Form No: J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-
The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Anuj Singh

C.R.A. 450 of 2016

Tapan Naskar & Anr.

Versus

The State of West Bengal

For the Appellants-	Mr. Jayanta Narayan Chatterjee, Ld. Sr. Advocate, Ms. Moumita Pandit, Ms. Ritushree Banerjee, Ms. Olivia Dutta, Mr. Suprovo Dey.
For the State-	Dr. Pradip Banerjee, Ld. APP Mr. Sankalpa Bhattacharjee.
Hearing concluded on-	November 17th, 2026
Judgment pronounced-	November 20th, 2026

RAJASEKHAR MANTHA, J

1. This appeal is directed against the judgment of conviction and order of sentence dated March 29th, 2016, and March 31st, 2016, respectively, passed by the Ld. Additional District and Sessions Judge, 5th Court, Alipore, South 24 Parganas, in Sessions Trial No. 01(02)12, arising out of Sessions Case No. 22(08)11.
2. The appellants were sentenced to rigorous imprisonment for life for the offence punishable under Section 302, IPC, and ordered to pay a fine of 5,000 rupees. In default thereof, they were directed to undergo another term of rigorous imprisonment for six months.
3. The appellants were also sentenced to rigorous imprisonment for life for the offence punishable under Section 120-B, IPC and to pay a fine of Rs 5,000. In default thereof, they were directed to undergo rigorous imprisonment for six months.
4. The sentences were directed to run concurrently, and the period of detention already undergone before the date of conviction was directed to be set off under Section 428 of the CrPC.

THE PROSECUTION CASE

5. The appellant nos. 1 and 2 are husband and wife. The deceased victim was the cousin of appellant no. 1. The deceased victim forced the appellant wife to enter into an illicit relationship with him. She complained to her husband. Her husband complained to **PW 4, the eldest brother of the deceased victim**, and asked him to intervene. He also warned the deceased victim, but in vain. Both appellants thus

planned to eliminate the victim. The husband and wife murdered the victim on April 30th, 2011, based on a premeditated plan.

6. In the morning of May 1st, 2011, the dead body of the victim was discovered by the local villagers of Lakshminarayanpur. PW 1 wrote a complaint to the Jibanatala P.S. based on which FIR no. 134 of 2011 was registered on the same day under Section 302 of the IPC against unknown persons.
7. From the night of April 30th, 2011, the deceased victim went missing. On the April 30, 2011 the appellant wife requested the deceased victim to meet her at Gourdaha railway station in the evening. The deceased left his house for the railway station in the evening at around 5:30 P.M. After some time at around 6 to 6:30 P.M, the appellants left their home, taking **PW 7, their minor daughter,** with them. The appellant wife was carrying a plastic bag with her. The appellants returned home that night but the deceased victim **did not.**
8. The dead body of the victim was then transported to the Canning Hospital; the hospital authorities informed the Canning PS about the death of the victim. **PW 9, the ASI of the Canning P.S.,** arrived and conducted an inquest on the dead body of the victim. He found sharp incised wounds on the left throat, cheek, and chin of the victim. He sent the dead body for PM examination to Alipore Police Morgue on the same day. The post mortem examination was conducted on the same day. It confirmed the injuries found during the inquest and opined that the victim suffered a homicidal death.

9. On May 3rd, 2011, the news of the death of the victim reached **PW 4** and **PW-5, the elder brothers of the victim.** PW 5 went to the police outpost at Gourdaha, Lakshminarayanpur; he identified the dead body of the victim from a photograph shown to him. PW 5 applied for release of the dead body of the victim for performing his last rites.

10. On May 4, 2011, the behavior of the appellants appeared suspicious to the local villagers. Upon interrogation, the appellants confessed before PWs-4, 5, and 6 to have murdered the victim. The appellants were arrested. On the same day the police were taken by the appellants to the house of the appellants and recovered a sari and da, (a sharp-cutting agricultural instrument). The police also recovered tablets described as sleeping or anti-depressant pills from the house of the deceased victim.

11. On the next day, May 5th, 2011, the appellants were produced before the jurisdictional magistrate to record their confession, which was eventually recorded on May 6th, 2011. The appellants admitted in detail the sequence of events leading to their killing of the victim. Meanwhile on May 5th, 2011, PW 7, the minor daughter of the appellants, was produced before the Magistrate and her statement was recorded, which revealed that PW 7 was in the lap/arms of her mother when the appellant husband murdered the victim.

12. Investigation was completed and a charge sheet was filed. Charges were framed against the appellants under Section 302 read with Section 34 of the IPC, and Section 120B, IPC. The trial commenced.

THE TRIAL AND EVIDENCE ON RECORD

13. **PW-1 was Satadal Mondal**, **the de facto complainant**. He was a teacher at a local school called, Ghuteshwari Vidyapith. He deposed that on May 1st, 2011, a local fisherman noticed a dead body near Gourdaha Railway Station and intimated him, which he immediately relayed to the police. The OC of Jibantala PS requested him to write a complaint, which he wrote on the same day. Based on his complaint,Jibontola P.S. Case No. 134 of 2011 was registered under Section 302. He identified his signature on the complaint.

14. **PW 2 was Uday Sardar.** PW 1 was his uncle. He was a resident of Lakshminarayanpur. On the morning of May 1st, 2011, he was returning from the railway station with his uncle (PW-1), when the police called them to the police station to sign on some case papers in connection with the said FIR. He identified his signature on the inquest report and the seizure list. During cross-examination, PW 2 deposed that, upon the instruction of the police officer, he signed on two blank papers.

15. **PW 3 was Ashoke Mondal, a class 12 student residing in Lakshminarayanpur.** On May 1st, 2011, he was sleeping when his mother woke him up and asked him to verify why a crowd had assembled beside the house of Gobindo Naskar. During cross-examination, he deposed that he saw a dead body near Gourdaha railway station.

16. **PW-4 was Ranjit Naskar,the elder brother of the deceased victim**. The appellant husband is his cousin. He confirmed that PW-7 and 8 are minor daughters of the appellants. He deposed the appellant wife was adulterous; in

support thereof, he narrated following events- the appellant husband used to be out of home at night to catch fish, returning in the morning; she used to spend such nights with the deceased victim. PW-4 warned the deceased victim but in vain.

17. He further deposed that on April 30th, 2011, at about 6:00 PM, the deceased victim went out of home. He then saw the appellant husband leaving his house; April 30th 2011, was a Saturday, thus he thought that the appellant husband had gone to catch fish. He thereafter saw the appellant wife leave home with her minor daughter; she was carrying a plastic bag. PW-4 saw the appellants and daughter returning home later that night. The deceased victim, however, did not return, prompting PW-4 to search for him but in vain.

18. Two to three days thereafter on May 3rd, 2011, PW-4 first learnt that a body was lying at Lakshminarayanpur, however, no one could identify the body. PW-4 and his brother, PW-5, went to the police outpost of Gutiari P.S; they were shown a picture of the victim's body and identified the same. They were told that the body had been sent to the Alipore police morgue for PM examination. PW 5 filed an application for release of the dead body of his brother for his last rites.

19. PW 4 deposed that on May 4th, 2011, the local villagers noticed something suspicious in the behavior of the appellants. They interrogated them. The latter broke down after an initial denial and confessed to killing the victim on the night of April 30th, 2011, at Gourdaha Kalabull Road in Lakshminarayanpur, near a Temple.

