

Three (03)
YEARS OLD
CASE Since
Filing of
Charge-sheet



**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
CHANDERNAGORE, HOOGHLY.**

Present: Manabendra Mohan Sarkar
Additional Sessions Judge,
Chandernagore, Hooghly.
(J.O Code – WB-01486)

Date of Judgment: 19th Day of August, 2026

S.T Case No. 09(02)2024
S.C Case No. 83/2023

CNR No. WBHG090013092023

Arising out of the Tarakeswar P.S. Case No. 286/2023 dated 07.07.2023 U/S 302/34, IPC

Complainant: Sabitri Koley
Represented by: Learned P.P Sri. Sankar Ganguly on behalf of State of West Bengal.
Accused persons: Amit Koley and Puja Koley
Represented by: Chinmoy Sinha Roy, Sri. Pratim Sinha Roy and Tulsi Chakraborty learned Advocate for the accused persons

Form-B

Date of offence	07.07.2023
Date of FIR	07.07.2023
Date of charge sheet	14.09.2023
Date of framing of charge	06.02.2024
Date of commencement of evidence	17.02.2026
Date on which judgment is reserved	--
Date of judgment	19.08.2026
Date of sentence order, if any,	20.08.2026

Additional Sessions Judge,
Chandernagore, Hooghly.
J.O Code – WB-01486

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Accused Details: -

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charged with	Period of detention during investigation or trial	Whether acquitted or convicted	Sentence imposed
1.	Amit Koley	08.07.2023	Facing custody trial	U/s 302/201 of IPC	3 years 1 month 12 days	Convicted	Life imprisonment and fine of Rs. 30,000/-
2.	Puja Koley	09.07.2023	30.09.2023	U/s 302/109/201 of IPC	52 Days	Convicted	Life imprisonment and fine of Rs. 30,000/-

From-C

A. Prosecution: -

Rank	Name	Nature of evidence (eye witness, police witness, expert witness, medical witness, panch witness, other witness.)
P.W-1	Constable 304 Subhasish Paul (CSW No. 7)	Police witness
P.W-2	Sabitri Koley (CSW No. 1)	De facto complainant-cum-eye witness
P.W-3	Shambhu Charan Koley (CSW NO. 2)	Brother of the deceased
P.W-4	Bishal Koley (CSW No. 3)	Nephew of the deceased
P.W-5	Prabir Koley (CSW No. 5)	Son-in-law of the deceased
P.W-6	Sangita Koley (CSW No. 13)	Niece of the deceased
P.W-7	Buddhadeb Mondal (CSW No. 10)	Neighbour of the deceased
P.W-8	S.I Fariuddin Mondal (CSW No. 6)	Police witness
P.W-9	Dr. Atanu Kumar Paul (CSW No. 15)	Medical witness
P.W-10	Dr. Avijit Roy (CSW No. 16)	Medical witness
P.W-11	S.I Nilmadhab Paul (CSW No. 19)	I.O

B. Defence Witnesses, if any: -

Rank	Name	Nature of evidence (eye witness, police witness, expert witness, medical witness, panch witness, other witness.)
Nil	Nil	Nil

C. Court witnesses, if any: -

Rank	Name	Nature of evidence (eye witness, police witness, expert witness, medical witness, panch witness, other witness.)
Nil	Nil	Nil

List of Prosecution/Defence/Court Exhibits: -

A. Prosecution: -

Sl. No.	Exhibit Number	Description
1.	Exhibit No. P-1/P.W-1	Dead body challan
2.	Exhibit No. P-1/1/P.W-1	Signature of P.W-1 on the dead body challan
3.	Exhibit No. P-2/P.W-1	Signature of the witness on the seizure-list
4.	Exhibit No. P-3/P.W-2	Written-complaint
5.	Exhibit No. P-3/1/P.W-2	Signature of P.W-2 on the written-complaint
6.	Exhibit No. P-4/P.W-2	Statement of the P.W-2 recorded u/s 164 of C.P.C
7.	Exhibit No. P-4/1/P.W-2	Signature of P.W-2 on her statement recorded u/s 164 of Cr.P.C
8.	Exhibit No. P-5/P.W-3	Signature of P.W-3 on the label
9.	Exhibit No. P-6/P.W-3	Signature of P.W-3 on the label
10.	Exhibit No. P-7/P.W-3	Statement of P.W-3 recorded u/s 164 of Cr.P.C
11.	Exhibit No. P-7/1/P.W-3	Signature of P.W-3 on the recorded statement u/s 164 of Cr.P.C

(4)

12.	Exhibit No. P-8/P.W-4	Statement of P.W-4 recorded u/s 164 of Cr.P.C
13.	Exhibit No. P-8/1/P.W-4	Signature of P.W-4 on the recorded statement u/s 164 of Cr.P.C
14.	Exhibit No. P-9/P.W.-5	Signature of Sabitri Koley on the inquest report
15.	Exhibit No. P-9/1/P.W-5	Signature of Karabi Koley on the inquest report
16.	Exhibit No. P-10/P.W.-5	Signature of P.W-5 on the seizure-list
17.	Exhibit No. P-5/1/P.W-5	Signature of P.W-5 on the label.
23.	Exhibit No. P-6/1/P.W-5	Signature of P.W-5 on the label
24.	Exhibit No. P-9/2/P.W-8	Signature of P.W-8 on the inquest report
25.	Exhibit No. P-1/2/P.W-8	Signature of P.W-8 on the dead body challan
26.	Exhibit No. P-11/P.W-8	Seizure-list dated 07.07.2023
27.	Exhibit No. P-11/1/P.W-8	Signature of P.W-8 on the seizure-list dated 07.07.2023
28.	Exhibit No. P-12/P.W-8	Another seizure-list dated 07.07.2023
29.	Exhibit No. P-12/1/P.W-8	Signature of P.W-8 on the seizure-list dated 07.07.2023
30.	Exhibit No. P-9/3/P.W-9	Signature of P.W-9 on the inquest
31.	Exhibit No. P-13/P.W-10	P.M report
32.	Exhibit No. P-13/1/P.W-10	Signature of P.W-10 on the P.M report
33.	Exhibit No. P-14/P.W-11	Formal FIR
34.	Exhibit No. P-14/1/P.W-11	Signature of Anil Kumar Raj on the formal FIR
35.	Exhibit No. P-3/2/P.W-11	Receiving endorsement and signature of Anil Kumar Raj on written-complaint
36.	Exhibit No. P-15/P.W-11	Rough sketch map
37.	Exhibit No. P-15/1/P.W-11	Signature of P.W-11 on the rough sketch map
39.	Exhibit No. P-10/1/P.W-11	Seizure-list dated 09.07.2023
40.	Exhibit No. P-10/2/P.W-11	Signature of the accused Amit Koley on the seizure-list
41.	Exhibit No. P-16/P.W-11	Statement of the accused leading to discovery

**Additional Sessions Judge,
Chandernagore, Hooghly.
J.O Code – WB-01486**

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B. Defence :-

Sr. No.	Exhibit Number	Description
1.	Mat Exhibit No. D-I/P.W-11 (collectively)	Photographs of the P. O

C. Court Exhibits: -

Sr. No.	Exhibit Number	Description
Nil	Nil	Nil

D. Material Objects: -

Sr. No.	Exhibit Number	Description
1.	Mat Exhibit No. P-I/P.W-3	Lungi
2.	Mat Exhibit No. P-I/1/P.W-3	Signature of P.W-3 on the label pasted on the lungi
3.	Mat Exhibit No. P-II/P.W-3 (collectively)	Gloves
4.	Mat Exhibit No. P-II/1/P.W-3	Signature of P.W-3 on the label pasted on the gloves
5.	Mat Exhibit No. P-I/2/P.W-5	Signature of P.W-5 on the label pasted on the Lungi
6.	Mat Exhibit No. P-II/2/P.W-5	Signature of P.W-5 on the label pasted on the gloves
7.	Mat Exhibit No. II/3/P.W-11	Label
8.	Mat Exhibit No. II/4/P.W-11	Signature of P.W-11 on the label
9.	Mat Exhibit No. I/3/P.W-11	Label
10.	Mat Exhibit No. I/4/P.W-11	Signature of P.W-11 on the label

J U D G E M E N T

1. This judgement adjudicates the tragic death of the deceased, who was brutally murdered by his own son, on the greed of acquiring whole property of the deceased, conspiring with his wife. Driven by greed over the estate of his father, the accused orchestrated a calculated assault, culminating in a devastating betrayal of familial bonds, eternal bond between father and son. This case unveils a grim narrative where the sanctity of familial relations was shattered by unbridled greed and avarice.

2. The present judgment arises from the heinous murder of a father by his own son, a crime fueled by greed and anger, which has brought the fore of the darker side of human emotion and lust for property. The accused Amit Koley stand charged u/s 302/201 of IPC and Puja Koley stand charged u/s 302/109/201 of IPC for the brutal killing of their father and father-in-law respectively namely Aditya Koley on 07.07.2023 near about 1.00 P.M at midnight within the jurisdiction of this court.

3. The prosecution case in essence, is that on the fateful night, the accused person Amit Koley conspiring with his wife Puja Koley, acting in pre-planned collusion and in furtherance of their common intention, violently strangled the neck of his father Aditya Koley and murdered his father Aditya Koley, for getting the whole properties of his father. The entire incident was witnessed by the wife of the deceased who have consistently supported the prosecution version of the event throughout the trial. More pathetic scene is that one aged

mother deposed in this case against his own son alleging that her son, Amit Koley conspiring with his wife, committed murder of her husband Aditya Koley by strangulating his neck before her own eyes.

4. The core issue for determination for this court is whether the prosecution has succeeded in proving the guilt of the accused persons beyond reasonable doubt. The court having meticulously examined the oral and documentary evidence, available on record, proceeds to deliver its verdict, having mindful of the cardinal principle that the burden of prove rest solely and squarely on the prosecution.

5. Present case arose on the basis of the written complaint lodged by Sabitri Koley, wife of the deceased Aditya Koley and mother of the accused Amit Koley, alleging that on 06.07.2023 at about 10.00 P.M after finishing her dinner, she went to sleep with her grand-daughter in the one room of their first floor. It is also alleged that in another room her husband (deceased) used to sleep alone and in another room her son, accused Amit Koley, along with his wife Puja Koley and his 4 years old son, used to sleep. It is also alleged that at about 1.00 A.M at midnight on 07.07.2023 suddenly she woke up from her sleep hearing the shouting of her husband and she went to open her door but it was not opening and then she understood that the door of her room has been closed from outside with the *hasball* and then her grand-son Rudra Koley opened the *hasball* from outside and she tried to come out from her room but her daughter-in-law Puja Koley tried to push her forcefully in her room. It is also alleged that at that time, the de facto complainant found that her daughter-in-law Puja Koley was sweating and at that time Puja Koley told her: “*oder bap batar moddhe jhogra hochhe, apner amar okhane jawar dorkar nei*” (quarrel is going on in between

father and son, we need not go to there). It is also alleged that the de facto complainant anyhow rushed towards the room of her husband pushing her daughter-in-law Puja Koley (A-2) aside and she found her husband lying on the bed and her son Amit Koley (A-1) was sitting on the chest of her husband and he (Amit Koley) was pressing/strangulating the neck of her husband Aditya Koley with his hands. It is also alleged that the de facto complainant requested her son to leave her husband saying: “*Amit chhere de, nahole tor baba morey jabe*” and at that time her daughter-in-law Puja Koley took her outside of the room pulling her and then the de facto complainant went to the house of her brother-in-law Shambhu Koley to call him and thereafter, Shambhu Koley and his son Bishal Koley came there and they all the three persons entered into the bed room of the deceased (Aditya Koley) and found that the dead body of Aditya Koley was lying on the bed and blood was coming out from his mouth. It is also alleged that Amit Koley and Puja Koley killed the husband of the de facto complainant namely Aditya Koley by strangulating/ throttling his neck.

: REGISTRATION OF FIR:

6. On the basis of the said written complaint received on 07.07.2023, the instant case being Tarakeswar P.S. Case No. 286/2023 dated 07.07.2023 U/s 302/34, IPC was registered against the accused persons namely Amit Koley and Puja Koley.

7. After registration of FIR, the case was endorsed to the S.I Nil Madhab Paul for investigation. After completion of investigation of the case, the Investigating Officer submitted the charge

sheet against the FIR named accused persons namely Amit Koley and Puja Koley u/s 302/201/34 of IPC.

8. In compliance of section 207 of Cr.P.C, copies of the documents were furnished to the accused persons. After supplying copies to the accused persons, the Ld. A.C.J.M, Chandernagore, Hooghly, committed the case in this court for trial.

9. After considering the material on record, the respective charge u/s 302/201 of I.P.C has been framed against the accused Amit Koley and charge u/s 302/109/201 of IPC has been framed against the accused Puja Koley and same were read over and explained to them and they pleaded not guilty and claims to be tried and hence this trial.

10. During trial in order to prove the charges against the accused persons, the prosecution examined 11 (eleven) witnesses. The details of the prosecution witnesses as examined have been mentioned above.

11. Apart from relying upon the oral evidence of the above-named prosecution witnesses, the prosecution relied upon some exhibits which have already been mentioned herein-before.

12. After the termination of the evidence of the prosecution witnesses as above, the accused persons facing trial were examined by this Court u/s 313 of Cr.P.C with reference to the incriminating evidence available against them and during such examination, they once again have denied their involvement into the

commission of the alleged offence. The results of the examination of the accused persons have been reduced into writing in separate sheet which has been kept with the record.

13. The accused persons did not want to adduce any evidence or examine any witness before the court on their behalf to prove their innocence in this case. After the termination of trial in the above manner, this court heard the argument in details. Ld. P.P submitted that in this case P.W-2 is the eye-witness and she is the wife of the deceased Aditya Koley as well as the mother of the accused Amit Koley, and there have no iota of evidence on record to the effect that there had / have any enmity in between P.W-2 and the accused persons, so P.W-2 is the fully reliable and credible witness in this case and basing on her testimony, the accused persons may be convicted safely. He further contended that moreover, all other witnesses corroborated with the testimony of P.W-2 and even the testimony of P.W-2 got corroboration from the medical evidence i.e. post-mortem report. He further contended that the evidence of prosecution witnesses fully established the chain of event. He further submitted that the grand-daughter of the de facto complainant is mentally abnormal, that is why prosecution could not examine her as witness, moreover both the children were in the custody A-2. Ld. Public Prosecutor further submitted that the prosecution has been able to establish their case beyond any shadow of reasonable doubt and accordingly, he prays for passing necessary order convicting the accused persons as per law. On the other hand, learned defence counsel contended that all the witnesses are relative of the deceased; that means all the witnesses are interested witness and it will not be safe to convict a person basing on the mere testimony of interested witnesses. Ld. defence counsel

further contended that there has no independent witness who saw the incident and testimony of the witnesses did not get any corroboration from any independent witness, so it will not be safe to rely upon the testimony of the relative of the deceased. He further contended that there have lapses in the investigation procedure; I.O did not send the seized gloves and lungi to the FSL, which creates doubt about the truthfulness of the prosecution story and benefit of doubt will go in favour of the accused. He further contended that prosecution could not show the involvement of the accused Puja Koley in the commission of the alleged offence and her mere presence in the P.O does not prove that she was involved in the commission of the alleged offence or she has the same intention as of the accused who was executing the crime. The Ld. defence counsel further contended that the prosecution has miserably failed to establish the guilt of the accused persons beyond reasonable doubt and accordingly, learned defence counsel prays for passing order of acquittal in favour of the accused persons who are facing trial.

