GAHC010104272019

2026:GAU-AS:15192

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./271/2019

JIAUR RAHMAN
S/O- LATE MONDAL SK., VILL.- SUKLARTARI, P.S. BILASIPARA, DIST.- DHUBRI.

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE P.P., ASSAM

2:MOSTAFIZUR RAHMAN
S/O- LATE MONDAL SK
VILL.- SUKLARTARI
P.S. BILASIPARA
DIST.- DHUBRI
PIN- 783351.

3:JESMINARA BIBI
W/O- WAHIDUR RAHMAN
R/O- VILL- SUKLARTARI
P.S- BILASIPARA
DIST- DHUBRI
ASSAM
PIN-78335

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

For the Accused/Appellant : Mr. A. Ahmed, learned counsel

For respondents : Ms. B. Bhuyan, Sr. Advocate and Addl. PP, Assam, assisted by Ms. R. Saloi, Adv.

Date on which judgment is reserved : **30/09/2026**
Date of pronouncement of judgment : **09/10/2026**
Whether the pronouncement is of the operative part of the judgment ? : No.
Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

(Rajesh Mazumdar, J)

1. We have heard Mr. A. Ahmed, learned counsel for the appellant and Ms. B. Bhuyan, learned senior counsel and Addl. PP, Assam, assisted by Ms. R. Saloi, learned counsel. The present appeal assails the judgment and order dated 14.3.2019 passed by the Learned Additional Sessions Judge, Bilasipara, Dhubri, in Sessions Case No. 169/2012, through which the present appellant had been held guilty of commission of offences under Section 302 of the Indian Penal Code (IPC), 1872. The consequential sentence of life imprisonment and a fine of Rs. 15,000/-, with stipulations in case of default in payment of the fine imposed, is also challenged.

2. **The First Information Report**:

Investigation was set in motion in this case through a First Information Report (FIR) filed by one Mostafizur Rahman on 05-05-2010 before the Lakhiganj watch post, inter alia, stating that on 04-05-2010, Tuesday, at about 04.00 pm, his nephew Rizwanur Rahman, aged about 3 years old, son of his elder brother, went missing from his house. Later on, at about 11.00 pm, the dead body of Rizwanur Rahman was recovered from a cowshed, and it is suspected that someone had killed his nephew Rizwanur Rahman, as there was a ligature mark of rope on the neck of the dead body of Rizwanur Rahman.

Pertinent that, based on the evidence of the mother of the victim, the informant and his wife were later added as accused under the provisions of Section 319 Cr.P.C. However, for reasons explained in the impugned judgment, they were acquitted at the conclusion of the Trial. There is no appeal preferred against the acquittal.

3. **Investigation, Chargesheet, Committal and Framing of Charges**:

On the information being forwarded by the Out Post, the officer in charge of the Bilasipara Police Station registered Bilasipara PS case No. 193/10 u/s 302 IPC and SI R.K. Talukdar was entrusted to conduct the investigation of the case. After completion of the investigation, the investigating officer submitted a charge-sheet against the appellant herein, namely Jiaur Rahman, u/s 302/201 IPC.

On receipt of the charge sheet, Learned Sub Divisional Judicial Magistrate(M), Bilasipara, took cognizance and, after furnishing necessary copies to the accused persons, committed the case before the Learned Sessions Judge, Dhubri, for further proceedings, and the Ld. Sessions Judge, Dhubri made over the case to the Learned Additional Sessions Judge, Dhubri for trial.

Charges were framed under section 302 I.P.C. against the appellant herein; he pleaded not guilty and claimed to be tried. After framing of charge, the case was committed for trial. During the trial and on the basis of the evidence of PW-8 and PW-9, the informant and his wife were added as accused u/s 319 Cr.P.C. Charges under section 302/34 I.P.C. against both the impleaded accused were framed on 27-01-16; they pleaded not guilty and claimed to be tried.

4. **The Trial**:

In order to prove the prosecution charges against the accused, the prosecution adduced evidence of 14 witnesses and exhibited 6 documents. The FIR was Ext-1, Ext-2 was the Inquest report, Ext-3 the Seizure list, Ext-4 was the post-mortem report, Ext-5 the Sketch Map, and Ext-6 the Charge sheet.

Statements of the accused were recorded u/s 313 Cr.P.C., who pleaded total denial; the appellant herein also took a plea of alibi and adduced evidence of two witnesses and exhibited the Bank Passbook of United Bank of India in the name of DW-1 as Ext-A.

5. **The point which fell for determination in the Trial**:

The learned Trial Court framed the following point for determination:-

i. Whether the present accused persons on 04-05-10 at about 04.00 pm at village Suklartari under Bilasipara PS, in furtherance of common intention, committed murder by intentionally causing the death of Rizwanur Rahman, a minor boy aged about 3 years old, by strangulating him?

