

16 SCOB [2022] HCD 188

HIGH COURT DIVISION

Death Reference No. 87 of 2015 with
Criminal Appeal No. 7608 of 2020

The State and another

Vs.

Md. Mostafa Sarder and another

Ms. Kazi Shahanara Yeasmin, Deputy
Attorney General with Mr. Zahid
Ahammad (Hero) and Ms. Sabina Perven,
Assistant Attorney Generals.

.....for the State
(In the reference and respondent in the appeal)

Mr. Mohammad Shishir Manir with
Mr. Mohammad Noab Ali, Advocates
.....for the convict-appellant
(In CrI. A. No. 7608 of 2020)

Judgment on 27.06.2021

Present:

Mr. Justice S.M. Emdadul Hoque

And

Mr. Justice Bhishmadev Chakraborty

Editors' Note:

In the instant case the conviction was wholly based on medical evidence, i.e., on the experts' opinion. But the High Court Division found that the medico-legal evidence (autopsy report) was inconsistent with the homicidal death and the report differs from the opinion of renowned authors of forensic experts. High Court Division held that the necropsy report and the evidence of doctor are not a gospel of truth or sacrosanct. These may be scrutinized and rejected by the Court, if found contradictory with the symptoms found on the dead body and oral evidence of witnesses. In the result, it set aside the judgment and order of the trial Court and acquitted the accused.

Key Words:

Strangulation; hanging; protrusion of tongue; haematoma; ligature mark; Section 45 of the Evidence Act, 1872

The prosecution case that the victim was made senseless on torture or murdered earlier and thereafter her body was suspended at the place and in the manner to screen the offence is not at all believable because it is not based on rationality:

As per inquest the height between the suspended point and the wooden ceiling was 4½ (four and a half) feet and the victim was 5 (five) feet tall. A rafter (রফা) of a tin shed house is one of a series of slopped wooden structural members that extend from the ridge or hip to the wall plate, downslope perimeter or eave and that are designed to support the roof shingles, roof dock and its associated load. As per sketch map, the lower part of the rafters of the occurrence house were slopping and down to the wall plate to fix roof of tin on it which is common in this country. Therefore, in case of self hanging from the rafter, it was possible for the victim to receive a strike/blow on her head from it resulting haematoma and intracranial haemorrhage which has been found in the autopsy. It may be noted here that no other external injury was found on the person of the deceased. If the condemned-prisoner assaulted the victim or strangulated

her by force, there could have been some marks of violence or other injuries such as scratch mark on the throat or other parts of the body. It was almost impossible for the condemned-prisoner to take the victim's body on the entresol of the house through a ladder or stair generally used in such a tin shed house after making her senseless. Therefore, the prosecution case that the victim was made senseless on torture or murdered earlier and thereafter her body was suspended at the place and in the manner to screen the offence is not at all believable. It may further be noted here that the doctor found one of the cause of victim's death by strangulation and it was *antemortem*. If she was hanged after her death as stated in the FIR and found by the trial Judge, the ligature mark found around the neck would be of *postmortem*, it would not in any case be *antemortem*.
...(Para 45)

Protrusion of tongue is found in most of the hanging cases but not in strangulation:

In the necropsy report (exhibit-4) the doctors found deceased's tongue protruded due to gas and PW8 doctor deposed 'জিব্বা আংশিকভাবে বাহির হইয়াছিল', which supports the inquest report. In that case, as per Reddy's book of 'Essentials of Forensic Medicine and Toxicology', 34th Edition, 2017 (Page 328, serial No. 13 of the table) the death was for hanging but not of strangulation. The tongue position in case of homicidal death by strangulation and in case of suicidal hanging as published in 'International Journal of Legal Medicine' further shows that in the survey they have found protrusion of tongue in most of the hanging cases but not in strangulation.
...(Para 46)

The ligature mark in case of strangulation is commonly found round around the neck and in case of hanging eyes of the deceased are found closed according to the view expressed by experts:

The ligature mark in case of strangulation is commonly found round around the neck but here it is found 'ill defined and anterior aspect of the neck'. Showing the condition of fracture of hyoid bone, Mr. Ahammad submits that Medical Jurisprudence speaks of fracture of hyoid bone common in strangulation but it is absent in hanging and from that point of view, the present case is purely a case of strangulation. We find in Modi's Medical Jurisprudence (20th and 22nd edition), that in case of strangulation larynx, trachea and hyoid bone (all) are often found fractured but it is rare in hanging. In this case only hyoid bone is found fractured. Moreover, Reddy in his Medical Jurisprudence, 34th Edition, 2017 (Page-328) found fracture of hyoid bone uncommon in strangulation but may occur in hanging. In view of the above position, the submission of Mr. Ahammad does not stand but supports the defence case of hanging. Moreover, in the inquest, the IO found the eyes of the deceased closed which according to the view expressed by Modi is also a sign that the victim's death was from hanging. ... (Para 48)

Section 45 of the Evidence Act, 1872:

According to section 45 of the Evidence Act, a postmortem report is an expert opinion and if it is found corroborative to the injuries on the person of the deceased and supported by the evidence of doctor, it may be considered alone for basing conviction in the absence of any ocular evidence on record.
...(Para 49)

Doctors should be cautious enough in holding autopsy in unnatural death cases:

The prosecution further failed to prove the time of occurrence. It appears from the evidence and other materials on record that the dead body of Kohinoor was found in the place and manner after 3 (three) days of her missing. The doctor found most of the organs of the corpse decomposed and blister all over the body. But in the report they

did not write about the approximate time of death of the deceased. We find that the doctors very casually examined the corpse and held autopsy on it. They did not mention the condition of eyes and other necessary symptoms generally found internally and externally to determine the death. They should be cautious enough in holding autopsy in unnatural death cases. Their callousness in holding autopsy may result in miscarriage of justice. ... (Para 50)

Medical evidence is not sacrosanct and may be rejected by the Court, if found contradictory with the symptoms found on the dead body and oral evidence of witnesses:

It transpires from the evidence of witnesses that there was strained relation between the husband and wife for the second marriage of the condemned-prisoner. The fact of missing of the deceased wife before 3 (three) days of tracing her body hanged and the surrounding circumstances lead us to believe that she might have committed suicide at the place and in the manner for the reason of her husband's second marriage. The defence has been able to make out a specific and believable case of suicidal hanging by putting suggestions to the prosecution witnesses. The necropsy report and the evidence of doctor in support of strangulation and intracranial haemorrhage are not a gospel truth or sacrosanct. These may be scrutinized and rejected by the Court, if found contradictory with the symptoms found on the dead body and oral evidence of witnesses. ... (Para 52)

JUDGMENT

Bhishmadev Chakraborty, J:

1. Learned Additional Sessions Judge, Court No. 1, Barishal has made this reference under section 374 of the Code of Criminal Procedure (Code) for confirmation of the sentence of death awarded upon the condemned-prisoner in terms of the judgment and order passed on 08.10.2015 in Sessions Case No. 208 of 2010 finding him guilty of offence under section 302 of the Penal Code. In addition to the sentence of death he was further sentenced to pay a fine of taka fifty thousand.

