

IN THE HIGH COURT AT CALCUTTA

Criminal Appellate Jurisdiction

BEFORE:

**The Hon'ble Mr. Justice Arijit Banerjee
And
The Hon'ble Mr. Justice Apurba Sinha Ray**

C.R.A. 160 of 2021

**Md. Salim @ Chikna
VS
The State of West Bengal**

**For the Appellant : Mr. Dipta Dipak Banerjee, Advocate
Mr. Diwakar Pathak, Advocate**

**For the State : Mr. Madhusudan Sur, Id. APP
Mr. Dipankar Paramanick, Advocate**

Heard on : April 21, 2026

Judgement on : April 21, 2026

Dictated in Court by Arijit Banerjee, J. :

1. The appellant was charged with murder of the victim. The victim was a sex worker. The prosecution case is that the appellant, on the relevant day, went to the room of the victim. After he entered the room, the victim asked P.W.2, namely, Aloka Purakait to bolt the door from outside. P.W.2 says that she did so. P.W.2 claims to be working in the house for 30/40 years, where the victim lived and worked as a sex worker.

2. The further case of the prosecution is that when next morning at about 6 a.m. P.W.2 opened the door of the victim's room which she had bolted from outside, she found the victim lying dead. The appellant had vanished. She found rods of the window broken. According to her the appellant had fled through the window after breaking the window rods.
3. A complaint was lodged by P.W.2. The police arrested the appellant. After investigation, charge sheet was submitted. The appellant was charged with commission of offence under Section 302 IPC. He pleaded not guilty and claimed to be tried.
4. The prosecution examined four witnesses. The defence examined none.
5. P.W.1 was the Medical Officer, who conducted post mortem on the deadbody of the victim. He proved the post mortem report which is to the effect that death was caused due to manual strangulation.
6. P.W.2, as aforesaid, was Aloka Purakait, who claimed to have been working in the same house where the victim resided, for 30/40 years. She deposed more or less what we have indicated above and what the prosecution case is.
7. P.W.3 and P.W.4 were seizure list witnesses. They only identified their respective signatures and nothing more.
8. Strangely enough, the Investigating Officer was not examined. Hence, contents of the seizure list could not be proved.
9. We have read the judgment of the learned Trial Judge. According to him, non examination of the Investigating Officer is not fatal unless the accused is found to be prejudiced due to such non examination. We have to differ from him.

10. There is no arrest memo on record. No TI Parade was held. The conviction was entirely on the basis of the evidence of P.W.2. P.W. 2 identified the appellant in Court 14 months after the alleged incident. Broken rods of the window through which the appellant allegedly fled after murdering the victim, were not seized.
11. Although the post mortem report indicated manual strangulation as the cause of the victim's death, the appellant's fingerprint was not taken or sent for forensic examination. There was no eyewitness to the alleged incident. The conviction is on the basis of circumstantial evidence.
12. We do not say that a conviction cannot be based on circumstantial evidence. If the chain of circumstances is complete, the same can surely be the basis of conviction. However, in the instant case, the chain of circumstances is far from complete. There is not a single piece of independent evidence which corroborates the evidence of P.W.2. No seizure of any material item was made.
13. We are also of the opinion that P.W.2's evidence lacks in credibility. Why would the victim, after the appellant allegedly entered her room around midnight on the relevant date, ask P.W.2 to bolt the only door of the room from outside? The same is not normal human conduct. That door provided the only ingress to and egress from the victim's room.
14. We also see that in her evidence in chief P.W.2 said that on the concerned day at about midnight she saw "one Chikna entered into the room of prostitute Lila". However, in her cross examination, she stated that she did not mention the name "Chikna" before the Police. She

heard later about the said name and she mentioned the said name for the first time in Court.

15. The conviction by the learned Trial Court is solely on the basis of “last seen theory” going by the evidence of P.W.2. There is nothing else to implicate the appellant. It is well established that “last seen together” theory cannot be the sole basis for conviction. It is recognized to be a weak piece of evidence. In this connection, one may refer to the decisions of the Hon’ble Supreme Court in the cases of ***Padman Bibhar Vs State of Odhisa*** reported in ***2025 INSC 751*** and ***Rambraksh @ Jalim Vs State of Chhattisgarh*** reported in ***(2016) 2 S.C.R. 599***.
16. Having gone through the judgment and order impugned before us, we find more loopholes than substance to sustain conviction of the appellant. Suspicion, however strong, cannot be a substitute for proof. In our view, the appellant’s guilt has not been proved at all far less beyond reasonable doubt.
17. In the result, this appeal succeeds. The judgment and order of conviction and sentence is set aside. The appellant, Md. Salim @ Chikna be set at liberty at once.
18. The appellant be released from the Dum Dum Correctional Home unless he is wanted in any other case.
19. Copy of the judgment along with LCR be sent down to the learned Trial Court.
20. Copy of the judgment be sent to the Superintendent of the Dum Dum Correctional Home immediately.
21. CRA 160 of 2021 is disposed of.

22. Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)