

Form No. J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Ajay Kumar Gupta

CRA 729 of 2015
With
CRAN 3 of 2017 (Old No.: CRAN 3831 of 2017)
With
CRAN 4 of 2018 (Old No.: CRAN 3012 of 2018)

Mana Naskar
Versus
The State of West Bengal

For the Appellant	: Mr. Akash Dutta, Adv.
	Mr. Aditya Dutta, Adv.
For the State	: Mr. Partha Pratim Das, Adv.
	Md. Y.A. Ismail, Adv.
Hearing concluded on	: September 4, 2025
Judgment on	: September 9, 2025.

Rajasekhar Mantha, J.

1. The appeal is directed against the judgment of conviction dated January 27, 2012 and the order of sentence dated Jan 30, 2012, passed by the learned Sessions Judge, Fast Track Court -II Howrah in the Sessions Trial No.

465/2008, whereby the appellant has been convicted under Sec.302 of the IPC and has been sentenced to imprisonment for life, and a fine of Rs 10,000 has imposed on her. In default thereof, she is to further undergo a rigorous imprisonment of one year.

THE PROSECUTION CASE

2. On August 12, 2008, the victim, 2 year old Gobindo, was as usual, left in the custody of his grandmother being Tapobala Naskar (PW 15) by his parents being Madhusudan Naskar (PW 4) and Sabita Naskar (PW 5) before they left for work. PW4 worked as a rickshaw van puller and PW-5 as a house maid. On that date, Gobindo was aged about 1-2 years. The house of the appellant and her brother-in-law were next to each other. Tapobala used to stay with her two sons alternatively.
3. On that fateful day, appellant, Mana Naskar, the aunt of Gobindo, is stated to have persuaded the grandmother to take the victim with her, on the pretext that the victim would play with her daughter Arati (PW 2). She is then stated to have thrown him in the pond, adjoining the house of the accused. Nobody saw the incident.
4. It was by word of mouth that villagers and prosecution witnesses came to learn that the accused killed the victim. The grandmother stated that the accused took the victim from her custody. Arati elder daughter of the appellant is stated to have informed most of the prosecution witnesses that her mother, the accused, has killed the victim.
5. One Sangita (not examined), a neighbor, is stated to have arrived in the house of Uma Naskar (PW 1) where Arati was present. Sangita is stated to have told

Arati that her mother Mana Naskar was being beaten by locals that she has thrown the victim into the said pond. Arati, at that time aged about 15, rushed to the said pond. Uma reached the pond later.

6. Uma, upon her arrival, is stated to have seen one Tumpa, a lady from the same village, and Ramesh Naskar (PW 11) searching for the victim in and around the pond. One Joydeb Naskar (PW16) is stated to have arrived and dived in the said pond, and it was he, who discovered the victim therein after his legs touched the body of the victim.
7. Uma lodged a written complaint dated August 12, 2008 with the jurisdictional police station being Manickpore, Sankrail, South Howrah. In the complaint, it was stated that she believes that it is Mana Naskar, who has drowned the body of the victim in the said pond, as a result of which, the victim died. Sanjit Naskar (PW 23) scribed the complaint. Uma however stated in her cross-examination that she was not aware of the contents of her complaint to the police.
8. The inquest officer came to learn from the villagers that Mana Naskar drowned the victim in the said pond. The inquest report further records the cause of death being death by drowning. No injury marks were found on the body of the victim. The body of the victim was covered with a bed sheet. The body of the victim, as found by the inquest officer, was lying at the verandah of his grandmother, Tapobala.
9. Post mortem was thereafter conducted by Dr Harashit Sarkar (PW 20) and it was revealed that the victim had been strangulated to death. The cause of the death was found to be asphyxia. Further, a small deep wound was found over the trachea. A hematoma was found over the trachea. No water was however

found in the lungs, heart, and trachea of the victim. During the cross-examination, the PM Doctor stated that he has mentioned in his post-mortem report that water and mud were in fact found in the body of the victim.

10. The accused was arrested during the investigation. The inquest and investigation of the crime were conducted by sub-inspector Kaushik Banerjee (PW 22). Mana Naskar was accordingly charge sheeted for committing the offense under Section 302. In the trial, she was found guilty of the murder of the victim and was sentenced as stated above.