2. Learned Judge further found him guilty under section 201 of the Penal Code and sentenced him thereunder to suffer rigorous imprisonment for seven years and to pay a fine of taka five thousand, in default, to suffer imprisonment for two months more. But, he acquitted two other co-accused who faced the trial under the same charges.

3. Against the aforesaid judgment and order of conviction and sentence, the condemned-prisoner preferred Jail Appeal No. 179 of 2015 through jail authority. The above jail appeal was subsequently converted into Criminal Appeal No. 7608 of 2020. Since the reference and the criminal appeal have arisen out of the same judgment and order, these have been heard together and are being disposed of by this judgment.

4. PW1, Md. Asmat Ali Sarder lodged a first information report (FIR) with Gournadi police station implicating his son-in-law Mostafa (condemned-prisoner) and four others as accused stating, *inter alia*, that the accused persons in a preplanned way murdered his daughter Mst. Kohinoor Begum (deceased) and suspended her body from a *rafter* (টিনের চালের রফয়ার সাথে) on the entresol (মাচা) of four roofed tinshed house of accused Mostafa. It was further contended in the FIR that accused Mostafa took accused Blue Begum his second wife and due to it there was serious strain between Mostafa and his daughter. He suspected

that all the accused named in the FIR led by Mostafa murdered his daughter and hanged the body with a scarf/muffler in the place and in the manner as stated hereinbefore and then decamped.

5. On the aforesaid allegation Gournadi police station case No. 05 dated 04.02.2010 corresponding to General Register No. 19 of 2010 under sections 302, 34 and 201 of the Penal Code against five accused including the condemned-prisoner was started.

6. Md. Shahjalal, a Sub-Inspector (SI) of police, investigated the case. In his turn, he arrested three accused named in the FIR including convict Mostafa and on collecting necessary materials for prosecution submitted a charge sheet under above noted sections of the Penal Code against three accused who were named in the FIR at serial Nos. 1,2 and 5. However, he did not send up Hasi Begum and Sarwar Paik in the charge sheet.

7. The record of the case was then sent to the Sessions Judge, Barishal. Learned Sessions Judge took cognizance of offence against the accused persons sent up in the charge sheet. Subsequently, he framed charges against all the three accused under the aforesaid sections of the Penal Code. The charges so framed were read over to the accused, to which they pleaded not guilty and claimed to be tried. The Sessions Judge then sent the record of the case for trial to the Additional Sessions Judge, Court No. 1, Barishal.

8. During trial, the prosecution examined 8 (eight) witnesses and they were cross examined by the defence. The defence case, as it transpires from the trend of cross examining the prosecution witnesses is that the accused were innocent, they did not commit the offence of murder and that the victim committed suicide by hanging.

9. On conclusion of examination of the prosecution witnesses, learned trial Judge examined the accused persons under section 342 of the Code. In the examination, they reiterated their innocence and demanded justice but did not examine any witness to support their defence. However, learned Additional Sessions Judge considering the evidence and other materials on record found accused Mostafa Sarder guilty of offences under sections 302 and 201 of the Penal Code and sentenced him thereunder to death, giving rise to this reference and the appeal.

10. Mr. Zahid Ahammad, learned Assistant Attorney General taking us through the evidence and other materials on record submits that the condemned-prisoner murdered his wife Kohinoor Begum brutally striking on the head and strangulating her and, thereafter, to screen the offence suspended her dead body from a rafter on the entresol of his dwelling house. Earlier, the victim made a General Diary Entry (GDE) with the concerned police station finding her life risky with the condemned-prisoner. Since the victim was found dead in the house of her husband, it was his duty to explain how she met with the death. The explanation of the husband as suggested to the prosecution witnesses that she has committed suicide was proved false by the medical evidence and autopsy report. In the report, the doctors opined that the death was due to the combined effect of intracranial haemorrhage and violent asphyxia resulting from strangulation, which was antemortem and homicidal in nature. The condemned-prisoner did not take the defence that he was not at home when the occurrence took place. The witnesses successfully proved the charges against him of committing the heinous offence. The learned trial Judge on sifting and assessing the evidence both oral and documentary correctly found him guilty of the offence of murder and sentenced

him to death. Since, the judgment and order of conviction and sentence is based on legal evidence, it should not be interfered with by this Court.

11. Mr. Mohammad Shishir Manir, learned advocate for the appellant advanced his argument only on the point that this was purely a case of suicidal hanging. Undoubtedly, the wife died in the house of her husband (condemned-prisoner) but he explained the death of his wife. The defence suggested the prosecution witnesses to that effect and made out a specific case that the victim committed suicide. Although, in the postmortem report the doctor opined the death as antemortem and homicidal in nature because of violent asphyxia and intracranial haemorrhage and supported in his evidence but the medical evidence is not sacrosanct. He refers to the evidence of PWs1-4 and 7 and submits that their evidence unequivocally proves that this is a case of suicide. All of them stated that they did not see the actual occurrence but they heard that the victim had committed suicide. Even PW2, daughter of the deceased and PW7, the son on oath did not bring any allegation against the condemned-prisoner. They in evidence stated that their mother had committed suicide, but their father was made accused on mere suspicion.

12. Mr. Manir then takes us through the postmortem report (exhibit-4) and submits that although the doctors abruptly concluded that the death was homicidal in nature but the signs and symptoms found in the dead body and recorded in the autopsy report proved it suicidal. If the evidence of witnesses is assessed carefully and considered with circumstantial evidence in juxtaposition with the expert report, a conclusion can safely be drawn that the victim has committed suicide. He refers the index of symptoms specified by the renowned forensic experts for drawing a comparison with the symptoms found in the autopsy report to prove the death as suicidal. Firstly, he refers to 'A Text Book of Medical Jurisprudence and Toxicology' by JP Modi, 24th Edition 2011, page 456 and pointed at serial Nos. 2,5,6,7,11 and 13 of the table of differences of symptoms between hanging and strangulation and submits that those indicate the instant death as suicidal. He relies on serial No. 6 of a similar table of KS Narayan Reddy's 'The Essentials of Forensic Medicine and Toxicology' 34th Edition, 2017, Page- 328 which tells fracture of hyoid bone is common in hanging but uncommon in strangulation.

13. Mr. Manir further takes us through the FIR and inquest report and submits that the body of the deceased was found partially hanging, i.e., it was hanged from a low point of suspension. According to Modi's Medical Jurisprudence and Toxicology (24th Edition, Chapter XIX, page 445) partial hanging is used for such cases in which the bodies are partially suspended, for those in which the bodies are sitting, kneeling, reclining, prone or any other posture. He produced some photographs printed in the above book and the provisions of Reddy's Forensic Medicine, 34th Edition, page 390 and submits that it is quite possible for a person to commit suicide by hanging partially and if the overall facts and evidence on record of this case are considered together with the medical jurisprudence, it would be conclusive that this is a case of partial hanging and suicidal in nature.

