship between appellant no. 1 and 2. The victim informed the prosecution witnesses about the torture that she suffered at the hands of the appellants due to the said illicit relationship namely to his brother, mother, and grandfather. Therefore, the mother, brother, and grandfather are direct witnesses to the statement of the victim that she is suffering in her matrimonial home and hence their testimonies are reliable, direct and relevant to the factum of the victim being tortured in her matrimonial home.

36. The first link in the chain of circumstance i.e. the motive of the Appellants to eliminate the victim to enable them to continue of their illicit affairs is clear and explicit. The pregnancy of the victim and the child that she could have delivered would have another thorn in the relations between the Appellants. It is for this purpose that the Appellant no.1 asked the victim to abort her fetus which the victim refused. This is the second limb and the most vital and basic link in the chain of circumstance i.e. motive.

37. The absence of independent witnesses or members of Salishi or the other three witnesses becoming hostile to the

prosecution, would have little impact on the prosecution case. The first argument of the Counsel for the Appellants shall, therefore, be rejected. In this regard the decision of the Supreme Court in **C. Muniappan and Others v. State of Tamil Nadu** reported in **(2010) 9 SCC 567** as to how to deal with a hostile witness may be referred to:-

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses

emphasis applied

38. The decision in **C. Muniappan (Supra)** has been followed in **Selvamani v. The State Rep. By The Inspector Of Police** reported in **2024 INSC 393** wherein the Supreme Court despite retraction from the other witnesses relied on the witnesses of the relatives of the victim to affirm the case of prosecution. Para no. 13 thereof is set out below:-

13. In the present case also, it appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused. **However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under Section 164 CrPC and the evidence of the Medical Expert (PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her examination-in-chief**

emphasis applied

39. A Holistic reading of the deposition of PW 8-10 sets out the following

a. The victim has died in unusual circumstances as heard by them and they in unison have disputed the position of the victim when she was found in the room.

b. However, what PW 10 has admitted is that the appellant and victim were in the house where the deceased was found in a sitting position.

c. PW 8-10 did not deny that appellant no. 2 was the first person who informed them about the death of the victim.

d. The other prosecution witnesses deposed that the appellant and the victim were in the house when the victim died and nobody else was present.

e. The evidence of all the prosecution witnesses confirms that it was the appellant who informed all that the victim had locked herself in the room. Hence, the evidence of the hostile witness required the appellant to provide an explanation under Sec. 106 of the Evidence Act.

40. It is next argued that the post-mortem report of PW-12 cannot be accepted since he was a Dermatologist. It is argued that the post-mortem of the body of the victim could have been performed at the local Hospital near Jalpaiguri, which is not very far away from the place of occurrence. The argument is not effective enough to warrant any discussion.

41. The next argument of Counsel for the defense is that PW-12 was not qualified to perform a post-mortem, his report cannot be accepted by this Court for being inadequate and incomplete. Reference is made to the decision of the Hon'ble Supreme Court of India in the case of ***Machindrav. Sajjan Galfa Rankhamb & Ors.*** reported in ***(2017) 13 Supreme Court Cases 491***, particularly paragraph 16 thereof and the case of ***Madan Gopal Kakkad v. Naval Dubey & Another*** reported in ***(1992) 3 Supreme Court Cases 204*** particularly paragraphs 34 and 35 thereof.

42. Paragraph number 16 of the ***Machindrav decision (Supra)*** has to be read with paragraphs number 14 and 15 thereof where the court negated the medical evidence given the fact that the postmortem doctor has not indicated in his report as well as in his deposition as to the cause of the injuries on the person of the victim. In the present case, the postmortem doctor has unequivocally stated that the death was caused by strangulation, and throttling and all the injuries caused on the person of the victim are ante more in nature. He concluded that the death was homicidal. The nature of the

injuries would further reveal that they cannot self-inflicted injuries. Such injuries have been caused by human intervention.

43. Paragraphs number 34 and 35 of the ***Madav Gopal Kakkad decision (Supra)*** cannot be read in isolation. A holistic reading of paragraph number 29 to 35 read with paragraph number 47-49 thereof. The postmortem doctor opined that there has been no complete penetration by the accused in the private part of the victim since there is minor abrasion on the private part, consequently, he opined that it is an attempt to rape but not rape. The court however held that the act of the accused is rape. In that regard, the court held that the evidence of a postmortem doctor does spell out the facts of the case. It is an expert opinion on the facts having a medical ramification and therefore it was held that it is up to the court to examine the medical opinion to determine whether the act is homicidal or suicidal.

