

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. 734 of 2016

**Pintu Saha
Versus
The State of West Bengal**

For the Appellant : Mr. Moinak Bakshi
Ms. Niketa Bhattacharjee

For the State : Mr. Madhusudan Sur, Ld. A.P.P.
Mr. Monoranjan Mahata

Hearing concluded on January 22, 2026.

Judgment on : January 22, 2026.

Rajasekhar Mantha, J.:

1. The subject appeal is directed against the judgment of conviction and order of sentence dated 31st May, 2016, passed by the learned Additional District & Sessions Judge, F.T.C. Bankura in Sessions Trial No. 01(01)/2013 arising out of the Sessions Case No. 01(11)2012. The appellant was convicted under Section 302 of the IPC and was sentenced to suffer imprisonment for life and directed to pay a fine of Rs. 5,000/-. He was also convicted to suffer imprisonment for one year for

commission of offence punishable under Section 201 of the IPC. The sentence was directed to run concurrently.

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

2. An unidentified dead body with a palm severed in a decomposed condition was discovered by local residents in the Damodar river at Balighat under Mouza- Krishnanagar under Barjora PS sometime at about 1.00 p.m. on 27th June, 2012.
3. Upon being informed, the Barjora PS personnel, removed the dead body therefrom and sent the same for inquest. **PW 15 was the Inquest Officer as well as the Investigating Officer of the case.** The inquest report recorded several injuries on the body of the victim including the left palm being severed from the dead body. Sharp injuries were also found on the right wrist of the victim. The victim had several cuts in both the upper and lower portion of his body. The inquest report indicated that the name "MANIK" was tattooed on the left forearm.
4. **PW 5 was one of the local residents.** He discovered the body of the victim. He wrote the formal written complaint to the Barjora PS. The FIR being No. 70/12 dated 27th June, 2012 was registered based on the said complaint at about 2.05 p.m on 27th June, 2012.

5. Meanwhile, the parents of the victim, PW 7 (mother) and PW 8 (father), were searching for their son. The said son left the house in the evening at 5:30 pm, on the 25th, 2012 and had not come back. PW 8 is stated to have lodged a missing diary with the Durgapur, Cokoven PS in that regard. PW 7 and 8 later received information from Barjora PS that two dead bodies have been recovered and reached thereat.
6. PW 7 gave the description of the wearing apparel of her son to the police personnel of the Barjora PS. The said wearing apparels worn by her son when he left the house on June 25th, 2012. PW 7 further informed the said PS that the left hand of her son had a tattoo imprinted with his name "Manik". The said PS showed PW 7 photographs of the dead bodies recovered. PW 7 identified one of such bodies as that of her son Manik, from the said photographs. She along with her husband on being directed by the Cokeoven PS had gone to make enquiries about her son from his friends and had met CW-2 Mrinmoy Mondal @ Babushona at his house. She deposed that she had informed the police that Babushona had informed her that he had seen the accused and the victim on the night of the 25th together on a motorcycle at 8:30 PM.

7. Investigation was completed and charge sheet was submitted. Charges were framed under section 302 and Section 202 of the IPC. Babushona who should have been the star witness of the prosecution ought have been cited as a witness in the charge sheet. He was not so cited.
8. The case of the prosecution was based on circumstantial evidence. The main witnesses for the prosecution were **PW-7**, Monika Barui, mother of the victim, **PW-8**, Monoranjana Barui, father of the victim and **PW-11**, Sanjoy Some, maternal uncle of the victim. The consistent evidence of PW-7, PW-8 and PW-11 is that the victim left his house in the evening around 5.30 p.m. on 25th June, 2012 on a motorcycle. PW-7, however, stated that he left the house on 26th June, 2012. The victim was 18 years of old at that time. He used to normally return home by 9.30 p.m. but did do so on the said date. On being advised by Cokeoven PS they are stated to have gone to the house of the **CW-2**, one Mrinmoy Mondal @ Babusona. CW 2 was one friend of the victim.
9. PW 7 has deposed that C.W.-2 has informed PW-7 and PW-8 that the former has last seen the victim with the appellant. CW-2 has deposed that he saw the victim riding his motorcycle with the appellant seated on the pillion. He saw the victim and appellant between 8-8.30 p.m. on 25th June, 2012. CW 2 has deposed that he stopped the victim and enquired with him. The victim was however in hurry. The victim told CW 2 that he would speak to him later. They drove away. The last

seen theory of the victim with the accused was therefore the the genesis of the prosecution case.

