

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

**CRA (DB) No.05 of 2024
IA No: CRAN 2 of 2025**

Sachin @ Sachindra Banman

-Versus-

The State of West Bengal

For the appellant	:	Ms. Rima Sarkar, Mr. Arijit Ghosh, Ms. Sidhi Sethia, ... Advs.
For the State	:	Mr. Jagriti Mishra, AAAG, Mr. Debarata Rai , Adv.
Heard on	:	12.06.2026 & 18.06.2026
Reserved on	:	18.06.2026
Judgment on	:	19.06.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against the conviction of the appellant, primarily under Section 302 of the Indian Penal Code (IPC). The allegation is that the appellant murdered his wife in a banana garden

behind the parental house of the victim, where the appellant and his wife, the victim, were residing with their three children at the relevant juncture.

2. Learned counsel for the appellant argues that the prosecution case is based on the 'last seen alive together' theory and on a purported extra-judicial confession. However, there are serious lacunae in the prosecution case.
3. PW-1, the brother of the victim, who was also the de facto complainant, mentioned in his complaint, which gave rise to the FIR leading to the investigation, that after committing the offence, the appellant had contacted his mother-in-law (PW-2) over her mobile phone and admitted to the offence. However, PW-2 herself, in her cross-examination, stated that although the call had come to her mobile phone from the appellant, she had handed over the same to her husband, PW-3, to whom the admission was divulged.
4. PW-3, on the other hand, stated in his evidence that it was PW-2, his wife, who heard the confession over mobile phone, upon which, she dropped the mobile phone in shock.
5. Secondly, whereas PW-1 stated in his evidence that the appellant called the victim over her mobile phone and asked her to go outside the house, PW-2 stated that at the relevant point of time both the appellant and the victim were at home along with their three children.
6. Thirdly, the learned Trial Judge heavily relied on the evidence of a child witness (PW-9), the youngest son of the appellant and the victim. However, the learned Trial Judge, while recording the deposition of PW-9, did not record satisfaction as to the said child witness being capable of understanding the implications of his statements, pertaining to his rationality, and whether the child witness was aware of the need to tell the

truth. This, it is argued, vitiates the evidence of PW-9. In support of such contention, learned counsel relies on *Pradeep v. State of Haryana*, reported at 2023 SCC OnLine SC 777.

7. In the complaint leading to the FIR, it is argued, there was no mention of the PW-9 having witnessed the appellant and the victim together lastly, before the death of the victim. Such version came for the first time in evidence. By relying on *State of Maharashtra v. Ahmed Shaikh Babajan and others*, reported at (2009) 14 SCC 267, it is contended that omission to mention facts material to the offence by a vital witness vitiates the complaint and the resultant trial.
8. Learned counsel further submits that the statement of PW-9 under Section 164 of the Code of Criminal Procedure (Cr.P.C.) is also vitiated by the delay of about nine days in taking such statement after the offence. In support of such argument, learned counsel relies on *Firoz Khan Akbarkhan v. State of Maharashtra*, reported at 2025 Live Law (SC) 349.
9. Learned counsel also relies on *Kannaiya v. State of Madhya Pradesh*, reported at 2025 SCC OnLine SC 2270, to argue that where the genesis and origin of the offence was not explained and the eye witness was not mentioned in the FIR, the trial is vitiated.
10. In *Sachin v. State of Maharashtra, through Police Station officer*, reported at 2019 SCC OnLine Bom 1080, it is contended, the Bombay High Court observed that delay in taking statement under Section 164, Cr.P.C. and variance in the testimony of the ocular witnesses is fatal to the prosecution case.