44. The court held that the opinion of an inexperienced doctor that it was an attempt to rape since there was minor abrasion on the private part will not deter the Court to hold that the law of the land is that even minor penetration will amount to rape.

45. The court therefore in ***Madan Gopal (supra)*** did not therefore discard the evidence of the postmortem doctor on the basis of that he is a doctor not having appropriate qualifications. Rather it relied on the evidence of the inexperienced doctor by rectifying and interpreting it according to the law to hold that even a minor abrasion on the private part will constitute rape.

46. Reference is also made to texts from the Modi's Books of Medical Jurisprudence and Toxicology, 24th Edition (Pages 454 to 456) to argue that the basic ingredients of strangulation as opposed to hanging are not found in the Post post-mortem doctor's report. It is particularly argued that the larynx of the victim was not found to have been broken.

47. This Court is of the view that not every case of strangulation or death by *asphyxia* requires the Larynx to have been broken. The obstruction and compression of the neck and Larynx may be a common occurrence in cases of strangulation but may not be the case in all cases of strangulation. The expression "strangulation" used by the Post post-mortem doctor is a probable cause, the actual cause of death is *asphyxia*. Modi's Book on Medical Jurisprudence and Toxicology cannot be the final word in so far as the post-mortem reports are concerned. In this regard, the decision of the Supreme Court in **Ponnusamy v. State of T.N., (2008) 5 SCC 587 : (2008) 2 SCC (Cri) 656 : 2008 SCC OnLine SC 651 at page 596** may be referred to:-

25. MrRangaramanujam, however, relied upon Modi's Medical Jurisprudence and Toxicology, 23rd Edn. at p. 584 wherein a difference between hanging and strangulation has been stated. Our attention in this connection has been drawn to Point 12 which reads as under:

"Hanging- Fracture of the larynx and trachea—Very rare and that too in judicial hanging.

Strangulation- Fracture of the larynx and trachea—**Often** found also hyoid bone (sic fracture)."

emphasis applied

48. Reference may also be made to the decision of the Supreme Court in **RaviralaLaxmaiah v. State of A.P., (2013) 9**

SCC 283 : (2013) 3 SCC where the court observed when larynx can be fractured in case of strangulation:-

16. So far as the medical evidence is concerned, the High Court has dealt with the opinion of Dr K. Padmavathi (PW 10), who has referred to Modi's Medical Jurisprudence and Toxicology, wherein it has been stated that, "hyoid bone and superior cornua of the thyroid cartilage are not, as a rule, fractured by any other means other than by strangulation", although the larynx and the trachea may, in rare cases, be fractured as a result of a fall. The post-mortem has revealed that the fracture of the hyoid bone is characterised by the absence of haemorrhage in the tissues around the fracture.
emphasis applied

49. Hence, it is not the larynx but the hyoid bone which is fractured in every other case of strangulation. That however may also not be found in every case. The fracture in the larynx tube can also be caused due to a fall. Medical Science has it that fracture of the larynx is *often* found in case of strangulation but not *always*.

50. Therefore the inability of the post mortem doctor to conclude with mathematical precision as to the finding of fracture of which bone or tube will not negate strangulation. Non-fracture of the larynx (voice tube) cannot be permitted to be a compelling ground much less a decisive ground for acquittal, particularly when the injuries are found to be homicidal in nature. The post mortem doctor did find that the victim had also been throttled (choked) apart from being strangled. Therefore strangulation is not the only course of death. Choking can also happen by blocking of the nostrils. Non-fracture of the Hyoid bone for the larynx would not be decisive in the facts of the case.