10. **PW 15, the IO the case**, has deposed that based on the aforesaid statement of PW 7, he detained the appellant first on 27th June, 2012. The appellant was however released by the police and subsequently was rearrested on 1st July, 2012 after a brief investigation.
11. Based on the purported leading statement of the appellant, the police are stated to have recovered the weapon used by the appellant to inflict injuries on the body of the victim and his head. The police purportedly recovered a 'Dao' (a sharp cutting instrument used in agriculture/farming), commonly available in market in most parts of Bengal. Along with the purportedly recovered, weapon was purportedly recovered a blood soaked vest of the deceased and a bottle of liquor and empty glass.
12. The PW-6, Sanjit Khan, whose signature was obtained on a seizure list of the aforesaid 'Daa' bloodstained vest, bottle of alcohol and glass and a bamboo stick has denied that the appellant was present at the time of discovery and seizure of the aforesaid items. He also denied that the appellant had in any way confessed to having brutally assaulted the victim with the 'Dao'. He deposed that he was only present around the place of seizure and was asked by the police to sign on a blank document.

13. PW 1-4, and PW 9 were local residents residing within the jurisdiction of the said Barjora PS. They turned hostile. The prosecution cross examined them. They denied the prosecution case. PW 10 was a police constable. He was an inquest witness. PW 12 was a police constable of Barjora PS. He was a witness to the seizure of the alleged offending weapons. PW 11 was a constable of Barjora PS. He took the dead body of the victim for postmortem, on instruction of the PW 15.
14. PW 13 was the Post Mortem Doctor. He opined that the death of the victim may have taken place 48-72 hours from the conduction of the post mortem. The post mortem was conducted from 12:30 P.M. on June 28, 2012. The victim thus may have died between 25th June to 26th June, 2012. He has deposed that the age of the person on which he conducted post mortem was **34 years**.
15. The first chink in the chain of circumstances was the information received by PW 7, 8, and 11 from CW 2. CW 2 informed them that he has seen the victim and the appellant riding bike together on the night of 25th June, 2012 at 8.30 p.m.
16. CW 2 was present in the Barjora PS when the said PW 7, 8 and 11 took the name of the appellant having been last seen with the victim. The statement of CW 2 was however not recorded then and there i.e. on June 27th, 2012. It was recorded the second day when he went back to the Police Station on 28th June, 2012 in the morning.

17. Further, we are shocked to note that the prosecution did not cite CW 2 as its witness. CW 2 is the direct witness to last seen theory. PW 7, 8 and 11 are mere hearsay witnesses on that score. The said omission on part of the prosecution dents the credibility of CW 2 as well as that of PW 7, 8, and 11.
18. It is essentially based on the evidence of PW-7, PW-8 and PW-11 that the Trial Court had called the CW-2 to depose in the trial. The evidence of PW 7, 8, and 11 as regards the last seen theory is based on the eye-witness account of CW 2.
19. In view of the above, the prosecution case could not have been built on the last seen theory. If the last seen theory was the sheet anchor of the prosecution case, the failure on the part of the Investigating Officer to include CW-2 in the charge sheet as a witness for the prosecution, is incredible and creates substantial doubts in the mind of this Court as regards whether CW 2 at all saw the victim with the appellant.
20. The argument of the learned counsel for the appellant Mr. Bakshi that the story of CW-2 having last seen the appellant and the victim together on 25th June, 2012 at 8.30 p.m., therefore, could be an afterthought concocted by the prosecution, cannot be ruled out.

21. The last seen theory cannot be applied to the present case. The PM doctor has opined that the death of the victim took place 48-72 hours before the date and time of conduction of the post mortem. The post mortem was conducted at 12:30 P.M on June 28th, 2012. The same translates, that the victim may have died between 25th and 26th, June, 2012. The time of death of the victim thus would be 12:30 PM afternoon of either 25th June or 26th June, 2012. CW 2 saw the victim with the appellant between 8 to 8:30 PM at night of June 25th, 2012. The medical evidence has indicated that the time of death of victim is 12:30 P.M. in the after-noon of either 25th June or 26th June.

22. The victim therefore has died in the afternoon time or around the noon time of 25th or 26th of June, 2012. He thus did not die just after CW 2 saw him with the appellant around 8-8:30 PM in the night of 25th June, 2012. CW 2 is alleged to have seen the victim and appellant at night of 25th June 2012. Thus, a substantial gap has intervened between the victim and appellant having been last seen together and the death of victim. Reference in this regard may be made to the decision in ***Rambraksh v. State of Chhattisgarh, reported in (2016) 12 SCC 251***, wherein it was held as follows:-

“12. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. **Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime**

becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.