20. PW-4 has deposed that the appellants meticulously recounted before the villagers as to how they lured and then killed the victim. The appellants confessed that the appellant wife lured the victim to come to Gourdaha railway station; upon his arrival, she offered him a snack and cold drink/water, laced with sleeping pills. She thereafter aaked the victim walk with her to her sister's house. Meanwhile, the sleeping pills made the victim drowsy. The appellant husband was all along following the victim and his wife, as planned. He seized the opportunity of the victim being drowsy and gave a blow on the person of the deceased victim with a Da. The minor daughter, Paramita Naskar, PW-7 saw all from the arms of her mother.

21. PW 4 confirmed that the police seized one purple-colored saree and one small Da with bloodstains from the house of the appellants; the appellant husband showed the police the place where the Da was kept. PW 4 identified the Da seized by the police and the saree in the trial. Four Rs 100 notes were also seized from the house of the appellants. PW-4 was shown an envelope in Court from which four such notes were taken out; he could not identify them by the unique number printed thereon. PW 4 confirmed that the police seized sleeping pills from the room of the deceased victim. PW 4 deposed that the deceased victim used to take sleeping pills.

22. PW 4 described the location of the house of the appellants; their house was located opposite the house of Prabir Naskar. He deposed that the main door of Prabir Naskar's house faces the house of PW-4.

23. During cross examination, PW 4 was asked why he kept silent and did not lodge a police complaint when he was aware of the illicit relation between the appellant wife and deceased victim before April 30th, 2011. He did not answer. He deposed that he did not inform the police after his brother went missing on April 30, 2011.

24. **PW- 5 was Goshto Naskar. He was the younger brother of PW 4 anddeceased victim.** He confirmed the evidence of PW 4 on the said illicit relationship between the 2nd appellant and the deceased. He added that the appellant wife and deceased victim frequently spoke over mobile phone. Local villagers were aware of their illicit relationship. He confirmed the evidence of PW 4 on the leaving of the victim and appellants with their minor daughter one after the other from their respective houses on that fateful night, and the subsequent return of the appellants.

25. He confirmed the evidence of PW 4 that in the morning of **May 3rd, 2011**, they came to learn that a dead body was found at Gutiari Sharif Police Outpost near Lakshminarayanpur. He confirmed that they went there and identified the victim from a photograph. In the trial, PW-5 identified the written application filed seeking release of the victim's dead body for performing his last rites.

26. PW-5 confirmed the confession of the appellants made before the local villagers on the morning of **May 4th, 2011.** He heard and witnessed the confession.He deposed that the appellants meticulously recounted as to how they lured and murdered the victim. PW-5 confirmed the seizure of Saree, Da and sleeping pills by the police.

27. **PW-6 was Prabin Kumar Naskar. He was the cousin of the deceased victim.** PW 6 deposed on the lines of the evidence of PW 4 and PW 5 in all respects.

28. **PW 7 was Paramita Naskar, the elder minor daughter of the appellants**. The Ld. Trial Judge put questions to PW-7 and the answers given by PW-7 satisfied the Judge that she was capable of giving evidence. The questions and answers have been recorded in the evidence of PW-7. We are also satisfied to that effect.

29. PW-7 deposed that she resides with her grandmother. She informed the court that her paternal aunt and uncle have brought her to the court for tendering evidence. She identified the appellants as her parents. She confirmed that Sushmita Naskar, PW-8, is her younger sister.

30. PW-7 deposed that she knew the deceased victim. **Ranjit Naskar, PW 4**, and **Gostha Naskar, PW-5** were her uncles. She confirmed that the deceased victim used to come to their house and she also went to the house of the deceased victim.

31. In the trial, PW 7 stated the victim is at home and is alive. She claimed that the police did not interrogate her. The prosecution declared her hostile. During cross-examination, she denied that she was in the arms of her mother when her father killed the victim. She denied having made any statement before the magistrate.

32. **PW 8 was Sushmita Naskar. She was the younger minor daughter of the appellants**. The Ld. Trial Judge put questions to PW-8 and was satisfied that she was capable of deposing in the trial. We are equally satisfied. She identified the appellants as her parents.

33. She deposed that Ranjit, PW-4, Goutam, the deceased victim, and Goshto, PW-5, are her uncles. Contrary to PW-7, she deposed that she did not ever go to the house of the deceased victim and latter also did not come to their house. However, PW-

7and PW-8 collectively deposed that the deceased victim is at home. The prosecution declared her hostile.

34. During cross-examination by the prosecution, she was suggested that the deceased victim used to come to their house in the absence of her father, which was denied by her. She denied the allegation that her mother was in an extramarital affair with the deceased victim. She denied that her father had killed the victim.

35. **PW-9 was Tarun Das. He was the inquest officer.** On May 1st, 2011, he was posted as an ASI at Canning P.S. He identified his signature on the inquest report. Canning Hospital intimated Canning P.S. that a dead body has been received by it. PW- 9 went and conducted the inquest over the dead body, and found sharp incised wounds on the person of the victim. He informed the Jibantala PS about it. He sent the dead body for PM examination. He seized the wearing apparels of the deceased victim after post-mortem examination. He identified his signature on the seizure list.

36. **PW 10 was Subal Chandra Ghorai, posted at Jibantola PS.** On May 1st, 2011, he went to the Lakshminarayanpur where a dead body was lying. He transported the dead body to the Canning Sub-Divisional Hospital.

37. **PW-11 was Dr. Bikash Mukherjee**. He conducted post mortem on the dead body of the victim. He identified the post mortem report in the trial. On May 1st, 2011, he was posted as the autopsy surgeon at Alipore Police Morgue. He found the following injuries on the dead body of the victim :

a) An abrasion 1/3 in the muscle-deep left forearm.

b) Two abrasions and one 2/2 abrasion bone-deep incised wound in the chin.

c) An incised wound 3 into 2 bone-deep left lower cheek with fracture lower side.

d) An incised wound 9 into 1 into 3 deep on lower side neck, 2 below left nostril, and 4 above middle of left clavicle, with evidence of muscle vision, nerve, etc. cutting with oozing of blood.

e) An incised wound with cutting with partial cutting of left numerous bones.

f) An incised wound left forearm with cutting left radius area. An incised wound middle tie of left forearm and 1/2 into 1/2 bone-deep.

38. To the query of the Court, PW-11 said that the death of the victim was most likely caused by injury no. (d) set out herein above.

39. **PW-12 was Vivekananda Sur, the Judicial Magistrate**. **He recorded the confession of the appellants and statement of PW 7.** One lady constable Bula Das produced PW-7 before him, and identified her as the minor daughter of the appellants.PW-7 was willing to get her statement recorded. PW 12, thus, recorded her statement. He identified the copy of the statement in the trial.

40. **On May 5th, 2011,** onelady home guard Chabi Chowdhury produced the appellant wife before him. She was willing to record her confession. PW-12 informed her that she is not bound to make any such confession, and if she so makes, the confession may be used against her in a Court of law. PW-12 assured the appellant wife that

she will not be sent to police custody if she decides not to confess. PW 12 gave a day's time to her to reflect upon it. **OnMay 6th, 2011**, the appellant wife was again produced before PW-12. PW-12 reiterated the said caution and assurance to her. The appellant wife, however, insisted on recording her confession. The confession was thus recorded, read over, and explained to her; she put her LTI on it. PW 12 identified the copy of the confession in the trial.

41. Similarly, **on May 5th, 2011**, the appellant husband was produced before PW-12. PW-12 followed the same procedure as he did with the appellant wife. On **May 6th, 2011,** the appellant husband was again produced; he insisted on recording his confession. His statement was recorded, read over, and explained to him, after which he put his LTI thereon. PW 12 identified the copy of the confession in the trial.