6. **Prosecution Evidence**:

Before proceeding, this Court reminds itself that the informant and his wife were

arrayed as accused during the Trial and therefore, they were also allowed to recall the witnesses who had deposed prior to them being arrayed as accused and were allowed to cross-examine them.

7. PW-1 Mostafizur Rahman, a government servant in the police department, deposed that the present appellant was his brother and the deceased minor was the son of his brother. He deposed that on the day of the incident, he was on duty at Bilasipara PS. After completion of his duty, while he was returning to his house, he saw a gathering at his house, and he came to know that his nephew was no more. They found the body of the deceased minor at about 10.30 pm at the cowshed of their house. The police were informed, and he lodged an ejahar at the police station without naming any accused.

In cross-examination, he stated he had not seen the occurrence of the incident, and he does not know who had killed his nephew.

8. PW-2 Ofizuddin deposed that on the day of the incident at about 11.00 pm, they came to know that the minor victim had expired. Thereafter, they went to see the incident and found the dead body of the minor victim lying at the house of the informant. Villagers also arrived at the place of occurrence, and hue and cry took place at the house of the informant. Thereafter, he returned home.

In cross-examination by the appellant herein, he stated he could not say how the deceased died. He only went to the house of the informant to see the incident.

In cross-examination by the informant and his wife, he stated that the mother of the victim, who also deposed as PW. 8, was the 3rd wife of Wahidur Rahman. The father of the victim used to work in Gujarat, and he came home rarely. He stated that Jesmina is a madwoman, and she is unable to take care of her child, and she used to leave her child somewhere on many previous occasions. He stated that on the date of

the incident, PW. 8 took her son to an unknown place, and after the child went missing, the family members, the villagers, and relatives started searching for the child and used a generator to drain the pond. He stated they searched till 11.00 pm but could not trace him. Later, they heard that the boy was found near the cattle shed, and they informed the police. He stated that PW. 8 did not tell him and other villagers that the appellant tied a rope around the neck of her son and pulled the rope both sides. He stated that PW. 8 did not tell about seeing the incident of killing of her son by the appellant and other accused persons. He stated that at the time of the incident, the accused who were later arrayed as such were not present at the place of occurrence. He had informed the informant over the telephone to come hurriedly as his nephew was missing, and then the informant had lodged the case at the police station. The father of the victim had two children from his 2nd wife and three children from his 3rd wife.

9. PW-3 Alauddin Sk. deposed that the incident occurred about 4/5 years ago, and on the day of the incident, at about 09.00 pm, he closed his shop and proceeded to his home. While he was on his way to his house, he saw many people on the road and heard that the victim, aged about 3 years old, was not found at home, and it was suspected that somebody had killed the boy. Thereafter, he, along with others, started searching. He, along with his friend, recovered the dead body of the deceased near the house of the informant, and they saw the dead body in torchlight at about 11.00 pm. He deposed that the police came to the house of the informant and asked him about the incident, and he narrated before the police whatever he stated before the court.

In cross-examination by the present appellant, he stated he could not say how the victim died. He, along with his friend, found the dead body of the deceased near the house of the informant.

In cross-examination by the impleaded accused, he stated that he knew PW. 8, but he does not know where she and her deceased son went on the day of the incident. The water of the pond near the house of Jesmina Bibi was also drained out by a machine, and at that time the appellant was also present. He stated he saw first the dead body of the deceased lying near the cattle shed.

10. PW-4 Matleb Ali was a seizure witness and deposed that the incident occurred about 4/5 years ago, and he only heard that the victim died a few years back and at that time the deceased child was 4/5 years old. He deposed that he does not know the reason for the death. He further deposed that Ext. 2(1) is his signature on the Ext. 2 seizure list. He does not know the reason for which his signature was taken.

PW-4 was declared hostile by the prosecution.

In cross-examination by the prosecution, he denied that he did not show to the police any jute rope by which the accused killed the deceased by strangulating him; that the police did not seize jute rope in his presence as a witness; that he did not state before the police that murder was committed by the appellant as he suspected.

In cross-examination by the appellant herein, he stated he did not know the contents of the seizure list. He did not see the occurrence of the incident.

In cross-examination of the newly impleaded accused, he stated that accused Anurupa Roy Sarkar is an Auxiliary Nurse and Midwife and the accused Mostafizur Rahman is a government service holder. He did not witness the incident.

11. PW-5 Latiur Rahman deposed that the incident occurred about 3/4 years back. On the day of the incident, he heard that a 3/4 year old child belonging to the house of the complainant was missing. Thereafter, he went to the house of the complainant, and they started searching, but they could not find the said child, and on the same

day at about 09.00 pm he came to know that the said child was found dead. Hearing the same, he rushed to the house of the complainant and found the nephew of the complainant dead at the house of the complainant. The deceased boy was the son of the elder brother of the complainant. He deposed that many people came to see the incident. On the next day, he accompanied family members of the complainant to the cremation ground where he heard that the nephew of the complainant was murdered.