Emphasis Applied

23. In ***Jabir v. State of Uttarakhand, reported in (2023) 16 SCC***

111, the last seen theory was examined in light of probable time of the death indicated by the post mortem report as follows:-

28. **In the present case, save the “last seen” theory, there is no other circumstance or evidence.** Importantly, the time gap between when the deceased was seen in the company of the accused on 9-10-1999 **and the probable time of his death, based on the post-mortem report, which was conducted two days later, but was silent about the probable time of death, though it stated that death occurred approximately two days before the post-mortem, is not narrow...**

Emphasis Applied

24. Thus, the last seen theory falls flat on its face. The evidence of CW 2 and PW 7,8 and 11 on the last seen theory is not credible as stated above. Further, the time gap between the death of the victim and the latter being last seen with the appellant is not narrow in terms of the decision in ***Jabir(supra)***.

25. Further, PW 8, the father of the victim, has deposed that in addition to CW 2, one Kennath of Deshbandhunagar also told the parents of the victim that the victim was last seen with the appellant on the said bike. The prosecution however has neither cited or examined the said Kennath as witness. In this regard, PW 15, the IO officer of the case, has deposed that PW 7, 8 and PW 11, the maternal uncle of the victim, have never told PW 15 during the police interrogation that they have come to learn from CW 2 that the victim was last seen with the appellant.

26. The investigation officer has also failed to investigate the link arising from the place from where the bike of the victim is alleged to have been recovered. The bike of the victim was seized from Sarada lodge near Durgapur Bus Stand. In this regard, PW 11 has deposed that the house of the appellant is near the Sarda Lodge, where the bike of the victim was parked. The investigating officer, PW 15, however has not ascertained whether the house of the appellant was indeed near the said lodge.
27. Assuming that the victim was last seen with the appellant on the said bike. In that case, the presence of the said bike at a location which is allegedly near the house of the appellant could not have linked the appellant to the bike of the victim.
28. The appellant cannot also be linked with the recovery of the dead body of the victim. The dead body of the victim was found in the Damodar river. The distance between the Sarda Lodge, where the bike of the victim was parked, and the said river has not been brought on record.
29. The investigating officer did not ascertain whether the house of the appellant was near to the said bike and hence could not link the appellant with the bike. Hence whether the appellant, by virtue of having his home being allegedly close to the said Sarda Lodge, went with the victim or took the latter to the Damdodar River after having parked the said bike at the Sarada Lodge could not be proved.

There is no credible evidence to suggest that the appellant was at all with the victim between June 25th and June 26th of 2012.

30. Further, even assuming for the sake of argument that the appellant was last seen with the victim on the aforesaid date and time as deposed by CW-2, that is at best one vital link in the chain of circumstances. The same by itself cannot support the prosecution case for conviction of the appellant.
31. Yet another very vital link in a case based on circumstantial evidence is the motive. There is absolutely no evidence on record to establish any motive on the part of the appellant to come with the crime against his own friend and to end his life. The situation at best has been characterized by the prosecution as an act committed under influence of alcohol and/or high inebriation.
32. There are other major omissions in the prosecution case. The most crucial gap in the prosecution case is the age of the victim. While PW-7 and PW-8 have clearly deposed that their son was 18 years of age and was about to take the school leaving board examination, the PM doctor has clearly deposed that the body on which he performed the autopsy was of a male of about 34 years of age. Reference in this regard may be made to the decision in **Pruthviraj Jayantibhai Vanol vs Dinesh Dayabhai Vala and Ors, reported in (2022) 18 SCC 683** wherein it was held as follows:-

“17. Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW-2 and PW-10 is unimpeachable. **It is only in a case where there is a gross**

contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved.”

Emphasis Applied

33. As to whether the body of the victim was at all recovered and as to whether the postmortem was performed on the body of the victim Manick Barui is in serious doubt.
34. Learned counsel for the State would argue that a mother cannot identify a body of stranger as her son as no mother would see her son to die. This by itself cannot conclusively prove the chain of circumstances against the appellant. The said identification did not have any link pointing towards the guilt of the appellant.
35. The next missing link is that while a severed palm was recovered by the Barjora police from the river bank near place and time of occurrence after two days and the palm was duly sent for postmortem, no postmortem report of the palm has come on record. There is no linking of the palm to the body on which postmortem actually performed. While it is true that there was a tattoo mark of the name of the victim Manick Barui on his hand, PW-7 stated that the tattoo was on the left arm whereas the doctor has stated that the tattoo was on the victim's right forearm. The aforesaid contradiction is another chink in the armour of the prosecution case.
36. At this juncture, it would not be inappropriate to indicate the answers given by the appellant to examine under Section 313 of the Cr. P.C.