EVIDENCE ON RECORD AND THE CHARGE.

11. The prosecution has examined as many as 23 witnesses.
12. **PW 1 is Uma Naskar.** She is the complainant. She has not seen the crime. To that extent, her evidence is hearsay, as she learned the complicity of the accused from one Sangita. Sangita has however not been arrayed as Prosecution Witness. Records would reveal that she was also not examined by the police at all.
13. The role of Uma starts when she reaches the pond and finds Tumpa and PW 11 searching for the victim. She joined them in their search for the victim. They were subsequently joined by the PW 16 who found the body of the victim in the pond. Uma is the witness to the recovery of the dead body of the victim by the PW 16. She is further a witness to the fact that Arati Naskar, the daughter of the accused, rushed to the pond from the house of Uma upon being informed by Sangita that her mother had drowned the victim. What cannot be ignored is that, she admits during her cross-

examination that she was not made aware of the contents of her written complaint to the police.

14. **PW 2**, was **Arati Naskar**, older daughter of the Appellant. She was present in the house of PW 1 when Sangita came to inform that the accused had drowned the victim. At the time of deposing before the Trial Court, she was aged about 15. The Trial Judge was thus required to first ascertain, whether she has a rational mind to depose. This was however not undertaken by the Court below. Thus, her evidence is to be discarded at the onset.
15. However, considering that she had given her statement before the Magistrate under Sec 164 CrPC, and the magistrate being satisfied with her mental capacity to speak facts recorded her statement thereunder, and on the same breath, the Magistrate having found that her younger sister, being Sanjani Naskar aged about 3 years, did not have the mental capacity to record any statement. This Court is of the view that the evidence of PW 2 can be taken a note of.
16. She supports the version of PW 1 that she was present in the house of the PW 1 when Sangita came to give information. Further, she is a witness to the fact that the victim has been recovered from the said pond.
17. She has deposed that she was taken before the learned magistrate for recording her statement under section 164, CRPC. However, she stated during the cross-examination that the police have not recorded her statement under Sec 161, CRPC. She has been unequivocal in stating, both during her examination-in-chief and cross-examination, that she has heard from the villagers that it is her mother Mana Naskar who has killed her cousin brother, the victim. The angle of strangulation comes out from her

deposition, where she says that she had heard from the villagers that her mother had strangled and thrown the victim in the pond.

18. **PW 3 was Dr Rabindranath Mondal**, is the doctor who deposed that he issued the death certificate of the victim upon the request of the Inspector in Charge of the Manickpore Police Station, Sankrail, Howrah. He has been declared hostile by the prosecution. His cross examination revealed that the death certificate alleged to have been issued by him was handed over to the said IC. He did not possess any such certificate. Nothing more could be obtained from his cross-examination that would throw light on the facts of this case.
19. **PW 4 is Madhusudan Naskar**. He is the father of the victim. He is a Riksha Van puller. He was loading coal on the van when one Haripada, a resident of his village, informed him that his son was missing. PW 4 and Sajani Naskar (the younger daughter of the accused) that the victim had been thrown in the pond when he reached his home. However, the victim was yet to be found in the pond when PW 4 reached there. Thus, the story that the accused had thrown the victim into the pond was spread before the child was actually recovered from the pond.
20. Further, PW 4 is a witness to the fact that the victim was recovered from the pond by Joydeb Naskar (PW 16). He corroborated the presence of the PW 3, the doctor who is alleged to have issued the death certificate. PW 4 has deposed that PW 3 came to examine whether the victim was alive. Upon finding that the victim is dead, he advised the victim to be taken to any hospital for a post-mortem.