51. While it is true that it is always desirable that the post mortem Doctor holding the qualification of FSM, it cannot be said that a qualified medical doctor albeit a Dermatologist at a later stage of Post Graduation, is incapable of performing a post-mortem and detecting the injuries on the body of the deceased.
52. The decisions cited by the learned Counsel for the Appellants, namely, Machindra (supra) and Madan Gopal Kakkad (supra) may not come to the aid of the Appellants since the Post Mortem Doctor was not even cross-examined by the defence. Cross-examination was declined. The evidence of post-mortem doctor has gone in unchallenged and uncontroverted. In these circumstances, the second limb of the argument of the learned counsel for the Appellants cannot hold water.
53. The next point argued by learned counsel for the Appellants is that the actual incriminating circumstances found by the Trial Judge in course of the evidence have not been confronted to the Appellant.
54. In the absence of the specific role of the Appellant in the offence, and the death of the victim, i.e., strangulation or asphyxiation of the victim after causing the injury on the body and locking the door from inside and escaping from the window and thereafter calling the neighbours to complain that the victim locked herself in the room have not been confronted.
55. This Court has carefully considered the argument and finds that the same is not acceptable. The Appellants have been duly confronted with the post-mortem report in detail. They have

not been able to explain the presence of any other persons in the house. The appellants have not explained the circumstances under which a person who would want to commit suicide would inflict physical assault on herself. The victim hitting herself on her chest and her own back and slap herself or scratch herself in the neck with her own nails is not possible in the facts of the case. The appellants have not explained as to why instead of breaking open the door of the room themselves, they have gone to call on the witnesses. In this regard, the decision of the Supreme court in *Ashok Verma v. The State of Chhattisgarh*- 2024 INSC 1011 may be referred to:-

7. As noted earlier, the incident which led to the death of Smt. Pushpa, the wife of the appellant-convict, had occurred admittedly in her matrimonial home.....

11. In the context of the afore-extracted paragraphs, it is relevant to note that in the case on hand, the appellant was bound to explain what happened on that day at his house by virtue of Section 106 of the Evidence Act since the appellant and the deceased were man and wife and the incident had occurred in the house where they were residing. Therefore, he was bound to explain and establish the same as it is a fact, exclusively within his knowledge, by concrete evidence, if he fails to establish the plea of 'alibi'.

emphasis applied

56. The decision of the Supreme Court referring to the application of section 106 of the Evidence Act when there is an allegation of murder by one spouse of the other is dealt with in **[2024] 6 S.C.R. 164 : 2024 INSC 368- Anees v. The State Govt. of NCT. Para nos. 54 and 55** are set out below :-

54. Cases are frequently coming before the courts where the husband, due to strained marital relations and doubt as regards the character, has gone to the extent of killing his wife. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the

prosecution to lead evidence. No member of the family, like in the case at hand, even if he is a witness of the crime, would come forward to depose against another family member.

55. If an offence takes place inside the four walls of a house and in such circumstances where the accused has all the opportunity to plan and commit the offence at a time and in the circumstances of his choice, it will be extremely difficult for the prosecution to lead direct evidence to establish the guilt of the accused.

57. No evidence has come on record to suggest that the victim has hung herself to the ceiling fan with a saree. The Appellants had a chance in course of the examination under Section 313 of the Cr.P.C. to indicate that they found that upon opening the door the victim was found hanging from the ceiling fan. They chose to remain silent. None of the injuries on the body of the victim have been explained by the Appellants and no other person except the Appellants were in the house, the evidence of PW1 duly corroborated with the evidence of PW 13 and PW 14, form must therefore be accepted.

58. A victim of suicide by hanging herself from a ceiling fan, even if she falls down, would be lying on the floor or the bed under the fan. She can never be found lying in a sitting position on the ground. In this regard the decision of the Supreme Court in **Ashok Verma (supra)** may be referred to:-

17....In this context, it is to be noted that in Satish Nirankari's case, this Court held even in the absence of non-rupture of hyoid bone cause of death can be of strangulation. **The position and posture of the body of Pushpa when PW-8 and others came to the house of the appellant-convict, as deposed by PW-8, were not challenged in cross-examination. This was duly taken note of by the Courts.**

emphasis applied

59. The evidence that she was lying in a sitting position on the floor and the rods of the window found removed and the day long torture of the victim by the appellants, indicate that the victim was tortured, beaten on the chest stomach and back by the appellants and then strangled. This is the only conclusion possible. The appellants thereafter locked the room from inside and came out therefrom after removing the rods of the window, appear to be clearly established. The appellants thereafter stagemanaged the events, by calling of the neighbours and entered the room from outside, to only to concoct a story of suicide by the victim. The chain of circumstances is therefore complete in the facts of the case.

