

Form No. J(1)

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

Present :

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

CRA 76 of 2020

**Saroj Roy @ Sushanta
Versus
The State of West Bengal**

For the Appellants : Mr. Manjit Singh, Senior Advocate
Mr. Biswajit Mal
Mr. Arkaprabho Roy

For the State : Mr. Debashis Roy, P.P.
Ms. Zareen Nasema Khan
Ms. Rajashree Tah

Heard on : 19th March, 2026

Judgment on : 19th March, 2026

Rajasekhar Mantha, J.:

1. The subject appeal is directed against judgment and/or order of conviction dated 09.12.2019 and 10.12.2019 passed by the Additional District & Sessions Judge, 15th Court, Alipore, South 24-Parganas in Sessions Trial No.01(04) of 2014 arising out of the Sessions Case No.13(01) of 2014. The appellant was sentenced to suffer rigorous imprisonment of life under Section 302 of the IPC and was also imposed

a fine of Rs.50,000/- in default he was to suffer further rigorous imprisonment of one year.

2. The prosecution case in brief is that the appellant, who was already married with child, had an illicit extramarital affair with the victim. The affair was continuing for about seven years prior to the incident.

3. The victim, who was living with her mother and brother in a rented accommodation, was often visited by the appellant. The victim insisted that the appellant marries her officially and socially and settles down. The appellant already being married may not have disclosed the same to the victim.

4. The appellant was unhappy both with his marital life with his wife who was P.W.-18 and equally disturbed with his extramarital affair with the victim. The appellant often visited the house of the victim as deposed by the complainant P.W.-3, mother of the victim, namely Lila Dutta Chowdhury.

5. The appellant had maintained a diary. He had written in his diary that if the victim did not cease to insist on a social marriage and independent living with him, he would kill her and thereafter commit suicide by consuming poison.

6. On the day of occurrence i.e. 26th September, 2013, the appellant at about 7 am arrived at the victim's house (place of occurrence) to meet

her. At the relevant point of time her mother P.W.-3 (Lila Dutta Chowdhury) and P.W.-1 (Abhijit Dutta Chowdhury) were present in the house. P.W.-1 (Abhijit Dutta Chowdhury) deposed that he saw a quarrel as usual between the victim and the appellant. He left for work at about 9:30 am in the morning. The quarrel between the appellant and the victim, thereafter erupted again.

7. The mother of the victim left them to take a bath. While the mother was inside the bathroom she overheard the victim shouting in pain and crying for help. She hurriedly came out of the bathroom and found the victim lying in a pool of blood. The appellant was also lying unconscious in the same room away from her. A kitchen knife was found near the bodies along with a bottle. The neighbours arrived first and the officers of Patuli PS later arrived upon being intimated. The appellant and the victim were taken to a Government Hospital. The victim was declared brought dead. The appellant was found with several injuries and treated and subsequently survived. A formal complaint was lodged by PW-3, Lila Dutta Chowdhury whereupon FIR being No. 635 of 2013 dated 26.09.2013 was registered by the Patuli PS in the city of Kolkata. Inquest was conducted where as many as 8 injuries were detected by the Inquest Officer, PW-15, Pir Mohammad.

8. Post mortem on the victim was conducted. Investigation was completed and charge sheet was filed. The trial court framed charges under Section 302 of the IPC against the appellant on 7th April 2014.

9. PW-1, Abhijit Dutta Chowdhury, was the brother of the deceased who deposed on the lines of the prosecution case as narrated hereinabove. He admitted that the appellant had a love affair with the victim since 2006. He further deposed that, upon repeated insistence by the victim, the appellant took her to the Kalighat temple and got married to her. Upon the victim insisting that the marriage be solemnized socially and the appellant took a separate residence where the victim and the appellant could live together, the appellant started avoiding her and also threatened her. The rest of the evidence of PW-1 is on the lines of the prosecution as already narrated hereinabove.