21. His deposition further reveals that he had a property dispute with his brother being Subhamoy Naskar (the husband of the appellant) PW-6, about the stay of their mother in a room. PW 4 was unequivocal in stating that he does not share a cordial relationship with Subhamoy Naskar(PW 6). He would however clarify that he does not have any bad blood against Arati Naskar, the daughter of Subhamoy Naskar and the accused. The important facet of his testimony is that he was informed by Haripada not about the death of the victim, that the victim was missing. Haripada was not arrayed as a PW. There is no evidence to suggest that the Police examined him.
22. **PW 5 is Sabita Naskar.** She is the mother of the victim. She deposed that she was informed by one Panchu of her village that her son is missing. However, when she came home, she saw that the victim was lying dead in front of the house of the accused. She stated that she arrived before the arrival of PW 4, her husband. PW 4 stated that when he arrived, the victim was not yet been recovered from the pond. Thus PW 5 having stated to have arrived earlier than her husband could not have seen the victim's body lying dead. Either PW 4 or PW 5 were lying before the Trial.
23. PW 5 corroborated PW 4, that they did not share a cordial relationship with the appellant. The point of ill will was Tapabala, PW 15, for she was occupying a room in the house of the appellant. As per PW 5, the accused was unhappy because her family possessed lesser tracts of land. There is some contradiction here with the evidence of Tapabala as she deposed that she stayed in the house of the either of her sons from time to time.
24. **PW 6 is Subhamoy Naskar.** He is the brother of PW 4. He is the husband of the accused and the uncle of the victim. He returned home around 5 pm

much after the unfortunate incident. He heard from the villagers that his wife had thrown the victim in the pond and the police had arrested her. He was declared hostile by the prosecution and was cross-examined.

25. Another likely motive behind the crime came from the suggestions put to him by the prosecution. PW 6 was suggested that her wife was unhappy with the fact that they have two daughters as children but no sons. She held a grudge against the PW 4 and 5 for having for having a male child victim boy. It was further suggested to PW 6 that the accused used to enter into quarrels with Tapobala, the grandmother of the victim, when she used to spend time with Gobindo. The prosecution further suggested that both Arati and PW 6 used to play with the victim and the same was deprecated by the accused. It was further suggested that the accused did not take it well when Gobindo was adored by immediate family members. All such suggestions have been denied by the PW 6. It must be noted that this angle was not further pursued by the prosecution.

26. **PW 7 is Laxmi Naskar.** She has deposed that she knows both PW 6 and PW 4. She corroborated the version of other prosecution witnesses that the villagers were searching for the victim in the pond. She came to learn about the victim being killed by the accused from PW 1. She is further a witness to the fact that the victim has been recovered from the pond.

27. **PW 8 is Subir Karaak.** He is the photographer, who is alleged to have been called on by the IC of the Manickpur Thana to take pictures of the body of the victim.

28. **PW 9 is Ashok Ghosh.** He was the Sub sub-sub-inspector at the said police station when the incident took place. He came to the PO and signed the

seizure list, which comprised of pictures taken by the PW 8. He has deposed that the IO of the case told him that the pictures are related to the death of the victim.

29. **PW 10 is Rabin Ghosh.** He signed on the seizure list as a witness who was present when the seizure of the said pictures was effected.
30. **PW 11 is Ramesh Naskar.** He was a member of the search party who was looking for Gobindo in the pond. PW 11 has corroborated the version of PW 1 as regards that they were searching for Gobindo in the pond. He has come to learn that the accused has been drowned the victim from PW 1. He has deposed that the age of the victim was one and a half years. He further stated that the Pond was not surrounded by any boundary wall. It was at the edge of the house of the victim.
31. **PW 12 is Saraswati Naskar.** She is related to PW 4. She has come to learn from Arati, PW 1, about the accused having strangled and drowned the victim in the pond. She corroborated the version of PW 4 and PW 5 that Tapobala (PW 15) used to take care of the victim when his parents went out for work.
32. **PW 13 is D.N. Barman.** He was a constable at the said police station. He accompanied the IO of the case to the PO and further stated that the post-mortem was conducted in Howrah Morgue.
33. **PW 14 is Banbehari Sarangi.** He was a constable at the said police station. He would corroborate the version of PW 1 that it was Uma who lodged the complaint with the said police station.
34. **PW 15 is Tapobala Naskar.** She was the mother of PW 4 and PW 6. She was the grandmother of the victim. She corroborated the version of the PW 4

and PW 5 that PW 4 and PW 6 had a dispute concerning her occupation of a room in the house of the Appellant . PW 15 stated in cross-examination that on the date of occurrence the accused took the victim from her on the pretext of playing with her. She thereafter went to the accused enquiring about the victim when she was told by the accused that victim had gone somewhere. She deposed that the accused had enmity against Gobindo. One may note as to why would PW 15 hand over the custody of the victim to the accused despite having a knowing that the accused did not like Gobindo. The evidence is therefore unreliable.