In cross-examination by the appellant herein, he stated that his house is situated about 1 & 1/2 km away from the place of occurrence, and he cannot say as to how and under what circumstances the deceased died.

In cross-examination by the impleaded accused, he stated that he has a jewellery shop at Lakhiganj market. He knew the female accused, who served as a nurse at Lakhiganj Primary Health Center. The male accused was serving at Bagribari PS as a constable at the time of the incident, and he resided at Bagribari in his quarter. He stated that both the accused came to the place of occurrence after hearing about the incident, and at the time of the incident the father of the deceased child was not present at home; therefore, accused Mostafizur Rahman lodged ejahar after coming to know about the incident. He further stated that accused Mostafizur Rahman and Anurupa Roy Sarkar are not involved in this case.

12. PW-6 Ali Akbar deposed that the deceased minor child was the son of Wahidur and the incident occurred 4/5 years ago. On the day of the incident, he heard that the nephew of the informant, aged about 4/5 years, was missing from his house and people were searching for the said child. Hearing about the incident, he went to the house of the informant, and he came back home since the boy could not be traced. The next morning, he heard that the boy was found dead near the house of the complainant. Accordingly, he went to the house of the complainant and came to know that he was found dead at night. He got to know that the boy was murdered by

somebody, but he could not say who. He further deposed that the police took his signature on the seizure list vide Ext-2(2).

In cross-examination by the present appellant, he stated that the police simply took his signature on a blank paper, and he does not know why the police took his signature. He stated he did not see any occurrence of the incident.

In cross-examination by the impleaded accused, he stated that the deceased was the own nephew of the informant. The impleaded female accused was the wife of the informant, and she was serving as a nurse at Lakhiganj PHC at the time of the incident, and the accused Mostafizur Rahman was serving as a police constable at Bagribari PS, and he resided at Bagribari at his quarter at the time of the incident. He stated that his house is near the house of the complainant, but he did not live in the said house and resided at Lakhiganj market. He stated that the police took the dead body and took his signature. He did not hear anything about how the incident took place.

13. PW-7 was the Medical Officer, who deposed that he conducted the post mortem on 05-05-10 on the dead body of Rizwanur Rahman, aged about 3 years old, male, and on examination found rigor mortis present in both lower and upper limbs; eyes closed; during examination found a continuous ligature mark on the neck of the deceased which was horizontal in position and below the thyroid cartilage; on dissection of the ligature mark, soft tissue congested & parchmentization present, and the injury is ante-mortem in nature. According to his opinion, the cause of death is due to asphyxia as a result of strangulation sustained by the deceased.

In cross-examination, he stated he had conducted a post-mortem examination on the dead body under reference Lakhiganj Watch Post GD entry no. 40 dated 05-05-10. The deceased was an average-built child, and his eyes were closed. The nail bed was bluish. He stated he had found only one ligature mark during the post-mortem

examination, and the presence of a ligature mark means that there is injury.

On re-examination, PW-7 further deposed that he had deposed earlier before the court, and he had conducted post-mortem examination of the deceased Rizwanur Rahman in connection with Lakhiganj Police Watch Post GD entry no. 40 dated 05-05-2010. In further cross-examination by the defence, he stated he did not find any nail marks and finger marks on the body; therefore, the same was not mentioned. He found one ligature mark on the neck of the deceased, but he did not measure the mark. In the post-mortem report, he did not mention the colour of the ligature mark. In the post-mortem report, he did not mention by which particular material, such as nylon rope, jute rope, coconut rope or any thread, the said ligature mark was caused.

14. PW-8 Jesmina Bibi, the mother of the deceased child, deposed that the incident occurred on 04-05-10 at about 04.00 pm, and it was Tuesday. She deposed that, at the time of her son's death, he was 3 years old. She deposed that on the day of the incident, at about 04.00 pm, she told her brother-in-law, Mostafizur Rahman, and Jiaur Rahman to look after her 3-year-old son and went to the backside of her house for some work. After some time, her son Rizwanur started shouting. Hearing the same, she immediately rushed towards her son and saw that accused Jiaur Rahman had tied a rope around the neck of her son and was pulling the rope from both sides for the purpose of killing her son. When she tried to save her son, Mostafizur Rahman and his wife, Anurupa Roy, held her by the hands and restrained her from going near her son. She deposed that, at the time of the incident, her husband was not at home. He was in Gujarat. She deposed that when she was about to shout, Mostafizur Rahman threatened to kill her, and by that time, the accused Jiaur Rahman had killed her son by strangulating him with a rope. Seeing the incident, she became unconscious and became abnormal for 3 days. She deposed that she became mentally and physically ill for more than 15 days as she lost her son, and later on she heard that Mostafizur Rahman had lodged the FIR. She deposed that Mostafizur Rahman, along with Jiaur

Rahman, lodged the case in order to escape from the incident. She deposed that accused Jiaur Rahman had threatened her against giving evidence against him, and she was threatened by the accused before coming to give evidence before the court.