14. He then refers to the Medical Jurisprudence of JP Modi (24th Edition, Page- 589) to explain 'extradural haemorrhage' and submits that according to Modi 'extradural haemorrhage' is mostly traumatic and occurs between the skull and the dura mater and is caused by the rupture of the middle meningeal artery, diploic veins or dual venous sinuses. Admittedly, the distance between the rafter and wooden ceiling was four and a half feet and the victim's height was five feet and as such it was naturally possible to receive a blow on her head at the time of hanging resulting haematoma and extradural haemorrhage.

15. Mr. Manir further submits that in this case the conviction has been based solely on the autopsy report. Under section 45 of the Evidence Act, a postmortem report is an expert opinion, but it is not conclusive proof of the fact. The courts are at liberty to accept or reject this sort of opinion. It is established principle that statement of witnesses will prevail over the postmortem report, if the report contradicts with ocular evidence. In the case of Tomaso Bruno Vs. State of UP, (2015) 7 SCC 178, the trial Court found two Italian nationals guilty under sections 302 and 34 of the Penal Code on the charge of murder of another Italian by strangulation and were sentenced to suffer imprisonment for life. The High Court of Allahabad confirmed the conviction and sentence passed by the trial Judge, but on appeal the Supreme Court of India acquitted them and set aside the conviction and sentence. There it has been held-

“The Courts normally would look an expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such report are perfunctory and unsustainable. We agree that the purpose of an expert opinion is primarily to assist the Court in arriving at a final conclusion but such report is not a conclusive one”.

16. Mr. Manir urges to analyse the report of the case in hand, read it in conjunction with other evidence on record and to form final opinion as to whether the report is worthy of reliance or not. He refers to the cases of the State Vs. Tajel Sheikh, 19 BLC (AD) 178 and Habibur Rahman Vs. the State, 16 BLT 275 and submits that in the cited cases it has been held that the postmortem report is just like any other corroborative evidence. It cannot be accepted as a conclusive proof as to the cause of death of the deceased. In both the above cited cases our superior Court disbelieved the postmortem reports. It is well settled position of law that an expert’s report is not sacrosanct. It may not be accepted when it contradicts with ocular evidence. The oral evidence in this case contradicts with the findings of postmortem report.

17. Mr. Manir refers an article published in the journal of Enam Medical College, volume 3 No. 2 of July 2013 titled as ‘Violent Asphyxial Death: A Study in Dinajpur Medical College, Dinajpur’ which shows that 88.5% of violent asphyxial death were due to hanging and 6.25% due to strangulation. The article published in the International Journal of Medical Toxicology and Forensic Medicine, 2013; 3(2): 48-57 titled as ‘Study of Violent Asphyxial Death’ shows that hanging (82.48%) is the most common encountered violent asphyxial death followed by drowning (14.43%) and strangulation (03.09%) and, therefore, most common form of violent asphyxial death are hanging but not strangulation. A Medical Study published in ‘The International Journal of Legal Medicine [(2019)133:1279-1283]’ shows that tongue protrusion is more common in hanging. The data of the above medical study shows that tongue of most of the bodies in case of hanging (32 out of 47) found protruded but less in strangulation (15 out of 47). The fracture of hyoid bone is also common in hanging but uncommon in strangulation according to the Medical Jurisprudence of Modi and Reddy.

18. Mr. Manir lastly submits that the GDE alleged to have been lodged by the victim with the concerned police station has not been brought before the Court as evidence. The IO of the case was dead during trial but the prosecution did not examine any other police officer as witness to prove the document and its content, and as such there is no scope to take into account the GDE for consideration. There is no ocular evidence against the appellant and the opinion of the doctor does not correlate with the internal and external symptoms found on the dead body of the victim, and as such it should be rejected. The judgment and order of

conviction and sentence relying solely on the medical evidence would be set aside and the appellant be acquitted of the charges levelled against him, he concludes.

19. In reply Mr. Ahammad, learned Assistant Attorney General takes us through the ‘violent asphyxial death’ and ‘hyoid bone’ from *Wikipedia*. He shows us the photographs of ‘hyoid bone’ printed there and submits that in this case the experts report about fracture of hyoid bone proves that the death of Kohinoor was not for hanging but of strangulation. In the reports the doctors clearly opined that the death was due to the combined effect of intracranial haemorrhage and violent asphyxia, resulting from strangulation and it was antemortem and homicidal in nature. He submits that for violent asphyxial death external force is to be applied upon the victim and that has been done here. The condemned-prisoner pressed the throat of the deceased with the muffler and consequently her hyoid bone was fractured. If the victim had committed suicide, there could be no reason of its fracture.

20. Mr. Ahammad then takes us through ‘intracranial haemorrhage’ which is also called ‘epidural haemorrhage’ from *Wikipedia* and *radiopaedia* with photographs and submits that in this case in the autopsy the doctor found extradural haemorrhage on the right parietal region. It was not possible to cause haemorrhage on the head of the victim without any external assault, strike or blow thereon. The victim herself cannot strike on her head to cause it. The condemned-prisoner being the husband had struck on victim’s head before her death and suspended the body from the rafter of the house with the muffler.

21. He then refers to the Medical Jurisprudence of JP Modi (22nd Edition, page 270) and draws our attention at serial Nos. 6, 7 and 12 of differences of symptoms of hanging and strangulation and submits that in case of hanging bleeding from nose, mouth and ears are very rare, on the contrary bleeding from those organs in case of strangulation may be found. In case of hanging noncontinuous and oblique ligature mark is found high up of the neck and in case of strangulation ligature mark would be transverse. In the case in hand, the autopsy report matches with the above symptoms of strangulation. He further refers to serial No. 8 of the similar table of Modi’s Medical Jurisprudence (20th Edition, Page-157) to show that fracture of hyoid bone is common in strangulation, which has been found in this case. He refers to the Medical Jurisprudence of Bakshi, 3rd Edition, 1980 (Page-182-184) where at serial No.15 the view expressed by Modi at serial No.14 (20th Edition) about the symptoms of strangulation of bleeding from mouth, nose and ear has been supported. At serial No. 14 of the Bakshi’s table it has been opined that protrusion of tongue is absent or very little in the cases of hanging but in strangulation it is a common feature. He further refers to the Lyon’s Medical Jurisprudence (11th Edition, Page 961) and submits that in case of strangulation the ligature mark would be openly transverse and in case of hanging it is ordinarily not. He adds that strangulation is always in favour of homicide.