42. PW-12 deposed that he did not ask the appellants why they were inclined to confess their crime. Instead, PW 12 asked the appellants whether anyone had forced them to confess; the appellants assured PW 12 that they were confessing of their own free will.

43. **PW-13 was ASI Dilip Kumar Das posted at the Jibantala P.S.** On May 1st, 2011, he drew up the formal FIR no. 134 of 2011 and identified his signature on it.

44. **PW-14 was Dr. Subho Hajra, the FSL doctor**. He deposed that on November 30th, 2011, he analyzed the materials sent to him in a sealed cover in connection with Jibantala PS Case Number 134 of 2011 dated May 1, 2011. He deposed that he had submitted his report to the police.

45. **PW-15 was Dr. Shipra Roy, Deputy Director of FSL Kolkata**. She deposed that on June 20th, 2011, the Director of FSL received sealed packets from Constable C/3955 Ashim Hajra relating to the Jibontola PS Case no. 134 of 2011 dated May 1st, 2011. She was nominated to examine the materials. She examined and arrived at the following findings - No blood stain was found on the *katari* (Da) and *sari*; blood stains, however, were detected on the shirt, full pant, and *sando genji* (sleeveless vest) of the deceased victim.

46. **PW 16 was the officer in charge of Jibantola PS., the IO**. On May 1st, 2011, at around 5:15 AM, PW-1 informed him that an unknown dead body of a male person is lying at Lakshminarayanpur. He registered a GD entry and visited the spot. He sent the dead body to the Canning Sub-division Hospital. He thereafter received a formal written complaint from PW-1. On May 3rd, 2011, PW- 5, the elder brother of the deceased victim, identified the dead body as that of his brother. He seized articles from the house of the appellants on May 4th, 2011.

47. He produced the appellants and their minor daughter before PW 12 for recording their confession/statement under Section 164 of the CrPC. During the course of investigation, he examined PWs-4, 5, and 6. PW 16 confirmed that PWs- 4, 5, and 6 narrated to him the events of that fateful night and the confession of the appellants made before the villagers. PW-16 deposed that he did not interrogate other persons to verify the said statement of the aforesaid witnesses.

48. The appellants were examined under Section 313 of the CrPC. The appellant husband was asked in question no. 30 did the police take him to his house and recovered a blood-stained purple-color sari and one small blood-stained Da and did

he show the location of such articles in the house. He admitted that the police went to his house with him. He denied the rest of the suggestion. In question no. 33, he was asked did he confess before PW-12; he admitted that he gave a confession before the Magistrate but under the pressure of the police.

49. At Question Number 32, the appellant wife was asked did she make any confession before PW 12; she admitted that she gave a confession but under the pressure of the police. The appellant husband and wife lastly deposed that they have been falsely implicated.

FINDINGS OF THE TRIAL COURT

50. The Ld. trial Judge held that the confessions the appellants find corroboration from evidence of PW-4, PW-5, and PW-6. Hence, the prosecution case was not solely based on the said confession. The appellants were convicted under Section 302 of the IPC and Section 120B of the IPC (which speaks of criminal conspiracy and constitutes an independent and substantive offense) and sentenced them as stated above.

ANALYSIS OF THIS COURT

I) The incriminating circumstances

51. The key eyewitness for the prosecution was the minor daughter of the appellants, PW-7. In her statement under Section 164, CrPC, she stated that she was in the arms of her mother when her father murdered the victim. The confession of the appellants to the Magistrate confirms that PW 7 was in the lap (arms) of her mother when the victim was attacked and murdered. In the trial however, PW-7 retracted from her statement. Similarly, the appellants also retracted from their confession made under Section 165, CrPC. The admissibility and reliability thereof will be considered hereinbelow. The

prosecution case thus proceeded on such retracted confession, statement and circumstantial evidence. The incriminating circumstances tendered in evidence are set out as follows:-

i) The appellant husband used to catch fish on every **Saturday night;** on such nights, the victim visited the appellant wife and forced her in an illicit relationship with him. She protested; in response, the victim threatened to kill her husband;

ii) She informed her husband about it. He informed PW-4, eldest brother of the deceased victim, and prayed for his intervention; PW 4 was, however, sarcastic to the appellant No.1 and said he could not do anything about it. He reprimanded the appellant husband.

iii) The appellant informed his wife about the victim-blaming done by PW 4; she proposed to eliminate the victim to which the husband agreed. Accordingly, they planned that the wife will pretend to love the victim. She would win the latter's trust, which she successfully did.

iv) **`On the fateful night of April 30th, 2011,** the appellant wife called the victim and asked him to meet her at Gourdaha Railway Station. The victim first left his house, followed by the appellants with their minor daughter, PW-7. Prior thereto the appellant wife procured sleeping pills most likely during her visit to the house of the victim.

v) Upon arrival, the appellant wife offered a snack called "egg devil" and a cold drink to the victim, which were laced with two sleeping pills each. The victim consumed them. The appellant wife then asked him to accompany her to her

sister's house, which was 30 minutes away. The victim became drowsy. The appellant husband seized the opportunity and attacked the victim with the Da. He threw away the mobile phone of the victim in nearby drain and also took away money from his purse and threw the purse into the nearby drain.

vi) The appellant wife and husband came back together to their house; PW-4 and 5 saw them returning home;

vii) **From May 1st, 2011 to May 3rd, 2011**, the victim was missing. On May 3rd, 2011, PW 4 was intimated that one unidentified dead body is lying at Gourdaha, Lakshminaryanpur; PW 5, the elder brother of the victim, went to the police outpost threat and identified the victim from a photograph taken of his dead body;

viii) The PM examination found sharp incised wounds on the dead body of the victim, caused by a sharp cutting weapon; the death was found homicidal;

ix) On **May 4th, 2026**, the local villagers became suspicious of the behavior of the appellants and confronted them. The appellants confessed that they had killed the victim. PW- 4, 5, and 6 were present when this extra judicial confession was made.

x) **On May 4th, 2011**, the appellants led the police to their house and indicated the place where a sari and Da with blood stains and four 100-rupee currency notes were kept; these articles have been seized by the police. The police thereafter searched the house of the deceased victim and recovered pink-colored pills as well as sleeping pills. The said materials were sent for

FSL examination. Blood stains were detected on the wearing apparels of the deceased victim.

xi) On May 5th, 2011, the appellants were produced before the Magistrate for recording their confession; their confession was recorded on the next day. PW- 7, who was on her mother lap (arms) at the time of the commission of crime, was produced before the same Magistrate on May 5th, 2011, when her statement got recorded.

II) Three broad circumstances are proved from the above

52. The first set of circumstances establishes the motive and events of April 30th, 2011 that took place before commission of the crime. The second indicate the events of the fateful night i.e. the luring of the victim, administration of sleeping pills and luring him towards the PO and the assault by appellant no.1 on the victim. The third set covers the conduct of the appellants post-crime, i.e. their extra-judicial confessions, first made to the local villagers, and later recorded before the Judicial Magistrate, PW 12; it includes the statement of PW- 7 made before the Magistrate; she witnessed the crime. The prosecution relies on the confession of the appellants and statement of PW 7, implicating the appellants before the Magistrate; all of which have been retracted in course of Trial. It is these confessions and statement from which the chain of circumstances incriminating the appellants has emerged. The admissibility and reliability of the confessions of the appellants both extra-judicial and under 164 of the CrPC and that of PW-7, the child witness, must therefore be considered. It needs to be closely examined as to whether such a retraction was a strategic move.