35. **PW 16 is Joydeb Naskar.** He was a co- villager. He is the person who discovered the victim in the pond. He came to learn from the PW 12 that the victim is missing. The accused having taken the victim from PW 15 and then strangled and drowned him in the pond was narrated to him by PW 15. His evidence is entirely heresay as regards who strangled the victim.

36. **PW 17 is Bidyut Naskar.** PW 4 is his uncle. He deposed that the daughter of the accused had told him that the accused had killed Gobindo. He however has not taken the name of the daughter. It may however be reasonably inferred that it was Arati, PW 1, who told him about the same since it was she who was 15 years old and the other daughter of the accused was 3 years old at the time of the incident. Further, it has come from the evidence of the prosecution witnesses that it was Arati who had told the villagers that her mother had killed the victim.

37. **PW 18 is ASI** to the said police station. He would say that he received the said complaint

38. **PW 19 was IC** to the said police station. He would depose that he has done nothing in connection to said case.
39. **PW 20, Dr.Harashit Sarkar, is the post-mortem doctor.** He deposed that the death of the victim is homicidal. He confirmed the injuries in the PM Report and identified it in Court. He indicated that injuries have been found in the trachea region of the person of the victim. The trachea is the tube in the throat that carries air to the lungs. The said tube does not receive injuries when one dies by drowning. The victim therefore has been clearly strangled to death since strangulation would require of an assailant to press and cause injuries to the trachea region of the victim.
40. The PM doctor would further state that there was no water in the heart and lungs of the victim. However, during his cross-examination, he stated that water and mud were found in the body of the victim. He opined that when one dies by drowning, water would fill the abdomen of the deceased. However, when a dead person is thrown in the water, water will not enter his body since a dead person does not inhale and exhale.
41. **PW 21 is the judicial magistrate.** She recorded the statement of PW 2 under Section 164 CRPC. The other daughter of the accused was also taken before the said magistrate. However, the magistrate could not record her statement since she found that the latter does not have mental capacity.
42. **PW 22 is the investigating officer** of the case. He would state that he has recorded the statement of Arati Naskar and Sajani Naskar under Section 161 CRPC. It may be noted that Arati during her cross-examination stated the police did not interrogate her. The IO would depose that he has examined 5 witnesses during the investigation. However, 23 witnesses have deposed

before the court. One may leave out the witness of police officials namely Sub-inspector, Inspector-in- Charge, and constables. Most of them have just lent their signature on documents like the Seizure list and thus need not be examined by the IO. However, even keeping them aside, one gets as many as 18 non-police witnesses, who deposed before the Court.

43. **PW 23 is the scribe** of the complaint who wrote out the same on behalf of Uma upon her instructions. He has passed the higher secondary examination.

44. The accused was examined under Sec 313 CRPC. A perusal of the questions put to the accused by the learned Session Judge would indicate that all the circumstances arising from the evidence against the accused have been placed before her for her answers. She denied the same. It was her specific plea that she was not at home when the said incident unfolded. She was out for work. She heard the same upon her arrival to her home. She however has stated that she did see the dead body of the victim. Thus, one may infer that she has not only heard about the incident, but she was indeed present when the dead body was there in the village.

THE FINDINGS OF TRIAL COURT.

45. The Trial court found that the prosecution was able to prove that the victim was last seen with the accused. Thus it was incumbent upon the accused to explain as to what she did with the victim thereafter. Having been unable to explain the same, the accused was convicted. The Last Seen theory therefore formed basis of the conviction of the accused in the Court below.

46. The Trial Judge further observed that the accused in her examination under Sec 313 has admitted that there is a dispute between her husband being PW

6 on one hand and the PW 4 and 5 on the other regarding the stay of PW 15 in a room of the house. Thus, PW 4 and 5, being the parents of victim, seek to falsely implicate her. The Trial judge factored in the said dispute and held that the accused thus had the motive to end the life of the victim.

ANALYSIS OF THIS COURT

47. The case of the prosecution is based on circumstantial evidence. There are absolutely no eye-witnesses to the incident. Thus, the burden of proof, on the prosecution, is on a much higher pedestal.