22. Mr. Ahammad then submits that four months before the occurrence took place, the victim made a GDE with the concerned police station bringing allegation that her life was *at stake* with the condemned-prisoner. She was under a serious apprehension that she might have been killed at any time. PW5, Mst. Jesmin Begum in her evidence supported lodgment of the said GDE. No history of victim’s previous attempt to commit suicide has been found and as such it was almost impossible for her to commit suicide. This is a cold blooded, premeditated and brutal murder, where the dead body of the victim wife was found in the house of the convict husband. The circumstantial evidence, medical evidence and evidence of the doctor are consistent with homicidal death of the ill fated victim. Mr. Ahammad refers to the cases of Ali Hossain Vs. the State, 15 BLD 307; Shah Alam Vs. the State, 5 BLC 492;

Abdullah Vs. Mst. Zulekha, PLD 1950 Peshwar 19 and Sabir Hossain and two others Vs. the State, 21 DLR (WP) Lahore 5 and relied on the *ratio* of those cases to put reliance of the autopsy report solely in the absence of any ocular evidence on record. He finally concludes that the judgment and order of conviction and sentence passed by the trial Court is based on legal evidence and it should be upheld.

23. To address the submissions of both the sides and to dispose of the reference as well as the appeal, let us go through the evidence of prosecution witnesses in brief.

24. PW1 Asmat Ali Sardar, informant and father of the deceased stated that the occurrence took place between 1.30 am to 2.00 am on 01.02.2010 at the house of accused Mostafa. He had lodged the *ejahar* implicating five persons as accused. His daughter (the deceased) had three issues. Accused Mostafa took Blue Begum as his second wife just two months before the occurrence. The relation between the accused husband and his daughter deteriorated for the reason of second marriage of the accused. The accused used to assault the victim. Accused No. 2, Hasi Begum at about 8.00 pm made a phone call to PW5 Jesmin and told her that victim Kohinoor had been found missing. He and his relations tried their best but could not find her out. He received the news of his daughter's death at about 1.30 pm on the day which was 3-4 days after her missing. He and his relations then and there rushed to the accused's house and found her body hanging partially from a rafter with a muffler on the entresol of the house. Later, police came there, brought down the dead body, held inquest, took it to the police station and, thereafter, he lodged the FIR. He proved the FIR and identified his thumb impression thereon. In cross-examination he stated that he found the body hanging at the house of accused Mostafa. The deceased was dissatisfied at the second marriage of her husband. He did neither see who killed his daughter nor did he know how she was murdered. He further stated that when he got the information of his daughter's death, he was working at a place four miles away from the occurrence house. He could not remember the van driver's name who took him to the house of occurrence. He was there about two and a half hours and in the meantime 100-125 people assembled there. A police officer wrote the *ejahar* but he could not remember his name. He denied the defence suggestion that his daughter committed suicide for the reason of her husband's second marriage. On recall for cross-examination by the defence he stated that when he went to the occurrence house, he found accused Mostafa, his daughter Nahida (PW2) and son Nayeem (PW7) there. He himself and PWs 2 and 7 were witnesses to the inquest. He did not find any injury on the person of the deceased. When he wanted to know about the cause of death, they told him that she committed suicide for the reason of second marriage of her husband.

25. PW2 Nahida Akter, daughter of the deceased stated that her mother was found missing on 01.02.2010. Thereafter, she found her hanging at about 11.00-11.30 am on 04.02.2010 at the entresol over the wooden ceiling of their dwelling house. At first she smelt stink and on search found the body hanging partially with a muffler from a rafter of their house. At her hue and cry, the neighbours rushed there and apprehended accused Lal Miah. Nobody murdered her mother. Police came, brought down the corpse and held inquest. She put her signature on the report. She proved the inquest report exhibit-1 and identified her signature thereon-1/1. She identified accused Lal Miah on the dock. In cross-examination she stated that it was not possible to see everything around the entresol from the floor of their house. The boundary of their house was enclosed with a fence. She saw her mother taking tablet at about 8.00-8.30 am on 01.02.2010. She had two brothers and they resided in the house of occurrence. About 100 people rushed to the occurrence house. The IO examined her under section 161 of the Code. She studied up to class ten but did not continue thereafter.

26. PW3 Kazi Sajal, a ward councillor of Gournadi Paurasava stated that the informant was his neighbour and he was a witness to the inquest. He proved his signature in the inquest as exhibit-1/2. He heard that Kohinoor committed suicide by hanging. In cross-examination he stated that the occurrence took place within the area under ward No. 3. He heard that Kohinoor had committed suicide by hanging with a rope.

27. PW4 Md. Shahjahan Bapery, a man from the locality stated that he received the news of victim's suicidal death by hanging and rushed to the occurrence house. He found the body lying at the courtyard of accused's dwelling house. Police held inquest on the corpse and took his signature on the report exhibit-1/3. After some days of occurrence, he went to the police station and put his signature in the seizure of wearing apparels of the deceased. He proved the seizure exhibit-2 and identified his signature thereon. He identified seized articles as material exhibit-I series. In cross-examination he stated that he heard that the victim committed suicide. He saw the dead body after a while of committing suicide.

28. PW5 Mst. Jesmin Begum, a daughter-in-law of PW1 and *bhabi* of the deceased stated that the occurrence took place between 8.00 am of 01.02.2010 to the noon of 04.02.2010 at the entresol of accused Mostafa's house. Informant Asmat Ali was her *chancha shwashur*. The victim was her sister-in-law (*nanod*). She and the informant resided at the same compound. Deceased Kohinoor was the first wife of accused Mostafa. Mostafa took Blue Begum as second wife without the permission of Kohinoor. Blue Begum was a bad lady and she made a plan to commit the murder. Accused Mostafa and Blue used to torture the victim. Kohinoor lodged a GDE with the concerned police station before four months of taking place the occurrence. She was at first found missing from the morning on 01.02.2010. Afterwards her dead body was found hanging at the entresol of Mostafa's house. They all reached there and smelt stink emitting from the dead body. Police also came there, held inquest on the corpse and she put her signatures on the report exhibit-1/4. She went to the police station with the informant and put her signature on the left side of the FIR. The informant put his thumb impression in the FIR. She proved the FIR exhibit-3 and identified her signature thereon. She identified the accused persons in the dock. In cross-examination she stated that the distance between her house and that of the accused would be three miles. She received the news of disappearance of the deceased and went to the house of occurrence on foot. A salish was held for the second marriage of accused Mostafa where Shahjahan, Kabir Talukder, Anis Talukder and Jalil Sarder were present. She denied the defence suggestion that Kohinoor committed suicide due to family crisis. She did not know whether there was any relation between Lal Miah and accused Mostafa Sardar. She further denied that wife of Lal Miah eloped with accused Mostafa and when Kohinoor learnt it, she committed suicide.