POINTS FOR CONSIDERATION

14. From the rival contention of the respective parties following points have been cropped up for consideration and determination: -

- (i) Whether the accused Amit Koley committed offence punishable u/s 302/201 of IPC?

(ii) Whether the accused Puja Koley committed offence punishable u/s 302/109/201 of IPC?

(iii) Whether the accused persons are liable to be convicted for those offences?

(iv) What will be the quantum of punishment, if accused persons are found liable to be convicted?

DECISION WITH REASONS

15. Time has come to pave through the materials on record to fathom out as to how far the prosecution has been able to prove its case against the accused persons. Let us discuss the merit of the case point wise.

16. This court takes up the opportunity to discuss all the points together as they are intrinsically related to each other.

17. At first let me discuss the evidence of the prosecution witnesses. Constable Subhasish Paul has been examined as P.W.-1. He stated that on 07.07.2023 he was posted at Tarakeswar P.S as constable of police and on that date as per instruction of S.I Fariduddin Mondal, he brought the dead body of the deceased Aditya Koley to Serampore Walsh Hospital for P.M examination. He stated that after conducting post mortem on the dead body of Aditya Koley, doctor handed over the viscera of the said dead body to him and he handed over

the same to the I.O of this case and I.O seized the same under proper seizure-list. The said dead body challan has been marked as **Exhibit No. P-1/P.W-1** and his signature on the said seizure-list has been marked as **Exhibit No. P-2/P.W-1**.

18. In this case, the de facto complainant has been examined as P.W.-2. She stated that she has one son and one daughter. She also stated that her daughter namely Karabi Koley is residing in her matrimonial house at Nanda, under Singur P.S. and her daughter got married before 16 years. She also stated that her son Amit Koley has one son and one daughter. She also stated that at the time of the incident, her grand-son was aged about 4 years and her grand-daughter was aged about 10 years. She also stated that their house is two storied building and on the first floor, there have four rooms and at the time of the incident, their family consisted of six members including her husband. She also stated that they all used to reside in the first floor of their house. She also stated that she used to sleep with her grand-daughter in one room and in the room, adjacent to her room, her son used to sleep with his wife and son and in the room, next to the room of her son, her husband used to sleep and they used to use another room as store room. She also stated that on the ground-floor there was one room and they used to use that room for keeping their agricultural products. She also stated that their house was in the name of her husband. She also stated that agricultural lands were also in the name of her husband. She also stated that her son and her daughter-in-law (putra badhu), conspiring with each other, killed her husband. She also stated that she saw the accused persons to kill her husband with her own eyes. She also stated that on 20th Ashar, 1430 B.S, the incident was taken place.

19. P.W-2 also stated that near about 10.00 P.M, she went to bed with her grand-daughter for sleeping and on that night at about 12.30 A.M / 1.00 A.M she heard shouting of her husband. Then and there she tried to came out from her room, but when she tried to open the door of her room, it is found that the door of her room was locked from outside and then she heard crying sound of her grand-son, he (her grandson) was also asking her for opening the door of her room and then she told him that door is locked from outside and she asked her grand-son to call his parents to open her door and but her grand-son told her that his parents were not present in their room and then she asked her grand-son to open the door and then her grand-son somehow opened the door of her room opening the has-ball with which her door was closed from outside. She also stated that when she came out from her room, her daughter-in-law namely Puja Koley came towards her coming out from the room of her (P.W-2) husband and she came with full of sweating and she tried to push her inside her room, but she rushed towards the room of her (P.W-2) husband. She also stated that at that time her daughter-in-law tried to restrain her saying that quarrel was going on in between her (P.W-2) husband and her (P.W-2) son, so they should not interfere. She also stated that but she succeeded to enter into the room of her husband and entering into the room of her husband, she found her son sitting on the chest of her husband and he was strangulating the neck of her husband with his both hands wearing gloves. She also stated that the accused Amit Koley also tied the mouth of her husband with *lungi*. She also stated that at the time of incident, her husband peed on his wearing pant. She also stated that then she tried to save her husband from the hand of her son Amit Koley and she repeatedly requested her son to leave her husband saying that “*chhere de....chhere de..... nahole tor baba mara jabe....*”. She also stated that when she was requesting her son, at that time her daughter-in-

law namely Puja Koley was also present there and then her daughter-in-law Puja Koley told her (P.W-2) son: “*Otakeo Dhoru.....Otakeo Mere Felo.....*” and her daughter-in-law tried to hold her for killing her, but she somehow escaped from the clutches of her daughter-in-law and then get down from the first floor and she came out from her house and she rushed towards the house of her *debor* namely Shambhu Koley. She also stated that she was not in a position to go in the house of her *debor* by running, her body was trembling due to fear and suffocation.

20. P.W-2 also stated that the name of the son of her *debor* is Bishal Koley and the name of the daughter of her said *debor* is Sangita Koley. She also stated that the house of her *debor* is situated at 5/6 minutes walking distance from her house. She also stated that reaching in the house of her *debor*, she told to Bishal Koley: “*tor dada boudi tor jethuke marchhe.....*”. She also stated that hearing about the fact of incident from her, her *debor* and his son Bishal Koley came with her in her house. She also stated that when she came back in her house with her *debor* and his son namely Bishal Koley, they found that the body of her husband lying with sign of no life and blood was coming out from the mouth of her husband. She also stated that then her *debor* took her in his house. She also stated that on the date of the incident her daughter and her son-in-law were in their house (in the matrimonial house of her daughter) and then Bishal Koley made a phone call to the husband of her (P.W-2) daughter and at about 4.00 A.M her daughter along with her husband and her son came to the house of Shambhu Charan Koley and then her son-in-law made a phone call to the local P.S. and then police came to their house and took the body of her husband. She also stated that at evening time she went to the P.S for lodging written-complaint. She also stated that seeing the incident she was feeling very much unwell

and her blood pressure became high and she was feeling very much unwell on the next day of the incident also. She also stated that Sangita prepared the written-complaint in her laptop as per her instruction. She also stated that Sangita is the daughter of her debor namely Shambhu Koley. She also stated that at that time Sangita Koley was a student and she was unmarried. She also stated that after preparing the written-complaint by Sangita as per her instruction, she go through the contents of the written-complaint and after understanding the contents of the written-complaint, she put her signature on the same. The said written-complaint has been marked as **Exhibit No. P-3/P.W-2**.

21. P.W-2 also stated that when police came to their house for first time, she was not in a position to talk with them. She also stated that at that time she was not in a proper sense due to fear and her *debor*, the son of his *debor* Shambhu Charan Koley and her daughter identified her house and shown the P.O to the police. She identified her daughter-in-law Puja Koley in the court room and her son Amit Koley through V.C. She also stated that she was interrogated by the police and she gave her statement before the learned magistrate and the learned magistrate recorded the same and after recording her statement, learned magistrate read over the same before her and after understanding the same she put her signature on her recorded statement. The said recorded statement has been marked as **Exhibit No. P-4/P.W-2**. She also stated that her son and her daughter-in-law killed her husband for getting the whole property including the agricultural land and liquid money of her husband.

22. During cross-examination P.W-2 stated that in their first floor, there have three bed rooms, one kitchen room, one

bathroom and one store room and one drawing room. She also stated that their balcony is situated on the southern side of their house on the first floor. She also stated that there was no scope for any person to enter into the balcony of their first floor except through the staircase and the balcony was covered by iron grill. She also stated that they used to keep their main gate under lock and key in the night and no person could enter into their house if main gate remains under lock and key. She also stated that there were no houses situated adjacently to their house and after crossing the road, there have two houses on the southern side of their house. She also stated that except said two houses there were no houses situated near their house. She also stated that on the ground floor there have three rooms and in the one room on the ground floor, there had one cot and one sofa but no one used to use that room as bed room.

23. P.W-2 also stated that the said business of her husband was not the family business and said business was exclusively of her husband. She also stated that before the incident, her daughter-in-law had cordial relation with her. She also stated that since the age of one year of her grand-daughter, her mother used to assault on her head (*oor ma oor mathay thuke thuke oor matha kharap kore diyechhilo*) and that is why her grand-daughter was suffering from mental disease. She also stated that her husband used to bear all the medical expenses of her grand-daughter. She also stated that her husband also borne all the expenses of his son and his daughter-in-law. She also stated that they went to tour many times at many places in India and they also went to foreign tour for one time before the incident. She also stated that for the above-mentioned tour, her husband spent huge amount of money and her husband used to spend for the expenses for the above-mentioned tour from his own earning. She also stated that they spent ten days in

Switzerland and they also used to go in different tour at different times for 10/12 days at a time. She also stated that at night they only used to lock the main gate under lock and key. She also stated that near about 10.00 P.M she went to sleep with her grand-daughter. She also stated that it is fact that her grand-daughter was 50% mental retarded. She also stated that when she tried to open her door, she found it was not opening and she found through the window that her grand-son was standing on the balcony, she asked her grand-son why he is standing there and she asked him where his parents are, he replied that his parents are not in his room and then she asked her grand-son to open her door from outside and her grand-son loose the hash-ball of her door from outside and opened her door. She also stated that regularly her husband also used to keep his door close without locking his door with chhitkini, hash-ball or lock and key (*dorja gulo sudhu bhejiye rakha hoto*).

24. Shambu Charan Koley has been examined as P.W-3. He is the debor (brother-in-law) of P.W-2. P.W-3 stated that the incident was taken place on 07.07.2023 at about 1.00/ 1.30 A.M at night when he was sleeping at his house. He also stated that when he was sleeping in his house, his boudi Sabitri Koley came in front of his house and called them from the outside of their house and hearing the calling of his boudi, he woke up from the sleep and opened the door and then and there his boudi Sabitri Koley entered into their room and she was crying and she asked him to go with her in her house. He also stated that Sabitri Koley told him “*Tumi Tara Tari Amar Sathe Cholo..... Amar Chhele and ebond Amar Bouma Tomar Dada Ke Mere Felbe.....*”. He also stated that the distance between his house and the house of his elder-brother Aditya Koley is about 8/10 minutes walking distance. He also stated that then and there he rushed towards the house of his elder-brother

Aditya Koley along with his son and his boudi Sabitri Koley with his motor-bike. He also stated that reaching in the house of his elder-brother/place of occurrence (here-in-after it will called as P.O), they entered into the room of his elder-brother Aditya Koley and found that body of Aditya Koley was lying with the sign of no life and it appears to him that Aditya Koley expired. He also stated that he saw the pant of her elder-brother Aditya Koley was wetly. He also stated that he asked Amit Koley saying that “ Tui Eta Ki Korli.....” and Amit Koley replied him that “Ashanti Theke Rehai Pete Ami Ei Kaj Ta Korechhi”.

25. P.W-3 also stated that his elder-brother had oil mill, wheat grinding mill and he had some other business and he had also 5 bighas of landed property and his brother Aditya Koley used to keep all his earning in his custody and he used to go to the tour and used to spend his money as per his own wish and it was not acceptable to his son Amit Koley and his daughter-in-law Puja Koley and on that issue there was dispute in between Amit Koley and Aditya Koley. He also stated that his brother Aditya Koley used to narrate about the incident during his life time. He also stated that on the issue of his brother’s traveling and spending money, wife of Amit Koley used to quarrel with her husband Amit Koley on daily basis.

26. P.W-3 also stated that then they returned back to their house from the house of Aditya Koley and his son Bishal Koley made a phone call to Karabi Koley and Prabir Koley and at about 4.00/4.30 A.M his niece Karabi Koley and her husband Prabir Koley came to their house and Prabir Koley made a phone call to the local P.S. and then police came to the house of Aditya Koley and took the dead body of Aditya Koley to Tarakeswar Hospital and they all accompanied

them and after examining Aditya Koley, doctor declared Aditya Koley as brought dead and dead body of Aditya Koley was sent for P.M examination. He also stated that at the evening time, they returned back to their house and after returning back, they took Sabitri Koley in the local P.S at evening time and then Sabitri Koley lodged written-complaint. He also stated that his daughter Sangita Koley typed the written-complaint in his laptop. He also stated that on 09.07.2023 at about 4.00 / 4.30 P.M police came with Amit Koley to the house of Sabitri Koley i.e on the P.O for investigation and police seized one Lungi and two hand gloves from the bed room of Amit Koley. He also stated that he gave his statement before the magistrate at the time of investigation. From his evidence it appears that in the first floor of the house of Aditya Koley, there have four rooms and the family members of Aditya Koley used to use three rooms for their sleeping and one room as a store room and Sabitri Koley used to sleep with her grand-daughter in one room and in the room adjacent to her room, her son used to sleep with his wife and son and in the room next to the room of her son, her husband i.e Aditya Koley used to sleep and on the ground floor there was one room which they used to use for keeping their agricultural products.