- 11.** By citing *Kanhaiya Lal v. State of Rajasthan*, reported at 2014 SCC OnLine SC 230, learned counsel next argues that in a case where the conviction is based on the 'last seen alive together' theory and circumstantial evidence, the burden lies heavily on the prosecution to establish the motive for the offence. In the present case, however, it was admitted by PW-2, the mother of the victim, in whose house the appellant and the victim were residing at the relevant juncture, that they were happy during their stay at the said house. Thus, rather than a motive having been established, it is elicited from the evidence that the appellant and his wife, the victim, were happily residing together and there could not be any motive for the alleged offence.
- 12.** Learned counsel for the appellant also cites *Manoj alias Munna v. State of Chhattisgarh*, reported at 2025 SCC OnLine 2858 to argue that any adverse inference under Section 106 of the Indian Evidence Act is to be drawn against the accused only when the prosecution has been able to establish the case beyond a reasonable doubt. In the present case, the primary burden of proof of the prosecution having not been discharged to connect the appellant to the offence and in the absence of any eye witness, burden could not be cast on the appellant under 106 of the Evidence Act to explain as to what happened after the appellant was last seen together with the victim.
- 13.** Learned counsel for the appellant next submits that PW-9, the youngest son of the appellant and the victim, mentioned in his statement under Section 164, Cr.P.C. that his father was roaming about in the courtyard before the fateful incident, which contradicts the prosecution case that he was at the rear of the house, where the offence was committed.

- 14.** Also, the said witness stated that he found the victim, his mother, beside a banana tree in the courtyard of the house and not in the banana garden, as sought to be made out by the prosecution. The said witness also embellished his initial statement by alleging that he saw blood oozing out from the victim and that the appellant, his father, admitted his guilt in front of PW-9.
- 15.** Such palpable contradictions, it is argued, demolishes the 'last seen alive together' theory, which is the very premise of the conviction.
- 16.** Also, in view of the contradiction between the versions of the different witnesses as to whether the PW-2 or the PW-3, respectively the mother and the father of the victim, first heard the alleged confessional statement of the appellant over mobile phone. Thus, in the absence of any credible evidence of such confession, which in any event is extra-judicial in nature, the rigours of Section 106 of the Evidence Act were not attracted at all.
- 17.** Learned AAAG, appearing on behalf of the State, rebuts the submissions of the appellant and argues that the evidence of PW-3, the father of the victim, and PW-9, her son, are to be read together. On a conjoint reading of the same, it comes out that the appellant scolded PW-9 when the latter followed his parents to the place of occurrence, upon which PW-9, their youngest son, came back to the house. Furthermore, the appellant was singing songs after the commission of the offence, which lends a sinister note to the offence. It is also found from the evidence of PW-3 and PW-9 that PW-3, the father of the victim, had, immediately prior to the offence, abused the appellant, which can be linked with the conduct of the appellant in calling the mother of the victim over the mobile phone and asking her to hand over

the phone to the father of the victim (PW-3) to tell PW-3 about the murder of his daughter.

- 18.** It is further submitted by the State that the Doctor authoring the medical examination report categorically mentioned that the death was neither accidental nor suicidal but homicidal in nature. Hence, since it was the appellant who was last seen with the victim before her death as per the versions of PWs-1, 2, 3 and 9, there could not be any shade of doubt as to the appellant being the assailant. Furthermore, PW-9, in his evidence, stated that although immediately there was no scuffle between the victim and the appellant, they used to quarrel, the last such incident taking place about 10-12 days before the commission of the crime. Since the core prosecution case has been well-established by evidence, minor discrepancies are not fatal to the conviction.
- 19.** In rejoinder arguments, learned counsel for the appellant adds that from the evidence of the Investigating Officer (IO), it is evident that PW-3 did not mention in his statement under Section 161, Cr.P.C. about the appellant singing any song at the relevant point of time.
- 20.** Having heard learned counsel for the parties, we come to the conclusion, on the basis of the materials on record, that the learned Trial Judge did not err in law or in fact in handing out the conviction, due to the reasons enumerated below.
- 21.** Insofar as the broad contours of the prosecution case are concerned, the same was established by cogent evidence. It has come out consistently from the evidence of PWs-1, 2, 3 and 9 that it is the appellant who was last seen together with his wife, the victim. Hence, the onus shifted to the appellant,

