

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 Rai Chattopadhyay**

CRA 614 OF 2014

**Md. Abdul Mottalab Mia @ Abdul Mottalab
Vs.
The State of West Bengal**

For the Appellant : Mr. Imtiaz Ahmed,
Mrs. Ghazala Firdaus,
Sk. Saidullah,
Mr. Mithun Mondal,
Md. Arsalan.

For the State : Mr. Debasish Roy, Id. P.P.,
Ms. Faria Hussain,
Mr. Anand Keshari..

Last Heard on :10.03.2026

Judgment on :12.03.2026

Rajasekhar Mantha, J.:

1. The subject appeal is directed against the judgement and order of conviction dated 29th May, 2014 and 30th May, 2014 respectively passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Alipurduar in Sessions Trial no.53 of 2011 arising out of Trial Case no. 49 of 2011. The appellant was convicted under Section 302 of the Indian Penal Code and was sentenced to life imprisonment and to pay a fine of Rs

5,000. In default thereof to further undergo rigorous imprisonment of a further 6 months.

THE PROSECUTION CASE AND THE EVIDENCE ON RECORD:-

2. The Jaigaon Police Station received the complaint dated 3rd November 2010, from **PW 11, Md. Rahul Islam**. The complainant stated about the death of his mother (the victim) at a house owned by **PW 8, Abdul Rahaman** at Jharna Busty, District Jalpaiguri. PW 11 stated that the appellant brought the victim to Jharna Busty about 18 months prior to the incident from the house of the **father of victim, PW 12**. The victim appears to have abandoned her husband one Jamir Ali due to torture and started to live with **her father, PW 12**.
3. PW 11 is stated to have received a telephone call from the appellant in the evening that the victim was not in a good physical condition. He then rushed to Jharna Busty from his house, which is an hour by bus. He found the door of the house locked. It has later transpired from the other witnesses that the locals and in the presence of the police, broke open the window of the house and a strong foul smell was emanating therefrom. The victim could be seen lying motionless on a cot covered with a mosquito net. The local people along with the police personnel broke open the door and found the victim lying on the bed with blood oozing out of her nose and mouth.
4. Inquest was conducted at about 06:25 p.m. There were blackish blister marks on different parts of the body of the victim. The Jaigaon PS

registered FIR no.364 of 2010 dated 3rd November, 2010. The appellant was named as accused.

5. The body of the victim was sent for post mortem, which was conducted on the same day at North Bengal Medical College Hospital in Siliguri.
6. After investigation was completed charge sheet was filed against the appellant. Charges were framed on 6th April, 2011 under Section 302 of the Indian Penal Code.
7. **PW 1, was Hamidul Mia**, who arrived at the P.O after the body of the victim was transferred via a police vehicle for post mortem.
8. **PW 2 was Asmat Ali**, a local resident and brother-in-law of the PW 8. PW 2 was the employer to the appellant. **PW 8, Abdul Rahman**, was the owner of the house where the PO being, a tenanted room was located. The appellant and victim obtained the tenancy and were residing there from 1st of November 2010 till the death of the victim. PW 2 was the owner of a furniture shop, where the appellant used to work as a carpenter for six month before the death of the victim.
9. PW 2 has deposed that the appellant originally resided in a place called Darogaon prior to his induction as a tenant at the PO. The appellant along with the victim became the tenant at the PO two or three days prior to the incident. PW 8 allowed the appellant and victim to stay at the PO since PW 2 was his brother-in-law. **Abeda Bibi, PW 9, was the sister of PW 2.** PW 8 was married to PW 2.
10. PW 2 has deposed that since after 2nd November, 2010, the appellant did not return for duty at his furniture shop. On the 3rd of

November, 2010 around 5 a.m. in the morning, the appellant called **Idul Islam, PW5** who is the nephew of PW 2 and told him that the victim had died in an accident. PW 5 was the co-worker of the appellant at the furniture shop of PW 2. PW 5 is stated to have informed PW 2 of the same. PW 2 later got information from **PW 11, the son of the victim**, over the phone that appellant informed PW 11 that the victim was seriously unwell.