10. PW-2, Bapi Das, PW-4, Santi Ranjan Chakraborty, PW-5, Sudip Paul were the chance witnesses who were passing by the P.O. on the date and time of occurrence. They were also seizure witnesses to the torn page of the diary of the appellant, the knife and a bottle found at the P.O. They deposed uniformly that they heard the victim shouting for help between 9-10 in the morning and came to the P.O. They reached upto the P.O and found the victim lying unconscious in a pool of blood and blood coming out of her body. They found the appellant also lying down with some bleeding injuries. The appellant was trying to say something but was not audible. Both fell unconscious. PW-5 identified the seizure articles in Court. Both PW-3 and PW-5 identified their signatures of the seizure list. PW-3 was the mother of the victim. Her evidence in the lines of the prosecution case and the complaint lodged by her.

11. PW-6, Dr. Goutam Shah and PW-8, Dr. Prabhas Sarkar were the medical doctors attached to the M.R. Bangur Hospital where the appellant was admitted. They treated him.

12. PW-7, Sujoy Sarkar was a police constable. The statement of the appellant was recorded in the presence of PW-7, PW-8 and PW-9 by PW-10, Pukar Pradhan, who was the Magistrate from the local Court.

13. PW-9, Snehasis Bag, was the police constable who took the victim and the appellant to the hospital.

14. PW-12, Sekhar Roy took the photographs of the place of occurrence after the bodies of the victim and the appellant were removed from the P.O.

15. PW-13, Dr. Anindita Maiti who treated the injured appellant and recorded that he suffered multiple injuries.

16. PW-16, Dr. Madhumita Sarkar issued the death certificate to the victim stating that he was brought dead to the hospital.

17. PW-17, Dr. Tapan Kanti Roy, was the Postmortem Doctor who recorded the following injuries on the bodies of the victim.

“After going through I found the following injuries over the dead body:

- i. There was a stab wound on right shoulder measuring $\frac{1}{2}$ inch X $\frac{1}{2}$ inch with a depth of 2 & $\frac{1}{2}$ inch telling upwards.
- ii. Another stab wound measuring 2 & $\frac{1}{2}$ inch below the wound no.1 and measuring $\frac{1}{2}$ X $\frac{1}{2}$ inch with a depth of 3 inch and also telling upwards.

iii. There was a stab wound 3 inch away from the mid line and 3 inch below to the right nipple measuring $\frac{1}{2}$ X $\frac{1}{2}$ inch with a depth of 2 inch and cutting the cartilage telling upwards.

iv. 2 inch lateral and 1 inch below to the previous wound there was a stab wound with a depth of 2 inch which was almost parallel to the previous wound.

v. A stab wound at left elbow vertically placed measuring $\frac{1}{2}$ X $\frac{1}{2}$ inch and to the skin deep telling upwards.

vi. A defence cut injury at left plum measuring $\frac{1}{2}$ X $\frac{1}{2}$ inch.

vii. Parallel to the previous injury there was another defence cut measuring $\frac{1}{2}$ X $\frac{1}{2}$ inch.

viii. There was a stab injury at left fifth inter costal space. Place transversely 4 inch away from the mid line and penetrating the heart from the nipple of the left side it was 3 inch away and from the left it was 44 inch away.

ix. There was one incised wound at left shine boarder of left measuring $\frac{1}{2}$ X $\frac{1}{2}$ inch and deep to the mussel.

x. A bruised at right side and the anterior chest wall measuring 3 inch X 2 inch.

xi. There was a stab wound at antarial abdominal close to the liver. All these injuries show evidence of vital reaction.

Almost all the vicarious fell all the materials were preserved and sent for chemical analyses.

In my opinion death was due to the effect of injuries as stated above anti-mortem and homicidal injury. This is the said post mortem report in original signed by me & bears office seal. Marked as Exhibit – 14.

On all probabilities the injuries were sustained by some surpe cutting weapon.”

In cross-examination he stated that the death of the victim was caused due to the injury to the vital organ like heart, lungs and excessive blood from artery from the different stab injuries.

18. PW-20, Anirban Panja was the handwriting expert who identified the handwriting of the appellant in the diary and the torn page seized from the P.O.

19. Based on the evidence indicated above, the appellant was sentenced to life imprisonment by the Trial Court after being found guilty of offence under Section 302 of the IPC.