under Section 106 of the Indian Evidence Act, in view of his having special knowledge as to what occurred thereafter, to explain such circumstance, in order to absolve himself of the offence. No such effort was taken by the appellant at all. Not a single defence witness was examined. In his statement under Section 313 of the Cr.P.C., the appellant resorted to bald denials without attempting to explain away the clinching evidence of PW-9, his youngest son, who categorically stated that when he tried to follow the appellant to the place of occurrence, he was rebuked and sent back by the appellant, upon which he came back to the house, thus establishing that the appellant was the person who was last seen with the victim while she was alive. The trajectory of events thereafter has not been explained in any manner by the appellant, in the teeth of detailed narration of the relevant facts, as borne out by the evidence, to him by the Court while taking his statement under Section 313, Cr.P.C. Thus, the appellant miserably failed to discharge his onus under Section 106 of the Indian Evidence Act to explain away his role in the offence, being the last person seen with the victim when she was alive.

- 22.** In *Kannaiya v. State of Madhya Pradesh (supra)*¹, the Hon'ble Supreme Court was considering a case where the eye witness was not mentioned in the FIR, which omission was treated to be a material one. However, in the instant case, there was not a single eye witness. The mere fact that PW-9, the son of the appellant, saw him last with the victim does not elevate the PW-9 to the category of an eye witness, the omission to mention whom would vitiate the complaint.

¹ ***Kannaiya v. State of Madhya Pradesh*, reported at 2025 SCC OnLine SC 2270**

- 23.** PW-1, the complainant, might very well have been unaware of the turn of events between PW-9 and the appellant prior to the commission of the offence. Thus, there was no scope of PW-1 to mention about the same in his complaint. Hence, the ratio laid down in the said judgment is not attracted to the present case.
- 24.** In *Sachin v. State of Maharashtra (supra)*² as well as *Firoz Khan Akbarkhan (supra)*³, the Bombay High Court and the Hon'ble Supreme Court respectively were also considering cases where the statement of the eye witness was not recorded within a reasonable period, which was held to be fatal to the prosecution. However, in *Firoz Khan Akbarkhan (supra)*³, the Hon'ble Supreme Court took into consideration both sides of the coin, referring to both categories of judgments - where the delay in taking witness statements was deemed fatal and where it was not.
- 25.** In Paragraph No.21 of *Firoz Khan Akbarkhan (supra)*³, the Hon'ble Supreme Court took into consideration the delay of 2-3 days in recording the statement of eye witnesses under Section 161 of the Cr.P.C., which was held to be thoroughly explained by the witnesses. As opposed thereto, in the present case, there was no eye witness and as such, the principle laid down in the aforesaid judgments is not applicable. In fact, in *Firoz Khan Akbarkhan (supra)*³, the Hon'ble Supreme Court also considered *Ganesh Bhavan Patel v. State of Maharashtra [(1978) 4 SCC 371]*, which was distinguished since in the said case, the delay in recording statement in material witness was accompanied by a delay in registering of the FIR as

² ***Sachin v. State of Maharashtra, through Police Station officer, reported at 2019 SCC OnLine Bom 1080***

³ ***Firoz Khan Akbarkhan v. State of Maharashtra, reported at 2025 Live Law (SC) 349***

well as the surrounding circumstances, which led to the Court to hold that there was a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story. Again, in *Jagjit Singh v. State of Punjab* [(2005) 3 SCC 689] and *State of A.P. v. S. Swarnalatha* [(2009) 8 SCC 383] which were also considered, the Court held in favour of the convict/accused, as the inordinate delays therein could not be sufficiently explained.

26. As opposed thereto, the Hon'ble Supreme Court, in *Firoz Khan Akbarkhan (supra)*⁴ went on to consider *Lal Bahadur v. State (NCT of Delhi)* [(2013) 4 SCC 557, where the delay of even 27 days was held not to be fatal in a case where communal violence had broken out. In *Baldev Singh v. State of Punjab* [(2014) 12 SCC 473], delay of over 2 years in recording witness statements was deemed not fatal, when explained.
27. In *Sunil Kumar v. State of Rajasthan* [(2005) 9 SCC 283] and *V K Mishra v. State of Uttarakhand* [(2015) 9 SCC 588], it was observed that delay in recording witness statements was not fatal *per se*.
28. Thus, on a composite reading of the above judgments, it comes forth that delay in recording witness statements *per se* does not vitiate the prosecution case. If such delay is coupled by other suspicious surrounding circumstances and/or delay in registering the FIR as well, it is required to be explained by the prosecution. In the present case, the apparent delay of about nine days in recording the statement of PW-9, a child witness, under Section 164, Cr.P.C., by itself does not vitiate the trial, in the absence of anything else to cast doubt on the prosecution version.
29. Thus, such line of argument of the appellant does not cut ice.