27. Bishal Koley has been examined in this case as P.W-4. He stated that Sabitri Koley is his aunt (mejo jethima). He also stated that Aditya Koley was his mejo jetha (middle uncle). He also stated that Aditya Koley is no more in the world and he was murdered by his own son Amit Koley and his daughter-in-law Puja Koley in his house. He also stated that on 07.07.2023 at about 1.15 A.M his said aunt Sabitri Koley came to their house crying and at that time they were sleeping. He also stated that hearing the shouting of her said jethima, they woke up and his father opened the main door of their house and then and there his

said jethima entered into their house and told his father that “*tor bhaipo ebong tor bouma tor dada ke mere felchhe..... tui taratari chol.....*”. He also stated that at that time he was also present there. He also stated that hearing the same his father went to the house of his said jethima (aunt) along with him and his said aunt (jethima) with his motor-cycle/byke. He also stated that reaching in the house of his said jetha, they entered into the room of said jetha and they found his said jetha lying on the bed with sign of no life. He also stated that they called him (his jetha) but he did not give any response. He also stated that then his father asked the accused Amit Koley “*tui eta ki korli... tui kajta ki thik korli.....*” and the accused person Amit Koley was standing on the balcony on the first floor and Amit Koley replied saying that “*Asantir theke rehai pawar jonno ami eta korechhi....*”. He also stated that all the rooms, on first floor of his jetha, were attached with the said balcony. He also stated that his said jethu had one mill and he had also agricultural property and whatever he used to earn from his property, he used to keep the same in his custody. He also stated that his jethu and jetha also used to go in tour sometimes, but it was not acceptable to Amit Koley and Puja Koley and on that issue, there was dispute in between the accused persons and his jethu and jethima. He also stated that on fear they came back to their house with his jethima as the attitude of the accused person Amit Koley was furious. He also stated that the daughter of his said jethu used to reside in her matrimonial house at Singur. He also stated that returning back to their house, he made a phone call to his elder-sister Karabi (his cousin elder-sister/daughter of his said jethu) and her husband Prabir Koley and narrated the incident to them. He also stated that then Karabi and Prabir Koley came to their house at about 4.00/4.30 A.M on that day and after reaching in their house, his jamaibabu Prabir Koley informed the matter to the local P.S over telephone and then they all the

persons including his jethima, went to the house of his said jethima. He also stated that when they went to the house of his jethima along with Karabi and Prabir, they did not find Puja Koley and her children in the said house and on reaching in the house of his jethima, they found that police had already arrived there. He also stated that then they brought his said jethu in the hospital and after examining his jethu, doctor declared him brought dead and then the dead body of his jethu was sent for post mortem examination in another hospital and after post mortem, they took the dead body and performed last funeral rituals. He also stated that after returning from funeral rituals, his jethima was not in well condition and she was crying and then they took their jethima in the local P.S for lodging written complaint. He also stated that his elder-sister Sangita Koley prepared the written-complaint in her laptop as per the instruction of his said jethima Sabitri Koley and after preparing written complaint in her laptop, Sangita took the print out of the same from her printer and after taking the print out, his elder-sister Sangita read over and explained the same to his said jethima Sabitri Koley and after understanding the contents of the same, his jethima Sabitri Koley put her signature on the said written-complaint and then he himself, his jethima, Karabi, Prabir went to the Tarakeswar P.S along with mama (maternal uncle) of Karabi with the vehicle of said mama and after reaching the tarakeswar P.S, his jethima lodged the written-complaint. He also stated that after lodging the written-complaint police advised them to go to the house and then they returned back in the house of their jethima Sabitri Koley. He also stated that but reaching there, they did not find the accused Amit Koley in their house. He also stated that at about 8.00 P.M police again came in the house of his jethima/ P.O. He also stated that when police came there his jethima was crying and they all shown the room of his jetha Aditya Koley to the I.O. He also stated that Police searched the whole house and

interrogated all of them and recorded his statement and the statement of his elder-sister Karabi (jethtuto didi), his jamaibabu Prabir, his jethima Sabitri Koley, and his father Shambhu Charan Koley. He identified both the accused. He also stated that the accused Amit Koley is his cousin brother and Puja Koley is his boudi and Puja Koley is the wife of Amit Koley. He also stated that he gave his statement before the learned magistrate and the learned magistrate recorded the same and after recording his statement, learned magistrate read over the same before him and after understanding the same, he put his signature on his recorded statement. His recorded statement has been marked as **Exhibit No. P-8/P.W-4.**

28. Prabir Koley has been examined as P.W-5. He is the son-in-law of the deceased Aditya Koley. He also stated that Sabitri Koley is his mother-in-law and Aditya Koley was his father-in-law. He also stated that Aditya Koley is no more in the world and he was murdered by his own son Amit Koley and his daughter-in-law Puja Koley in his house by conspiring with each other. He also stated that on 07.07.2023 at about 2.00 A.M his brother-in-law Bishal (*khurtuto shala*) made a phone call to him and informed him that Amit Koley and Puja Koley killed his father-in-law. He also stated that then he asked his brother-in-law whether they informed the matter to the local P.S or not and his brother-in-law Bishal told them that his hand and legs were trembling on fear, so he did not take any step against the accused persons and he also told him that “*tomader matter.....ja korar tomra ese koro.....*”. He also stated that his brother-in-law (Bishal) asked him to come to their house immediately, and he then informed the matter to his wife. He also stated that at about 4.00 A.M to 4.30 A.M he reached in the house of his *khurtuto Shosur* with his wife and younger son and reaching

there he found that his mother-in-law was crying and his mother-in-law narrated the whole incident to him and his wife. He also stated that his mother-in-law told them that she saw the accused Amit Koley to kill her husband, Aditya Koley. He also stated that his mother-in-law asked him to take appropriate step against the accused persons and then he made a phone call to 101. He also stated that police authority asked the location of the P.O and he told them the exact location of the incident over telephone and then they all went to the house of his father-in-law Aditya Koley from the house of his *khurtuto Shosur* Shambhu Charan Koley. He also stated that reaching in the house of his father-in-law, they directly went in the first floor and entering into the room of his father-in-law, they found that his father-in-law was lying on his bed without sign of any life. He also stated that he also found the wearing pant of his father-in-law was in wetting condition. He also stated that said pant was of nassi colour and seeing the same it appears to him that his father-in-law urinated on the said pant. He also stated that reaching in the house of his father-in-law, they found Amit Koley loitering on the balcony in the first floor. He also stated that said balcony is situated on the southern side of the bed rooms of his father-in-law Aditya Koley and the accused Amit Koley. He also stated that he asked Amit Koley why he killed his father and Amit Koley was trying to give reply, but he did not give any heed towards his words on hate. He also stated that police also came to the spot after their reaching in the house of his father-in-law. He also stated that then they brought his father-in-law in the Tarakeswar rural Hospital by one vehicle namely Chota Hati and said vehicle was arranged by police personnel from the house of one Buddhadeb Mondal. He also stated that house of Buddhadeb Mondal is situated opposite side of the house of his father-in-law. He also stated that the house of one Bag is situated exactly on the opposite side of the house of his father-in-law intervened by one road and

the house of Buddhadeb Mondal is situated on the western side of the house of said Bag. He also stated that his *Khurtuto Shosur, Khurtuto Shala*, his wife and his mother-in-law also went to hospital with him. He also stated that his *mama shoshur* Srikanta Das also went to the Tarakeswar hospital with his vehicle. He also stated that at about 5.45 A.M they reached at Tarakeswar hospital and after examining his father-in-law, doctor declared him brought dead.

29. P.W-5 also stated that then police officer inquired the dead body of his father-in-law and prepared a report in this respect in their presence and his mother-in-law, his wife, the attending doctor and other hospital staffs put their respective signatures on the said inquest report. He also stated that then the dead body of his father-in-law was sent for post mortem examination in the Serampore hospital and police asked them to go there and then he along with his *khurtuto Shosur* Shambu Charan Koley, *khurtuto shala* Bishal Kholey and his wife Karabi went to the Serampore walsh hospital. He also stated that his *mama shosur* Srikanta Das, taking his mother-in-law, returned with his vehicle in the house of his *khurtuto shasur* Shambhu Charan Koley. He also stated that after completion of post mortem, the dead body was handed over to them and they took the dead body of his father-in-law in *Chatra Kalibabur Shamshan* and performed last funeral rituals. He also stated that said *chota hati* vehicle took the dead body of his father-in-law in the Tarakeswar hospital, then in the Serampore Walsh hospital, then in the *Chatra Kalibabur Shamshan* and after completion of funeral rituals, they returned from the said *Shamshan* with the said Chota Hati vehicle and after completion of last funeral rituals, they returned to the house of his *khurtuto shosur* Shambhu Charan Koley at about 5.30/6.00 P.M and after returning from funeral rituals, he found that his mother-in-law was not in

well condition and she was crying and then he along with his *khurtuto Shosur* tried to make his mother-in-law understand the situation and asked her for filing written-complaint. He also stated that the daughter of his kaka sasur namely Sangita Koley @ Tinku wrote the written-complaint as per instruction of his mother-in-law. He also stated that Sangita Koley typed the written-complaint in her laptop and took the print out of the same and after taking the print out, Sangita Koley read over and explained the same to his mother-in-law Sabitri Koley and after understanding the contents of the same, his mother-in-law Sabitri Koley put her signature on the said written-complaint. He also stated that then he himself, his mother-in-law, his *khurtuto Shosur*, his *khurtuto shala* Bishal, his wife Karabi went to the Tarakeswar P.S along with his mama shosur (maternal-father-in-law) with his vehicle and on reaching the Tarakeswar P.S, his mother-in-law lodged the written-complaint.

30. P.W-5 also stated that after lodging the written-complaint, police advised them to go to the house of his father-in-law and they assured them that they will reach the P.O shortly. He also stated that then they returned in the house of his father-in-law and at about 8.00 P.M police again came in the house of his father-in-law/ P.O. He also stated that when police came there, his mother-in-law was still crying and they all shown the room of his father-in-law Aditya Koley/P.O to the I.O. He also stated that police searched the whole house and prepared a rough sketch map and interrogated his mother-in-law along with them and recorded his statement and the statement of his wife, his *khurtuto shala* Bishal, his mother-in-law Sabitri Koley, his uncle-in-law Shambhu Charan Koley. He also stated that on 09.07.2023, police again visited in the house of his father-in-law along with the accused person Amit Koley at afternoon and at that time he himself and his *khurtuto Shosur* Shambhu

Charan Koley also came to the P.O. He also stated that the accused Amit Koley brought out one multi colour check lungi and one pair of hand gloves from his bed room and handed over the same to the I.O. He also stated that police prepared a seizure-list in this respect and he himself and his *khuturo shosur* put their signature on the said seizure-list. The said seizure-list has been marked as **Exhibit No. P-10/P.W-5**. He also identified said multi colour check lungi which has been marked as Mat Exhibit No. P-I/P.W-3). He also identified said hand gloves which has been marked as Mat Exhibit No. P-II/P.W-3. He identified both the accused persons in the court room. He also stated that the accused Amit Koley is his brother-in-law and Puja Koley is the wife of Amit Koley.

31. Sangita Koley has been examined as P.W-6. Sangita Koley is the scribe in this case and she is the daughter of Shambhu Charan Koley. She stated that Aditya Koley was her *mejo jethu* and Aditya Koley is no more in the world. She also stated that on 07.07.2023 Aditya Koley was murdered by his own son Amit Koley and his daughter-in-law Puja Koley in his house by conspiring with each other. She also stated that on 07.07.2023 at about 2.00 A.M she was sleeping in her house and all on a sudden she heard crying sound and then her brother Bishal called her and she wake up from her sleep and her brother told her that her jethima Sabitri Koley came to their house and informed them that Amit Koley and Puja Koley killed their *mejo jethu* namely Aditya Koley. She also stated that then her brother asked her to give the phone number of Karabi Koley. She also stated that Karabi Koley is the daughter of Aditya Koley. She also stated that then her brother Bishal Koley made a phone call to Karabi Koley and her husband Prabir Koley and informed them that Amit Koley and Puja Koley killed Aditya Koley. She also stated that on the next day early morning (near

about 5.00 P.M) she went to the house of her *mejo jethu* Aditya Koley with her brother.

32. P.W-6 also stated that before evening, her father, her brother, Prabir Koley and others returned to their house after performing funeral rituals of her *mejo jethu* Aditya Koley. She also stated that her *mejo jethima* Sabitri Koley was crying and after returning from the funeral rituals, her father and others tried to console her and told her to lodge a written-complaint. She also stated that her *mejo jethima* Sabitri Koley narrated the whole incident to her and as per her instruction she typed the written-complaint in her laptop and then she took the print out of the same and after taking the print out, she read over and explained the same to Sabitri Koley and after understanding the contents of the same, Sabitri Koley put her signature on the said written-complaint in her presence. The said written-complaint has been **marked as Exhibit No. P-3/P.W-2.**

33. Buddhadeb Mondal has been examined as P.W-7. He is the driver of vehicle namely Chhota Hati. He stated that he has a vehicle namely Chhota Hati and he himself drives the said vehicle. He also stated that Sabitri Koley is his neighbour. He also stated that his house is situated opposite side of the house of Sabitri Koley intervened by one road and the house of Bag family is situated just beside their house. He also stated that he had visiting terms with the family of Sabitri Koley and the family members of Bag family had no visiting and talking terms with the family of Sabitri Koley. He also stated that the name of the husband of Sabitri Koley is Aditya Koley and he is no more in the world. He also stated that on 07.07.2023 he was murdered by his own son Amit Koley and his daughter-in-law Puja Koley in his house by conspiring

with each other. He also stated that on 07.07.2023 after returning from his work, he slept and on the next day early morning at about 5.00 A.M he heard hue and cry coming from the house of Aditya Koley and hearing the same he rushed to their house and on reaching there he found the dead body of Aditya Koley lying on the bed of Aditya Koley. He also stated that on being asked, Sabitri Koley told him that Amit Koley and Puja Koley killed Aditya Koley. He also stated that as per direction of police he along with Prabir Koley and others brought the body of Aditya Koley from his bed room in his vehicle and took Aditya Koley in the Badyipur Hospital at Tarakeswar and after examining Aditya Koley, doctor declared him brought dead. He also stated that then as per direction of police he brought the dead body of Aditya Koley for post mortem examination in the Serampore walsh hospital as police asked to do so. He also stated that then he brought the dead body by his said vehicle in the Chatra Kalibabur Samsan and thereafter he returned to his home.

34. Dr. Atanu Kumar Paul has been examined as P.W-9. He stated that on 07.07.2023 he was posted at Tarakeswar Rural Hospital as medical officer. He also stated that since 08.00 P.M of 06.07.2023 till 10.00 A.M of 07.07.2023 he was in emergency duty at Tarakeswar Rural Hospital. He also stated that in the morning on 07.07.2023 one patient Aditya Koley was brought before him and he examined him and found that he was brought dead and accordingly, he informed the matter to the local P.S and sent the dead body of concerned patient to the Serampore Walsh hospital for P.M examination. He also stated that police conducted inquest on the dead body of Aditya Koley in his presence and he put his signature on the inquest report.