29. PW6 Md. Liakat Sardar, a cousin of the deceased stated that the occurrence took place within 20.00 hours of 01.02.2010 to 13.30 hours of 04.02.2010 at the entresol of the dwelling house of accused Mostafa. He identified the accused in the dock. He further stated that there was an illicit relation between Blue Begum and Mostafa and due to that, the relation between the deceased and Mostafa became strained. Mostafa used to torture Kohinoor and she told it to them. Mostafa took Blue Begum as his second wife and a salish was held for it. Kohinoor did not accept the second marriage of accused Mostafa. He received the news of victim's death through a message over cell phone. He then went to the occurrence house and found gathering there. He found the body of Kohinoor hanging from a rafter with a muffler on the entresol of the house. She was murdered in a preplanned way in order to make Mostafa's family life smooth with accused Blue Begum. In cross-examination he stated that he was not

present in the salish. Sajal Kazi, former member and Shahjahan member were present there. He found a good number of people at the occurrence house. He also found the local member and Chowkider there. He denied the defence suggestion that due to the second marriage of accused Mostafa, victim Kohinoor committed suicide.

30. PW7 Md. Nayeem Sarder, son of the deceased stated that the occurrence took place at about 1.00-2.00 am on 01.02.2010 in their dwelling house. The informant was his maternal grandfather and accused Mostafa was his father. He knew nothing about the death of his mother. He proved his signature in the inquest exhibit-1/5 and identified the accused in the dock. In cross-examination he stated that he used to run a shop and on the day of occurrence he was there. His maternal grandfather made his father accused in this case on mere suspicion.

31. PW8 Md. Aktaruzzman Talukder, Head of the Department of Forensic Medicine, Sher-e-Bangla Medical College Hospital, Barishal stated that he conducted postmortem examination of deceased Kohinoor at about 16.00 hours on 05.02.2010 and found the following injuries.

- i) Ill defined broad transversely placed ligature mark on anterior aspect of neck.
- ii) Haematoma on right parietal region.

32. On dissection, he found antemortem congestion and clotted blood around the injuries. He also found congestion present on either side of trachea with fracture of hyoid bone. Extradural haemorrhage was present on the right parietal region.

33. Death in their opinion was due to the combined effect of intracranial haemorrhage and violent asphyxia resulting from strangulation which was antemortem and homicidal in nature. He proved the autopsy report exhibit-4 and identified his signature thereon. In cross-examination he denied the defence suggestion that the victim committed suicide by hanging. He found the body partially decomposed and blister on it. He found the tongue protruded in part. He further denied the defence suggestion that he failed to find out the cause of death for holding postmortem examination after long days of victim's death or that the death was suicidal in nature.

34. We have considered the enlightening/inspiring submissions of both the sides, gone through the evidence and other materials on record.

35. It is admitted position of fact that the deceased was the wife of the condemned-prisoner. She was found missing from 01.02.2010. PW1 informant, PW2 the daughter of the deceased and PW6 a relative of the informant found the deceased hanging partially with a muffler from a rafter on the entresol of the convict's house. There is no dispute that the body of the deceased was found at her husband's house hanging at noon on 04.02.2010 and it was partially decomposed. Nobody had seen the occurrence of murder or of committing suicide. The daughter of the deceased PW2, Nahida Akter and the son PW7, Md. Nayeem Sarder while examined as witnesses did not bring any allegation against their father, the condemned-prisoner. PW1 informant, father of the deceased, PW2 daughter, PW3 a neighbour and ward councilor, PW4 a man from the locality and PW7 the son stated that they heard the victim had committed suicide. Even in the cross-examination PW1 stated that while he reached the occurrence house PWs 2 and 7 told him that the victim committed suicide for the second marriage of their father. In cross-examination PW7 stated that the informant filed the case against his father on suspicion. Thus the evidence of kith and kin as well of the neighbours support the defence case that the deceased has committed suicide.

36. Admittedly, the body of the deceased was found hanging at the house of the condemned-prisoner, who was her husband. According to the provisions of section 106 of the Evidence Act, a burden is imposed upon a husband to explain how his wife met with the death while she was under his custody. The explanation given in this case by suggesting the prosecution witnesses is that his wife committed suicide by hanging. On the other hand, the opinion given in the postmortem report (exhibit-4) and in the evidence of PW8, the doctor such defence case has been denied. Mr. Manir, learned advocate for the appellant has advanced his argument solely on the point that the external and internal injuries found on the person of the deceased are not consistent with the findings and decisions of antemortem and homicidal death. Rather, opinion of the renowned forensic experts on this point is against the opinion of the doctor given in this case. He also submits that doctor's opinion is not sacrosanct and the Court can reject it, if it is found contrary to the oral evidence and the other conditions described in forensic and medical jurisprudence.

37. Let us consider whether as per oral and documentary evidence, the death of Kohinoor was antemortem and homicidal in nature as has been argued by the learned Assistant Attorney General or it was suicidal as placed by the learned counsel of the appellant.

38. Admittedly, the body of the deceased was found at the place and in the manner as stated in the FIR. Oral evidence has been also led to that effect. The first question arises whether commission of suicide by partial hanging in the manner the deceased was found was at all possible. We find from the writings of renowned forensic experts like JP Modi and KSN Reddy and the photographs of numerous incidents of partial hanging that it was possible for the deceased to commit suicide in the manner her body was found. It depends upon the will, weight and position of the suicide (*felo-de-se*). It further depends on the height of the point of suspension and the material used for it. Here the suspended point was 4' 6" from the wooden ceiling, the deceased was 5" tall and the material used for hanging was a muffler. In view of the above, it can be presumed that the victim's death may be for hanging partially, i.e., in the position she was found hanged. The findings of the learned Additional Sessions Judge that the victim could not commit suicide in the position she was found, is totally wrong and against the opinion of the renowned forensic experts.

39. The learned Assistant Attorney General and the learned advocate for the appellant both has referred the tables of symptoms of death for hanging and strangulation written by the renowned forensic jurists to show differences between the two usually found in a dead body. They have referred JP Modi's Medical Jurisprudence (three different editions), the Medical Jurisprudence of KS Narayan Reedy and of Bakshi and by showing the symptoms of differences of deaths for hanging and strangulation, they tried to establish their respective cases. For better appreciation the table of differences of symptoms in Modi's Medical Jurisprudence, 24th Edition, 2011 is reproduced below:

Hanging	Strangulation
1. Mostly suicidal.	1. Mostly homicidal.
2. <u>Face-Usually pale and petechiae rare.</u>	2. <u>Face-Congested, livid and marked with petechiae.</u>
3. Saliva-Dribbling out of the mouth down on the chin and chest.	3. Saliva-No such dribbling.
4. Neck-Stretched and elongated in fresh bodies.	4. Neck-Not so.
5. <u>External signs of asphyxia, usually not</u>	5. <u>External signs of asphyxia, very well marked (minimal if death due to vasovagal</u>