⁴ ***Firoz Khan Akbarkhan v. State of Maharashtra, reported at 2025 Live Law (SC) 349***

- 30.** The next contention of the appellant is that the FIR did not disclose the fact that PW-9, the youngest son of the victim and the appellant, saw the appellant last with the victim before her demise. However, in Paragraph No.26 of *Ahmed Shaikh Babajan (supra)*⁵, which is specifically relied on by the appellant, the Hon'ble Supreme Court recognized the trite principle of law that the First Information Report (FIR) does not constitute substantive evidence and can, strictly speaking, be only used as a previous statement for the purpose of either corroborating or contradicting its maker. At the same time, it was observed that omission of material facts pertaining to the crime is undoubtedly relevant in judging the veracity of the prosecution case. The Hon'ble Supreme Court further recognized that it is not the requirement of law that every minute detail of the occurrence needs to be recorded in the First Information Report, in support of which the Hon'ble Supreme Court referred to *State of A.P. v. Golconda Linga Swamy [(2004) 6 SCC 522]*.
- 31.** In the context of the above judgment, it is to be noted that PW-1, the brother of the victim in the present case, had lodged the complaint. It might not have been within the knowledge of the complainant as to whether his nephew, PW-9, had tried to accompany his parents when they went behind the house, and/or whether PW-9 was rebuked and sent back by his father, the appellant, while doing so. Thus, omission of such fact in the complaint is entirely beside the point and, thus, not fatal to the prosecution case at all.

⁵ *State of Maharashtra v. Ahmed Shaikh Babajan and others*, reported at (2009) 14 SCC 267

- 32.** Learned counsel for the appellant seeks to assail the 'last seen together' theory by citing *Kanhaiya Lal v. State of Rajasthan (supra)*⁶. The Hon'ble Supreme Court, in the said case, merely observed that the conviction of the appellant cannot be maintained merely on suspicion however, strong it may be. It was observed that these facts assume further importance on account of absence of proof of motive, particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time.
- 33.** In such context, it is to be seen that PW-9, who was one of the best witnesses to say so, stated in his evidence that there used to be quarrels between his parents, the appellant and the victim, and the last such incident took place 10-12 days before the commission of the offence.
- 34.** However, it is a well-settled principle of criminal jurisprudence that mere absence of motive need not necessarily demolish the prosecution case *per se*, if the prosecution case is proved otherwise.
- 35.** In the event the offence is proved by strong circumstantial evidence and the chain of events leading to the offence is amply proved by the prosecution, mere lack of motive is not fatal to the prosecution case.
- 36.** Rather, in *Manoj alias Munna (supra)*⁷, relied on by the appellant, the Hon'ble Supreme Court took note of the settled principle that Section 106 of the Evidence Act clearly provides that when a fact lies especially within the knowledge of a person, the burden of proving that fact rests upon him. Accordingly, it was held, when an accused is shown to have been last seen in the company of the deceased, it becomes incumbent upon him to explain

⁶ ***Kanhaiya Lal v. State of Rajasthan*, reported at 2014 SCC OnLine SC 230**

⁷ ***Manoj alias Munna v. State of Chhattisgarh*, reported at 2025 SCC OnLine 2858**

how and when they parted ways. The explanation furnished must be reasonable, probable and satisfactory in the opinion of the Court. If such an explanation is offered, the burden cast by Section 106 of the Evidence Act stands discharged. However, it was held, if the accused fails to present a credible explanation, regarding facts within his special knowledge, this failure constitutes an additional link in the chain of circumstantial evidence established against him. The Hon'ble Supreme Court further observed that at the same time, Section 106 does not shift the primary burden of proof from the prosecution.