III) Admissibility of a statement/confession under Section 164, CRPC.

53. Mr. Jayanta Narayan Chatterjee, Ld. Sr. counsel for the appellants, has argued that the Trial Judge committed error in relying upon the said confessions to convict the appellants. It is argued that the confessions before the magistrate have been retracted by the appellants. Even if they are held admissible, they are unreliable due to the surrounding circumstances. He then points out to the evidence of PW-7 where she denied and retracted her statement. PW-7 deposed that the Magistrate never examined her.

54. The admissibility of such statements in evidence and their reliability and whether a Court should act on a statement depends on the Court's satisfaction based on the principles for appreciating evidence. In **Sahadevan v. State of T.N., reported in (2012) 6 SCC 403,** addressed it as follows:

> "16. Upon a proper analysis of the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases ***where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused***:
>
> (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
>
> (ii) It should be made voluntarily and should be truthful.
>
> (iii) It should inspire confidence.
>
> (iv) ***An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.***
>
> (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

> (vi) Such statement essentially has to be proved like any other fact and in accordance with law."
>
> Emphasis applied

55. In **Nikhil Chandra Mondal v. State of W.B., reported in (2023) 6 SCC 605,** it was held that a statement under section 164, CrPC, can become the basis of a conviction; a caveat, however, was attached thereto as follows:-

> 16. It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. **It has further been held that it is well-settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession**. **It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence.**
>
> Emphasis applied

56. In the afore-quoted decisions, the Court held that a statement made under Section 164 of the CrPC is admissible in evidence; however, it is a weak piece of evidence. It follows from the above that once a confession under Section 164 of the CrPC is duly recorded, it is a judicial confession and good evidence and can be relied upon by the prosecution.

57. In **Parmananda Pegu v. State of Assam, reported in (2004) 7 SCC 779,** the Court addressed whether a retracted confession can be relied upon in the following manner :-

> 17. The foremost amongst the factors that are sought to be relied upon by the prosecution is the retracted confession of the appellant recorded under Section 164 CrPC. The confession has been extracted supra in verbatim. Before acting on a confession made before a Judicial Magistrate in terms of Section 164, the Court must be satisfied first that the procedural requirements laid down in sub-sections (2) to (4) are complied with. These are salutary safeguards to ensure that the confession is made voluntarily by the accused after being apprised of the implications of making such confession. **Looking at the confessional statement (Ext. 8) coupled with the evidence of PW 22, the then Additional Chief Judicial Magistrate, Dhemaji, we have no doubt in our mind that the procedural requirements have been fulfilled. Inter alia, PW 22 deposed that after**

cautioning the accused that the confessional statement, if made, will be used in evidence against them, he gave three hours' timefor reflection during which the accused were kept in a room attached to the court in the immediate presence of an office peon. PW 22 further stated that it appeared to him that the accused made the statement voluntarily. A memorandum as required by sub-section (4) was also recorded. Thus the first requirement for acting on a confession is satisfied but that is not the end of the matter. **The court, called upon to consider the evidence against the accused, should still see whether there are any circumstances appearing from the record which may cast a doubt on the voluntary nature of the confession.The endeavour of the court should be to apply its mind to the question whether the accused was free from threat, duress or inducement at the time of making the confession**. In doing so, the court should bear in mind, the principle enunciated in Pyare Lal Bhargava v. State of Rajasthan [1963 Supp (1) SCR 689 : (1963) 2 Cri LJ 178] that under Section 24 of the Evidence Act, **a stringent rule of proof as to the existence of threat, duress or inducement *should not* be*applied and a prima facie opinion based on evidence and circumstances may be adopted as the standard laid down.*** To put it in other words, "on the evidence and the circumstances in a particular case **it may appear to the court that there was a threat, inducement or promise, though the said fact is not strictly proved" (SCR p. 693).**

18. Having thus reached a finding as to the voluntary nature of a confession, the truth of the confession should then be tested by the court. The fact that the confession has been made voluntarily, free from threat and inducement, **can be regarded as presumptive evidence of its truth**. Still, there may be circumstances to indicate that the confession cannot be true wholly or partly in which case it loses much of its evidentiary value.

19. In order to be assured of the truth of confession, this Court, in a series of decisions, ***has evolved a rule of prudence that the court should look to corroboration from other evidence***. ***However, there need not be corroboration in respect of each and every material particular.Broadly, there should be corroboration so that the confession taken as a whole fits into the facts proved by other evidence***. In substance, the court should have assurance ***from all angles that the retracted confession was, in fact, voluntary and it must have been true.*** The law on the subject of retracted confession has been succinctly laid down by a three-Judge Bench of this Court in Subramania Goundan v. State of Madras [1958 SCR 428 : 1958 Cri LJ 238] which lays down: (SCR pp. 440-41)

> "The next question is whether there is corroboration of the confession since it has been retracted. **A confession of a crime by a person, who has perpetrated it, is usually the outcome of penitence and remorse and in normal**

> **circumstances** ***is the best evidence against the maker.The question has very often arisen whether a retracted confession may form the basis of conviction if believed to be true and voluntarily made.*** For the purpose of arriving at this conclusion the court has to take into ***consideration not only the reasons given for making the confession or retracting it but the attending facts and circumstances surrounding the same***. ***It may be remarked that there can be no absolute rule that a retracted confession cannot be acted upon unless the same is corroborated materially.*** It was laid down in certain cases one such being Kesava Pillai, In re [ILR (1930) 53 Mad 160 : AIR 1929 Mad 837] that if the reasons given by an accused person for retracting a confession are on the face of them false, ***the confession may be acted upon as it stands and without any corroboration***. But the view taken by this Court on more occasions than one is ***that as a matter of prudence and caution which has sanctified itself into a rule of law, retracted confession cannot be made solely the basis of conviction unless the same is corroborated*** one of the latest cases being Balbir Singh v. State of Punjab [AIR 1957 SC 216 : 1957 Cri LJ 481] , **but it does not necessarily mean that each and every circumstance mentioned in the confession regarding the complicity of the accused must be separately and independently corroborated**, nor is it essential that the corroboration must come from facts and circumstances discovered after the confession was made. ***It would be sufficient, in our opinion, that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession."***

The learned Judges then highlighted the difference between retracted confession and the evidence of an approver or an accomplice: (SCR p. 441)

> "Though under Section 133 of the Evidence Act a conviction is not illegal merely because it proceeds on the uncorroborated testimony of witnesses, Illustration (b) to Section 114 lays down that a court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. In the case of such a person on his own showing he is a depraved and debased individual who having taken part in the crime tries to exculpate himself and wants to fasten the liability on another. In such circumstances it is absolutely necessary that what he has deposed must be corroborated in material particulars. ***In contrasting this with the statement of a person making a confession who stands on a better footing, one need only find out when there is a retraction whether the earlier statement, which was the result of remorse, repentance***

> ***and contrition, was voluntary and true or not and it is with that object that corroboration is sought for.*** Not infrequently one is apt to fall in error in equating a retracted confession with the evidence of an accomplice and, therefore, it is advisable to clearly understand the distinction between the two. The standards of corroboration in the two are quite different. ***In the case of the person confessing who has resiled from his statement, general corroboration is sufficient*** while an accomplice's evidence should be corroborated in material particulars. In addition, the court must feel that the reasons given for the retraction in the case of a confession are untrue."