35. Dr. Avijit Roy has been examined as P.W-10. He stated that on 08.07.2023 he was posted at Serampore Walsh hospital as M.O and on that date, he conducted autopsy on the dead body of Aditya Koley, aged about 73 years, in connection with Tarakeswar P.S U.D Case No. 47/2023, dated 07.07.2023. He also stated that the dead body was identified by constable 304 Subhasish Paul of Tarakeswar P.S. He also stated that on conducting P.M examination on the body of Aditya Koley, he found several injuries over the dead body which has been mentioned in the P.M report, of which the most important injuries are : fracture and sub-luxation of hyoid bone and thyroid cartilage at places with extravasation of blood in and around fracture side. He also stated that in his opinion the cause of death was due to the effect **of throttling as** noted anti-mortem and homicidal in nature. He also stated that after P.M examination, he has preserved viscera which was handed over to the escorting police constable for sending the same to FSL. He also stated that thereafter he prepared the P.M report. The PM report has been marked as **Exhibit No. P-13/P.W-10.**

36. P.W.-11 is the I.O of this case. He stated that on 07.07.2023 he was posted as S.I in Tarakeswar P.S. and on 07.07.2023, S.I Anil Kumar Raj was the officer in-charge of the P.S. He also stated that on that day S.I Anil Kumar Raj received one written complaint from Sabitri Koley. He also stated that he worked with S.I Anil Kumar Raj for 1 (one) year and 6 (six) months and he knows his signature and handwriting in due course of official transaction. He proved the formal F.I.R which has been marked as **Exhibit-P-14/P.W.-11.** He also proved receiving endorsement along with signature of Anil Kumar Raj which has been marked as **Exhibit-P-3/2/P.W.-11.**

37. P.W.-11 also stated that SI Anil Kumar Raj endorsed the case to him for investigation and after receiving investigation, he perused the written complaint and left for the PO along with complainant and lady constable. He also stated that he visited PO and the relative of complainant also accompanied them in the P.O and the relative of the complainant shown the PO to him as the physical and mental condition of complainant was not stable. He also stated that he prepared the rough sketch map along with index. The rough sketch map and index have been marked as **Exhibit-P-15/P.W.-11 collectively**. He also stated that in the PO he recorded the statement of complainant Sabitri Koley and witness Sambhu Koley, Kaberi Koley, Prabir Koley and Bishal Koley. He also stated that he sent the de facto complainant Sabitri Koley and witness Sambhu Koley and Bishal Koley before the Magistrate for recording their statement. He also stated that returning from PO in the PS, he collected inquest report, dead body challan and the seized Alamat along with seizure list prepared in the UD case. He also stated that on 08.07.2023 he arrested Amit Koley. He identified the accused Amit Koley before the court through VC. He also stated that he took accused Amit Koley in PC and during PC period as shown by the accused he seized one old blue white black green color lungi and two yellow colour hand gloves and he seized those articles under a seizure list dated 09.07.2023. The seizure list has been marked as **Exhibit-P-10/1-P.W.-11**. He also stated that the accused stated before him during interrogation that if they give him opportunity, he will show the offending gloves and lungi. He also stated that he recorded the statement of the accused Amit Koley u/s 161 CrPC. He also stated that leading to his statement they recovered the above-mentioned articles from the bedroom of accused Amit Koley. The relevant portion of the statement of the accused has been marked as **Exhibit-P-16/P.W.-11**. He also identified

the seized gloves which has been marked as Mat Exhibit-II/P.W.-3. He also identified the said seized lungi which has been marked as Mat Exhibit-I/P.W.-3. He also stated that on 09.07.2023 he arrested another accused Puja Koley from the house of Swapan Samui from Bishnubati, Tarakeswar, Hooghly. He also identified the accused Puja Koley before the court. He also stated that he also examined other witnesses and recorded their statement. He also stated that he collected PM report and after completion of investigation he submitted charge-sheet against both the accused persons u/s- 302/201/34 IPC vide Charge-sheet No. 280/23 dated 11.09.2023.

38. **Delay in lodging FIR:** Learned defense counsel argued that the FIR was lodged in this case after 17 to 18 hours from the alleged time of the incident, from which it appears that the prosecution story may be concocted or motivated and afterthought. Ld. advocate for the accused persons further contented that as per version of prosecution, the alleged incident took place at about 01.00 hrs. on 07-07-2023 and FIR was lodged at about 19.15 hrs on that day, but there is no explanation that why FIR was lodged after lapse of 17-18 hours. Ld. Public Prosecutor submitted that there is no question of delay in lodging the FIR in this case. In this case, the own son of the de facto complainant killed her husband before her own eyes at mid night of the said fateful night, so, it is clearly imaginable that how the mental condition of the said unfortunate mother was at that time, which also clearly appears from the testimony of the prosecution witnesses. He also submitted that all male relative of the de facto complainant went to the local hospital with the dead body and then to Serampore Walsh Hospital for post mortem and thereafter for performing his last funeral ritual and thereafter they

brought the de facto complainant, aged lady, to the police station for lodging FIR, so 17/18 hours delay is natural.

39. *“When there is no enmity between the informant and the accused, there is no question of the former delaying deliberately the filing of the FIR, to involve the accused falsely”- Saktu Vs State of UP, AIR 1973 SC 760; 1973 Cr.L.J 599: (1973) 1SCC 202.* In the instant case in hand, there has no iota of evidence on record, from which it can be said that there was any enmity between the FIR maker and the accused. It should be kept in mind that in this case, the mother of the accused herself lodged the complaint against her own **only son**. There has no evidence on record to the effect that there was any enmity between the son and the mother before the incident. There has no evidence on record to the effect that there had any probable reason, for which the de facto complainant might have falsely implicate her own son in this case. The de facto complainant was cross-examined at a length, but no evidence came out from her testimony to the effect that there was any kind of enmity between the accused and the informant, for which the informant may falsely implicate the accused in this case. It appears from the testimony of prosecution witnesses that P.W-5 informed about the incident to the police by dialing on the 101 at about 4.30 A.M and then police came to the place of occurrence (hereinafter the place of occurrence will be called as P.O) and took the dead body in the hospital and then dead body was sent for post mortem and after performing funeral ritual, they took the de facto complainant in the P.S for lodging FIR. So, it appears that it has been done in natural flow. In the case of **Munsi Prasad vs State of Bihar, 2002 SCC (Cri) 175; (2002)1 SCC 351** it has been held that *“But even if there was delay, the plaintiff’s explanation for delay if satisfactory does not render the prosecution case*

in any way doubtful”-. “Delay in giving FIR even if not found satisfactory, by itself is no ground for disbelieving prosecution witnesses”- Rammurthi Vs State of Haryana, AIR 1976 SC 2455; 1976 Cr.L.J 1888; (1976)4 SCC 308. “The court must take into consideration the attending circumstances and take the realistic view in deciding the delay”- Ram Kumar Vs State of Haryana 1994 Cr.L.J 3836 (SC).

40. In this case it appears from the available material on case record and from the testimony of the prosecution witnesses that the de facto complainant is the aged lady, whose husband was killed by her only son before her own eyes and the incident was taken place at mid night and there was no one to help her and accordingly she took shelter to her debor (brother-in-law); and her said debor (P.W-3) along with his son and her went to the house of the deceased/P.O and on fear they returned to their house from the said house/P.O and made a phone call to the daughter of the deceased and at about 4.00 hrs/4.30 hrs, the daughter of the deceased along with her husband came to the house of P.W-3 and then P.W-5 (son-in-law of the deceased) made a phone call to the police and thereafter in the very morning police came to the P.O and police took the deceased Aditya Koley in the hospital and the doctor declared him brought dead and then dead body was sent for post mortem and then the relative of the deceased performed the last funeral ritual of the deceased at *shamshan ghat*(cremation ground/funeral ghat) and after returning from *shamshan ghat*/funeral ghat, they brought the de facto complaint in the P.S for lodging written complaint. The de facto complainant (P.W-2) stated in her deposition that seeing her son to strangulate her husband, she requested the accused to leave her husband but he did not leave him. She also stated that moreover, the accused

persons tried to catch her for killing her also and but she any how escaped therefrom and reached in the house of P.W-3 and informed them about the incident and then her *debor* (P.W-3) and her nephew (P.W-4) rushed to the house of deceased/P.O and seeing the situation of that house, they returned to the house of P.W-3 and her nephew Bishal Koley (P.W-4) made a phone call to her daughter and at about 4.00 P.M her daughter along with her husband (P.W-5) reached in the house of P.W-3 and then P.W-5 informed about the incident to police over telephone and then police came to the P.O and at that time her condition was not well due to fear and during evening time, she lodged the complaint. P.W.-3, 4, 5, and 6 all corroborated with the statement of the de facto complainant. P.W.-3, 4, 5, and 7 all stated that the police took the deceased in the hospital in the morning and the doctor declared him dead and then the dead body of the deceased was sent for post mortem and after post mortem, the last funeral ritual of the deceased was performed in the *shamshan* ghat. P.W.-3, 4, 5, and 6 also stated that after returning from *shamshan* ghat at evening time, the de facto complainant was taken to P.S for lodging complaint and she lodged the written complaint. It is clearly imaginable that what was the mental condition of the said unfortunate lady who saw, with her own eyes, her only son to kill her husband. In one side the deceased is the husband of the de facto complainant and on the other side, the accused is the son of said de facto complainant. In this case, de facto complainant was the only eye witness and she was aged lady and from the evidence of prosecution witnesses it appears that after the incident, the mental condition of the de facto complainant was very much unquiet and she was in trauma due to fear. Moreover, why a 63 years old mother will falsely lodge a complaint against her only son implicating him in a murder case. So, in view of this court, the delay has

satisfactorily been explained in this case and it will not corrode the prosecution case.

41. **Interested Witness :** Ld. defence counsel further contended that all the vital witnesses are the interested witnesses, so on the basis of their evidence it will not be safe to convict the accused persons. He further contended that P.W.-2, the de facto complainant, is the wife of the deceased Aditya Koley, P.W.-3 is the brother of the deceased, P.W.-4 is the nephew of the deceased, P.W.-5 is the son-in-law of the deceased and P.W.-6 is the niece of the deceased and they are all interested witnesses in this case and they might have deposed falsely to secure conviction of the accused persons. Ld. P.P contended that P.W.-2 is the eye witness in this case and her presence on the P.O at the time of incident has also been confirmed by other prosecution witnesses. Moreover, A-1 admitted at the time of his examination U/s 313 Cr.P.C. that hearing about the fact of incident from his mother, his uncle (P.W-3) and the cousin Bishal Koley (P.W-4) came with his mother in their house on that fateful night. He also admitted during his examination u/s 313 Cr.P.C in question no-52, that reaching in the house of deceased, P.W.-4/Bishal and others entered into the room of the deceased and they found that the deceased lying on the bed with sign of no life and on their call, the deceased did not give any response. Ld. P.P further contended that from the answer given by the A-1 to the question put to him, as mentioned above, it is clear that P.W.-2, seeing the incident, went to the house of P.W-3 and informed about the incident to P.W-3 and then her *debor* (P.W-3) along with his son (P.W-4) came to the house of deceased (P.O) with her (P.W.-2) and entered into the room of the deceased and they found the deceased lying on the bed with no sign of life and on their call, the deceased did not give any response. He further contended that

the prosecution witnesses are not only the relative of the deceased, but also, they are the relative of the accused. He further contended that P.W.-2 is the own mother of A-1, P.W.-3 is the own uncle of A-1, P.W.-4 is the own cousin of A-1, P.W.-5 is the own brother-in-law of the A-1 and P.W.-6 is the own cousin sister of A-1. The Ld. P.P further contended that there has no iota of evidence on record to the effect that any of the above-mentioned witnesses had any kind of enmity with the accused persons prior to the incident. So, the above contention of ld. defence counsel does not hold much more water.

42. In [Dharnidhar vs. State of U.P.](#), (2010) 7 SCC 759, the Hon'ble Apex Court held that there is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case; relevant portion thereof is quoted as under:" *There is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In the case of [Jayabalan v. U.T. of Pondicherry](#) [(2010)1 SCC 199], this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Court held as under:" 23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses, must not be pedantic. The court must be cautious in appreciating and accepting the evidence given*

by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim..... Similar view was taken by this Court in [Ram Bharosey v. State of U.P.](#)[AIR 2010 SC 917], where the Court stated the dictum of law that a close relative of the deceased does not, per se, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the Court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown over- board, but has to be examined carefully before accepting the same..... In the light of the above judgments, it is clear that the statements of the alleged interested witnesses can be safely relied upon by the Court in support of the prosecution's story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons, who are closely related to the deceased. When their statements find corroboration by other witnesses, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, and then we see no reason why the statement of so called interested witnesses cannot be relied upon by the Court."

43. In a very recent judgement rendered by Hon'ble Apex Court in [Baban Shankar Daphal and others vs. The State of Maharashtra](#), 2025 SCC Online SC 137 in respect of testimony of witness which should not be discarded merely because of relation with

victim, the Hon'ble Apex Court has, in paragraphs 27 and 28, held as under:"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 relative 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 relative 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."

44. In the instant case in hand, there is no evidence on record from which it may appear that any of the prosecution witnesses

has any previous grudge against the accused persons or that there had any previous enmity in between the prosecution witnesses and accused persons. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the Court only with that intention and not to further the cause of justice. Mere being a relative of the victim/deceased does not mean that he is an interested witness. There is no evidence on record from which it can be said that the prosecution witnesses have deposed before the court with the intention of securing the conviction of the accused persons out of vengeance or enmity or due to any disputes between them. Courts must assess the reliability, consistency, and coherence of their statements rather than labeling them as untrustworthy. In this case all prosecution witnesses supported the prosecution story and fully corroborated with the statement of the de facto complainant.

45. In the instant case, P.W.-2 is the de facto complainant and she is the wife of the deceased. But on the same time, she is the mother of the A-1, i.e the mother of the accused Amit Koley. As per her statement, she is the only eye-witness in this case. In this case, the alleged incident was taken place at mid night at about 01.00 A.M inside the house, i.e within the four wall, where both the accused persons including their children and the deceased and the de facto complainant used to reside, so, there is no scope of having any independent eye witness. In the instant case in hand, the allegation is that the own son of the deceased and the de facto complainant killed the deceased Aditya Koley in the bed room of the deceased at mid night at about 01.00 A.M, so, we cannot expect the presence of any independent witnesses at the place of occurrence (P.O) at the time of the incident. Moreover, the eye witness is not only the wife of the deceased, she is also the mother of the

A-1, so why she will depose against her own son/A-1 implicating him in a murder case and why she will implicate her only son/A-1 in a false case leaving the actual culprit.

46. The defence has not been able to bring any evidence on record to show that there was any enmity in between the accused persons and the de facto complainant or other prosecution witnesses. From the evidence of P.W.-2 it appears that she personally witnessed the incident. No suggestion was given to P.W.-2 stating that she was not present at the time of incident or in the fateful night of said incident in that house. Moreover, from the answer given by the accused to the question no-23 and 52, it appears that A-1 admitted the fact that P.W.-2, seeing the incident, went to the house of P.W-3 and informed about the incident to P.W-3 and P.W-3 along with his son (P.W-4) came to the house of deceased with P.W.-2 and entered into the room of the deceased and they found the deceased lying on the bed with no sign of life and on their call, the deceased did not give any response. So, this court does not find any reason for not relying upon the statement of P.W.-2. Moreover, P.W.-3 to P.W.-6 also supported the prosecution story and corroborated with the testimony of P.W.-2. All the prosecution witnesses including P.W.-2 were cross-examined at a length and none of them broke down during their cross-examination and none of them made any contradictory statement in respect of the core fact of the incident during their cross-examination. Moreover, each of the prosecution witnesses supported the prosecution case and corroborated with the statement of each other. So, this court does not find any reason for not relying upon the testimony of P.W.-3 to 6 also. From the evidence of prosecution witnesses it has firmly been established that the incident was taken place in the house of the deceased and the de facto complainant

was present in that house at the time of incident and she herself witnessed the incident with her own eyes.