- 37.** The facts of the present case, if tested on the anvil of the above ratio, unerringly indicate that the chain of events and circumstantial evidence clearly indicate that the offence was committed by the appellant. Thus, the primary burden of proof was duly discharged by the prosecution.
- 38.** In the present case, at least four witnesses, PWs-1, 2, 3 and 9, proved the foundational fact in their evidence, that the appellant was last seen to go with the victim behind the house where they were residing. The minor discrepancy in the evidence of PW-9 as to the appellant roaming about in the courtyard does not vitiate the prosecution case. From the sketch map of the place of occurrence, which is a part of the record, it is evident that the precincts of the house, where the protagonists were staying, is immediately adjacent to the banana garden, the place of occurrence of the offence. Apparently the courtyard was at the rear of the house, between the house and the banana garden. Thus, whether the appellant was roaming about in the courtyard or behind the house amount to the same thing. Fact remains that the prosecution witnesses have adduced clinching evidence to the effect

that the appellant called the victim outside the house and went behind the same, adjacent to which the banana garden is situated, thus establishing the fact that the appellant was the last person seen with the victim during her lifetime.

- 39.** Conspicuously, in the statement of the appellant under Section 313 of the Cr.P.C., not a single explanation has been furnished by the appellant as to what transpired after they were last seen together behind the house. The appellant entered into a denial mode and merely answered “false” to the vast majority of the questions. From the quality of the questions put to him by the Court, it is evident that all the relevant facets and the plinth of the prosecution witnesses’ deposition was put to him at length. Despite the same, not a single line of explanation could be elicited from him. Hence, the rigours of Section 106 of the Evidence Act are clearly applicable and adverse inference is to be drawn against the appellant for suppression of the turn of events after the appellant was last seen with the victim.
- 40.** Coming to the question of the evidentiary value of PW-9, the child witness, learned counsel for the appellant relies on *Pradeep (supra)*⁸.
- 41.** In the said case, it was highlighted by the Hon’ble Supreme Court that in view of the requirement of Section 118 of the Evidence Act, the learned Trial Judge was under a duty to record his opinion that the child is able to understand the questions put to him and is able to give rational answers to the questions put to him. The learned Trial Judge must also record his opinion that the child witness understands the duty of speaking the truth

⁸ ***Pradeep v. State of Haryana*, reported at 2023 SCC OnLine SC 777**

and state why he is of the opinion that the child understands the duty of speaking the truth.

42. In Paragraph No.9 of the said judgment, the Hon'ble Supreme Court recorded that it is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court. The law requires only a subjective satisfaction of the learned Judge as to the rationality of the child witness, his/her ability to understand the implication of the questions put to him, and his capacity to give rational answers to them.
43. In the statement under Section 164, Cr.P.C. of PW-9, the child witness, who was about seven years of age at the relevant juncture, the said witness answered each and every question put to him in clear terms. He was studying in Class-III of a school then and stated, in reply to queries put to him, that he knows that the questioner was a Judge, that nobody threatened or tempted him to state anything before the Judge, and that he was voluntarily making his statements.
44. The learned Trial Judge recorded accordingly that in view of the above question and answers, he was satisfied that the witness was capable of giving rational answers voluntarily.
45. Hence, the requirements stipulated in *Pradeep (supra)*⁹ were fully satisfied in the present case. The learned Trial Judge, in the aforementioned statement, clearly recorded each and every question put to the child witness which, in our opinion as well, in the capacity of an Appellate Court, were sufficient to

⁹ ***Pradeep v. State of Haryana*, reported at 2023 SCC OnLine SC 777**

display the rationality of the child witness and his ability to answer questions in proper perspective.