Hanging	Strangulation
<p>well marked.</p> <p>6. <u>Ligature mark-Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.</u></p> <p>7. <u>Abrasions and ecchymoses round about the edges of the ligature mark, rare.</u></p> <p>8. Subcutaneous tissues under the mark-White, hard and glistening.</p> <p>9. Injury to the muscles of the neck-Rare.</p> <p>10. Carotid arteries, internal coats ruptured in violent cases of a long drop.</p> <p>11. <u>Fracture of the larynx and trachea-Very rare and may be found that too in judicial hanging.</u></p> <p>12. Fracture-dislocation of the cervical vertebrae-Common in judicial hanging.</p> <p>13. <u>Scratches, abrasions and bruises on the face, neck and other parts of the body-Usually not present.</u></p> <p>14. No evidence of sexual assault.</p> <p>15. Emphysematous bullae on the surface of the lungs-not present.</p>	<p>and carotid sinus effect).</p> <p>6. <u>Ligature mark-Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.</u></p> <p>7. <u>Abrasions and ecchymoses round about the edges of the ligature mark, common.</u></p> <p>8. Subcutaneous tissues under the mark-Ecchymosed.</p> <p>9. Injury to the muscles of the neck-Common.</p> <p>10. Carotid arteries, internal coats ordinarily ruptured.</p> <p>11. <u>Fracture of the larynx, trachea and hyoid bone.</u></p> <p>12. Fracture-dislocation of the cervical vertebrae-Rare.</p> <p>13. <u>Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body-Usually present.</u></p> <p>14. Sometimes evidence of sexual assault</p> <p>15. Emphysematous bullae on the surface of the lungs-May be present.</p>

(emphasis supplied)

40. KS Narayan Reddy in his book ‘the Essentials of Forensic Medicine and Toxicology’, 34th Edition, 2017 found the symptoms as under:

Trait	Hanging	Strangulation by ligature
1. Ligature Mark:	It is oblique, does not completely encircle the neck; usually seen high up in the neck between the chin and larynx. The base is pale hard and parchment-like.	It is transverse, completely encircling the neck below the thyroid cartilage. The base is soft and reddish.
2. Abrasions and ecchymoses:	About the edges of ligature mark not common.	About the edges of the ligature mark are common.
3. Bruising:	Of the neck muscles less common.	Of the neck muscles are common
4. Neck:	Stretched and elongated.	Not stretched or elongated.
5. Subcutaneous tissues:	White, hard and glistening under the mark.	Ecchymosed under the mark.
6. Hyoid bone:	<u>Fracture may occur.</u>	<u>Fracture is uncommon.</u>
7. Thyroid cartilage:	Fracture is less common	Fracture is more common.
8. Larynx and trachea:	Fracture rare.	Fracture may be found
9. Emphysematous bullae:	Not present on the surface of the lungs.	Very common on the surface of the lungs.
10. Carotid arteries:	Damage may be seen.	Damage is very rare.

Trait	Hanging	Strangulation by ligature
11. Face:	Usually pale and petechiae are not common.	Congested, lived and marked with petechiae.
12. Signs of asphyxia:	External sings less marked.	External sings well-marked.
13. Tongue:	<u>Swelling and protrusion is less marked.</u>	<u>Swelling and protrusion is more marked.</u>
14. Saliva:	Often runs out of mouth.	Absent.
15. Bleeding:	From the nose, mouth and ears not common	From the nose, mouth and ears common.
16. Involuntary discharge:	Of faeces and urine less common.	Of faeces and urine more common.
17. Seminal fluid:	At glans is more common.	At glans is less common.

(emphasis supplied)

41. Modi in his Medical Jurisprudence, 22th Edition found the differences as under:

Hanging	Strangulation
1. Mostly Suicidal	1. Mostly Homicidal
2. Face-Usually pale and petechiae rare.	2. Face-Congested, lived and marked with petechiae.
3. Saliva-Dribbling out of the mouth down on the chin and chest.	3. Saliva-No such dribbling.
4. Neck-Stretched and elongated in fresh bodies.	4. Neck-Not so.
5. External signs of asphyxia, usually not well marked.	5. External sings of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect).
6. <u>Bleeding from the nose, mouth and ears very rare.</u>	6. <u>Bleeding from the nose, mouth and ears may be found.</u>
7. <u>Ligature mark-Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.</u>	7. <u>Ligature mark-Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.</u>
8. Abrasions and ecchymoses round about the edges of the ligature mark, rare.	8. Abrasions and ecchymoses round about the edges of the ligature mark, common.
9. Subcutaneous tissues under the mark-White, hard and glistening.	9. Subcutaneous tissues under the mark-Ecchymosed.
10. Injury to the muscles of the neck-Rare.	10. Injury to the muscles of the neck-Common.
11. Carotid arteries, internal coats ruptured in violent cases of a long drop.	11. Carotid arteries, internal coats ordinarily ruptured.
12. <u>Fracture of the larynx and trachea-Very rare and too in judicial hanging.</u>	12. <u>Fracture of the larynx an trachea-Often found also hyoid bone.</u>
13. Fracture-dislocation of the cervical vertebrae-Common in judicial hanging.	13. Fracture-dislocation of the cervical vertebrae-Rare.
14. Scratches, abrasions and bruises on the face, neck and other parts of the body-Usually not present.	14. Scratches, abrasions fingernail marks and bruises on the face neck and other parts of the body-Usually present.
15. No evidence of sexual assault.	15. Sometimes evidence of sexual assault.
16. Emphysematous bullae on the surface	16. Emphysematous bullae on the surface

Hanging	Strangulation
of the lungs-Not present.	of the lungs-May be present.

(emphasis supplied)

42. In his Medical Jurisprudence, 20th Edition, 1977 Modi wrote the symptom of differences as under:

Hanging	Strangulation
1. Mostly Suicidal. 2. <u>Ligature mark, oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.</u> 3. Abrasions and ecchymoses round about the edges of the ligature mark, rare. 4. No Evidence of sexual assault. 5. Subcutaneous tissues under the mark, while hard and glistening. 6. Injury to the muscles of the neck rare. 7. Carotid arteries, internal coats ruptured in violent cases of a long drop. 8. <u>Fracture of the larynx and trachea, very rare and that too in judicial hanging.</u> 9. Fracture-dislocation of the cervical vertebrae, common in judicial hanging. 10. Scratches, abrasions and bruises on the face, neck and other parts of the body, usually not present. 11. Face, usually pale and petechiae rare. 12. Neck, stretched and elongated in fresh bodies. 13. External signs of asphyxia, usually not well marked. 14. <u>Bleeding from the nose, mouth and ears very rare.</u> 15. Saliva, running out of the mouth down on the chin and chest. 16. Emphysematous bullae on the surface of the lungs not present.	1. Mostly homicidal. 2. <u>Ligature mark horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.</u> 3. Abrasions and ecchymosis round about the edges of the ligature mark, common. 4. Sometimes evidence of sexual assault. 5. Subcutaneous tissues under the mark, ecchymosed. 6. Injury to the muscles of the neck, common. 7. Carotid arteries, internal coats ordinarily ruptured. 8. <u>Fracture of the larynx and trachea, often found also hyoid bone.</u> 9. Fracture-dislocation of the cervical vertebrae rare. 10. Scratches, abrasions finger nail marks and bruises on the face, neck and other parts of the body, usually present. 11. Face, congested, lived and marked with petechaie. 12. Neck, not so. 13. External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect) 14. <u>Bleeding from the nose, mouth and ears may be found.</u> 15. Saliva, no such running. 16. Emphysematous bullae on the surface of the lungs, may be present.