47. **Contradiction:-** Ld. defence counsel contended that the prosecution witnesses stated about so much details of the fact of the incident in their deposition but those witnesses did not state all the details of the incident before the I.O u/s 161 Cr.P.C during investigation, which creates doubt about the veracity of the testimony of the prosecution witnesses and it appears that the witnesses are pro-active and they tried to exaggerate and embellish their statement at the time of deposing before the court to establish the prosecution case and it is one kind of contradiction. Ld P.P contended that none of the witnesses made any contradictory statement in respect of the core fact of the incident. He further contended that there is no evidence on record which shows that any of the witnesses made any statement in his/her deposition during their testimony before the court which is inconsistency with the statement of the concerned witnesses made before the I.O. He further submitted that the defence counsel could not have brought any portion of the statement of any witness, on record, made before the I.O u/s 161 Cr.P.C which contradicts with the statement of the concerned witnesses made during his/ her testimony before the court. Ld. defence counsel has also contended that there have many contradictions in between the content of FIR and deposition of P.W-2. On the other hand, the learned public prosecutor submitted that FIR is not an encyclopaedia of the prosecution case. He further submitted that there have no contradictions in between the contents of the FIR and deposition of P.W-2, in respect of the core fact of the incident. He further submitted that moreover, minor contradictions, which does not touch the core fact of the incident, will not corrode the prosecution case.

48. In legal parlance, a contradiction occurs when a witness's testimony in court differs from his statement made under Section 161 Cr.P.C during the police examination. An omission refers to instances where a witness introduces new facts in court that were not mentioned in his statement made under Section 161 Cr.P.C. Adverting to the question of when an omission amounts to a contradiction, the Explanation to Section 162 Cr.P.C clarifies that omissions in police statements can only be treated as contradictions if they are significant and relevant in the context of the case.

49. A discussion on these concepts would be incomplete without referencing the landmark judgment of **Tahsildar Singh v. State of U.P.**, which laid the foundational clarifications that have shaped all subsequent rulings since 1959. The terms "omission" and "contradiction" are thoroughly explained in this judgment. According to Justice Hidayatullah, a "contradiction" encompasses inconsistencies, variances, or opposition between statements. On the other hand, as per Justice K. Subba Rao, a "statement" means the act of stating or reciting, and "to contradict" means to assert the opposite, and thus, a statement cannot include something that was never stated. At first glance, this suggests that contradictions can arise only from statements, not omissions. However, His Lordship further held that the term "statement" not only encompasses what is expressly said but also includes implied words necessary for a full understanding or interpretation.

50. When an omission rises to the level of contradiction: Notably, to determine when a statement includes omissions by implication, Justice K. Subba Rao in **Tahsildar Singh case**, outlined three key principles. These principles played a key role in fully and properly interpreting such omissions. They are as follows: 1. The concept of a recital by necessary implication: A statement cannot include that which is not stated. But very often, to make a statement sensible or self-consistent, it becomes necessary to imply words which are not actually in the statement. Illustration: - Police examination: I saw A stabbing B at a particular point in time. Court testimony: I saw A and C stabbing B at the same point in time. In the statement before the police, the Court can imply the word “only” after “A” i.e. the witness saw A only stabbing B. 2. The concept of the negative or the positive aspect of the same recital: - Sometimes, a positive statement may have a negative aspect and a negative one a positive aspect. Illustration: - Police examination: A dark man stabbed B. Court testimony: A fair man stabbed B. The earlier statement must be deemed to contain the recital not only that the culprit was a dark-complexioned man but also that he was not of fair complexion. 3. Principle of inherent repugnancy: - There are occasions when the same person makes two statements at different times, and both cannot co-exist. There is an inherent repugnancy between the two; therefore, if one is true, the other must be false. Illustration: - Police examination: A, after stabbing B, ran away by a northern lane. Court testimony: Immediately after the stabbing, A ran away towards the southern lane. As he could not have run away immediately after the stabbing i.e. at the same point of time, towards the northern lane as well as towards the southern lane, if one statement is true, the other must necessarily be false. So, while these may not be omissions in the strict sense, the statement must be deemed to contain these omissions by

implication. However, it is important to note that not every omission qualifies as a contradiction for the purpose of discrediting the witness.

51. The question is whether the omission is on a vital aspect which the witness was normally bound or expected to disclose even without a question along with the other answers and whether the new version given in box on a vital aspect militates against what he already said and operates as an embellishment. That is a question of fact to be decided in each case. In the instant case in hand, the defence counsel could not have brought any portion of the statement of any witness, on record, made before the I.O which contradicts with the statement of the concerned witnesses made during his/ her testimony before the court.

52. Moreover, the concept of contradiction in criminal jurisprudence cannot be rigidly defined, as its significance varies from case to case. The Court must determine whether a contradiction is trivial or material enough to undermine the reliability of a witness's testimony. In doing so, the Court should evaluate contradictions in the broader context of the witness's evidence to reach a rational conclusion. On going through the deposition of the prosecution witnesses and their statement made u/s 161 Cr.P.C it is found that none of the prosecution witnesses made any contradictory statement in respect of the core fact of the incident. There is no evidence on record which shows that any of the witnesses made any statement in his/her deposition during their testimony before the court which is inconsistent with the statement of the concerned witnesses made before the I.O u/s 161 Cr.P.C. The ld. defence counsel could not have brought, on record, any portion of the statement of any witness made before the I.O u/s 161 Cr.P.C which contradicts with

the statement of the concerned witnesses made during his/ her testimony before the court. So, it cannot be said that the testimony of any prosecution witnesses contradicts with his/her previous statement made u/s 161 Cr.P.C.

53. Ld. defence counsel further contended that though I.O cited the name of 19 witnesses in the charge-sheet, but learned P.P has examined only 11 witnesses, leaving the independent witnesses, to suppress the actual fact of the incident. Ld. P.P contended that the public prosecutor has the discretion to choose which witnesses to be examined from the charge-sheet, the prosecution is not bound to examine every single witness listed in the charge-sheet especially to avoid repetitive and redundant evidence and to ensure a speedy trial. He further contended that P.P can drop witnesses if their evidence is repetitive, unnecessary, or if the P.P has credible information that witness has been own over or will not support the prosecution case. He further contended that if the public prosecutor decides to withdraw or not examine the witnesses listed in the charge-sheet, defence is free to cite and examine that person as defence witness, but the defence also did not examine any such witnesses. He further contended that among said not-examined eight witnesses, three witnesses are the relatives of the deceased and four witnesses are the technical witnesses like constable, home guard, R.O and J.M., so, it is not true that said 8 witnesses were independent witnesses; moreover, defence had every opportunity to examine those witnesses but the defence also did not examine them. Ld. P.P further submitted that for avoiding repetitions, he did not examine the other charge-sheeted witnesses; and among said witnesses, one was the wife of P.W-3 and one was the wife of P.W-5. So, this contention of ld. defence counsel does not hold any much more water.

54. It is fact that the public prosecutor has the discretion to choose which witnesses to be examined from the charge-sheet; the prosecution is not bound to examine every single witness listed in the charge-sheet especially to avoid repetitive and redundant evidence and to ensure a speedy trial. The P.P can drop witnesses if their evidence is repetitive, unnecessary, or if the P.P has credible information that witness has been own over or will not support the prosecution case. Moreover, as the public prosecutor decided to withdraw or not examine the witnesses listed in the charge-sheet, the defence had the opportunity to cite and examine that person as defence witness, but the defence also did not examine any such witnesses. So, it will not corrode the prosecution case.

55. One question may arise that why prosecution did not examine the grand-daughter of P.W-2 and why I.O did not cite her name as witness in the charge-sheet. From the evidence of P.W-2 it appears that the grand-daughter of P.W-2 is abnormal girl. Defence also admitted the same in the cross-examination of Pw-2. It is admitted fact that the grand-daughter of P.W-2 is abnormal one. A-1 also admitted the said fact in his examination u/s 311 of Cr.P.C. So, there was no question of examining the grand-daughter of P.W-2 as witnesses. Moreover, both the children of the accused used to reside with A-2.

56. This court did not find any major contradictions in between the contents of the FIR and deposition of P.W-2, in respect of the core fact of the incident, which can corrode the prosecution case. The court must examine whether the discrepancies go to the roots in the matter. In the **State of U.P vs M.K.Anthony (1985) 1SCC 505**, the Supreme Court held that “*minor discrepancies on trivial matter not*

touching the core of the case, hyper-technical approach to technical error not going to the roots, would not justify the rejection of the evidence as a whole.....Even honest and truthful witnesses may differ in some details unrelated to the main incident because of power of observation, retention, and reproduction differ with individuals.” Only essential or broad picture needs to be stated in the FIR. All minute details need not be mentioned herein. It is not a verbatim summary of the prosecution case. It may not even be necessary to catalogue the avert acts therein- Baldev vs State (1995)6 SCC 593. FIR is not a chronicle of exhaustive details of the occurrence nor is it a catalogue of everything including minor particulars of the event which took place- State vs Harban Sahai – (1998)6 SCC 05.

57. Even in legal settings, minor discrepancies relating to the time of an incident and subsequent event are often considered normal and do not necessarily undermine the credibility of the witness’s overall testimony. Human memory can be imperfect, particularly after a lapse of time, and due to their background and potential cross examination style, might have minor variation in their recollection of details like the exact time of an event. These minor inconsistencies are often viewed as natural and not indicative of deliberate falsehoods, especially if the core details of the incident are consistent. The memory of incident’s timing and subsequent event might be approximate rather than exact. Minor discrepancies in trivial matters, such as the exact time, are generally not considered fatal to the witness’s credibility if the core details of the incident are consistent. The focus is on whether the witness’s account of the main event is believable and inspires confidence. Court often considers the context of the testimony and the circumstances surrounding the incident when

evaluating discrepancies, a witness being cross examined at length might become confused and make inconsistent statement, which should not be given undue weight. It is crucial to distinguish between minor discrepancies and material contradictions. Minor discrepancies, like a slightly off time are not as significant as contradictions that strike at the heart of the prosecution's case or cast serious doubt on the witness's truthfulness.

58. **Evidence of eye-witness-** In a recent judgement rendered by Hon'ble Apex Court in [Shahaja @ Shahajan Ismail Mohd. vs. State of Maharashtra](#), (2023) 12 SCC 558 has observed that the appreciation of ocular evidence is a hard task and has summed up the judicially evolved principles for appreciation of ocular evidence in a criminal case, which is quoted as under: "*The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under: 27.1 While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. 27.2. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by*

the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. 27.3 When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. 27.4. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. 27.5. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny. 27.6. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen. 27.7. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details. 27.8. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another. 27.9. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder. 27.10. In regard to exact time of an incident, or the

time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person. 27.11. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on. 27.12. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him. 27.13. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

59. To put it simply, in assessing the value of the evidence of the eye- witnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending

to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.

60. Now the question is: whether the prosecution has been able to prove the presence of the P.W.-2 on the P.O. at the time of incident or not. It is very important question in this case that whether P.W.-2 (wife of the deceased) was present at the P.O at the time of incident or not. The defence did not give any denial to the fact that on the date of incident P.W.-2 was present in that house (P.O). Moreover, during examination of the accused Amit Koley u/s 313 Cr.P.C, he admitted that her mother informed about the incident to her debor (P.W-3) at that night and on the said fateful night, getting the information from P.W.-2 (de facto complainant), P.W.-3 along with Pw-4 and P.W.-2, came to that house (P.O) on that very night and entering into the room of the deceased, they found the deceased lying on the bed with no sign of life and they called the deceased but the deceased did not give any response to their call. In this case, P.W.-2 is the wife of the deceased and the mother of A-1. It is admitted fact that they all the six family members, including P.W.-2 and the deceased, used to reside in the said house (P.O) and they used to sleep on the first floor of the said house (P.O). During examination of the accused persons u/s 313 Cr.P.C, both the accused persons admitted, in the question no-7 & 8 put to them, that

their house (P.O) is two storied building and on the first floor there have four rooms and at the time of the incident their family consisted of six members including the deceased. They also admitted that they all, including them, used to reside in the first floor of their house and P.W.-2 used to sleep with her grand-daughter in one room and in the room, adjacent to her room, the accused persons used to sleep with their son and in the room, next to the bedroom of the accused, the husband of P.W.-2 used to sleep and they used to use another room as store room. P.O is the house of the husband of the de facto complainant and it is admitted fact that P.W.-2 used to sleep in one room situated on the first floor of that building/house. The defence did not take any such plea that on the date of incident, P.W.-2 was not present in that house or that P.W.-2 was present in any other place.

61. From the evidence of P.W.-2, it appears that near about 10.00 P.M, she went to bed with her grand-daughter for sleeping and on that night at about 12.30 A.M / 1.00 A.M she heard shouting of her husband and when she came out from her room, her daughter-in-law namely Puja Koley (A-2) came towards her coming out from the room of the deceased Aditya Koley and she came with full of sweating and she tried to push her (P.W.-2) inside her (P.W.-2) room, but she (P.W.-2) rushed towards the room of her (P.W.-2) husband. P.W.-2 also stated that at that time, her daughter-in-law Puja Koley (A-2) tried to restrain her saying that quarrel was going on in between her (P.W.-2) husband (deceased) and her (P.W.-2) son (A-1), so they should not interfere. P.W.-2 also stated that but she succeeded to enter into the room of her husband and entering into the room of her husband, she found her son sitting on the chest of her husband and he was strangulating the neck of her husband with his both hands wearing gloves. It also appears from

the evidence of P.W.-2 that she requested her son (A-1) to leave her husband, but the accused Puja Koley (A-2) asked the accused Amit Koley (A-1) to kill her (P.W.-2) also and the accused Puja Koley tried to catch her, but she somehow escaped from that house and reached in the house of her debor (brother-in-law/Pw-3), which is situated at a 5 (five) minutes walking distance, and informed about the same to P.W-3 and thereafter she along with Pw-3 and Pw-4 returned to their house and they found Aditya Koley lying on his bed without sign of any life. P.W.-3, 4 and 6 all corroborated with the statement of P.W.-2. P.W.-3, 4 and 6 all stated that P.W.-2 went to their house at midnight at about 01.00 A.M to 01.30 A.M on 07-07-2023 and informed about the incident to P.W.-3 in presence of P.W.-4 and then P.W.-3 and 4 went to the P.O. with P.W-2. Accused Amit Koley also admitted during his examination u/s 313 Cr.P.C that P.W.-3 and 4 came to their house/ P.O along with his mother (P.W.-2) on that very night. So, from the testimony of P.W.-2, 3, 4, 5, and 6 it is very much clear that on that very night P.W.-2 was present in her house/P.O and she saw the incident with her own eyes and seeing the incident, she went to the house of P.W-3 and she informed P.W-3 about the incident and then P.W-2 came back to her house with P.W-3 & P.W-4. So, the presence of P.W -2 in that house on that very night has firmly been established from the corroborated testimony of prosecution witnesses.