46. The statement of the child witness following the above questions are categorical and to-the-point and do not lack clarity from any perspective.
47. PW-9, in his deposition, also answers all the questions put to him with clarity and precision. The learned Trial Judge also recorded while taking such deposition that he tested the witness and he was able to give rational answers to the questions and was able to understand the questions and to give rational answers and as such he could be a competent witness to the prosecution.
48. Even the quality of the answers given in the cross-examination by the said witness goes on the show that he was quite capable of understanding the implications of what he was saying and that he was voluntarily giving evidence, knowing fully well the consequences of the same. Hence, the ratio laid down in *Pradeep (supra)*¹⁰ does not come to the aid of the appellant and the sterling quality of the evidence adduced by PW-9 negates all possibility of the same being discarded.
49. Learned counsel for the appellant also seeks to bring to the notice of the court certain perceived discrepancies in the evidence, such as to whom actually the appellant admitted his guilt over the phone and as to the exact chronology of events at the relevant juncture. However, it is only but natural that there will be subtle discrepancies in the deposition of witnesses, if they are actually truthful. Only in cases of tutored witnesses, the evidence will be fool-proof, without any iota of inconsistency. The

¹⁰ ***Pradeep v. State of Haryana*, reported at 2023 SCC OnLine SC 777**

surface-level inconsistencies found in the evidence, in any event, are minor and only go on to establish the veracity of the same.

- 50.** The principal theme of the prosecution case has not been demolished in any manner or deviated from by such minor inconsistencies.
- 51.** The prosecution witnesses established clearly that the appellant called on the mobile phone of PW-2, the mother of the victim, and confessed about his guilt. It is immaterial as to whether PW-2, the mother, handed over the phone to the father and as to exactly when the confession was made. The foundational basis of such confession by calling up on the mobile phone of the mother of the victim is not shaken in cross-examination.
- 52.** PW-9 stated in one place in his deposition that he saw the body of his mother, the victim, beside a banana tree in the courtyard. The courtyard being behind the house and adjacent to the banana garden, such statement itself does not amount to any discrepancy at all; it supports the prosecution case that the offence took place at the banana garden behind the house, which was adjacent to the courtyard.
- 53.** In general, the so-called inconsistencies sought to be portrayed by the appellant are of a minor nature and do not disturb the chain of events established by the prosecution.
- 54.** Despite the absence of eye witnesses, in view of the clinching circumstantial evidence on record, the learned Trial Judge was fully justified in coming to the conclusion as to the guilt of the appellant.
- 55.** We do not find any reason to displace the presumption created by applying the 'last seen alive together' doctrine in the present case. Since several witnesses corroborated that the appellant was last seen with the victim

before her demise and the appellant failed to explain away such circumstance, adverse inference was rightly drawn against the appellant on such count and clear proof of the appellant being the perpetrator of the offence was established.

56. The learned Trial Judge, while deciding the case, took into consideration all the above relevant aspects of the matter and came to justifiable conclusions.
57. It is to be kept in mind that even in criminal cases, the standard of proof is not “beyond *all* doubt” but “beyond *reasonable* doubt”.
58. Thus, if circumstantial evidence proves the prosecution case and the chain of events is sufficiently established by the prosecution, leading to the involvement of the accused in the offence, which is compatible with the line of reasoning of a prudent and reasonable person, there is no reason why the prosecution case should be thrown away.
59. Thus, in the present case, by substantive circumstantial evidence and clinching materials, particularly in the teeth of the abstinence of the appellant to discharge his burden of disclosure of facts relating to his special knowledge under Section 106 of the Indian Evidence Act, by application of the ‘last seen alive together’ theory, the guilt of the appellant was proved beyond reasonable doubt.
60. In view of the above discussions, there is no scope or necessity to interfere with the impugned judgment.
61. Accordingly, CRA (DB) No.05 of 2024 is dismissed on contest, thereby affirming the impugned judgment dated December 1, 2021 passed by the learned Additional Sessions Judge, Mathabhanga, Cooch-Bihar, in SC No.148/2016 [ST No.26(05)2017].

- 62.** IA No: CRAN 2 of 2025 is also disposed of in the light of the above observations.
- 63.** Urgent certified copies, if applied for, be supplied to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)