(emphasis supplied)

43. And finally Bakshi in his Medical Jurisprudence, 3rd Edition, 1980 showed the differences as under:

Hanging	Strangulation
1. Usually suicidal. 2. <u>Ligature mark is oblique, non continuous, and high up in the neck.</u> 3. Parchmentisation of the skin under the	1. Mostly homicidal. 2. <u>Ligature mark is transverse, continuous and lowdown in the neck.</u> 3. Parchmentisation of the skin under the

Hanging	Strangulation
<p>ligature mark in common.</p> <p>4. Abrasions and ecchymoses on either side the ligature mark are rare or the least less conspicuous.</p> <p>5. Subcutaneous tissues under the ligature mark are usually while, hard and parchment-like in appearance.</p> <p>6. Internal coats of the carotid arteries are ruptured only in long drops.</p> <p>7. Injury to the neck muscles is rare, except in long drops.</p> <p>8. Fracture or dislocation of the cervical vertebrae is common in hanging with a long drop-especially in judicial hanging.</p> <p>9. Signs of struggle such as abrasions, bruises and scratches on the face, forehead and other parts of the body are absent.</p> <p>10. Face is usually pale and placid. Petechial haemorrhages are usually absent.</p> <p>11. Neck may be stretched and elongated.</p> <p>12. Signs of asphyxia may not be very marked.</p> <p>13. Eyes are not very prominent and are usually closed.</p> <p>14. <u>Protrusion of tongue is absent or very little.</u></p> <p>15. <u>Bleeding from the mouth, nose and ears is very rare.</u></p> <p>16. Dribbling of Saliva from the angle of the mouth vertically in a straightline on to the chest is common.</p> <p>17. No emphysematous patches on the surface of the lungs under the visceral layers of pleurae are usually seen.</p>	<p>ligature mark is rare.</p> <p>4. Abrasions and ecchymoses on either side of the ligature mark are very common and more conspicuous.</p> <p>5. Subcutaneous tissues under the ligature mark are usually ecchymosed and not of parchmentised appearance.</p> <p>6. Internal coats of the carotid arteries are ordinarily found ruptured.</p> <p>7. Injury to the neck muscles is common.</p> <p>8. Fracture or dislocation of the cervical vertebrae is very rare, if at all.</p> <p>9. Signs of struggle such as abrasions, bruises and scratches on the face, forehead and other parts of the body are very common.</p> <p>10. Face is usually congested, livid with petechial haemorrhages under the skin.</p> <p>11. Neck does not become stretched and elongated.</p> <p>12. Signs of asphyxia are, as a rule very well-marked.</p> <p>13. Eyes are usually prominent, injected and open.</p> <p>14. <u>Protrusion of tongue is a common feature.</u></p> <p>15. <u>Bleeding from the mouth nose and ears may occur.</u></p> <p>16. Dribbling of saliva along the chest is unusual.</p> <p>17. Emphysematous patches on the surface of the lungs under visceral layers of pleurae are common.</p>

(emphasis supplied)

44. From the above tables of symptoms of renowned forensic experts it is difficult to arrive at a conclusion plainly as to the cause of death of deceased Kohinoor. In the tables reproduced hereinbefore, displaying the difference of symptoms, the experts have used the terms- 'as found, common, uncommon, usually, unusual, rare, very rare, absent, may be, may not be, mostly' *et cetera*. The terms used there are not definite, but indicates that a specific symptom may be or may not be found in both the cases. Thus the opinion of the forensic experts about symptoms of strangulation and hanging are not conclusive or absolute to determine a particular case. Some symptoms in hanging are also common in strangulation with slight variation. In view of the above position, we have to scrutinise carefully the symptoms found in the body of the deceased and thereafter to tally whether most of the symptoms found in this case attracts hanging or strangulation as per tables. In the postmortem

examination the doctors found- (i) body partially decomposed (blister all over the body); (ii) mouth partially open; (iii) tongue outside mouth due to gas; (iv) bloodstained discharge from nose; (v) ill defined broad transversely placed ligature mark on anterior aspect of neck; (vi) haematoma on the right parietal region; (vii) extradural haemorrhage inside the region; (viii) fracture of hyoid bone; (ix) antemortem congestion and clot found corresponding to the above injuries and (x) congestions present on either side of trachea. If the above external and internal symptoms and injuries found on the person of the deceased are compared with the above quoted tables of differences shown by the forensic experts, most of them find support in favour of hanging. Serial Nos. 2,5,6,7,11 and 13 of the table of Modi's Medical Jurisprudence, 24th Edition, 2011 and serial Nos. 6 and 13 of similar table of Reddy's Medical Jurisprudence, 34 Edition, 2017 support the defence case of suicidal hanging. Although renowned forensic experts' opinion is not encyclopedia but while the defence raises question about homicidal death of the deceased and in the trial the autopsy report is challenged and public witnesses support the defence version of suicidal hanging and other surrounding circumstances create a reasonable confusion as to the cause of death, we may in the circumstances safely rely on the opinions of renowned forensic jurists like Modi, Reddy and Bakshi. Although, arguments made by the learned Assistant Attorney General relying on medical jurisprudence of Modi and Bakshi that the death was homicidal caused by intracranial haemorrhage and strangulation are being supported to some extent, but most of the treatise referred to above speak in favour of hanging and the death as suicidal.

45. In the inquest report, it appears that the IO did not find any external injury on the corpse. In the autopsy, the doctors found only a haematoma on the right parietal region. On dissection they found intracranial haemorrhage present inside the haematoma. Naturally, the question arises how the haematoma was caused resulting in extradural or intracranial haemorrhage. The learned Assistant Attorney General has vehemently argued that it could not be the victim's self inflicted injury. It was done by the condemned-prisoner and while she became senseless, she was strangled and the body was suspended from the rafter and resultantly she died. We find from evidence and materials on record that the body was found on the entresol of the house hanging from a rafter under the tin shed roof. As per inquest the height between the suspended point and the wooden ceiling was 4½ (four and a half) feet and the victim was 5 (five) feet tall. A rafter (করা) of a tin shed house is one of a series of sloped wooden structural members that extend from the ridge or hip to the wall plate, downslope perimeter or eave and that are designed to support the roof shingles, roof dock and its associated load. As per sketch map, the lower part of the rafters of the occurrence house were slopping and down to the wall plate to fix roof of tin on it which is common in this country. Therefore, in case of self hanging from the rafter, it was possible for the victim to receive a strike/blow on her head from it resulting haematoma and intracranial haemorrhage which has been found in the autopsy. It may be noted here that no other external injury was found on the person of the deceased. If the condemned-prisoner assaulted the victim or strangled her by force, there could have been some marks of violence or other injuries such as scratch mark on the throat or other parts of the body. It was almost impossible for the condemned-prisoner to take the victim's body on the entresol of the house through a ladder or stair generally used in such a tin shed house after making her senseless. Therefore, the prosecution case that the victim was made senseless on torture or murdered earlier and thereafter her body was suspended at the place and in the manner to screen the offence is not at all believable. It may further be noted here that the doctor found one of the cause of victim's death by strangulation and it was antemortem. If she was hanged after her death as stated in the FIR and found by the trial Judge, the ligature mark found around the neck would be of *postmortem*, it would not in any case be *antemortem*.