62. **Faulty investigation:** - Ld. defence counsel contended that the investigating officer has seized the said gloves and lungi but he did not send the same to FSL for examination and report, so, it cannot be said that prosecution have been able to prove the case beyond reasonable doubt. He further submitted that I.O had the lapses in the investigation. He further submitted that lapses of the I.O to send the

seized article to FSL create doubt in mind about the truthfulness of the alleged incident and the benefit of doubt will go in favour of the accused. This contention of Id. defence counsel does not hold much more water. Ld. P.P submitted that the eye-witnesses supported the prosecution story and P.W-2 stated that she saw the accused persons to assault her husband by throttling and as result he succumbed to death, and the medical report/P.M report also corroborated with evidence of the eye-witness, and other prosecution witnesses also fully corroborated with the testimony of P.W.-2/eye-witness, so, not sending the seized article to FSL will not corrode the prosecution case. He further submitted that testimony of eye-witnesses will prevail over the evidence of expert. He further submitted that why a 63 years old mother will depose against her only son knowing fully about the grave consequences of the same.

63. It is fact that in this case, I.O seized the offending gloves and lungi but he did not send those articles to FSL. It may be the negligence on the part of the I.O for not sending those seized articles to FSL. In view of this court, it will not corrode the prosecution case as the reliable and credible eye-witness supported the prosecution story and from her evidence the prosecution case has firmly been established. Even non seizure of incriminating weapons will not damage the case of prosecution. In this regard Hon'ble Calcutta High Court, in the case of **Dhiren Chandra Barik vs State**, observed that "*in our considerable view omission or negligence of the investigating agency (i) to seize the weapon of offence, i.e, knife, (ii) to send the weapon of offence and blood sample to its forensic test and also (iii) to cause production of the seized bicycle during trial cannot be ground to disbelieve the prosecution witnesses including the sole eye witness, i.e, deceased's son who also sustained injury in the same occurrence*".

64. In **Paras Jadav and others vs state of Bihar**, **AIR 1999 SC 644, 1999 Cri.L.J 1122**, it was held that *if the lapse and omission is committed by the investigating agency or because of negligence, the prosecution evidence is required to be examined de hors such omission to find out whether said evidence is reliable or not. The contaminated conduct of officials should not stand on the way of evaluating the evidence by the courts; otherwise, the designed mischief could be perpetuated and justice could be denied to the complainant party.*

65. In the case of **Karnel Singh Vs State of M.P**, **1995 Cri.L.J 4173; AIR 1995 SC 2472**, Hon'ble Supreme Court observed that *"notwithstanding our unhappiness regarding the nature of Investigation, we have to consider whether the evidence on record, even on sticks scrutiny, establishes the guilt. In cases of defective investigation, the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of investigating officer if the investigation is designedly defective".*

66. The non-seizure and non-production of the weapon of offence and other article is not **fatal** for the **prosecution** case as it is not a substantive piece of evidence. It is merely a corroborative piece of evidence and its seizure is the responsibility of the investigating agency. The injured persons or victim party cannot be denied justice merely because there is a flaw or defect in the investigation. The justice cannot be snatched from the hands of the victim party on account of the fault of third party i.e. investigating agency, on which they admittedly do

not have any control. The observations made by Hon'ble Apex Court in case titled as [State of W.B. Vs. Mir Mohammad Omar & Ors.](#) (2008) 8 Supreme Court Cases 382, are relevant and reproduced herein as under: "*Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation.*"

67. A person can be convicted based solely on the testimony of eye witness, provided that the evidence is reliable and credible. The prosecution must establish a complete chain of circumstances that points to the guilt of the accused, and the evidence must be beyond reasonable doubt. It is crucial that the eye witness's testimony is not only corroborative but also consistent with overall narrative of the case. In the instant case in hand, on careful scrutiny of the evidence of the eye-witness and other prosecution witnesses it is found that the evidence of the prosecution witnesses is reliable and credible; and there is no reason for not placing reliance upon the testimony of the eye-witness of this case and other prosecution witnesses in this case.

68. In this instant case, P.W.-2 is the only eye-witness who personally saw the A-1 strangulating the neck/throat of the deceased Aditya Koley. P.W-3 to P.W-6 are the witnesses to subsequent

event. In this case, P.W.-2 is the most reliable witness. There is no reason for assuming that P.W.-2 has deposed falsely. Why P.W.-2 will depose falsely against her own son, labelling an allegation of committing murder of his own father, knowing the grave consequences of the same. As already stated, P.W.-2 is not only the wife of the deceased Aditya Koly but also, she is a mother of the accused Amit Koley (A-1). While a 63-year-old lady was deposing against her own son labelling an allegation that her son (A-1) killed her husband before her own eyes, what was her mental condition at that time. There is no evidence on record to the effect that there had any enmity in between the mother (P.W.-2) and son (A-1) at any point of time. Even there is no evidence on record to the effect that there had any quarrel in between the mother-in-law (P.W.-2) and daughter-in-law (A-2) at any point of time. So, in this case, P.W.-2 is the most reliable witness and there have no reason for not placing reliance on her evidence. A 63 years old mother will not give any false evidence against her own son without any grave reason.

69. From the evidence of P.W.-2, it appears that their house is two storied building and on the first floor there have four rooms and at the time of the incident, their family consisted of six members including her husband and they all used to reside in the first floor of their house. It also appears from her evidence that she used to sleep with her grand-daughter in one room and in the room, adjacent to her room, her son used to sleep with his wife and son and in the room, next to the room of her son, her husband used to sleep and they used to use another room as store room. A-1 also admitted said fact during his examination u/s 313 Cr.P.C.

70. From the testimony of P.W.-2 it also appears that near about 10.00 P.M, she went to bed with her grand-daughter for sleeping and on that night at about 12.30 A.M / 1.00 A.M she heard shouting of her husband. It also appears that then and there she tried to come out from her room, but when she tried to open the door of her room, it is found that the door of her room was locked from outside and then she heard crying sound of her grand-son, he was also asking her for opening the door of her room and then she told him that door is locked from outside and she asked her grand-son to call his parents to open her door and but her grand-son stated her that his parents were not present in their room and then she asked her grand-son to open the door from outside and then her grand-son somehow opened the door of her room opening the hash-ball with which her door was closed from outside. It also appears from the testimony of P.W.-2 that when she came out from her room, her daughter-in-law namely Puja Koley (A-2) came towards her coming out from the room of her (P.W-2) husband and she came with full of sweating and she tried to push her inside her room, but she rushed towards the room of her (P.W-2) husband and entering into the room of her husband, she found her son (A-1) sitting on the chest of her husband and he (A-1) was strangulating the neck of her husband with his both hands wearing gloves. She also stated that then she tried to save her husband from the hands of her son Amit Koley and she repeatedly requested her son to leave her husband saying: “*chhere de....chhere de..... nahole tor baba mara jabe....*”. She also stated that when she was requesting her son, at that time her daughter-in-law namely Puja Koley was also present there and then her daughter-in-law Puja Koley (A-2) asked A-1 saying: “*Otakeo Dhor.....Otakeo Mere Felo.....*” and A-2 tried to catch her for killing her, but she somehow escaped from the clutches of A-2 and then she got down from the first floor and she came

out from her house and she rushed towards the house of P.W-3/Shambhu Koley. From the evidence of P.W.-2 it also appears that reaching in the house of P.W-3/Shambhu Koley, she narrated the incident to them and hearing about the fact of incident from her, Pw-3 and Pw-4 came with her in her house. She also stated that when she came back in her house with Pw-3 and Pw-4, they found the body of her husband lying with sign of no life and blood was coming out from the mouth of her husband. All the three witnesses namely P.W.-3, 4, and 6 corroborated with the above testimony of P.W.-2.

71. P.W.-3 is the debor (brother-in-law) of P.W-2. From the evidence of P.W-3 it is found that on 07.07.2023 at about 1.00/ 1.30 A.M at night when he was sleeping at his house, his boudi Sabitri Koley (P.W.-2) came in front of his house and called them from the outside of their house and hearing the calling of his boudi, he woke up from the sleep and opened the door and then and there his boudi Sabitri Koley entered into their room and she was crying and she asked him to go with her in her house. P.W.-3 also stated that Sabitri Koley told him *“Tumi Tara Tari Amar Sathe Cholo..... Amar Chhele ebond Amar Bouma Tomar Dada Ke Mere Felbe.....”*. From the testimony of P.W.-3 it also appears that then and there he rushed towards the house of his elder-brother Aditya Koley along with his son (P.W.-4) and his boudi Sabitri Koley (P.W.-2) with his motor-bike. He also stated that reaching in the house of his elder-brother/deceased, they entered into the room of his elder-brother Aditya Koley and found the body of Aditya Koley was lying with sign of no life and it appears to him that Aditya Koley expired.

72. From the testimony of P.W.-4 also it appears that on 07.07.2023 at about 1.15 A.M his aunt Sabitri Koley (P.W.-2)

came to their house crying and at that time they were sleeping. It is also found from his evidence that hearing the shouting of her said jethima/P.W.-2, they woke up and her father opened the main door of their house and then and there his said *jethima* (P.W.-2) entered into their house and narrated the incident to his father in his presence. P.W.-4 also stated that hearing the same his father went to the house of his said jethima (aunt) along with him and his said aunt (*jethima*) with his motorcycle. It also appears from the evidence of P.W.-4 that reaching in the house of his said *jetha*, i.e on the P.O, they entered into the room of his *jehta*/deceased and they found his said jetha lying on the bed with sign of no life. He also stated that they called him (his *jetha*) but he did not give any response.

73. From the evidence of P.W.-3 it appears that he asked Amit Koley saying that “ *Tui Eta Ki Korli.....*” Amit Koley replied him that “*Ashanti Theke Rehai Pete Ami Ei Kaj Ta Korechhi*”. P.W.-4 also stated that then his father asked the accused Amit Koley “*tui eta ki korli... tui kajta ki thik korli.....*” and Amit Koley (A-1) was standing on the balcony on the first floor and Amit Koley replied saying that “*Asantir theke rehai pawar jonno ami eta korechhi....*”. The accused Amit Koley admitted his presence in that house/P.O during his examination u/s 313 Cr.P.C and he also admitted the fact that P.W.-3 and P.W.-4 came to their house with his mother hearing about the incident from her mother (P.W.-2).

74. From the testimony of P.W.-3 it appears that reaching in the house of the deceased; they found the accused Amit Koley standing on the balcony which is attached with all the room of Aditya Koley. P.W.-4 also corroborated with the statement of P.W.-3 in

this respect and he also stated that the accused Amit Koley was standing on the balcony of the first floor and said balcony was attached with all the room of Aditya Koley. P.W-4 also stated that another accused Puja Koley was inside of her bed room.

75. From the evidence of P.W.-2 it appears that then her *debor* (P.W-3) took her back in his house. P.W.-3 also stated that then they returned to their house from the house of Aditya Koley. P.W.-4 also stated that on fear they came back to their house along with his *Jethima* (P.W.-2) as the attitude of the accused Amit Koley was furious.

76. From the testimony of P.W.-2 it appears that on the date of the incident, the daughter and son-in-law of P.W.-2 were in their house (in the house of Prabir Koley) and then Bishal Koley made a phone call to the husband of her (P.W-2) daughter and at about 4.00 A.M her daughter along with her husband (P.W-5) and her son came to the house of Shambhu Charan Koley/P.W-3 and then P.W-5 made a phone call to the local P.S. and then police came to their house and took the body of her husband. From the evidence of P.W.-3 also it appears that reaching in their house from the house of deceased, his son (P.W-4) made a phone call to Karabi Koley and Prabir Koley and they (Karabi Koley and Prabir Koley) came to his house at about 04.00 A.M/04. 30 A.M and then Prabir Koley made a phone call to local P.S and then Police came to the house of Aditya Koley and took his body to Tarakeswar Hospital and they also accompanied him. P.W.-4 also stated that the daughter of his said jethu used to reside in her matrimonial house at Singur. From the testimony of P.W.4 also it appears that after returning back to their house, he made a phone call to his elder-sister Karabi (his cousin elder-sister/daughter of his said *jethu*) and her husband Prabir Koley and

narrated the incident to them and then Karabi and Prabir Koley came to their house at about 4.00/4.30 A.M on that night and after reaching in their house, his *jamaibabu* Prabir Koley (P.W-5) informed the matter to the local P.S over telephone and then again they all the persons including his *jethima*, went to the house of his said *jethima*/P.O. From his evidence it also appears that on reaching in the house of his *jethima*, they found that police arrived there and then they brought his said *jethu* in the hospital and after examining his *jethu*, doctor declared him brought dead and then the dead body of his *jethu* was sent for post mortem examination in another hospital and after post mortem they took the dead body and performed last funeral rituals.

77. From the evidence of P.W.-5 it appears that that on 07.07.2023 at about 2.00 A.M his brother-in-law Bishal (*khurtuto shala*) made a phone call to him and informed him that Amit Koley and Puja Koley killed his father-in-law. He also stated that then he asked his brother-in-law whether they informed the matter to the local P.S or not and his brother-in-law Bishal told them that his hand and legs were trembling on fear, so he did not take any step against the accused persons and he also told him that “*tomader matter.....ja korar tomra ese koro.....*”. From the testimony of P.W.-5 it appears that his brother-in-law asked him to come in their house immediately and he then informed the matter to his wife and at about 4.00 A.M to 4.30 A.M he reached in the house of his *khurtuto Shosur* (P.W.-3) with his wife and younger son and reaching there he found that his mother-in-law was crying and his mother-in-law narrated the whole incident to him and his wife. From the testimony of P.W.-5 it appears that his mother-in-law (P.W.-2) told them that she saw the accused Amit Koley to kill her husband Aditya Koley and his mother-in-law asked him to take appropriate step against the

accused persons and then he made a phone call to 101. From the testimony of P.W.-5 it appears that police authority asked the location of the P.O and he told them the exact location of the incident over telephone and then they all went to the house of his father-in-law Aditya Koley from the house of his *khurtuto Shosur* Shambhu Charan Koley. From the testimony of P.W.-5 it appears that reaching in the house of his father-in-law, they directly went in the first floor and entering into the room of his father-in-law, they found that his father-in-law was lying on his bed without sign of any life. P.W.-5 also stated that he also found the wearing pant of his father-in-law was in wetting condition and seeing the same it appears to him that his father-in-law urinated on the said pant. P.W.-3 also stated that he also found the wearing pant of the deceased in wetting condition. From the testimony of P.W.-5 it appears that reaching in the house of his father-in-law; they found Amit Koley loitering on the balcony on the first floor. From the testimony of P.W.-5 it appears that police also came to the spot and they brought his said father-in-law in the Tarakeswar Village Hospital by one vehicle namely Chota Hati and said vehicle was arranged by police personnel from the house of one Buddhadeb Mondal. From the testimony of P.W.-5 it appears that the house of Buddhadeb Mondal is situated opposite side of the house of his father-in-law. From the testimony of P.W.-5 it appears that his *Khurtuto Shosur*, *Khurtuto Shala*, his wife and his mother-in-law also went to hospital with him. From the testimony of P.W.-5 it appears that at about 5.45 A.M they reached at Tarakeswar hospital and after examining his father-in-law, doctor declared him brought dead.

