

Form No. J(1)

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

Present :

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

**C.R.A. 577 of 2017
Sk. Jahangir
Versus
The State of West Bengal & Anr.**

For the Appellant : Mr. Partha Sarathi Bhattacharyya,
Ms. Sukla Das Chanda,
Ms. Swarnali Saha.

For the State : Mr. Partha Pratim Das,
Ms. Manasi Roy.

Hearing concluded on : February 5, 2026.

Judgment on : February 5, 2026.

Rajasekhar Mantha, J.:

1. The subject appeal is directed against judgment of conviction dated 17.08.2017 and order of sentence dated 18.08.2017 passed by the Additional District and Sessions Judge, 2nd Court, Tamluk, Purba Medinipur in Sessions Trial No. 2 (6) of 2010 arising out of Sessions Case No. 78 (4) of 2010. The appellant was convicted under Sections 379(g)/302/201/34 of the IPC. The appellant was sentenced to undergo rigorous imprisonment for life and to also pay a compensation of Rs 50,000(fifty thousand) to the family of the victim.

THE PROSECUTION CASE, THE EVIDENCE ON RECORD AND ANALYSIS OF THIS COURT

2. On March 3rd, 2008, around 5 PM, the victim girl is stated to have gone to play near the house of the accused, near to the house of the grandparents of the victim. The victim was a 6–7-year-old minor. The victim girl went missing thereafter.

3. On the next day at about 5 AM, the body of the victim was found floating by **PW-4** & others, in a river called 'Kansa' on the northern side of the village- Golghat. The said PWs 4-5, had gone to relieve themselves near the river. The body was pulled up by **Abdul Mabub**, the nephew of **PW-2**(name withheld), the mother of the victim

4. **PW 1 (name withheld)** was the father of the victim. He was the complainant. The family of the victim did not suspect any foul play at the relevant point of time. However, when the last rites and ceremony was performed and the body of the victim was being bathed ceremonially, the paternal aunt of PW-1 noticed that the private parts of the victim girl was covered in blood, bruised and injured. The parents of the victim, PW 1 and 2, have deposed the day before the victim went missing, the appellant informed PW 1 & 2 that in the afternoon he saw the victim girl loitering around a local market and was crying

5. The parents (PW-1 and PW-2) of the victim, however, buried the body and performed the last rites. One Akram Ali, PW 10, informed the local Police about the injuries on the private parts of the victim. The body

of the victim was exhumed and was sent for inquest and postmortem at Tamluk Hospital.

6. The inquest officer, however, found the whole body of the victim blistered with cut marks. Blood was seen in the nose and mouth. There was mark of injury on the private parts of the victim.

7. The PM report confirmed that the victim was subjected to offence under Section 376(g). The injuries found on the victim's body are set out herein below:

“I found injuries at 7 places of body. As per my opinion, cause of death, in this case is due to combined effect of asphyxia shock and haemorrhage resulting from 7 points wound-anti mortem and homicidal nature. Drawing is post mortem.

I found wounds as genitalia – ruptured on perennial body extending one end at posterior vaginal wall and another end left rectal anal margin. Posterior vaginal wall ruptured with rupture of anterior Cervical Wall (illegible) apperted with labia minova seen. Uterine cavity empty with protrusion of (illegible) and obliteration of famines. No nail scratch or injury noted over thigh.

I collected viscera and artidem and handed over to the I. O. for further examination.”

8. Based on the above, the PW-1 filed a complaint scribed by PW-10, Sk. Akram Ali naming one Akkas, son of Monglu (absconding) and the appellant Sk. Jahangir, son of Sk. Hasmet responsible for the rape and murder of the minor victim. Initially, a formal FIR was registered under Sections 302/201/34 of the IPC. After Chargesheet the Trial judge framed charges against the both the accused under Sections 302/34, 201/34 and 376(g) of the IPC. Sk Akkas obtained bail before Trial and went absconding.

9. Apart from the above there is absolutely no other oral or evidence as regards any offence having been committed on the victim. There is absolutely no evidence whatsoever to link the appellant to the crime committed on the victim. The case of the prosecution was based on circumstantial evidence, the first purported link being the last seen theory. The prosecution was required to first link the accused with the rape and murder of the victim.

10. **PW 1, the father of the victim**, has deposed that the accused persons told him that they found his daughter roaming around the local market. He then went to search for his daughter along with his wife until late in the night but without any result.

11. On the next day at 5 a.m. **PW 4**, Aunt of PW 1 discovered the body of the victim floating on the local river. Then the prosecution story as stated above is narrated. PW 1 stated that the accused persons confessed before the police that they had raped the victim first and thereafter killed her and threw her body in the river. She admittedly was not present when the alleged confession was made.

12. The evidence of PW 1 in this regard is completely hearsay and there could not have been any admission by the accused before the PW 1. The police found wearing apparels of the victim in the house of the absconding accused.

13. **PW 2, the mother of the victim**, has narrated the entire incident, similar to her husband and the prosecution case. She, however, disclosed that some neighbors told her that they saw the victim traveling in a vehicle called "Trekker".

14. What transpires from the cross-examination of **PW 1 & 2** that there was a long standing enmity between **PW-9, father of PW-2** and the appellant herein.

15. **PW 3 was the wife of PW 9**. She was the grandmother of the victim. Her evidence is similar to that of PW 1 and 2. PW 4 was the aunt of the victim. She found the body of the victim floating in the river.