In cross-examination by the accused, Jiaur Rahman, she stated she is the 3rd wife of her husband, and there are two children from the 2nd wife of her husband. Her husband has two brothers, namely Mostafizur Rahman and Jiaur Rahman. All the brothers have their own kitchen but live in one campus. She stated that when she saw the incident, she started shouting, but she could not recollect who had come to the place of occurrence at that time. She stated she asked the complainant and accused to look after her son, and she went to the backside of her house for some work. After some time, she heard shouting of her son and, hearing the same, she rushed towards her son and saw accused Jiaur Rahman tying her son with a rope and pulling the rope for the purpose of killing her son. When she tried to save her son, the complainant, Mostafizur Rahman, restrained her from going near her son. She deposed that, at the time of the occurrence of the incident, her mother-in-law was alive and on that day she was present at her home. She denied that she did not go to the backside of her house; that she did not see the accused killing her son by strangulation; that complainant Mostafizur and his wife Anurupa Roy Sarkar were not involved in the killing of her son; that on the day of the incident, Mostafizur Rahman and his wife Anurupa Roy were not present at the place of occurrence.

In cross-examination by the impleaded accused, she stated that, on the date of the incident on 04-05-2010, the accused Mostafizur Rahman was on duty from 01.00 pm to 08.00 pm. Accused Anurupa is an ANM Nurse, and she was on duty at the time of the incident. She stated that accused Anurupa works at Lakhiganj PHC and lives in her quarter at Lakhiganj. She stated she does not have any personal grudge or enmity with the accused, Mostafizur and Anurupa Roy Sarkar, and they loved her son Rizwanur when he was alive. She stated that at the time of the incident, accused Mostafizur and Anurupa Roy Sarkar were not present at the place of occurrence.

Accused Mostafizur and accused Anurupa Roy did not hold her or restrain her at the place of occurrence at the time of the incident. She stated that at the time of the incident, her husband was not present at the house, and she did not tell the names of accused Mostafizur and accused Anurupa Roy to her husband. She stated that on the back side of their house, they had chili cultivation, and there is a big pond at the back side of their house. She stated that when she went to pluck chillies in the chilli garden at 03.00 p.m., she left her son Rizwanur at home and returned at 04.00 p.m., but she did not find Rizwanur at home, and she started searching for him. She stated the pond is situated at a distance of 10/12 cubits from their house, and the water of the pond was drained using a shallow machine (pump machine). She stated that her husband's brothers are living in a separate house but in the same compound. She further stated she did not suspect involvement of accused Mostafizur and accused Anurupa Roy regarding the missing and murder of her son Rizwanur.

15. PW-9 Wahidur Rahman is the father of the deceased child, and he deposed that Mostafizur and Jiaur are his brothers and the deceased was 3 years old at the time of the incident. He deposed that the incident occurred on 04-05-2010 at about 04.00 pm, and at that time he was present in Gujarat. He deposed that he came to know about the incident from Mostafizur Rahman when he returned from Gujarat. Mostafizur Rahman informed him over the phone that Mostafizur, Anurupa Roy and Jiaur Rahman had killed his son. He deposed that when he returned home from Gujarat, and he was about to enter his house, Mostafizur Rahman did not allow him to enter his house for 7 days, and Mostafizur forced him to stay outside for about 7 days. Later on, he came to know that his deceased son had been cremated. He deposed that his brother, Mostafizur, lodged the case himself in order to save himself from guilt. The condition of his wife was serious due to the death of their son. His wife told him that she saw the incident of the killing. Accused Jiaur Rahman, Mostafizur Rahman, and his wife Anurupa Roy Sarkar had killed their son, and she herself witnessed the same. His wife

further told him that she shouted but could not do anything because of threats given by the complainant and the other accused. His wife told him that Mostafizur, Jiaur Rahman and Anurupa had killed their son by strangulation with the help of rope.

In cross-examination by the present appellant, he stated that he went to Gujarat in the month of January, 2010, and he returned home as soon as he was informed about the incident. He stated that the deceased was the son begotten of Jesmina and himself. He stated that Mostafizur Rahman had informed him about the incident over the telephone on the date of the incident. When he arrived at his house, Mostafizur Rahman restrained him from entering his house. He stated that, since he was in Gujarat at the time of the incident, he did not see the incident, and at the time of the incident, his mother was alive and his mother used to stay in the house of the complainant and the accused. He denied that he stated before the police that his wife is a stubborn lady; that he stated before the police that his wife frequently told him to divorce; that the accused and the complainant did not threaten him and his wife; that his son was not killed by the accused along with the complainant and his wife Anurupa Roy; that accused JiaurRahman, complainant and his wife are not involved in the killing of his son.