20. In Pyare Lal [1963 Supp (1) SCR 689 : (1963) 2 Cri LJ 178] the same principle in regard to the evidentiary value of retracted confession has been reiterated. Subba Rao, J. speaking for a four-Judge Bench, stated the legal position thus: (SCR pp. 695-96)

> "***A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made.*** But it has been held that a court shall not base a conviction on such a confession without corroboration.***It is not a rule of law, but is only rule of prudence.*** It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances **such a conviction can be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession*and prepared to act upon it without corroboration;*** but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars."

By the use of the expression "corroboration of material particulars", the Court has not laid down any proposition contrary to what has been clarified in Subramania Goundan case [1958 SCR 428 : 1958 Cri LJ 238] as regards the extent of corroboration required. ***The above expression does not imply that there should be meticulous examination of the entire material particulars***. It is enough that there is broad corroboration in conformity with the general trend of the confession, as pointed out in Subramania Goundan case [1958 SCR 428 : 1958 Cri LJ 238] .

Emphasis Applied

58. The following principles emerge from the above decisions:-

a) A confession made by an accused person before a Magistrate is ordinarily a 'strong piece of evidence' against him, provided the Magistrate has informed the accused that he will not face any legal consequences whatsoever, if he declines to confess; its weakness relates to its reliability (not admissibility) since the statement is not made before the Court trying the accused.

b) A confessional statement may form the basis of a conviction, provided it is voluntary and truthful. A retracted confession does not automatically become inadmissible. It is however a weak piece of evidence.

c) A statement or confession under Section 164, CrPC, is examined at two stages. The court examines whether the statement was voluntary and then truthful.

d) When a confession is found to be voluntarily made, a rebuttable presumption arises in favor of the statement being true.

e) **As a rule of prudence**, a confession should find corroboration from other prosecution witnesses. This practice came to be developed into '**a rule of law'** since the Court started to look for corroboration before acting on a confession.

f) The aforesaid condition under clause (e), however, does not dilute the Rule that before relying on a confession, the Court **need not** always seek corroboration. Corroboration is called for when the Court is not satisfied with the voluntariness of the statement in question since doubts on the voluntariness shakes the admissibility thereof.

g) Over time, this 'rule of seeking for corroboration' was relaxed; the Court now seeks **general** corroboration from prosecution witnesses before acting on a confession. General corroboration is not cross-checking each material particular of the confession with the other evidence on record; broadly the trend of evidence on record must corroborate the confession in question and should indicate the possibility that such confession can very well be made by the accused.

59. In the instant case, PW-12 cautioned the appellants that their confession may be used against them in a Court of law; they were granted a day's time to decide on it. The appellants have not claimed that during this reflection period any one has influenced or coerced them to make a confession. The defense has not suggested to or confronted the PWs on this score. Despite the prior note of caution, the appellants insisted on recording their confession. We have carefully examined the circumstances leading to the appellants making the confessions under the section 'Reliability of Confession'.

60. In **Rabindra Kumar Pal v. Republic of India, reported in (2011) 2 SCC 490,** at paragraph 64, the Supreme Court summarized eleven principles regarding recording of a confession under Section 164 of the CrPC.

> 64. The following principles emerge with regard to Section 164 CrPC:
>
> (i) The provisions of Section 164 CrPC must be complied with not only in form, but in essence.
>
> (ii) Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.
>
> **(iii) A Magistrate should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial.**

> (iv) The maker should be granted sufficient time for reflection.
>
> (v) He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.
>
> (vi) A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such retracted judicial confession.
>
> (vii) Non-compliance with Section 164 CrPC goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.
>
> (viii) **During the time of reflection, the accused should be completely out of police influence**. The judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him.
>
> (ix) At the time of recording the statement of the accused, no police or police official shall be present in the open court.
>
> (x) Confession of a co-accused is a weak type of evidence.
>
> (xi) Usually the court requires some corroboration from the confessional statement before convicting the accused person on such a statement.

Emphasis applied

61. Learned Senior Counsel Mr. Jayanta Narayan Chatterjee argued that principle no. (iii) thereof mandates that the Magistrate should ask the accused why he is willing to confess his guilt. In the present case, the magistrate did not ask the appellants why they were willing to confess. Counsel further relied on principle no. (viii) and argued that a retracted judicial confession cannot form the basis of a conviction.

62. Indeed, in the case at hand, the ACJM, PW 12, did not enquire why the appellants were willing to confess. This omission alone cannot impeach the confession he recorded. Principle (viiii) lays down the litmus test that, before recording a judicial confession- a

judicial officer must satisfy his conscience that the accused is making the statement voluntarily. Principle (i) to (vii) and (ix) and (x) are thus the illustrative indicators which enable a Magistrate to arrive at such a satisfaction. Therefore, principle (iii) must be read with principle viiii; the said clauses should not read like a section of a statute.The decision in**Jamiluddin Nasir v. State of West Bengal, reported in (2014) 7 SCC 443,** cited by the appellants,is a case on point that all the principles laid down in **Rabindra Pal decision (supra)** are illustrative indicators.

63. In **Rabindra Pal** decision (supra), the magistrate did not ask Jamiluddin Nasir why he was willing to confess his guilt; he, however, gave the accused sufficient time for reflection; he directed that the accused be kept aside from other accused persons in judicial custody when placed for reflection. This segregation was directed to ensure no one influences the accused and force a confessional statement from him. The Court held the confession admissible and reliable.

64. The purpose of segregation is to ensure no third person influences the accused. In the present case, the appellants have not pleaded that any third person influenced them during the reflection period that the magistrate gave them. Appellants, who retract a statement under Section 164 of the CrPC, must prove that any influence induced the confession.

65. Thus, when the accused has not claimed that any one has influenced him or her during the reflection time, the question of segregation, keeping the accused separate from other accused persons who may influence him, cannot and does not arise. One stray answer in course of examination under Section 313, CRPC that the confession was made at the instance of the police would not ipso facto render it a coerced one. The

appellants have not given particulars of such coercion. The reason for making a confession before other villagers including PWs 4 and 5 has not been explained by the appellants.

IV) <u>Admissibility and Reliability of the confession of the appellants</u>

66. The 'time gap' between the arrest of an accused person and his production before the Magistrate indicates whether the police got the time to force a confession. On May 5th, 2011, the police arrested the appellants and produced them on the same day before the Magistrate for recording a confession. Hence, the police did not buy any time to force a confession.

67. The dead body of the victim was identified on May 3rd, 2011. On May 4th, 2011, the appellants confessed before the local villagers, calling for their custodial interrogation. They were arrested on the same day and led the police to their house and showed them the location of the Da and blood-stained saree of appellant No.2 and the four 100 rupee currency notes. The police, therefore, arrested the appellants only after they confessed before the villagers. The police thus did not require a confession of the appellants before the Magistrate to justify their arrest.

68. Confession of the appellants indicates that PWs- 4, 5, and 6, family members of the victim, were aware of the illicit relationship of the appellant wife with the deceased victim. On the fateful night, PWs- 4 5 and 6 saw the appellants leaving the house after the victim left; they further saw the appellants returning home, but not the victim. They, therefore, had reason to suspect the appellants with the missing of the victim. Thereafter, the dead body of the victim was identified by PW-4, 5, and 6 on May 3rd, 2011. They, however, did not accuse the appellants until they witnessed the appellants confessing to

the local villagers on May 4th, 2011. Therefore, PWs-4,5, and 6 did not intend to falsely implicate the appellants.

69. Following the said confession, the police on being led by the appellants went to their house and recovered sari and Da and 4 hundred rupees notes, followed by the recovery of anti-depressant pills and sleeping pills from the house of the victim.