16. **PW 5 was Jarina Bibi**. She was declared hostile. She was the sister-in-law of the appellant. She denied having told the police that the women folk of the village found injuries on the private parts of the victim while performing last rites. She denied having told the police that the victim was raped and murdered. She admitted to a long standing dispute between Hatem, PW 9, the father of PW 2 and the appellant, Sk. Jahangir.

17. **PW 6 was Asma Bibi**. She was the sister-in-law of PW 1. She was also part of the crowd who was searching for the victim. An attempt was made early in the morning to approach the local mosque to make an announcement about the missing victim girl. The victim girl was found by PW 4 by that time.

18. **PW 6 was also the wife of Abdul Mamud**, who removed the body of the victim, out of the river. Her deposition as regards rape and murder of the victim by the accused persons was vague and sketchy.

19. **PW 7 was Suriya Bibi, wife of Akram Ali**. She also noticed injury on the private part of the victim while preparing the victim for last rites. She had only heard from the others that accused persons committed rape and murder of the victim.

20. **PW 8 was Shkhiya Khatoon (Bibi)**, wife of Sk. Tayeb Ali, local villager. She deposed that on 3rd March, 2008 the accused persons in a drunken condition informed PW 2 that they found victim crying and sitting at the near shop of Anjan of the local market. Her evidence is similar to all other witnesses except the evidence of PW 5. The evidence of PW-1 to 4 and 6 to 9 are parrot like carbon copies of one and another without any direct or indirect knowledge of the actual offence on the victim.

21. **PW 9 was Hatem Ali, father of PW 2**. His evidence is similar to PW 1 to 4.

22. **PW 10 was Sk. Akram Ali** the scribe of the complaint. **PW 11 was Sahadeb Maity**, a local villager. His evidence is based on his own suspicion without any material basis.

23. **PW 12 was the uncle of the victim**.

24. **PW 13 was Rampada Chanda**. He had a furniture shop where the appellant worked.

25. **PW 14 Sk. Alam Ali**, who was an acquaintance of PW 1. He was in the group of persons, who was trying to locate the victim on 3rd of March, 2008. His evidence is hearsay.

26. **PW 15 was Pulak Maity**, who took photographs of the victim girl.

27. **PW 16 was Dr. Pradip Das**, who performed autopsy and post mortem on the victim. He found injuries on the victim morefully described in paragraph no. 7 hereinabove. He did not ascertain the approximate time of the death of the victim. He deposed that post mortem was video-graphed. He also examined the appellant. Semen sample of the appellant was preserved by the PW 16. PW 17 was the police constable. The FSL report of the Semen was not compared with the fluids in the body of the victim. No FSL report was exhibited in the Trial.

28. **PW 18 was the Investigating Officer**. He narrated the steps taken in the investigation, which is perfunctory

29. **PW 19 was Narayan Chandra Mondal**, another Investigating Officer, who claims to have submitted the wearing apparels of the victim to F. S. L. The report was never collected or produced in Court.

30. No medical evidence other than the Post Mortem Doctor's report was produced in the Trial. There is no link whatsoever established between the accused persons to the offence in any form whatsoever. The postmortem report indicates that victim girl was raped. The same however by itself does not link the appellant with the victim. The appellant was examined under Section 313 of the Code of Criminal

Procedure and denied the prosecution case. He has clearly deposed that he is innocent.

31. At the risk of repetition, this Court wishes to reiterate that the evidences of PW-1 to PW-4 and PW-6 to PW-13 are all parrot like. They are either family members or friends and relatives of the victim girl's parents. There are no eyewitness whatsoever to the appellant being involved in the crime against the victim. The purported confession by the accused persons before the police is absolutely of no evidentiary value.

32. Some of the witnesses for prosecution only stated that the accused persons saw the victim near the market. No person has deposed that the accused persons were last seen with the victim. Even the first probable link in the chain of circumstances i.e. the last seen theory cannot be invoked in these facts.

33. The mere finding of garments of the victim in the house of one of the accused persons, who is absconding, namely, Akkas cannot be itself lead to any conclusive evidence that the victim was there with the appellant.

34. The evidence on record indicates that some of the PWs have told the parents of the victim that the victim was seen with some labourers. There is no evidence on record to establish as to with whom the victim went. The appellant last saw the victim. The appellant however was not last seen with the victim.

35. The appellant would not be informing the parents of the victim that he has last seen the victim if the appellant had committed the crime. If the appellant had committed the crime, he would have made every endeavor to disassociate himself from the victim. Thus the alleged statement of the appellant that he has last seen the victim is inconsistent with his guilt.

36. The case of prosecution is based on an illogical inference. The inference is that since the appellant is alleged to have informed the parents of the victim that he has seen the victim in the market, it is the appellant, therefore, who has committed the crime. This does not even form “the last seen theory”.

CONCLUSION:

37. In the facts and circumstances of the aforesaid, this Court is of the view that the prosecution has not brought even an iota of evidence against the accused persons to implicate them or even bring them anyway close to the place of occurrence or the crime in question.

38. The findings of the Trial Judge apart from being totally perverse are de hors the evidence on record and against the basic cannons of the criminal jurisprudence. The impugned judgment and order convicting the appellant dated 17th August, 2017 and order of sentencing dated 18th August, 2017 are set aside.

39. The appellant, namely, Sk. Jahangir shall be set at liberty forthwith from the custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the Learned Trial Court, which shall remain in force for a period of six months under Section 437A of the Code of Criminal Procedure corresponding to Section 481 of the BNSS, 2023

40. Let a copy of this judgment be sent down to the Court below for information.

41. Let the T.C.R. be returned to the Court below at once.

42. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

I agree.

(Ajay Kumar Gupta, J.)