In cross-examination by the impleaded accused, he stated that they are three brothers and all three brothers lived separately in the same compound. Accused MostafizurRahman is his younger brother and he is a government servant, and at the time of the incident, he was posted at Bagribari PS which was at 30/40 km away from their native place. He stated that the accused, Anurupa, is an ANM nurse and she is posted at Lakhiganj PHC and she resides at Lakhiganj. He stated that the accused Mostafizur and Anurupa Roy were not present at their native village at the time of the incident. He stated that about 500-600 people live in their village and at the back side of their house, they had a chilli garden which is about one furlong away from their house. Accused Mostafizur and accused Anurupa Roy did not restrain him from coming to his house when he had returned from Gujarat after the incident. He stated he has

two children, namely Somaya and Sajidur, from his first wife, and from his present wife, Jasmina, he has three children, and Rizwanur was one of them. He stated that one JiaurRahman informed him about the murder of his son Rizwanur over the phone, and neither the accused Mostafizur nor Anurupa Roy informed him of anything. He stated that at the time of the incident, he was not present at home and accused Mostafizur lodged an ejahar about the missing and murder of his son at the police station.

16. PW-10 Ayub Ali deposed that he heard that Rizwanur expired, but he did not see the incident, and he does not know anything about the incident. The Police took his signature on Ext-2 seizure list vide Ext-2(3).

In cross, he stated the police did not read over the content of the seizure list to him.

17. PW-11 Sahidur Islam Ahmed deposed that the incident took place about 3/4 years ago and a child aged about 3 years old died in the said incident. He deposed that he heard from villagers that one child died, and hearing the same, he visited the place of occurrence.

In cross-examination, he stated that he did not know whose child died or how the death occurred. He could not recollect from whom he heard about the incident.

18. PW-12 Jahidul Islam deposed that the son of the informant's elder brother had gone missing, and later on, he heard that the said child had expired. He went to the Bilasipara PS and heard that the accused persons had acted cruelly on the deceased child.

PW-12 was declared hostile by the prosecution.

In cross-examination by the prosecution, he denied that he had made any statement before the police that on 04-05-10 at about 04.00 pm, taking advantage of the absence of family members at the house, the accused took the deceased child towards the cowshed and killed the deceased Rizwanur by strangulating him with a rope around his neck.

In cross-examination by the defence, he stated that he did not visit the place of occurrence and he does not know anything about the incident. He stated that the accused is not his relative and he did not visit the house of the accused.

19. PW-13 SI (UB) Rohini Kr. Talukdar, the Investigating Officer of the case, deposed that on 05-05-10, he was posted at Lakhiganj watch post. On that day, one MostafizurRahman lodged an ejahar, and on receipt of the same, he made GD entry no. 40 dated 05-05-10 and forwarded the same to O/C Bilasipara PS for registration of the police case. Thereafter, O/C Bilasipara PS registered a police case vide Bilasipara PS case No. 193/10 u/s 302 IPC and endorsed him for investigation of the case. After taking charge of the investigation, he went to the place of occurrence and found the corpse in the cowshed. Executive Magistrate conducted the inquest, and thereafter it was sent to Dhubri Civil Hospital for post-mortem examination. He deposed that during investigation, he also prepared a sketch map of the place of occurrence, recorded statements of the witnesses, and seized a rope made of jute from the place of occurrence. Thereafter, he had collected the post-mortem report of the deceased, arrested accused JiaurRahman, and after completion of the investigation, submitted a charge sheet against the accused JiaurRahman u/s 302/201 IPC vide Ext-5.

In cross-examination, he stated that at the time of submitting the charge sheet, he did not furnish a copy of GD entry no. 40 dated 05-05-2010 along with the charge sheet. He stated that he did not find any blood stain on the earth or at the hay stack. He did not see any pond near the place of recovery of the dead body. He stated

during investigation that he found JasminaBibi W/O WahidurRahman went to the chilly field before the occurrence, keeping her son at home. But he did not measure the distance between her house and the chilly field. He stated he had reached the place of occurrence, where the dead body was recovered, at about 07.30 am on the next morning of receiving the ejahar. He stated that, in connection with this case, he did not receive ejahar from JesminaBibi and WahidurRahman. He stated that the witness WahidurRahman stated before the police that his wife is a stubborn lady and his wife wanted him to be put in jail. He denied that he had submitted the charge sheet on being influenced by witness JesminaBibi, the mother of the deceased Rizwanur.