70. Ld. Sr. counsel for the appellants has argued that the police seized the sleeping or anti-depressant tablets on 4th May 2026. The appellants allegedly confessed before the Magistrate on 6th May 2011. The recovery, therefore, was not effected based on the confession recorded before the Magistrate. The recovery is thus suspect.

71. This argument overlooks a material fact. The appellants first confessed to the villagers. They admitted the murder. They recounted in detail how they mixed sleeping pills and/or anti-depressant pills into the devilled egg and cold drink, which the appellant No.2 offered to the victim. The police searched the house of the victim and appellants based on this extra judicial-confession. They seized the tablets and the katari (Da). The police therefore acted with promptitude and in good faith and was just following the lead that arose from the confession of the appellants before the villagers. This Court finds no reason to doubt the recovery.Thus, the family members of the victim and police never intended to falsely implicate the appellants. The appellants confessed out of guilt and remorse.

72. Now let us examine the voluntariness of the confession in light of the procedure adopted by the Magistrate before recording the confession. PW 12 repeatedly informed the appellants, husband and wife, that they are not bound to confess their guilt, cautioning them that any statement made may be used against them.

73. The appellants informed PW 12 that they want to reveal the truth, and insisted upon PW-12 to record their confession. This exercise of caution was undertaken twice: first on May 5th, 2011, when they were produced before the Magistrate immediate upon their arrest and again on May 6th, 2011, when their confession was recorded. The confession thus was not coerced or hurried.

74. The recording of the confession under Section 164, CrPC, was done after the appellants had confessed their guilt to the local villagers in presence of PW 4, 5, and 6. The police, therefore, immediately subjected the volition and truth of the appellants' confession to the test of judicial mind by producing them before the Magistrate immediate upon their arrest. The confession thus was well thought out by the appellants. It was thus clearly voluntary. The reliability of the confession should now be examined in light of its contents.

75. In her confession, the appellant-wife stated that on every Saturday night, her husband routinely went out to catch fish. April 30, 2011 was also a Saturday night, when the victim went missing and the appellant wife and husband were away from their house. The appellant-husband denied having gone out on that night; he, however, did not produce any evidence to prove his presence in the house. The prosecution cannot be called upon to produce evidence that the husband was at the house since it fell within his exclusive knowledge. Under Section 114 of Evidence Act, 1872, this Court must, therefore, presume that the husband as usual was out of home. This was his routine.

76. The appellant wife detailed the plan hatched between them for eliminating the victim. She stated that the deceased victim came to her house and forced her into an illicit relationship, taking advantage of the appellant-husband's absence every Saturday night.

She warned the victim but in vain; she then gave an ultimatum to him that she would inform her husband, but in vain. In response, the victim threatened to kill her husband.

77. Finally, she informed her husband. He then spoke with the elder brother of the victim, Ranjit Naskar, PW 4. In response, PW 4took a cold, indifferent, sarcastic and contemptuous stance towards the appellants. PW 4 questioned why he would involve himself in the family affairs of appellant husband since the husband has failed to preserve the dignity of her own wife. PW-4 remarked in Bengali, "*আমারছাগলযদিঅন্যেরবাগানেরঘাসখায়, তাহলেতারবিচারকিআমিকরব? (If my goat goes to graze in another field how can I sit in judgement over it).*

78. The appellant wife hatched the plan with her husband to eliminate the victim. Admittedly, the victim himself was a shady person and known locally as such. The confession of the appellant husband is equally detailed. He confirmed the events narrated by his wife in her confession. He added that he had a one-to-one conversation with the deceased victim and told him not to come to his house. The appellant No.1, talked with the elder brother and guardian of the deceased victim, PW-4. He told PW-4 that the deceased victim should be given in marriage. He complained to PW-4 that the dignity of a married woman is at stake and that he should intervene. However, PW 4 did not intervene and instead made a sarcastic comment that it is the duty of a person whose garden has been plundered to ensure the preservation of his garden.

79. When a confessional statement is detailed and the accused persons produce no effective reliable and cogent evidence showing coercion or undue influence but relies merely on general allegations of police duress, such a confession should not be discarded. A judicial

Magistrate cannot be lightly disbelieved, as proposed by the Ld. Sr. Counsel for the appellants.

80. If the police had forced a confession, it would typically reflect discrepancies, a lack of clarity, and poor articulation. Such a detailed confession must be rebutted by strong and clear reasons. Reference in this regard may be made to **paragraphs 27 – 30 of Vijaya Singh v. State of Uttarakhand, reported in 2024 SCC OnLine SC 3510**.

81. Illustratively, the accused must indicate the circumstances under which the statement was made inter alia showing that it occurred after a long lapse of time. It was recorded in the presence of a police officer capable of influencing and dictating the confession. For that, the accused must show that a superior officer was present who could exert force on the accused person to make a detailed confession. None of these occurred in the present case.

82. A retracted confession should not be automatically discarded because the object with which the police apply for recording a confession before a judicial magistrate would stand frustrated. This was discussed in **R. Shaji v. State of Kerala, reported in (2013) 14 SCC 266** as follows:-

> 29. During the investigation, the police officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 CrPC. **This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced.**
>
> Emphasis applied

83. An apprehension of subsequent retraction by a witness in trial prompts the police to have the statement of that witness recorded under Section 164 CrPC. The said retraction becomes inevitable when the statement takes the character of a confession when given

by an accused person. More often than not a confession given under Section 164, CRPC is retracted on advice and sometimes even on intimidation of the third parties.

84. In view of the aforesaid discussions, two sets of circumstances emerging from the appellants' confession stand proved. The first set of circumstances was the motive for the crime and the plan hatched by the appellants to murder the victim. The second set of circumstances covered the events of that fateful night, when the appellant wife lured the deceased victim to come to Gourdaha railway station, fed him food laced with sleeping pills, and thereafter the appellant husband killed him.

V) <u>General corroboration of the appellants' confession flows from the evidence of PW-4, PW-5, & PW-6.</u>

85. Ld. Sr. counsel for the appellants has argued that PW-4, PW-5, and PW-6 are interested witnesses since they are the relatives of the victim; their evidence, therefore, cannot be seen for seeking corroboration of the confession. He has argued that the confessions were first made before local villagers. None of them was examined.

86. PW-6 is not an interested witness. He is a neighbor of the deceased victim. He considered the victim's father as his uncle. PW-4 and PW-5 were brothers of the deceased victim. They lived in the same village as the appellants. Their house was close to the appellants' house. Therefore, it is natural for them to be present when the appellants confessed to the villagers about how they murdered the victim. Consequently, the presence of PW-4 and PW-5 at the time of confession made to the villagers cannot be ruled out as unnatural.

87. This Court is of the view that the relative of a victim does not automatically become an interested witness. Evidence of both interested and relative witnesses should not be automatically discarded. The Court must examine whether their presence at the scene

was natural, and whether they could have naturally known about the crime. In **Baban Shankar Daphal & Ors *v.* The State Of Maharashtra, reported inn 2025 INSC 97,** it was held as follows :-

> 27. One of the contentions of the learned counsel for the appellants is that the eyewitnesses to the incident were all closely related to the deceased and for prudence the prosecution ought to have examined some other independent eyewitness as well who were present at the time of the unfortunate incident. This was also the view taken by the Trial Court, **but the High Court has correctly rejected such an approach and held that merely because there were some more independent witnesses also, who had reached the place of incident, the evidence of the relatives cannot be disbelieved.** The law nowhere states that the evidence of the interested witness should be discarded altogether. The law only warrants that their evidence should be scrutinized with care and caution. **It has been held by this Court in the catena of judgments that merely if a witness is a relative, their testimony cannot be discarded on that ground alone.**
>
> 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 labelling them as untrustworthy
>
> 29. The distinction between “interested” and “related” witnesses has been clarified in Dalip Singh v. State of Punjab, 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

88. PW-4 and PW- 5 had no reason to falsely implicate the appellants; they were not impacted by the conduct of the deceased victim. Per contra, the appellant No.1 had the motive to take revenge against the deceased victim. The motive of the appellant No.2 was to salvage the dignity of her family. The motive of the Appellant No.1 was clearly to avenge the illicit affair that the deceased was having with his wife.