20. Mr. Manjit Singh, learned Senior Advocate has been appointed by the State Legal Services Authority to represent the appellant. This Court wishes to record appreciation for the sincere efforts put in by Mr. Manjit Singh, learned Senior Advocate on behalf of the appellant before this Court.

21. Mr. Singh would argue that while it is true that the appellant may have caused the death of the victim as the evidence on record would indicate, the appellant could at best be charged Part-I of Section 304 or Part-II of the IPC. The crime was one of passion and emotion. It was not actuated with any motive or premeditation.

22. Reliance is place on the decision of a Co-ordinate Bench of the Bombay High Court in the case of ***Ghansham Dasharath Waghmare Vs. The State of Maharashtra*** reported in **2004 SCC Online Bom 1227**; ***Hanamant Bhimappa Gadivaddar Vs. State of Karnataka*** reported in **2001 SCC (Cri) 694**; ***Gurdip Singh Vs. State of Punjab*** reported in **1987 (2) SCC 14**; ***Sukhbir Singh Vs. State of Haryana*** reported in **2002 (3) SCC 327**; ***Madanayya Vs. State of Maharashtra*** reported in **AIR 2017 SC 3064**.

23. This Court has carefully considered the arguments advanced by Mr. Manjit Singh, learned Senior Advocate for the appellant and Ms. Z.N. Khan, learned counsel for the State.

24. In so far as the ***Ghansham Dasharath Waghmare (supra)*** is concerned, this Court notes that the same is factually distinguishable. The appellant therein, on the way to his work was irked and provoked by the sudden nagging by his wife and thereupon hit her on the head and also cut his own throat thereafter. The single provocation on the date and time of occurrence amongst the earlier provocation, was the nagging of the wife on the date and time of occurrence. The said judgment has no manner of application in the instant case.

25. In the ***Madanayya case (supra)***, this Court notes that there were two assailants and there was no conclusive finding as regards who caused the fatal injury on the victim. The said decision is equally distinguishable on facts.

26. In so far as the ***Sukhbir Singh case (supra)***, the proposition relied upon by learned counsel Mr. Manjit Singh is indeed the proposition that is required to be applied in the facts of the instant case. It was held in the said case that sudden fight resulting from a mutual provocation would not be premeditated. An injury resulting on the victim thereafter even if it is caused its death would at best be treated as culpable homicide. The time gap between altercation and the offence was deemed

very relevant. A longer time gap would take the case under Section 302 of the IPC and a shorter time gap would not.

27. The decision of **Gurdip Singh (supra)**, is equally distinguishable on facts. In the said case, the appellants, with a view to avenge an illicit relationship by the victim with a female member of their family was the cause for provocation.

28. The case of **Hanamant Bhimappa Gadivaddar (supra)**, is also distinguishable on facts.

29. This Court notes that the appellant had already written in his diary earlier that he would kill the victim, and thereafter consume poison to end the relationship and himself once and for all. He was carrying an open kitchen knife which PW-3 had admitted that he would carry on the earlier visit to her house as well. It is extremely unusual for a person to carry a 3 inch wide kitchen knife if he were to use the same for cutting any fruits and eating outside his house as was deposed by PW-3.

30. The writings in the diary and the knife that the appellant was carrying clearly indicated a premeditation in causing the death of the victim. It is of no consequence or avail to the appellant that he himself also tried to end his life.

31. In the facts of the instant case, the medical evidence in cross-examination of the PM Doctor/Autopsy Surgeon is clear and explicit. As many as 11 injuries were found on the body of the victim. The stab

wound injuries into the heart and lungs was sufficient to cause death of the victim according to the PM Doctor. In the facts of the case, the appellant was clearly liable for the offence under Section 302 of the IPC.

32. Ardent pleadings of Manjit Singh that the appellant has suffered enough for 12½ years for a soured extra marital relationship is not acceptable to this Court. Not only had the victim gone through the such disturbed extra marital relations but had also premeditated the offence in question to end the life of the victim.

33. In the facts and circumstances of the case, this Court is of the view that the impugned judgment and order of conviction calls for no interference.

34. Accordingly, CRA 76 of 2020 is dismissed. Consequently, all connected pending application, if any, is also dismissed.

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

36. 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.)