20. PW-14 JiajulRahman deposed that about 5-6 years back, while he was present at his house, in the evening hour, he heard that a boy drowned in water, which is 1 k.m. away from his house. Hearing the same, he went to the place of occurrence, saw a large gathering of people and a machine being used to drain out the water. But as the draining of water was not completed, he returned and heard that the body was recovered. Hearing this again, he went to the place of occurrence and, from the people present there, he heard that the dead body of the boy was found in the cow shed and not in the pond. He deposed that after two or three days of the incident, he went to Bilasipara and heard that JiaurRahman was brought to Bilasipara P.S. Accordingly, he went to the Bilasipara P.S. He saw JiaurRahman in the police lock-up. At that time, the police asked him to put his signature on a piece of paper saying that, as he had come to the P.S., he had to put a signature on the paper. He further deposed before him that two other persons were also to put their signatures on the said paper.

In cross-examination, he stated that accused MostafizurRahman and his wife Anurupa Roy Sarkar are government service holders. MostafizurRahman and JiaurRahman have separate kitchens and separate houses, though they live in the same compound. WahidurRahman also lives separately in a separate compound. He

stated that he does not know how and where the accused, MostafizurRahman and Anurupa Roy Sarkar, were at the time of the incident.

Defence Evidence:

21. DW-1 RunaLailaBewa deposed that her husband had served as a teacher in the PratapkhataAnandanagar LP School and after the death of her husband she is getting family pension. She deposed that her brother, accused JiaurRahman, withdrew her pension amount from the United Bank of India, Bilasipara branch by cheque and handed it over to her every month. She deposed that on 04-05-2010, her brother withdrew her pension amount and accused Jiaur handed over her pension amount to her, and he spent money on marketing for her and then spent the night at her house and on the next day at 10.00 am, he returned to his house at Suklartari. On the next day, her father-in-law sent her to her parents' house at Suklartari, and when she came to Suklartari, she came to know that Rizwanur, the son of one of her brothers, had died. She deposed that she does not know how Rizwanur died, as all were crying for the loss of Rizwanur. She deposed that WahidurRahman, the father of the deceased Rizwanur, is her elder brother and Jesmina is the mother of the deceased Rizwanur, wife of WahidurRahman. She further deposed that Ext-A is the bank passbook of United Bank of India.

In cross-examination by the prosecution, she stated that she did not make an enquiry at the bank regarding who had withdrawn her pension amount on 04-05-2010 and she did not witness her brother Jiaur visiting the bank to withdraw the money for her. She denied that, in order to save her brother JiaurRahman from this case, she deposed falsely before the court and did not bring her cheque book.

22. DW-2 MajibarRahman deposed that he knows all three accused persons, but he has no knowledge about the incident as he was not present at his house on the day of

the incident. He deposed that he saw accused JiaurRahman near Purana Cinema Hall, Bilasipara, about 12.00-01.00 pm and at that time, he asked him where he was going, and Jiaur replied that he was going to the bank to withdraw the pension amount in the name of his sister RunaLailaBewa to give her the same. He deposed that the house of RunaLailaBewa is at Pratapkhata, which is about 20 kms from Bilasipara. In cross-examination by the prosecution, he stated that he did not hear what incident took place in the house of the informant, and he cannot say the date when accused JiaurRahman went to withdraw the pension or from which Bank. He also denied that he saw accused JiaurRahman at Bilasipara.

Decision and reasons therefor of the Learned Trial Court:

23. The learned Trial Court has given a detailed judgment; PW 8, mother of the victim, has been found to be an eyewitness to the case. The learned Trial Court has placed reliance on the undeniable facts that the minor victim had met with an unnatural death, his body was found in the cow shed of the present appellant, and there was a mark of rope present on the neck of the deceased. The learned Trial Court was of the opinion that, in the face of the admitted fact that the body of the deceased had been found in the cow shed of the appellant and the evidence of the prosecution witnesses pointed towards the presence of the appellant in the same compound, it would be the burden of the accused/appellant herein to rebut the same and to show by producing cogent and believable reason how the dead body and the rope came to the place which was under his possession.

24. The learned Trial Court noted that the appellant had failed to show any single reason for the above. The learned Trial Court at paragraph 38 noticed that it was a case of murder, and that it was an admitted fact that the boy was present in his house in the compound, where his parents and the accused were staying.

25. The learned Trial Court found that the mother of the victim had seen the present appellant pulling one rope tied around the neck of the deceased, but when she shouted, she was threatened and restrained. It was the evidence of the mother of the victim that she had become unconscious, so she could not recall who had come after the death of the minor and what statement she had made before the police.

26. The learned Trial Court had concluded that the mental condition of the mother of the victim, who had just lost her child and who was in the presence and midst of the accused, with no person to help her, would not be in a condition to speak in each particular situation when she was in fear and shock.