48. What has weighed with the learned Trial Judge is the last seen theory, namely, the accused took out the victim from the custody of PW 15. By placing reliance thereon, it was held that it is, therefore, only the accused, who could have, and thus shall be presumed to have, committed the murder of the victim. The Trial Judge thus only applied his mind towards the aforesaid adverse circumstance appearing against the accused.

49. This Court however notes that the last seen theory requires thorough and clear proof. In the instant case. It is based on one sentence in the evidence of PW15 that the accused had taken the victim from her to play. There is no corroboration of the same. As already stated above, it is difficult to believe that PW15 would have handed over the child to the appellant given the bad blood with her and the brother-in-law and sister in law Sabita. In any event it is just one link in the chain of circumstances.

50. PW 15 however cannot be believed when she says that she handed over the victim to the accused. Why would PW 15 hand over the victim to the accused when PW 15 on the same breath says that the accused had enmity against the victim. It is not the deposition of PW(s) and so also not the case of the

prosecution that earlier also, the grandmother used to hand over the victim to the accused.

51. It is also not the case of the prosecution that the victim could have walked over to the house of the accused. It is rather the case of the prosecution that the victim being a baby of one and a half years cannot be expected to walk and fall into the pond accidentally.
52. While it is indeed seen from the sketch of the PO and its surroundings that the house of the accused, victim and the grandmother being PW 15 were in close proximity to one another, it cannot be held that the victim on his own motion could have reached the house of the accused by reason of the said proximity. There is therefore no clear evidence that PW 15 handed over the victim to the accused, which she would not do, given her views about the accused. The last seen theory therefore has not been established beyond all reasonable doubt.
53. The depositions of the PW(s) indicate that the accused took the victim from the custody of PW 15 for feeding him. However, it is the consistent stand of PW 5, being the mother of the victim that she always kept the victim with the grandmother after having fed him. Thus there was no scope for the PW 15 allowing the victim to be handed over to the accused for feeding.
54. Unless the last seen theory is proved and established by the prosecution, the burden of proof cannot shift to the accused to demonstrate where she actually was at the time of occurrence. Reference in this regard may be made to the decision in **Anees v. State (NCT of Delhi), reported in 2024 SCC OnLine SC 757**, wherein it was held as follows:-

50. Section 106 of the Evidence Act would apply to cases where the prosecution could be said to have succeeded in proving facts from which a reasonable inference can be drawn regarding guilt of the accused.

52. To explain what constitutes a prima facie case to make Section 106 of the Evidence Act applicable, we should refer to the decision of this Court in *Mir Mohammad* (supra), wherein this Court has observed in paras 36 and 37 respectively as under:

37. But the section would apply to cases where the prosecution has succeeded in proving facts **from which a reasonable inference can be drawn regarding the existence of certain other facts**, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.”

Emphasis ours

53. We should also look into the decision of this Court in the case of *Ram Gulam Chaudhary v. State of Bihar*, (2001) 8 SCC 311, wherein this Court made the following observations in paragraph 24 as under:

24....When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond a reasonable doubt, the section would apply to cases like the present, **where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death**. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference. We, therefore, see no substance in this submission of Mr. Mishra.”

Emphasis ours

55. The prosecution has been unable to prove that PW 15 handed over the victim to the accused. Thus, no adverse inference could be drawn against the inability of the accused to explain as to what she did with the victim after taking his custody from the PW 15. The said explanation cannot be called for in the absence of proof of such a handing over of custody. Para no. 44 of ***Anees*** (supra) may be referred to:-

44. To infer the guilt of the accused from absence of reasonable explanation in a case where the other circumstances are not by themselves enough to call for his explanation is to relieve the prosecution of its legitimate burden. So, until a prima facie case is established by such evidence, the onus does not shift to the accused.

56. The appellant has even otherwise stated in her deposition under Section 313 that she was out at work during the time of the alleged incident. The Trial judge has therefore committed error in this regard.