11. Becoming suspicious of the contradictory versions of the appellant, PW 2 and the Imam of a local masjid and one Manjima Bibi went to the P.O and found it under lock and key. PW 2 thereafter went to a panchayat member, PW 1, namely Hamidul Mia.
12. In the presence of the aforesaid persons, initially the window of the house was broken and the body of the victim was seen lying in the bed under a mosquito net with foul smell emanating therefrom. The police thereafter broke open the main door of the house and found the victim had died.
13. In cross examination, PW 2 confirmed that there was an oral tenancy agreement between the appellant and PW 8. He reiterated that PW 11 arrived at the P.O at about noon. He described the P.O and its surround areas.
14. **PW 3 was one Afsaruddin**. He arrived at the PO after the police recovered the body.
15. **PW 4 was Rahim Haque** who wrote the written complaint on instruction of PW 2 and PW 11.

16. **PW5 was Idul Islam, nephew of PW 2.** He worked in the furniture shop of PW 2. On the 3rd and 4th of November, he received a telephone call from the appellant at 6:30 p.m. in the morning stating that the victim had died. He immediately called PW 2 and informed other friends. He confirmed that the appellant took possession of the rented house on 1st of November, 2010 and entered therein. He gave a statement before a Magistrate under Section 164 of the CrPC. He denied having been tutored by anybody in course of his deposition.
17. **PW 6 was Khokan Chandra Das,** a police constable. **PW 7** is another police constable who took the dead body of the victim from P.O to P.S and for post mortem examination to North Bengal Medical College and Hospital. He identified the cloths that the deceased was wearing.
18. **PW 8 was Abdul Rahaman, the owner of the house in question where the deceased was found dead.** He confirmed that on the 1st of November, 2010 he came to know from his wife that PW 2 had admitted the appellant in the house as a tenant. He found the appellant the next day morning while he was attending the nature's call. He was informed by the appellant that he had woken up early to collect drinking water. He was examined by the police.
19. **PW 9 was Abeda Bibi, wife of PW 8 and sister of PW 2.** She deposed that on the 1st of November, 2010 at about 8 PM. the appellant along with the victim representing herself as the appellant's wife took possession of a room in their house as tenants. She further deposed

that she had some conversation with the appellant and the victim and went back upstairs to her own residence.

20. PW 9 has deposed that she saw the appellant next day morning at 5:30 am on her way to toilet. She was also informed by the appellant that he had woken up early to collect drinking water. PW 9 was an attendant at a local school. She confirmed that the appellant was brought to the P.O by PW 2 and took possession of the room as a tenant.
21. PW 10 received the complaint from PW11. **PW 11, Rahul Islam**, the complainant was son of the victim from her first husband. He deposed that on the 3rd of November, 2010, he received a call from the appellant that his mother was extremely sick and needed attention. He arrived at Jharna Busty in Jaigaon and received a call from PW 2 that the victim had died. He immediately returned back to the P.O and found the room of the appellant locked from outside.
22. PW 11 has deposed that a number of persons gathered at the house of PW 8. The appellant was not to be found anywhere. He confirmed in cross-examination the names of the victim's father and mother. He confirmed that he lived with his grandfather and the appellant had taken away his mother on the pretext of getting married to her.
23. PW 11 reiterated that neither his grandfather nor his father lodged any complaint with the police when the appellant took away the victim. He confirmed that he filed the complaint with the police as regards the death of his mother.

24. **PW 12** was the father of the victim **Jhantu Dey Sarkar**. He further confirmed that the victim was married to one Jamir Ali and due to the latter's torture in her matrimonial home started living with him.
25. PW 12 has deposed that the appellant brought the victim to Jaigoan to give her a job. The victim was living with the appellant for more than three months prior to the incident. The victim visited her father's house a few times while living with the appellant.
26. PW 12 confirmed that PW 11 had informed him about his visit to the victim's house on the 3rd of November, 2010 in the morning. He denied that the victim was engaged in the flesh trade and working out of a hotel call Tripti in Cooch Behar.
27. **PW 13 was Jalaluddin, a carpenter who also worked in the furniture shop of PW 2.** He confirmed that the appellant did not turn up for work on the 1st and 2nd of November, 2010 and PW 2 asked him to look out for the appellant. He went to the house of appellant on 2nd November, 2010 and found it locked from outside with a padlock.
28. **PW14 was a S.I of police** who was present when the door of the victim's house was broken. He confirmed having conducted the investigation after registration of the FIR. He prepared the sketch map of the P.O and identified the inquest report. He seized the broken lock, three pillows and pillow cover stained with blood and printed bed sheet stained with blood. He further seized a dupatta of the victim and a red gamcha. He recorded statements of several witnesses under Section 161 CrPC and that of PW5 before the Magistrate. The appellant is

stated to have surrendered before the trial court on 27th January, 2011 when he was arrested and remanded to Police Custody.