27. The learned Trial Court noticed that the mother of the victim, in her cross-examination, after two accused were newly impleaded, had denied the presence of the newly impleaded accused at the scene of the crime. Still, she did not deny the presence of the present appellant, and her testimony with regard to his presence could not be destabilized during lengthy cross-examination. Taking into account the evidence of PW No. 8, i.e, mother and eyewitness, the learned Trial Court came to the opinion that mere denial of the presence of the newly impleaded accused could not at the same time mean absence of the present appellant also at the scene of the crime. The learned Trial Court noticed that the appellant had failed to bring home any reason as to why the mother of the deceased would falsely implicate him.

28. The learned Trial Court further found that the Defence Witness No. 1 and Defence Witness No. 2, who had vouched that the present appellant was at Bilasipara and not at Sukratori on the day of the incident, were not present with the appellant at the bank from which the pension amount of DW No. 1 had been withdrawn and handed over. The learned Trial Court did not find substance in the testimony of DW 1

and DW 2.

29. In conclusion, the learned Trial Court found that the victim had died due to strangulation and that it was clear that the accused had tied the rope around the neck of the victim child and pulled both the ends of the rope after tying the rope around the neck of the child with the intention to cause his death and further that the present appellant had full knowledge that if he strangled the boy, the boy would die of suffocation. The learned Trial Court concluded that the prosecution had been able to establish the guilt of the present appellant beyond all reasonable doubt. Accordingly, it held the present appellant guilty of the offence under Section 302 of the IPC.

30. With regard to the other two accused, in the opinion of the learned Trial Court, the prosecution had failed to establish the charge under Section 302/34 IPC against them beyond reasonable doubt and, therefore, they were acquitted by giving them the benefit of doubt.

31. The arguments placed by the learned counsel appearing for the contesting parties have been heard and duly considered. The records made available with the paper book have also been duly perused.

(VIII) <u>Our Findings</u>:

32. At the outset, it would be relevant to notice that by the order dated 17.02.2023 passed in IA(Crl) 794/2022, the mother of the victim, who had also deposed as PW 8 during the Trial, and who is allegedly the sole eyewitness to the death of the victim, was allowed to participate in the Appeal proceedings at the time of hearing. However, the role of a lawyer engaged by the applicant as contemplated under the proviso to

Section 24(8) and Section 301(2) Cr.P.C. was to be limited to assisting the Public Prosecutor in charge of the case and to give arguments, with the permission of the Court. None, however, appeared for her during the hearing of the appeal.

33. The unfortunate unnatural death of the minor victim is an admitted fact in the present case. PW No. 1, who had lodged the FIR, had been arraigned as an accused along with his wife at a later stage in the trial, since the sole alleged eyewitness had stated before the Court that she had seen the present appellant strangulating her child. At that time, the impleaded accused, who were later acquitted, had held her back, due to which she could not save her son.

34. On re-appreciating the evidence led during the Trial and also on referring to the records placed before us, we cannot agree to the conclusion arrived at by the learned Trial Court that the guilt of the present appellant had been proved beyond reasonable doubt by the prosecution.

35. While examining the plea of alibi adopted by the appellant herein, the learned Trial Court held that the plea of the appellant, while cross-examining the prosecution witnesses, was that he was at the place of occurrence and he had searched for the body of the son of PW 8. The learned Trial Court has referred to the cross-examination of PW3 by the appellant in this regard. Unfortunately, we fail to decipher any such plea taken by the appellant herein in the records. On perusal of the records, we find that, contrary to the opinion of the learned Trial Court, no question regarding the presence of the appellant during the search had been put to PW 3 by the appellant during his cross-examination. We do not therefore find that the appellant had at any point of time asserted that he was present at the place of occurrence. We also note that none of the PWs in their evidence have stated that the appellant was

present at the time of search for the victim.

36. In the above premises, the question as to whether the evidence of PW 8, who was the alleged eyewitness, can be termed to be reliable, since only she asserted his presence at the place of occurrence, assumes importance in the present case. During her evidence-in-chief, she had deposed that the appellant before us had strangled her son. She had deposed that when she reached the place, she was restrained by the impleaded accused, i.e. the informant and his wife, and therefore, she could neither seek help nor help the victim herself. However, during the cross-examination by the impleaded accused, she had specifically stated that the impleaded accused, who had allegedly restrained her, were not present at the time of the occurrence.

37. It has come on evidence of the PWs that upon hearing about the disappearance of the son of PW 8 and PW 9, several of the PWs along with other co-villagers had joined in to search, which was continued late into the night, till the body of the victim was discovered at around 11 PM by PW-3 along with his friend. From the evidence of the PWs, it is apparent that a large number of people had participated in the search and even a pond had been drained out with the help of pumps in the effort to trace out the child. Ironically, none of the PWs gave evidence about noticing the mental state of the mother of the victim or that she was either found to be unconscious or to be disturbed or distraught. It has already been noticed that none of the witnesses had deposed about the presence of the appellant herein at the place of occurrence.