78. From the testimony of P.W.-6 it appears that on 07.07.2023 Aditya Koley was murdered by his own son Amit Koley and his daughter-in-law Puja Koley in his house by conspiring with each

other. She also stated that on 07.07.2023 at about 2.00 A.M she was sleeping in her house and all on a sudden she heard crying sound and then her brother Bishal (P.W-4) called her and she woke up from her sleep and her brother told her that her *jethima* Sabitri Koley came to their house and informed them that Amit Koley and Puja Koley killed their *mejo jethu* namely Aditya Koley. She also stated that then her brother asked her to give the phone number of Karabi Koley and then her brother Bishal Koley made a phone call to Karabi Koley and her husband Prabir Koley and informed them that Amit Koley and Puja Koley killed Aditya Koley. From the testimony of P.W.-6 it appears that on the next day early morning (near about 5.00 P.M) she went to the house of her *mejo jethu* Aditya Koley with her brother.

79. P.W.-7 also stated that on 07.07.2023 Aditya Koley was murdered by his own son Amit Koley and his daughter-in-law Puja Koley in their house by conspiring with each other. From the testimony of P.W.-7 also it appears that on 07.07.2023 after returning from his work, he slept and on the next day early morning at about 5.00 A.M he heard hue and cry coming from the house of Aditya Koley and hearing the same, he rushed to their house and on reaching there he found the dead body of Aditya Koley lying on the bed of Aditya Koley. From the testimony of P.W.-7 it appears that on being asked, Sabitri Koley told him that Amit Koley and Puja Koley killed Aditya Koley. From the testimony of P.W.-7 it appears that as per direction of police, he along with Prabir Koley and others brought the body of Aditya Koley from his bed room in his vehicle and took Aditya Koley in the Badyipur Hospital at Tarakeswar and after examining Aditya Koley, doctor declared him brought dead. He also stated that then as per direction of police, he brought the dead body of Aditya Koley for post mortem examination in

the Serampore walsh hospital as police asked to do so. He also stated that then he brought the dead body by his said vehicle in the Chatra Kalibabur Shamshan and thereafter he returned back to his home.

80. P.W.-2 stated that at evening time she went to the P.S for lodging written-complaint. She also stated that Sangita prepared the written-complaint in her laptop as per her instruction. She also stated that Sangita is the daughter of her *debor* namely Shambhu Koley. She also stated that after preparing the written-complaint by Sangita as per her instruction, she go through the contents of the written-complaint and after understanding the contents of the written-complaint, she put her signature on the same. The said written-complaint has been marked as **Exhibit No. P-3/P.W-2.**

81. P.W.-6 is Sangita Koley. She also stated that before evening her father, her brother, Prabir Koley and others returned to their house after performing funeral rituals of her *mejo jethu* Aditya Koley. She also stated that after returning from the funeral rituals, her *mejo jethima* Sabitri Koley was crying and her father and others tried to console her. She also stated that her mejo jethima Sabitri Koley narrated the whole incident to her and as per her instruction she typed the written-complaint in her laptop and then she took the print out of the same and after taking the print out, she read over and explained the same to Sabitri Koley and after understanding the contents of the same, Sabitri Koley put her signature on the said written-complaint in her presence. The said written-complaint has been **marked as Exhibit No. P-3/P.W-2.**

82. From the above discussion, it appears that all the prosecution witnesses corroborated with each other on material point

and they did not make any contradictory statement in respect of the core fact of the incident. On careful scrutiny of the above discussed testimony of prosecution witnesses, it appears that the prosecution has been able to establish the chain of ring. As already stated, there have no reason of not placing reliance on the testimony of P.W.-2, who is the wife of the deceased Aditya Koley and the mother of the accused Amit Koley (A-1). There is no evidence on record which can discredit the veracity of the testimony of P.W.-2. Defence could not bring any evidence on record, either by cross-examination of prosecution witnesses or by adducing any kind of evidence on his behalf, to show that P.W.-2 has/had any kind of personal interest for implicating the accused falsely in this case or that P.W.-2 may gain any interest/ profit by implicating her own son in a murder case. P.W.-2 was cross-examined at a length for two days, but she stood on the said long hard cross-examination and she never broke down during her cross-examination and she did make any contradictory statement in respect of the core fact of the case. A mother will never intend to convict his own son falsely in a murder case, without having any major conflict in interest. In this case there have no adverse evidence on the record, from which an inference can be drawn that there may have any conflict interest in between the mother (P.W-1) and the son (A-1). So, in view of this court, P.W.-2 is the fully reliable witness in this case and on the basis of her testimony, a definite inference can be drawn.

83. From the testimony of P.W.-2 it is firmly established that on 07-07-2023 at mid night at about 12.30 A.M to 01.00 A.M, she was present in her house i.e at P.O. From her evidence it has also been established that hearing the crying sound, she came out from her room and rushed to the room of her husband and she found her son Amit Koley sitting on the chest of her husband Aditya Koley and A-1

was strangulating the neck of Aditya Koley. From his testimony it also appears that on her repeated request, Amit Koley did not leave Aditya Koley; moreover, another accused Puja Koley tried to catch her for killing her and anyhow she escaped therefrom and reached in the house of her brother-in-law (debor) Shambhu Koley (P.W.-3) to take their help and reaching there she informed about the incident to them and she again came back to her house with P.W.-3 and P.W.-4. P.W.-3, 4, and 6 all the three witnesses supported the version of P.W.-2 in this respect. All these three witnesses stated that P.W.-2 came to their house at mid night at about 01.15 A.M and she informed that accused Amit Koley and his wife Puja Koley are killing her husband, Aditya Koley. From the testimony of P.W.-3 & 4 it appears that hearing the same from P.W.-2, they went to the house of Aditya Koley and entering into the room of Aditya Koley, they found Aditya Koley lying on the bed with no sign of life. During his examination u/s 313 Cr.P.C, the accused Amit Koley also admitted the fact that P.W.-3 & 4 went with his mother (P.W.-2) in their house/P.O at midnight.

84. From the testimony of P.W.-2, 3 & 4, it appears that then they came back to the house of Shambhu Koley from P.O. From the testimony of P.W.-4, it appears that they came back from the P.O to their house within short time on fear as the attitude of the accused Amit Koley was furious.

85. From the testimony of P.W.-3, 4, and 6, it also appears that returning from P.O, P.W.-4 made a phone call to the daughter and son-in-law of P.W.-2 and at about 04.00/04.30 A.M, the daughter and son-in-law of P.W.-2 came to the house of Shambhu Koley and son-in-

law of P.W.-2, namely Prabir Koley made a phone call to local P.S. P.W.-5, Prabir Koley also corroborated with their statement in this respect.

86. From the testimony of P.W.-2, 3, 4, 5, & 6, it appears that they all went to house of Aditya Koley, i.e at P.O again at early morning when police also came there and then Aditya Koley was taken to hospital and after examination the doctor declared him brought dead. All the witnesses namely P.W.-2, 3, 4, 5, 6 & 7 supported the prosecution story and they corroborated each other on material point. Moreover, medical evidence also supported the prosecution case and corroborated with oral testimony of prosecution witnesses. P.W.-10 is the medical officer who conducted autopsy on the dead body of the deceased Aditya Koley. From the evidence of P.W.-10 it appears that on conducting P.M examination on the dead body of Aditya Koley, he found several injuries namely fracture and sub-luxation of hyoid bone and thyroid cartilage at places with extravasation of blood in and around fracture side. He also stated that in his opinion the cause of death was due to the effect of throttling as noted anti-Mortem and homicidal in nature. So, from the above discussion, it appears that from the testimony of the prosecution witnesses it has firmly been established that the prosecution has been able to prove the fact that A-1 killed his father Aditya Koley by throttling in his bed room at midnight on 07-07-2023. In the instant case in hand, the evidence of the prosecution witnesses clearly reflects the intention of the accused persons. In the instant case, the activities of the accused persons, during the commission of the offence, clearly shows that A-1 strangled/throttled the neck of the deceased with intent to cause the death of his father Aditya Koley.

87. Puja Koley filed a written argument duly signed by her. Filing written argument on behalf of Puja Koley, it is contended that from the evidences available on record, it appears that Puja Koley has been implicated in this case without any justifiable ground and she has been made a scape-goat and she has no engagement and involvement in the commission of the alleged offence. Ld. defence counsel further contended that prosecution could not prove any overt act on the part of the accused Puja Koley (A-2) in the commission of the alleged offence, so there have no scope to convict her as mere presence on the P.O does not prove the fact that that particular person had the common intention as of the accused executing the crime. He further contended that the prosecution could not prove the prior meeting of mind in between both the accused persons for committing the alleged offence. It is further contended by the defence counsel that Puja Koley had neither participated in the alleged offence nor she had abetted, instigated or aided the commission of the alleged offence and she is liable to be acquitted from the charges framed against her.

88. Ld. P.P contended that from the evidence of the prosecution witnesses, it has firmly been established that on the date of the incident, Puja Koley (A-2) was also present in the said house and she also involved in the commission of the alleged offence. He further contended that from the evidence of P.W-2, it has firmly been established that both the accused persons were involved in the commission of the alleged offence. He further contended that from the evidence of P.W-2 it appears that both the accused persons, closing the door of the room of P.W-2 from outside, entered into the room of Aditya Koley and A-1 strangulated the neck of Aditya Koley and when the four years old grandson of P.W-2 opened the door of the room of P.W-2 loosing Hass-ball of

the said door from outside, then hearing the sound of opening the door of P.W-2, A-2 came out from the room of Aditya Koley with sweating and tried to restrain P.W-2 from entering into the room of Aditya Koley, but somehow P.W-2 entered into the room of Aditya Koley and found that A-1 was strangulating the neck of Aditya Koley and when P.W-2 requested A-1 to leave Aditya Koley, then A-2 commanded A-1 to kill P.W-2 also and she tried to catch P.W-2; these activities of A-2 clearly shows that A-2 was also involved in the commission of the alleged offence. Ld.P.P further contended that the restraining P.W-2 from entering into the room of Aditya Koley and trying to catch P.W-2 for killing her are the overt act on the part of A-2. He further contended that the A-2 restrained the wife of deceased and encouraged further killing, this goes beyond passive presence. He further contended that the words of A-2, as “*otakeo dhoru..... otakeo mere felo.....*”, and her actions, in restraining the wife of the deceased, clearly show her intention to aid and instigate murder.

89. P.W-2 stated that on the date of the incident at about 12.30/1.00 A.M he heard shouting of her husband and tried to come out from her room but she found that the door of her room was locked from outside and then she heard the crying sound of her grand-son and she asked her said grand-son to open the door from outside and her grand-son somehow opened the door of her room opening/ loosing the *hass-ball* with which the door was closed from outside. From the evidence of P.W-2 it also appears that when she came out from her room, Puja Koley came towards her coming out from the room of Aditya Koley and she (A-2) was sweating. From this evidence of P.W-2, it appears that A-2 was also present in the room of the deceased Aditya Koley at the time of the incident. From the evidence of P.W-2 it also appears that A-2 tried to push her (P.W-2) inside her room, but she (P.W-2) rushed

towards the room of her husband (deceased) and at that time A-2 tried to restrain her saying that quarrel was going on in between her husband and her son, so they should not interfere. From this activity of A-2, it is clear that A-2 was trying to facilitate the commission of offence by restraining P.W-2; as this is an **intentional aid**, it helped A-1 to continue the act without interruption. From the evidence of P.W-2, it also appears that entering into the room of her husband, she found her son sitting on the chest of her husband and he (A-1) was strangulating the neck of her husband with her both hands wearing gloves and at that time, she (P.W-2) tried to save her husband and repeatedly requested her son (A-1), to leave her husband saying that “*chhere de..... chhere de..... nahole tor baba mara jabe.....*”. It also appears from the testimony of PW-2 that at that time, Puja Koley (A-2) commanded A-1 saying that “*Otakeo Dhoru.... Otakeo Mere Felo.....*” (Catch her also..... kill her also) and A-2 tried to catch P.W-2 for killing her, but any how she escaped from that place and reached to the house of P.W-3. It is proved and admitted fact that immediate after the incident, P.W-3 came to the house of Aditya Koley along with P.W-2 and P.W-4. From the evidence of PW-4, it appears that when he came to the house of Aditya Koley, along with P.W-2 and P.W-3 for the first time, he found Amit Koley standing on the balcony on the first floor and **Puja Koley (A-2) was inside her bed room**. P.W-4 further stated that when he went to the house of Aditya Koley, for second time with Karabi and Prabir after 4.30 A.M, they did not find Puja Koley and her children in the said house. From the evidence of P.W-4, it appears that Puja Koley was present in their house (P.O) at the time of the incident, even during the first visit of P.W-3 and P.W-4 in that house/P.O after the incident, but later on she fled away from the said house. The incident of this case took place within the four walls in between family members at midnight, so there have no scope of having

any independent witness present at the P.O at the time of incident. Moreover, from the evidence of prosecution witnesses, it appears that no houses are situated adjacent to the house of Aditya Koley. There has no evidence on record to the effect that P.W-2 had any enmity with A-2. It is also not the case of the defence that P.W-2 had any enmity or grudge against A-2 for which she may falsely implicate A-2 in this case. Learned defence counsel further contended that as the accused persons had no enmity and bad feelings towards the deceased and P.W-2, so there had no occasion to kill Aditya Koley by the accused persons. Learned P.P submitted that from the evidence of the prosecution witnesses, it is clear that there had some cold war in between the deceased and the accused persons as the deceased used to go in different tours by spending huge amount and they (accused) had no financial freedom. Ld. P.P further submitted that from the evidence available on record it is clear that the deceased used to keep all his earnings in his custody and he used to give money to the accused persons as per their requirement but the accused persons had no financial freedom and A-1 had no independent income source and that is why the accused persons had trouble with the fact that the deceased were spending huge amount on his tours on different places within India and outside of India including Switzerland tour. He further submitted that the accused persons planned to kill Aditya Koley at mid-night thinking that at morning it will appear before the other persons that he (deceased) expired in his sleep due to his age, but as P.W-2 woke up and saw the incident, they did not escape from the clutches of law. From the evidence of P.W-2 and P.W-4 it appears that A-2 was also present in that house on that very night and she also involved in the commission of the alleged offence.