29. **PW-15 was one Bidhan Chandra Chakraborty, S.I of police** of Jaigaon P.S who entrusted the investigation of the case to PW-14. He confirmed that he submitted the charge sheet in the case and sought permission of the Magistrate to file supplementary charge sheet after the receipt of the FSL report.
30. The accused was examined under Section 313 CrPC and denied all the circumstances put forth to him.
31. Based on the evidence on record and the last seen theory the trial judge convicted the appellant under Section 302 of the Indian Penal Code for life.

ANALYSIS OF THIS COURT:-

32. The first link in the chain of circumstances is the pervasive control of the appellant over the life and movement of the victim. PW 11, the son of the victim, and PW 12, the father of the victim, have stated that the appellant took away the victim after the latter returned to her paternal home from her matrimonial home. PW 11 and 12 did not offer any resistance to the same. PW 11 stayed in the maternal house of the victim.
33. PW 12 stated that the appellant promised to marry the victim. The victim in fact lived with the appellant for 3 months before her death. The victim and appellant therefore consensually lived together. The victim was thus under the exclusive custody of the appellant. The

appellant therefore owed an explanation as to what happened to the victim after they checked in at the PO.

34. The motive of the appellant to end the life of the victim becomes immaterial in view of that the victim was under the exclusive control of the appellant. The victim was living with the appellant for last three months before her death. The victim was thus virtually disconnected from her son, PW 11 and her father, PW 12. In the present case therefore, it was nearly impossible for PW 11 and 12 to be aware of the conduct of the appellant towards the victim.

35. In a given case, the motive of a person may remain with him and his victim. The present is one of such cases where the victim did not reside with her family. Thus, the prosecution could not have adduced the evidence as regards the motive of the appellant. In ***Nusrat Parween v. State of Jharkhand, reported in 2024 INSC 955***, relied on by the appellant, the Court indeed held that proof of motive in a case based on circumstantial evidence assumes great significance.

36. The proof of motive in a case based on circumstantial evidence is however not an absolute rule. It only provides one more link to the case of prosecution. In the present case, the pervasive and exclusive control of the appellant over the life and movement of the victim makes up for the absence of motive. The ***Nusrat Parween decision (supra)*** is thus inapplicable to facts of the case.

37. The next link in the chain of circumstances is the conduct of the appellant just after the commission of the crime. The appellant has

given contradictory information to PW 11 and PW 5 respectively of the condition of the victim. The appellant informed PW 11, the son of the victim, that the victim needs medical attention. Whereas the appellant informed PW 5, his co-worker in the furniture shop of PW 2, that the victim had died in an accident.

38. It is quite natural that the appellant would not have the courage to inform PW 11 that his mother has died when she was in his custody. PW 11 may be aware of the conduct of the appellant towards his mother. Revealing the correct information to PW 11 may give rise to immediate suspicion in the latter's mind.

39. On the contrary, PW 5 was the coworker of the appellant. The appellant was sure that PW 5 would not immediately suspect that the death of the victim was caused by the appellant. The said contradiction reveals the nervousness of the appellant just after the commission of the offense.

40. There is another vital sub-link to the aforesaid link which also reveals the state of mind of the appellant. In the morning, PW 8 and PW 9 found the appellant outside the PO. On query by PW 8 and 9 as to what the appellant is doing outside, he explained that he wanted to collect drinking water.

41. PW 8 and 9 have *not* gone out to respond to the nature's call at the same time. Thus, PW 8 and 9 have seen the appellant outside the PO at different points in time. This indicates that the appellant was outside

the PO for a considerable period of time that he was seen by the PW 8 and 9, who came out to respond to the nature's call at different points in time. PW 8 and 9 have not stated that the appellant was having any water drum to carry water. Therefore it can be reasonably inferred that it is unlikely that the appellant had woken up early in the morning to collect water.