38. PW 8, in her initial deposition, had made elaborate and detailed allegations against the informant and his wife regarding the role played by them in causing the death of her son. The assertions, at the first instance, withstood cross-examination by the appellant herein. However, later, on her cross-examination by the informant and

his wife (after they were arrayed as accused), PW 8 reversed her assertions to the extent of admitting that she neither saw the two impleaded accused at the place of occurrence nor did they restrain her in any manner at the place of occurrence at the time of the incident. While on the earlier occasion, it was her consistent assertion that she had fainted on seeing her child being murdered and that she had remained abnormal for three days and mentally and physically ill for fifteen days after the incident, in her later cross-examination, she stated that she searched for her son in the nooks and corners of every house of the villagers in the village, in the banana field and other fields. PW 8, at one point of time during her subsequent cross-examination, had also stated that she did not find her son when she reached home on hearing a sound, and still she could not find her son.

39. In the above premises, we find that the evidence of PW 8 has not remained steadfast throughout. Rather, we find that the contradictions which have come to our notice are not minor contradictions, but are major contradictions, having significant variations and thereby carry the potential to render the evidence given by PW 8 to be wholly unreliable.

40. In **Anil Phukan Versus State of Assam**, reported in (**1993) 3 SCC 282,** the Apex Court had discussed the principles to be followed when conviction is sought to be based on the testimony of a sole eyewitness. The following paragraphs of the judgment are found to be relevant for the present case:

> "*3. This case primarily hinges on testimony of a single* ***eye-witness****Ajoy PW 3 Indeed, conviction can be based on the testimony of a single* ***eye-witness*** *and there is no rule of law or evidence which says to the contrary provided the sole* ***witness*** *passes the test of* ***reliability****. So long as the single eyewitness is a wholly reliable* ***witness*** *the courts have no difficulty in basing conviction on his*

*testimony alone. However, where the single **eye-witness** is not found to be a wholly reliable **witness**, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts -generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single **eye-witness** is a wholly unreliable **witness** that his testimony is discarded in toto and no amount of corroboration can cure that defect. It is in the light of these settled principles that we shall examine the testimony of PW 3 Ajoy.*

*4. Ajoy PW 3, on his own showing is the nephew of the deceased. He had accompanied the deceased to the place of occurrence when the later went to recover the loan from Anil appellant. This **witness**, therefore, is a relative of the deceased and an interested **witness**. 0f course, mere relationship with the deceased is no ground to discard his testimony, if it is otherwise found to be reliable and trustworthy. In the normal course of events, a close relation would be the last person to spare the real assailant of his uncle and implicate a false -person. However,. the possibility that he may also implicate some innocent person along with the real assailant cannot be ruled out and therefore, as a matter of prudence, we shall look for some independent corroboration of his testimony, to decide about the involvement of the appellant in the crime. Since, there are some doubtful aspects in the conduct of Ajoy PW 3, it would not be safe to accept his evidence without some independent corroboration direct or circumstantial."*

41. In the facts and circumstances of the case, and in view of the law enunciated in ***Anil Phukan (Supra***), we are of the considered opinion that the finding of the learned Trial Court regarding the guilt of the appellant herein solely on the basis of the testimony of PW 8 cannot be upheld. We have noticed that there is no evidence worth the name to remotely suggest the involvement of the appellant herein to the unfortunate, untimely and unnatural death of the son of PW 8, who also happens to

be the nephew of the appellant.

42. We have also minutely considered the evidence tendered by PW 9, who was the father of the deceased. He happened to be in Gujarat at the time of the occurrence. A perusal of the evidence adduced, juxtaposed with the two cross-examinations faced by him would show that even his evidence did not remain steadfast enough to be labelled as reliable. In fact, his evidence also suffers from severe self-contradictions like the evidence of the mother of the victim, and therefore we cannot find any corroboration to the evidence led by PW 8. It would be pertinent to note herein that the seizure witnesses produced by the prosecution have stated that their signatures had been obtained on blank forms by the seizing authority.

43. In conclusion, we do not find that the prosecution has been able to connect the appellant to the death of the victim beyond reasonable doubt. Therefore, the impugned conviction recorded by the learned Trial Court in the impugned judgment and order dated 14.03.2019 passed in Sessions Case no 169/2012, with regard to the appellant herein, cannot be sustained and is accordingly interfered with and set aside. The appellant is acquitted of the charge under 302 of the IPC, 1872, levelled against him. The petitioner had been allowed privilege of bail by suspending the sentence through order dated 29.11.2019 in I.A. (Crl) No. 544/2019, bail bond shall stands discharged.

44. Trial Court Records be returned forthwith along with a copy of this order.

JUDGE **JUDGE**

Comparing Assistant