89. Non-examination of other local village witnesses is not fatal to the prosecution case. The law does not require the prosecution to examine independent witnesses to render the evidence of the victim's relatives admissible and reliable. The prosecution is entitled to examine the witness who will prove its case. The prosecution has not withheld any material witness.

90. If the appellants did not make any confession before the villagers, they could have examined the local villagers to whom they allegedly confessed. However, they chose not to do so. Paragraph 22 of **Jogendra Nahak decision(supra) is as follows:-**

> 22. If a Magistrate has power to record the statement of any person under Section 164 of the Code, even without the investigating officer moving for it, then there is no good reason to limit the power to exceptional cases. We are unable to draw up a dividing line between witnesses whose statements are liable to be recorded by the Magistrate on being approached for that purpose and those not to be recorded. **The contention that there may be instances when the investigating officer would be disinclined to record the statements of willing witnesses and therefore such witnesses must have a remedy to have their version regarding a case put on record, is no answer to the question whether any intending witness can straight away approach a Magistrate for recording his statement under Section 164 of the Code. Even for such witnesses provisions are available in law e.g. the accused can cite them as defence witnesses during trial or the court can be requested to summon them under Section 311 of the Code.** When such remedies are available to witnesses (who may be sidelined by the investigating officers) we do not find any special reason why the Magistrate should be burdened with the additional task of recording the statements of all and sundry who may knock at the door of the court with a request to record their statements under Section 164 of the Code.

Emphasis Applied

91. Ld. Sr. Counsel for the appellants has argued that there is no evidence of the illicit relations between the Appellant No.2 and the deceased. In **Kukapalli Mohan Rao v. State of A.P., reported in (2013) 11 SCC 713,** it was held that the direct evidence of illicit relationship would not be available. The circumstantial evidence would indicate the existence of an illicit relationship. In **Kukapalli Mohan Rao decision (supra)**, it was held as follows:-

> 15. The direct evidence of illicit intimacy cannot always be expected. **But, taking into consideration the evidence of PW 5 and PWs 8 and 9, the prosecution could establish that the accused had a grudge or ill-feeling towards the deceased that led him to commit the murder**. PWs 2 and 3 found the accused with MO 6 (axe) which was used for the commission of the offence. PWs 5 and 9 also stated in their evidence that they found the axe near the cot at the scene of the offence. The prosecution also proved that MO 6 axe was seized from the scene of occurrence by PW 15, in the presence of PWs 1 and 11. MO 6 axe was also sent to RFSL, Vijayawada for analysis and from Ext. P-18 report dated 4-8-2001, it was observed that the blood of human origin was detected on MO 6 axe. Therefore, the contention raised by the learned counsel appearing for the appellant-accused that MO 6 was planted, cannot be accepted.
>
> Emphasis applied

92. The appellants confessed to the magistrate that the deceased victim forced the appellant wife to enter into an illicit relationship with him. This was also confessed by the appellants to the local villagers. This was witnessed by the PW- 4, 5, and 6. In the trial, PWs 4-6 deposed that they were aware of the said illicit relation. They however held the appellant wife responsible for it.

93. The appellants confessed that the said illicit relationship compelled them to kill the victim. An illicit relationship supplies a strong motive. The appellants did not deny that the appellant wife had an illicit relation with the deceased victim or the deceased victim forced her to enter into any such relationship with him. The evidence of PW-4 and 5

read with the confession of the appellants, inter alia, has proved the illicit relationship and motive for the crime beyond any reasonable doubt.

VI) The retraction by PW 7, child witness.

94. Ld. Sr. Counsel for the appellants has pointed out PW-7, the minor daughter, retracted her statement given under section 164 of the CrPC. The said retraction negates the prosecution case. PW-7 deposed that the deceased victim was alive. The appellants thus argue that PW-7 was not even aware that the victim had died. Thus it follows PW 7 had not witnessed the murder.

95. PWs-7 and 8, both minor daughters of the appellants, have made a strategic move to project that the deceased victim is alive and at home. This statement is clearly tutored. Its sole purpose is to undermine the prosecution case. To justify the retraction by PW-7, PW-8 adopted the stand of PW-7 that the deceased victim is alive.

96. PW-7 appeared before the Magistrate on May 5th, 2011, and got her statement recorded on the same day. Ld. Sr. Counsel has argued that the Magistrate should have given some more time to PW-7 to decide whether she is willing to speak against her parents.

97. The statement of PW-7 was not a confession. Section 164 of the CrPC makes a distinction between a confession and a statement that does not amount to a confession. Sub-section 4 of Section 164 of the CrPC states that when a magistrate records a confession, Section 281 of the CrPC governs it. Section 281 of the CrPC lays down the procedure for recording evidence. Per contra, sub-section 5 of Section 164 of the CrPC excludes the application of Section 281 of the CrPC when the magistrate records a statement that does not amount to a confession. Subsection 5 of Section 164 of the

CrPC confers discretion upon the Magistrate to decide the procedure for recording a statement. Therefore, the Magistrate had the discretion to decide the procedure of recording the statement of PW 7. A child witnessing a crime committed by her own parents would normally be under shock. Hence, the Magistrate did not keep the minor girl waiting and immediately recorded her statement.

98. The approach of the magistrate while recording the statement of PW 7 was clearly distinct from the one which he adopted while recording the confession of the appellants; the latter were given a day's time to reconsider whether they really want to confess.

99. In **Anees V. The State Govt. Of NCT, reported in 2024 INSC 368,** theCourt noted that a minor child may depart from the truth when it causes harm to their parents as follows:-

> 62.._____***There could be innumerable reasons for a witness to resile from his/her police statement and turn hostile. Here is a case in which a five-year-old daughter might have resiled thinking that having lost her mother, the father was the only person who may take care of her and bring her up. However, why she turned hostile is not important.*** What is important is the role of the public prosecutor after a prime witness, more particularly a child witness of tender age, turns hostile in a murder trial. When any prosecution witness turns hostile and the public prosecutor seeks permission of the trial court to cross-examine such witness then that witness is like any other witness. The witness no longer remains the prosecution witness.
>
> Emphasis applied

100. In **Anees decsion (supra**) the minor child was called upon to stand in the witness box to depose against her father, who was alleged to have committed the murder of her mother. In the present case, the situation was much worse. If the minor child PW-7 spoke the truth in Court, it would cause harm to her, and she would lose her parents.