60. In **Ashok Verma (supra)**, it was held:-

8. Now, the question is about the sustainability of the concurrent finding on the culpability of the appellant. Of course, various contentions have been raised by the appellant to assail the finding of guilt against him concurrently referred to in the judgments of the trial Court and the High Court. There can be no doubt that while dealing with the such a question **creation of fake scene** by the appellant, absence of explanation by the accused despite being bound by virtue of Section 106 of the Evidence Act are also to be taken into consideration.....

61. While it is true that, the examination under Section 313 of the Cr.P.C. could have been more specific, this Court cannot, acquit the Appellants or water down the other evidence proved against them merely on the basis of a minor omission in course of examination under 313 of the Cr.P.C. It is in that context that while the proposition of law laid down in the case of **Rajkumar Singh v. State of Rajasthan** reported in **(2013) 5 SCC 722**, are profound and the objects and purposes of the examination under

Section 313 of the Cr.P.C. are explained, the same would not ipso facto lead to acquittal of the Appellants.

This Court, on a careful examination of the evidence on record, finds that the evidence of PW 4 and PW 1 are duly corroborated by the evidence of PW 13 and the Investigating Officer. The substantial part of the chain of circumstances i.e.,

(a) The exclusive presence of the Appellants in the place of occurrence.

(b) The absence of any other persons in the house of the Appellants. Their illicit relationship and desire to continue the same and the victim being in obstruction thereto constitutes motives which is one of the vital links in a chain of circumstance.

(c) The substantial and serious likelihood since there that the Appellants, may have been present in the room at the time of occurrence and may have inflicted injuries that are not normal to a regular suicide forms another link in the chain of circumstances.

(d) The broken rods on the window, lends credence to the theory of the prosecution, duly confronted to the independent witnesses as corroborated by the evidence of the I.O. suggests clearly lead to an invariable conclusion that the Appellants after murdering the victim by asphyxiation, or by using a saree to strangle her, left her

in a sitting position in the room and locked the door from inside and escaped from the window.

(e) The motive of the appellants as already dismissed above.

The aforesaid is the only possible conclusion that one can arrive at and the only inference possible from the facts and circumstances that have emerged on the course of evidence.

In this regard the decision of the Supreme Court in 2024 6 S.C.R. 315 : 2024 INSC 385 Sukhpal Singh v. NCT of Delhi may be referred to:-

46. The circumstances leading to murder of Usha were in the exclusive knowledge of the appellant. He has offered no explanation as to the manner in which Usha was strangled to death within the confines of the room where only he and the deceased were present. The bald plea of denial offered by the accused by way of an explanation to this gravely incriminating circumstance is not sufficient to absolve him of the burden cast upon him by virtue of Section 106 of the Indian Evidence Act, 1872.

47. As a consequence of the above discussion, we are of the firm view that the prosecution has established the following links in the chain of incriminating circumstantial evidence: -

(i) Motive;

(ii) Last seen together;

(iii) Medical evidence establishing that the cause of death of the deceased was homicidal.

(iv) Confessional note;

(v) Abscondence for nearly 10 years;

(vi) Wrong explanation given by the accused in his statement under Section 313 CrPC;

(vii) Failure of the accused to offer explanation for the homicidal death of his wife in the night time when only the accused and deceased were present in the house leading to the interference of guilt by virtue of Section 106 of the Indian Evidence Act, 1872.

48. Connected together, all these facts form a clinching and complete chain of incriminating circumstances pointing exclusively towards the guilt of the accused appellant and totally

inconsistent with his innocence or the involvement of any other person in the crime.

62. The Appellants have not offered any other alibi of the likelihood of any other persons in the house, causing injuries to the victim or causing the death of the victim, lend further credence to the prosecution story.

63. The chain of circumstance together with motive is complete in the opinion of this Court.

64. For the reasons stated hereinabove, the impugned judgment and order of conviction and sentencing calls absolutely no interference whatsoever.

65. CRA 256 of 2016 fails and hereby dismissed.

66. Consequently, CRAN 2 of 2025 is disposed of.

67. Let the TCR be sent back to the Trial Court, as well as the instant judgment, for information.

68. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)