57. Proof of motive is in fact the most vital link in case based on circumstantial evidence. Reference in this regard may be made to the decision of the Honorable Supreme Court in **Nandu Singh v. State of M.P., reported in (2022) 19 SCC 301:-**

9. In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of prosecution must be discarded. **But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused.**

‘25. In State of U.P. v. Kishanpal [State of U.P. v. Kishanpal, (2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182] , this Court examined the importance of motive in cases of circumstantial evidence and observed : (SCC pp. 87-88, paras 38-39)

39. The motive may be considered as a circumstance which is relevant for assessing the evidence **but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one.** It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. **In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.”**

Emphasis ours

58. When there is no eye-witness to the crime, it is by based on the circumstances namely, the events preceding the crime and after the crime, that the guilt of the accused is established. The dispute relating to stay of PW 15 in a room of the house cannot constitute motive of the accused to kill an one and half year year-old child.

59. The said dispute can at best be called a reason to cause harm to the PW 15, but not to the victim. There is no explanation as to why the victim was zeroed down, leaving aside the other two children of the PW 4 and PW 5. Reference in this regard may be made to the decision in **Nusrat Parween v. State of Jharkhand, reported in 2024 SCC OnLine SC 3683:-**

11. Ongoing squabbles between close relatives residing under one roof are nothing out of usual and may give rise to an inference that all was not well within the family. However, in our opinion, merely because such quarrels were going on between the accused persons and Hamida Parween (deceased), that by itself could not be a ground to impute motive to the accused-appellants for murder of Hamida Parween(deceased).

60. At this juncture, we take note of the suggestions put to the husband of the accused, being PW 6. The essence thereof was that the accused regretted the fact that the brother of her husband (PW 6), being PW 4 has a son ie the victim Gobindo. Whereas PW 6 and the accused only has two daughters to be happy with. PW 15 has stated during her cross-examination that the accused did have enmity against the victim. The prosecution has not been able to bring any independent proof of the motive of the appellant that, she killed the victim for not having a male child of her own. All the suggestions put forward on this part were denied by PW 6.

61. The learned Trial Judge noted that the accused in her answer to questions, put to her under Sec 313 CRPC, stated that there was a dispute relating to the stay of PW 15 in one of the rooms of the house, which resulted in bad blood between the brothers, being PW 4 and PW6, and that is why PW 4 and 5 seek to falsely implicate her. The learned Trial Judge held that this factor persuaded the accused to commit the crime.

62. Having perused the questions and answers recorded under Section 313, we however do not find any such questions and answers being put to and answered by the accused.
63. In the instant case the house of the PW 15 being in proximity to the house of the accused, it was not within the exclusive, special, preeminent, and peculiar knowledge of the accused only as to what she did with the victim, after taking him from PW 15, if at all she had taken him.
64. It was not impossible for other persons to see what the accused did after the victim was taken by her, if at all he was ever taken. The others had the occasion to see as to whether the accused took the victim to her house.
65. It was not impossible for the investigating agency to collect evidence that the victim was strangled behind the closed doors of the house of the accused, and thus no one except the accused could answer as to what she did with the victim after taking him, if at all she took him.
66. The prosecution has failed to bring evidence as to what happened during the intervening period. Further in the absence of evidence of handing over of the custody of the victim to the accused, section 106 does not kick in. Further, in the absence of a clear motive of the accused, the chain of circumstances loses vital link. The prosecution sought to build up its case based on reading between the lines and creating suspicion against the accused. Suspicion cannot replace the proof beyond reasonable doubt.
67. The Evidence of the family members PW-1,2,4,5,6,7,11 and 12 is hearsay. No reliance could have been placed on them.
68. This Court also notices that the most vital witness Sangita, who told Arati PW1 and Uma for the first time the victim was missing or had died. She has not even

been questioned by the police. Her statements have not been recorded and she has not been cited as witness by the prosecution.

CONCLUSION

69. In view of the above, the conviction of the appellant cannot be sustained. The impugned Judgment and order is therefore liable to be set-aside and the appellant is hereby set at liberty subject to her not being required or wanted in any other case.

70. The Appellant shall furnish a bond in terms of Section 437A of the CRPC (corresponding to Section 481 of the BNSS).

71. **C.R.A. 729 of 2015** is allowed. All the pending interim applications shall stand disposed off in terms of this present judgment.

72. There shall be no order as to costs.

73. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon completion of all requisite formalities.

74. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

1.

(Rajasekhar Mantha, J.)

I agree.

(Ajay Kumar Gupta, J.)