101. In **State of M.P. v. Balveer Singh, reported in (2025) 8 SCC 545**, it was held as follows:-

> 62. The first condition, namely, the "possibility or opportunity of the witness being tutored" can be established by demonstrating or laying down certain foundational facts that suggest the probability that a part of the testimony of the witness might have been tutored. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or ***by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring.*** A mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.
>
> > 63. The second condition "reasonable likelihood of tutoring" requires that the foundational facts established in the first step be further proven or cogently substantiated before any portion of the witness's testimony can be deemed tutored. **This may be done by leading evidence to prove a strong and palpable motive to depose falsely that was imputed to the witness,** or by establishing that the delay in recording the statement is not only unexplained but is indicative and suggestive of some unfair practice by the investigating agency for the purpose of falsely supporting the case of the prosecution as held in Ranbir [Ranbir v. State of Punjab, (1973) 2 SCC 444 : 1973 SCC (Cri) 858] , or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence-lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negate their presence as unnatural.
> >
> > 67.9. Child witnesses are considered as dangerous witnesses as they are pliable and ***liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring.....***
>
> Emphasis applied

102. The likelihood of PW-7 being tutored cannot be ruled out. PW-7 started to reside with her grandmother after her parents got arrested. She was brought to the Court by the paternal aunt and uncle. Indeed, PW-7 resided with the parent-side of the family and came to the court with them, cannot become the sole ground for discarding her retraction made in the trial. This, however, would throw a doubt in the mind of the Court when she offers no valid reason as to why she is retracting from the statement given to the magistrate.

103. Ld. Sr. Counsel next relies on **Bhagwan Singh and Others v. State of M.P., reported in 2003 (3) SCC 21** to argue that child witness may be tutored. That is precisely the reason that the minor witnesses retracted their statements.

104. PW 7 was a minor girl who was about to lose her parents if they are convicted. Retraction thereof, therefore, was not only in the interest of her parents, but also in her interest. Her retraction was the necessity and truth became a luxury. This cannot be ruled out.

105. In her statement under Section 164, CrPC, first, the minor child deposed that she was with her parents when her father attacked the victim with a Da. She stated that there was an altercation between the appellant and the deceased victim, and thereafter, the appellant killed the victim. This statement is consistent with the confession of the appellants. This indicates she stated what she actually saw. The injuries found on the person of the victim confirm that the victim was attacked by a Da.

106. PW-7 deposed in the Court after a long period from the date when her statement was recorded by the Magistrate. She realized the consequences of her statement made to the magistrate. She has been tutored in the interim. A person is most likely to speak the truth when confronted just after what she saw since he or she has little time for reflection. After a long period, reflection occurs, pros and cons are analyzed, and a person given a lot of time, can depart from the truth. This appears to have happened with PW-7.

107. Ld Counsel for the appellants has next argued that absence of blood stains on the Da and Saree reported in the FSL report should negate the prosecution case. This Court, however, notes that the Katari/Da and saree were recovered 3 days after the incident. The likelihood of the same being washed and cleaned after the incident cannot be ruled out.

108. The report of the FSL cannot be the sole basis of conviction, since that is not a substantive piece of evidence. It provides a corroborative link to the chain of circumstances, if the case of the prosecution is based on circumstantial evidence. In **Mehtab *v.* State of Uttarakhand, reported in 2026 INSC 578, it was held as follows:--**

> 84. This Court in Allarakha Habib Memon v. State of Gujarat has expounded that even if the FSL report establishes that the blood group detected on the article recovered at the instance of the accused matches that of the deceased, **such circumstance in isolation is not sufficient to link the accused with the crime. It was observed that the mere recovery of a bloodstained article, in absence of reliable evidence connecting the same with the commission of the offence, cannot constitute a determinative incriminating circumstance against the accused.** .....
>
> Emphasis applied

109. In **Balwan Singh v. State of Chhattisgarh, reported in (2019) 7 SCC 781,** the Court noted the difficulty faced by a serologist while tracing the blood stains in the weapon and the accused cannot derive a benefit of doubt relying on the said difficulty as follows:-

> 15. We are also conscious of the fact that, at times, it may be very difficult for the serologist to detect the origin of the blood due to the disintegration of the serum, or insufficiency of bloodstains, or haematological changes, etc**. In such situations, the court, using its judicious mind, may deny the benefit of doubt to the accused, depending on the facts and circumstances of each case, if other evidence of the prosecution is credible and if reasonable doubt does not arise in the mind of the court about the investigation.**
>
> Emphasis applied

VII) Continuous and interlaced links in the chain of circumstances

110. A plain reading of such circumstances discussed above shows that they are interlaced. A cumulative reading of them is thus called for. In **Ram Avtar v. State (Delhi Admn.), reported in 1985 Supp SCC 410,** it was held that no specific formula can be applied to assess the circumstances as follows:-

> 2. At the very outset we might mention that circumstantial evidence must be complete and conclusive before an accused can be convicted thereon. ***This, however, does not mean that there is any particular or special method of proof of circumstantial evidence.*****We must, however, guard against the danger of not considering circumstantial evidence in its *proper perspective*, e.g., where there is a chain of circumstances linked up with one another, it is not possible for the court to truncate and break the chain of circumstances. In other words where a series of circumstances are dependent on one another they should be read as one integrated whole and not considered separately, *otherwise the very concept of proof of circumstantial evidence would be defeated.***
>
> 18. Before concluding we might observe that where circumstantial evidence consists of a chain of continuous circumstances linked up with one another***, the court has to take the cumulative effect of the entire evidence led by the prosecution before acquitting or convicting an accused.***
>
> Emphasis Applied

111. A common thread running through all the circumstances above is an illicit relationship. This relationship compelled the appellants, husband and wife, to conceive the plan to end the victim's life. They justified the plan in the interest of preserving their family and dignity of the appellant wife. Pursuant to the plan, the appellant wife started acting as if the deceased victim had her consent in the illicit relationship. By acting as such, the appellant wife won the trust of the deceased victim. The trust was nurtured through frequent phone calls made between them.

112. Based on this trust, the appellant wife called the deceased victim to the Gourdaha railway station. The appellant No.2 procured sleeping pills and/or anti-depressants

from the house of the deceased which she had access to. This was used by her to prepare the victim for attack by the appellant husband on the fateful night. She made the deceased victim consume food without any suspicion. This made the victim drowsy.

113. Even after consuming the drug-laced food, the deceased victim did not suspect a bit. Instead, he agreed to walk with the appellant wife towards her sister's house, not realizing that he was becoming drowsy. This walk made the victim lose his power of resistance due to the gradual action of drug dose. This gave the appellant husband an opportunity to attack the victim, who was helpless by that time.

114. We wondered as to why the appellants had to take PW- 7, their minor daughter, to the railway station when they knew PW 7 would witness the crime. PW- 7 may become a potential witness for the future, which she did. Further, parents would not want their daughter to see a murder committed by them. The appellant wife kept her other minor daughter in the house and did not take her to the railway station. This conundrum bothered us till we found the following on a closer scrutiny. The minor daughter was taken by the appellant wife to deceive the victim into believing that she was going to visit her aunt.

115. The appellant wife rightly anticipated that the victim would readily agree to meet her at night that too outside her house when she would inform him that she will be waiting for him at the railway station with her minor daughter. This could also dispel doubts amongst local people and those in the railway station as to why the appellant wife would want to meet the victim at a public place that too at dusk. The presence of the minor daughter with her removed all suspicion.

116. The appellants thus attempted to conceive a foolproof plan to end the life of the victim. These interlaced links in the chain of circumstances irresistibly point toward the guilt of the appellants.

CONCLUSION

117. For these reasons, the impugned judgement and order of sentence calls for no interference. CRA 450 of 2016 is hereby dismissed. Connected applications, if any, shall stand disposed of in terms of this judgment. The impugned judgment of conviction and order of sentence are upheld.

118. Let a copy of this judgment be sent to the Trial Court at once. The Trial Court Records shall also be sent back at once.

119. If the appellants are on bail, they shall surrender before the jurisdiction police within 7 days from the date.

(Rajasekhar Mantha, J.)

I agree.

(Anuj Singh, J.)