42. The nervousness of the appellant after the commission of the crime can also be inferred from his conduct in informing PW 5 that the victim had died in an accident. The appellant was aware that PW 11, the son of the victim, was known to PW 2, as a co-worker in a furniture shop of PW 2.

43. The appellant was aware that PW 5 being the employee of PW 2 would invariably inform PW 2 that the wife of the appellant had died. PW 2 in turn would inform the death of the victim to PW 11. The lie of the appellant to the PW 11 that his mother is ill would be easily exposed. He, however, committed the said mistake since he was under the stress of having committed the murder of the victim. The lie given out by the accused just after the commission of the crime is a relevant fact which calls for an adverse inference against him.

44. Learned counsel for the appellant, Mr. Imtiaz Ahmed, would argue that there was no evidence on record to indicate that the appellant was last seen with the victim. This Court is unable to accept the argument as the evidence of PW 9 and PW 8 has clearly established that the appellant took possession of the rented room on 1st of November, 2010

at about 8:30 a.m. PW 2 has confirmed that he introduced and was responsible for the appellant and the victim to take the PO on rent. The appellant and the victim were last seen by PW 9 entering the house. The appellant was thereafter seen early in the morning the next day, both by PW8 and PW9 at 5:30 a.m. alone.

45. Further, PW 11, the son of the victim, PW 12, the father of the victim were aware that the victim was residing with the appellant before her death. PW 2, the employer of the appellant has deposed that he was aware that the appellant is residing at PO with the victim. PW in fact directed PW, 5, the coworker of the appellant to search for the latter when the appellant did not turn up for work on November 2nd and 3rd, 2010.

46. The prosecution therefore has discharged its burden of proof that the appellant was last seen and stayed with the victim on the 1st of November, 2010 at about 8:30 p.m. In fact, it has been established that the appellant last stayed with the victim at the PO.

47. The evidence of PW 2, PW5, PW 13, establish that the appellant did not turn up at his work place i.e. the furniture shop of PW 2 on the 2nd and 3rd of November, 2010. The appellant was last seen by PW 8 and PW9 near about at 5:30 a.m. in the morning at the P.O and disappeared thereafter.

48. The burden therefore shifted on the appellant to demonstrate as to what transpired at the PO. He was in possession of the rented

accommodation i.e. the PO. The events in the PO thus fell within his exclusive knowledge. It was thus for the appellant to demonstrate that he was elsewhere than the P.O since after 1st of November, 2010.

49. Further, the disappearance of the appellant from the PO coupled with his absence from his workplace on November 2nd and 3rd of 2010 was required to be explained by the appellant. No explanation however has come on record. The only eyewitness to the events at PO after the appellant and victim checked in thereat was the appellant himself.

50. The principles of the last seen theory clearly put the appellant at the place and time when the victim must have died. The only conclusion that is possible in the facts of the case is that the victim was strangled by the appellant. There is no other evidence to indicate that there was anybody else present at the P.O on 1st and 3rd of November, 2010.

51. The decisions in ***Padman Bibhar v. State of Odisha, reported in 2025 SCC OnLine SC 1190 and Krishnan Kumar & Anr v. The State of Haryana, reported in 2023 INSC 679*** are inapplicable to present case. In ***Padman Bibhar (supra)***, the case of the prosecution was solely based on last seen theory. In ***Krishnan Kumar (supra)***, the last seen theory was not supported by any positive evidence in that none of the prosecution witnesses deposed that they have last seen the accused with the victim near or at the PO.

52. In the present case as discussed hereinabove, the evidence as regards the pervasive and exclusive control of the appellants over the

victim, the calls made by the appellant to PW 5 and PW 11 where he lied to the said witnesses about the death of the victim, the induction of the appellant and victim as tenants at the PO, the presence of the appellant outside the PO in the morning of 2nd November 2nd, 2010 witnessed by PW 8 and PW 9, and the absence of the appellant from his workplace after the commission of the crime furnish positive evidence that the victim was under the exclusive control of the appellant; she stayed with the appellant after which she was found dead at the place where the appellant brought her and stayed with her.

53. Learned counsel for appellant has next argued that the examination of the accused under section 313 of the CRPC was inadequate. The relevant circumstances have not been put forward to the appellant. Inadequate examination under Section 313 of the CRPC is not fatal to the prosecution case when the accused is represented by his counsel and the evidence of the PWs has been recorded in the presence of the accused. When the same is done, the accused gets the opportunity to hear the PWs and can accordingly instruct his counsel.