37. Against question no. 46 that the appellant has given a statement under Section 27 of the Evidence Act, which led to the discovery of the weapon used by the appellant to kill the deceased, he has clearly stated that he has signed on a blank sheet of paper in the Police Station. He had put such signature on the police telling him that he would be allowed to leave the PS which he did.
38. This Court does not find the signature of the appellant in the alleged statement under Section 27. The said sign on a blank sheet appears to have been used to prepare a seizure list of the aforesaid articles including the weapon used in the crime.
39. The said answer of the appellant to question nos. 46 and 49 under Section 313 of the Cr. P.C., is further bolstered by the evidence of PW-6 who was another seizure witness to the same articles. He has denied having seen the appellant at the place and time of seizure of the weapon, bloodstained vest, bottle of alcohol, glass and a bamboo stick. The discovery of the weapon by the police, is seriously in doubt.
40. Section 27 of the Evidence Act is invoked to demonstrate the mental awareness of the accused about the place of the offending weapons. In the present case, there is a doubt on whether the appellant has pointed out the place of the alleged offending weapons to the police. Thus, the appellant cannot be attributed with the awareness of the place of the said weapons and weapons themselves. In view of the above doubts cast on the alleged statement under section 27 of the Evidence Act, this Court cannot rely on the said

statement under Section 27 of the Evidence Act. Reference in this regard may be made to the decision in **Perumal Raja @ Perumal Versus State, Rep. By Inspector Of Police** reported in **2024 INSC 13**, wherein it was held as follows:-

22. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. **The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place.** Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto.

24. Section 27 of the Evidence Act is frequently used by the police, **and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse.** However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.

Emphasis Applied

41. The co-relation of the said weapon to the crime is equally doubtful as the FSL report of the bloodstain on the said weapon and other articles could not be correlated with that of the victim. The FSL report has indicated that the bloodstains having come after some time were so fragmented with the same could not be identified or related to the victim. The prosecution case of seizure of the weapon, therefore, falls flat on its face.
42. Having regard to the above, this Court is of the clear and unequivocal view that the prosecution has failed to establish the complete chain of circumstances against the appellant, in the absence

of such chain having been complete, the appellant could not have been convicted based on the circumstantial evidence.

43. It is now well-settled that a chain of circumstance is complete only when each and every link of the chain is so intricately and doubtlessly proved without any doubt whatsoever. The only conclusion possible from the aforesaid chain in the prosecution case must be the leading to the guilt of the appellant. Reference in this regard is made in the case of ***Nusrat Parween V. Tate Of Jharkhand reported in 2024 INSC 955***, wherein it was held as follows:-

7.....In cases involving circumstantial evidence, it is crucial to ensure that the facts leading to the conclusion of guilt are fully established and that all the established facts point irrefutably to the accused person's guilt. The chain of incriminating circumstances must be conclusive and should exclude any hypothesis other than the guilt of the accused. In other words, from the chain of incriminating circumstances, no reasonable doubt can be entertained about the accused person's innocence, demonstrating that it was the accused and none other who committed the offence.

44. In the instant case, at the risk of repetition it is seen that the oral evidence is wholly incomplete and unreliable. The discovery of the weapon is wholly suspect. The star witness of the prosecution do not even remotely establish a chain of circumstances. The basic link namely the evidence of CW 2, being the witness to the alleged last seen theory, was not cited as a prosecution witness in the charge sheet.
45. Further, the most vital gap in the prosecution case was the opinion of the postmortem doctor about the age of the victim at the time of postmortem, i.e., 34 years. PW-7 and PW-8 being the mother

and father of the victim have in no uncertain term stated that the son was 18 years of age.

46. Having regard to the above, this Court is of the view that the prosecution has failed to establish the crime against the appellant.

47. In view of the above, the impugned order sentencing the accused person shall stand set aside. The appellant shall be set at liberty.

48. Appellant shall be released from custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the Trial Court which shall remain in force for a period of six months in terms in terms of Section 437A of the Code of Criminal Procedure.

49. Accordingly, C.R.A. 734 of 2016 is allowed and disposed of. Consequently, all connected pending applications, if any, are also disposed of.

50. Lower Court records along with copy of this judgment be sent down at once to the learned Trial Court for necessary compliance.

51. Urgent Photostat certified copy of this judgment, if applied for, be furnished to the parties expeditiously.

(Rajasekhar Mantha, J.)

I agree.

(Ajay Kumar Gupta, J.)