90. During the examination of A-2 u/s 311 Cr.P.C, A-2 took a plea of alibi that she was not present in that house/P.O on the very night of incident and she was present in the house of her *masi* on that night. But A-2 did not take any burden to prove the said alibi even in prima facie. No one has been examined in this case as witness on behalf of the accused persons. Even this plea was not taken during cross-examination of the prosecution witnesses. Even it is not stated that where the house of her *masi* is situated. A-2 may examine any person of the family of her *masi* to prove her alibi, but she could not produce any witness to prove the fact that on that very night she was not present in their house/P.O or that she was present in the house of her *masi*. *The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of the offense by reason of his presence at another place. The plea can therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed -Dudh Nath vs State (1981)2 SCC166; Munshi vs State (2002)1 SCC 351.* Where the accused takes an alibi, the burden of proof is on him- *Narendra versus State (2004)10 SCC 699; AIR 2004 SC 3249.* Where no material is produced in support of the alibi, the plea must be rejected -*Rambabu versus State (2004) 10 SCC 598; AIR 2004 SC 2329.* Once the prosecution succeeds in discharging the burden it is incumbent on the accused to prove his plea of alibi with absolute certainty- *Binoy VS State (1997)1 SCC 283.* But in the instant case in hand, A-2 could not prove her plea of alibi.

91. **Conspiracy-** Section 107 of IPC defines the term Abetment of a thing. As per section 107 of IPC,.—A person abets the doing of a thing, who—(First)— Instigates any person to do that thing; or (Secondly)— Engages with one or more other person or persons

in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or (Thirdly)— Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1. — A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2. — Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

92. **Section 109 of IPC prescribed the punishment for abetment.** Section 109 of IPC reads as - Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation. — An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

93. P.W-2 alleged that A-1 killed her husband with the help of A-2. P.W-2 stated in her deposition about the detail's role played by A-2 at the time of committing the offence. From the testimony of P.W-4 it appears that when they first time went to P.O with P.W-2, A-

2 was in her bed room with her children but when they went to P.O for second time at morning, he did not find A-2 in that house. So, from the testimony of P.W-4 and P.W-2 it appears that at the time of incident A-2 was also present at the P.O but later on she fled away from that house. It is established position of law that mere presence at the scene of crime is not enough for abetment. But here, the accused No. 2 restrained the wife of deceased and encouraged further killing. This goes beyond passive presence. **Common Intention vs. Abetment:** If evidence shows prior agreement, Section 34 IPC (common intention) could apply. But even without prior agreement, the acts of the accused amount to abetment under Section 109 IPC. The deceased's wife's testimony is crucial in this case. Courts generally treat eyewitness, accounts of close relatives, with caution but not disbelief. If her testimony is credible, it strongly supports conviction. As already discuss above, there is no reason for disbelieving on the evidence of P.W.-2. In view of this court, P.W.-2 is wholly reliable and credible witness and conviction can be based even on her sole testimony, but in the instant case all other witnesses also fully corroborated with testimony of P.W.-2. Even this case got corroboration from medical evidence. **Intention:** The words of A-2, as "kill her also" , and her actions, in restraining the wife of the deceased, clearly show her intention to aid and instigate murder.

94. It has firmly been established in this case that the direct perpetrator i.e A-1 was throttling the deceased's neck with intent to kill him. So, he is clearly liable under Section 302 IPC. From the testimony of P.W-2, it appears that when P.W-2 came out from her room, she found A-2 coming out from the room of deceased Aditya Koley where A-1 was strangulating/ throttling the neck of deceased for killing him. It has also been established from the testimony of P.W.-2 that A-2

tried to prevent her from entering into the bed room of the deceased where A-1 was throttling the neck of the deceased. This is an **intentional aid**, as it helped A-1 to continue the act without interruption. Moreover, A-2 also encouraged the accused No. 1 to kill P.W.-2 also by commanding that “*Otakeo Dhoru.....Otakeo Mere Felo.....*” (Catch her also..... kill her also). This is instigation, showing active participation and shared criminal intent. From the statement of P.W.-2 it also appears that A-2 tried to catch her (P.W.-2) to kill her. This is an overt act, which shows that A-2 was not a passive bystander but an active participant. Thus, accused No. 2’s conduct satisfies both **instigation** and **intentional aid**, which are forms of abetment under Section 109 IPC.

95. So, this is a **fit case for convicting A- 2 under Section 109 IPC read with Section 302 IPC**. Her acts of restraining P.W.-2, instigating further killing, and attempting to catch P.W.-2, amount to **active abetment of murder**. Such conduct is sufficient for conviction under Section 109 IPC when the principal offence (murder) is committed.

96. From the above discussion, it is crystal clear that the prosecution has been able to prove the fact that the accused Amit Koley (A-1) killed his father Aditya Koley by throttling/strangulating his neck and his wife Puja Koley (A-2) abetted him in doing so by instigation and by intentional aids.

97. In [Krishna Mochi and others vs. State of Bihar](#) (2002) 6 SCC 81, the Hon'ble Apex Court laid emphasis on realistic approach to be adopted by the criminal courts while appreciating evi-

dence in criminal trial, paragraph 32 whereof is quoted as under:"32. *The court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals". I find that this Court in recent times has conscientiously taken notice of these facts from time to time....."*

98. On overall discussions and scrutiny of the prosecution evidences and principle of law, it appears to this court that the prosecution has been able to prove the fact that on 07-07-2023 at about 1:00 AM, A-1 killed his father Aditya Koley strangulating his neck in the bed room of the deceased and A-2 abetted A-1 in doing so by instigation and by intentional aids.

99. Thus, considering all the four corners of the available evidence on the record and in view of above discussion, this court is of the opinion that the prosecution has succeeded to prove the cases u/s 302 and u/s 302 of IPC read with section 109 of IPC against accused Amit Koley and Puja Koley beyond any shadow of reasonable doubt.

100. All the points are thus decided in favour of the prosecution and against the accused Amit Koley and Puja Koley.

101. Hence, it is

ORDERED

that the accused persons namely Amit Koley is found guilty for the commission of offence punishable under section 302 of IPC and accordingly he is convicted u/s 235 Cr.P.C.

that the accused person namely Puja Koley is found guilty for the commission of offence punishable under section 302/109 of IPC and accordingly, she is convicted u/s 235 Cr.P.C.

102. The offence for which the accused persons are found guilty is heinous in nature. So, considering the nature of offences and the circumstances of the case, this court is not inclined to deal with the accused persons under the provisions of Probation of Offender Act and under section 360 of Cr.P.C and this court is inclined to impose the sentence upon them.

103. Convict Puja Koley, who is on court bail, is taken into custody.

104. The convicts will be heard on the question of sentence in terms of sub-section (2) of section 235 of the Cr.P.C on 20-08-2026.

105. Convicts have been told regarding the punishment prescribed for the offence punishable U/s 302 IPC and under section 302/109 of IPC.

106. The convicts Amit Koley and Puja Koley in custody be produced on 20-08-2026 for hearing on the points of sentence.

Dictated and corrected by me

Sd/-

Additional Sessions Judge,
Chandernagore.
J.O. Code 01486

Sd/-

Additional Sessions Judge,
Chandernagore.
J.O. Code 01486

20-08-2026

Convicts Amit Koley and Puja Koley have been produced from the correctional home before the court.

I have heard the convicts on the point of sentence u/s 235(2) of the Cr.P.C.

Convict Amit Koley submitted that he is only earning member in his family and his children are fully dependent upon him and he is facing custody trial since long which is also one kind of punishment and as such, he prays for mercy.

Convict Puja Koley submitted that she has two minor children and one of them is mentally retarded/abnormal and she is only member in her family who can look after her children and there have no one to look after her children as her husband is in jail custody and as such, she prays for mercy.

Heard the submission of Id. Public Prosecutor appearing on behalf of State and the Ld. defence counsel appearing on behalf of convicts.

Learned Public Prosecutor, Sankar Ganguly, appearing on behalf of the State submits that considering the gravity of the instant case, where a helpless aged father, who was sleeping with the hope of

seeing the next morning, was brutally murdered by his son (A-1/C-1) in a cool brain, with a pre-planned for getting the evidence of crime disappeared, by throttling and smothering him and daughter-in-law (A-2/C-2) of said unfortunate deceased abetted the commission of gruesome crime, so, the convict no. 1 should be punished with capital punishment. He further submitted that the deceased was the father of A-1/C-1 and father-in-law of A-2/C-2. He further submitted that this kind of crime has shocked the collective conscience of the society. He further submitted that judicial system has a responsibility to the public at large i.e to society and the very nature of the crime definitely shows that the convicts had no basic humaneness, which can be amenable for any reformation and rehabilitation and such criminals are menace to our society and they cannot be reformed and only punishment A-1/C-1 deserves is nothing but death sentence. He further submits that the deceased was an old person who himself used to maintain the family of the convicts and his entire family were solely dependent on the deceased, nevertheless the accused brutally murdered that person on the pre-planned manner. He further submits that convict-1 being a biological son of the deceased had the responsibility to protect his father and to take care him, but he with an intention to grab the entire property of his father, brutally murdered his father with the abetment of his wife. He further submits that the relation in between the deceased and convict-1 was father and son which stand on trust and faith but the accused persons did the betrayal of familial relation by brutally murdering him. He further submitted that the fountain of justice has a duty to consider the doctrine of pain and pleasure of Lord Bentham and should come to the finding that only the capital punishment against convict-1 may somehow console the mother (P.W-2) and only then there will be the balance of pain as she (wife of the deceased) received seeing her husband being brutally

murdered by her own son. In support of his submission, he placed reliance in the case of Bachan Singh Vs. State of Punjab, Machi Singh vs. State of Punja, Swami Shraddhanada vs. State of Karnataka, Sankar Krishna Rao Khade vs. State of Maharastra and Rajendra Prahllad Rao Wasnik vs. State of Maharastra, Mahesh Vs. State of M.P and Deena @ Deena Dayal etc. vs. Union of India and others. Ld. P.P submitted that the convicts committed a heinous crime, they brutally murdered their own father and father-in-law on greed of his property, so they do not deserve any kind of leniency. He further submitted that it is a 'rarest of the rare case' and accordingly, he prays for capital punishment i.e death sentence for the convict no. 1 considering the extreme brutality of the murder and barbaric act of the convicts and he prays for life imprisonment for the convict no. 2.

Ld. Defence counsel for convicts submitted that the convict Amit Koley is the only earning members of their family and he is facing custody trial since long and this case does not fall within the category of a 'rarest of the rare case' as claimed by the prosecution and as such, prays for taking lenient view considering the age of the convict and other circumstances. He also submitted that the accused Puja Koley have two children and there have no one to look after them, accordingly he prays for taking lenient view considering the age of the convict Puja Koley and other circumstances and prays for passing minimum punishment/sentence.

Following propositions emerge from [Bachan Singh](#)'s case:
 (i) the extreme penalty of death need not be inflicted except in gravest cases of extreme culpability; (ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration

along with the circumstances of the 'crime'. (iii) Life imprisonment is the rule and death sentence is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances. (iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised. In order to apply these guidelines inter-alia, the following questions may be asked and answered: (a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence? (b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

Land mark precedent set in *Bachan Singh vs. State of Punjab* mandates that life imprisonment is the rule and death penalty is the absolute exception. Amplified guidelines in *Machi Singh vs. State of Punjab* require evaluating the manner of commission, motive, magnitude and victim vulnerability. Capital punishment is reserved only when the alternative option of life imprisonment is unquestionably foreclosed. It is fact that committing parricide destroys the core sanctuary of a familial relationship. The murder occurred in immediate presence of vulnerable mother, causing profound psychological trauma. But the act stemmed from an immediate domestic dispute over financial squandering on tour

rather than a diabolical cold blooded systematic plot against society. The accused persons are unlikely to be a habitual and operational threat to the community at large, as domestic rage incidents are typically situational. Indian jurisprudence heavily weighs the potential for reform of the offender inside a controlled correctional environment. The accused persons certainly deserve severe penal accountability for culpable homicide amounting to murder u/s 302 of IPC. However, it falls short of the extreme threshold defining a rarest of rare case.

I have carefully considered the submissions made by the convicts and also considered the mental condition of the wife of the deceased who lost her husband. It is known to us that such type of offense is alarmingly increasing and it would be traversity of justice if any undue sympathy or leniency is shown to the convicts which may also send a wrong message to the society as well.

Considering the gravity and the nature of the offense, age and character of convicts, I am of the view that they do not deserve to be dealt under any of the provision of curative sentence under the style of probation of Offender Act and as such, I am not inclined to invoke such provision.

Considering the facts and circumstances of the case and having regard to the submissions of learned lawyers of both sides, I am of the view that this case cannot equated with the phrase 'rarest of the rare case'. But at the same time any leniency, if shown, will not only pay premium to the convicts but also encourage like-minded persons. Therefore, considering the submission of both sides, age and future of convicts and all other aspect, it appears that justice will be subserved if

the convict Amit Koley be sentenced to suffer imprisonment for life and fine of Rs. 30,000/-, in default to suffer simple imprisonment for 6 months more for the offense punishable under section 302 of the Indian Penal Code and the convict Puja Koley be sentenced to suffer imprisonment for life and fine of Rs. 30,000/-, in default to suffer simple imprisonment for 6 months more for the offense punishable under section 302/109 of the Indian Penal Code and they are sentenced accordingly.

Hence it is

ORDERED

that the convict Amit Koley, for the offence committed punishable under section 302 of IPC, is sentenced to suffer rigorous imprisonment for life and fine of Rs. 30,000/-, in default to suffer simple imprisonment for 6 months more;
that the convict Puja Koley, for the offence committed punishable under section 302/109 of IPC, is sentenced to suffer rigorous imprisonment for life and fine of Rs. 30,000/-, in default to suffer simple imprisonment for 6 months more.

The period of detention in the judicial custody, if already undergone during inquiry and trial, will be set off as per provision of section 428 Cr.P.C.

The copy of judgement of conviction and order of sentence be supplied to the convicts Amit Koley and Puja Koley at free of cost forthwith in view of section 363 of Cr.P.C.

The certified copy of the judgement be supplied to the convicts at free of cost, if applied by the convicts in view of section 363(2) of Cr.P.C.

A separate copy of this judgement be also sent to the District Magistrate, Hooghly as per provision of section 365 of Cr.P.C.

Seized Alamats be destroyed on the expiry of the period of appeal as per law.

In view of memo no-3210-RG dt 31-07-17 of the Hon'ble Court, the convict has been informed in the language they understand about their right to prefer appeal against the judgement including his right to avail of legal aids in this regard from appropriate Legal Service Authority under the Act of 1987.

Dictated and corrected by me

Sd/-
Additional Sessions Judge,
Chandernagore.
J.O. Code 01486

Sd/-
Additional Sessions Judge,
Chandernagore.
J.O. Code 01486