54. The only incriminating circumstance not put to the appellant is the calls made by the appellant to PW 5 and PW 11. The evidence of PW 5 and 11 were recorded in presence of the appellant. Hence the omission to put the said question to the appellant is not fatal to the prosecution case.

55. In fact, the decision in ***State of Punjab v. Naib Din, reported in (2001) 8 SCC 578*** cited by the learned counsel for the appellant, at

paragraph no. 12 that the accused must demonstrate prejudice by the omission on part of the trial court to put a vital question to him. Omission on part of the trial court to put a question does not ipso facto lead to setting aside of a conviction.

56. In the present case, the appellant has not demonstrated before this Court that he was prejudiced by the omission on part of the trial court to put the question to the appellant as regards the calls made by him to PW 5 and PW 11. The said calls were a link in the chain of circumstances. The said calls by itself have not resulted in the conviction of the appellant.

Para no. 12 of ***Naib Din*** (supra) is set out below:-

12. That apart, the respondent failed to show that there was any failure of justice on account of the omission to put a question concerning such formal evidence when he was examined under Section 313 of the Code. No objection was raised in the trial court on the ground of such omission. No ground was taken up in the appellate court on such ground. If any appellate court or revisional court comes across that the trial court had not put any question to an accused even if it is of a vital nature, such omission alone should not result in setting aside the conviction and sentence as an inevitable consequence. Effort should be made to undo or correct the lapse. If it is not possible to correct it by any means the court should then consider the impact of the lapse on the overall aspect of the case. After keeping that particular item of evidence aside, if the remaining evidence is sufficient to bring home the guilt of the accused, the lapse does not matter much, and can be sidelined justifiably. But if the lapse is so vital as would affect the entire case, the appellate or revisional court can endeavour to see whether it could be rectified.

Emphasis applied

57. The medical evidence clearly indicated that the victim was strangled and the neck muscles were crushed. Death had occurred due to strangulation. In spite of this, post mortem doctor was not examined.

58. The post mortem report, was, however taken on record. It was exhibited albeit marked for identification. However no objection was raised by the appellant to the same. The said document was thus liable to be treated as an exhibit in the Trial in view of the evidence of the IO and the constable who took the body of the victim for PM. While sub section 1 of section 294 mandates that the genuineness of a document shall be proved by the author thereof before the Court in the trial. Sub-section 3 of Section 294 states that where the genuineness of a document is not disputed, the same may read in evidence without the author thereof deposing before the Court.

59. One blood stained pillow cover and bed sheet have been recovered from the PO. One gamcha (towel) and dupatta of a women (a longish scarf worn by women) have also been recovered from the PO. The latter may have been used to strangulate the victim. The appellant therefore had the requisite accessories in the form one gamcha and dupatta to strangulate and end the life of the victim. In view of that it was the appellant only who was with the victim at the PO, the irresistible conclusion that flows is that the appellant has killed the victim with the said gamcha and or dupatta available at the PO.

60. The case of prosecution was thus based on the aforesaid circumstances in addition to the last seen theory. The aforesaid circumstances leave no room for doubt in the last seen theory. It adds to

the authenticity and vigor of the last seen theory in the facts of the present case.

CONCLUSION

61. Having regard to the above, this Court is of the view that the evidence on record clearly indicates the participation of the appellant in the death of the victim. There is no other conclusion possible in the given facts and circumstances of the case. The finding of the trial judge against the appellant and the order of conviction and sentence therefore does not call for any interference whatsoever.

62. The subject appeal being CRA 614 of 2014 is hereby dismissed. All pending applications shall stand dismissed.

63. However there shall be no order as to costs.

64. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

I Agree.

(Rai Chattopadhyay, J.)

Later:

1. The judgment has been delivered in open Court.
2. Mr. Imtiaz Ahmed, learned counsel for the appellant seeks time for his client to surrender before Court in view of ongoing Ramadan.

3. Having regard to the submissions, this Court directs the appellant to surrender within a period of 10 days from date, mandatorily and positively.

4. The bail bonds are cancelled and sureties are discharged.

(Rajasekhar Mantha, J.)

I Agree.

(Rai Chattopadhyay, J.)