46. In the necropsy report (exhibit-4) the doctors found deceased's tongue protruded due to gas and PW8 doctor deposed 'জিভ্বা আংশিকভাবে বাহির হইয়াছিল', which supports the inquest report. In that case, as per Reddy's book of 'Essentials of Forensic Medicine and Toxicology', 34th Edition, 2017 (Page 328, serial No. 13 of the table) the death was for hanging but not of strangulation. The tongue position in case of homicidal death by strangulation and in case of suicidal hanging as published in 'International Journal of Legal Medicine' further shows that in the survey they have found protrusion of tongue in most of the hanging cases but not in strangulation.

47. In his Medical Jurisprudence, 22nd and 20th Edition, Modi in displaying the symptoms opined that blood in the nose, mouth and ear of a deceased may be found in case of strangulation and relying on it the learned Assistant Attorney General advanced his argument as blood stain discharge was found in the nose of victim. But in Modi's Medical Jurisprudence, 24th Edition, the experts have changed their views on that particular point and omitted it from the table of symptoms. This also goes against the prosecution.

48. The ligature mark in case of strangulation is commonly found round around the neck but here it is found 'ill defined and anterior aspect of the neck'. Showing the condition of fracture of hyoid bone, Mr. Ahammad submits that Medical Jurisprudence speaks of fracture of hyoid bone common in strangulation but it is absent in hanging and from that point of view, the present case is purely a case of strangulation. We find in Modi's Medical Jurisprudence (20th and 22nd edition), that in case of strangulation larynx, trachea and hyoid bone (all) are often found fractured but it is rare in hanging. In this case only hyoid bone is found fractured. Moreover, Reddy in his Medical Jurisprudence, 34th Edition, 2017 (Page-328) found fracture of hyoid bone uncommon in strangulation but may occur in hanging. In view of the above position, the submission of Mr. Ahammad does not stand but supports the defence case of hanging. Moreover, in the inquest, the IO found the eyes of the deceased closed which according to the view expressed by Modi is also a sign that the victim's death was from hanging.

49. According to section 45 of the Evidence Act, a postmortem report is an expert opinion and if it is found corroborative to the injuries on the person of the deceased and supported by the evidence of doctor, it may be considered alone for basing conviction in the absence of any ocular evidence on record. But here, the injuries found on the body do not support the opinion passed in the report. We find no ocular evidence in this case. The evidence of PW1 shows that when he arrived at the occurrence house, he found the condemned-prisoner there. There could be no reason of his presence there, if he had been the murderer. On informant's (PW1) query PWs 2 and 7 told him that their mother had committed suicide. Most of the public witnesses except PW5 and PW6 (relations of the deceased) deposed that they heard of victim's committing suicide. Even PW2 and PW 7, daughter and son of the deceased respectively, who resided in the occurrence house, did not depose against the condemned-prisoner. Rather, they spoke in support of the defence case.

50. The prosecution further failed to prove the time of occurrence. It appears from the evidence and other materials on record that the dead body of Kohinoor was found in the place and manner after 3 (three) days of her missing. The doctor found most of the organs of the corpse decomposed and blister all over the body. But in the report they did not write about the approximate time of death of the deceased. We find that the doctors very casually examined the corpse and held autopsy on it. They did not mention the condition of eyes and other necessary symptoms generally found internally and externally to determine the death. They should be cautious enough in holding autopsy in unnatural death cases. Their callousness in holding autopsy may result in miscarriage of justice.

51. Although, the victim earlier lodged a GDE with the concerned police station bringing allegation that her life was *at stake* with the condemned-prisoner but it was not brought to the record as evidence. PW5 in her evidence stated about its lodgment. We find it in the case docket and scrutinized accordingly. It was lodged on 03.10.2009, i.e., four months before taking place the occurrence. In the said GDE some allegations have been brought against the condemned-prisoner. It only reflects previous conduct of the condemned-prisoner and by it at best a presumption can be raised against him. But presumption or suspicion, by itself, however strong it may be, cannot be the basis of conviction in the absence of any legal evidence against him.

52. It transpires from the evidence of witnesses that there was strained relation between the husband and wife for the second marriage of the condemned-prisoner. The fact of missing of the deceased wife before 3 (three) days of tracing her body hanged and the surrounding circumstances lead us to believe that she might have committed suicide at the place and in the manner for the reason of her husband's second marriage. The defence has been able to make out a specific and believable case of suicidal hanging by putting suggestions to the prosecution witnesses. The necropsy report and the evidence of doctor in support of strangulation and intracranial haemorrhage are not a gospel truth or sacrosanct. These may be scrutinized and rejected by the Court, if found contradictory with the symptoms found on the dead body and oral evidence of witnesses. The *ratio* of the cases cited by Mr. Manir applies here.

53. The journal of Enam Medical College Hospital about a Study of Dinajpur Medical College Hospital of 'Violent Asphyxial Deaths' and the journal of the Department of Forensic Medicine and Toxicology of the Government Medical College, Amritashar, India also support the case of suicidal hanging as has been argued by Mr. Manir.

54. Since, the conviction is wholly based on medical evidence, i.e., on the experts' opinion but we find the medico-legal evidence (autopsy report) inconsistent with the homicidal death and the report differs from the opinion of renowned authors of forensic experts, and as such we cannot rely on it. The cases cited by the learned Assistant Attorney General are quite distinguishable and do not match this case.

55. Judges' mind always swings, to be or not to be. In this particular case, while deciding the death of the deceased as to whether it was suicidal or homicidal, our mind/balance swings in favour of suicidal death by hanging instead of strangulation and intracranial haemorrhage. And in that case, the condemned-prisoner would obviously get its benefit. Therefore, we find merit in this appeal.

56. In the result, the reference is rejected and the Criminal Appeal is allowed. The judgment and order of conviction and sentence passed by the Additional Sessions Judge, Court No. 1, Barishal on 18.10.2015 in Sessions Case No. 208 of 2010 is hereby set aside. The condemned-prisoner Md. Mostafa Sarder, son of late Hatem Ali Sardar is acquitted of the charges levelled against him. He should be set at liberty forthwith, if not wanted in any other cases.

57. Before parting with this case, we would like to express our special thanks to both Mr. Ahammad, learned Assistant Attorney General and Mr. Manir, learned advocate for the appellants. They have enlightened us with their laborious and meritorious submissions and supplying us the necessary books, the provisions of *Wikipedia and radiopaedia* to arrive at the decision.

58. Communicate the judgment and send down the lower Court records.