

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 267 of 2015

Alok Das @ Bablu Das

-Vs-

State of West Bengal

For the Appellant :

Mr. Partha Sarathi Bhattacharya, Adv.
Mr. Siddhartha Chowdhury, Adv.
Mr. Debangana Bhattacharjee, Adv.
Ms. Swarnali Saha, Adv.
Mr. Rajdeep Sinha, Adv.

For the State :

Mr. Saibal Bapuli, Ld. A.P.P.
Mr. Arani Bhattacharyya, Adv.

Heard on :

15.02.22, 24.02.22

Judgment on :

03.03.2022

Joymalya Bagchi, J. :-

Appeal is directed against the judgment and order dated 9th April, 2015 and 10th April, 2015 passed by the learned Additional Sessions Judge, Fast Track 2nd Court, Tamluk, Purba Mednipur in Sessions Case No. 90(10)/2004 arising out of Sessions Trial No. 3(06)/2006 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for

life and to pay fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for six months more.

Prosecution case, as alleged against the appellant was initiated on the basis of a written complaint lodged by one Sukhdev Khatua (P.W.1), son of the deceased namely, Durgapada Khatua. In the complaint he alleged on 15.11.1999 at about 6.30 a.m. his neighbour Srimanta Patra informed him he noticed a dead body beside the road at Baburhat bazaar. P.W. 1 was called upon to ascertain whether the body as that of his father or not. He proceeded to the spot and identified the body as that of his father. There was a deep cut injury on the throat and several injury marks on the head caused by a sharp cutting weapon. A suitcase and two jute bags were lying on the opposite side of the road and some of the clothes therein did not belong to his father. His father used to commit theft in various houses. On the basis of the aforesaid written complaint, Mahishadal Police Station case No. 76 of 1999 dated 15.11.1999 under Section 302 I.P.C. was registered against unknown persons. In course of investigation, inquest was held over the dead body and post mortem was conducted by P.W. 14. During investigation various witnesses including one Srikanta Jana (P.W. 9) were examined. Statement of Srikanta was recorded under Section 164 of the Code of Criminal Procedure also. As complicity of the appellant transpired through the aforesaid statement, he was arrested. On his showing, weapon of offence was recovered.

Charge-sheet was filed against him and charge was framed under Section 302 I.P.C.. In course of trial, prosecution examined 17 witnesses

and exhibited a number of documents. Defence of the appellant was one of innocence and false implication.

In conclusion of trial, the trial Judge by impugned judgment and order 9th April, 2015 and 10th April, 2015 convicted and sentenced the appellant, as aforesaid.

Evidence on Record:-

P.W. 1 (Sukdev Khatua) is the son of the deceased and the informant in the case. He was informed by his neighbours that his father was lying dead on the northern side of pitch road at the end of Baburhat Bazar. He went there and saw the dead body of his father with serious blood stained injuries on his head. One of the slippers of his father was lying beside the dead body. His father was a thief and had association with the appellant in connection with such nefarious activities. Appellant used to come to their residence once in a while. There were disputes and differences between his father and the appellant over sharing stolen articles. A year ago, appellant had assaulted his father on the head. He filed written complaint and proved his signature thereon. He signed on the inquest report.

P.W. 2 (Subhra Das) is the Gram Pradhan of Lakhya-I Gram Panchyat. She corroborated the evidence of P.W. 1 that the dead body of Durgapada was lying on the road and his slippers were lying beside him. There was a bag containing clothes, torch light and an attache case. Police came to the spot. She signed on the inquest report. She was also a signatory to the articles seized at the place of occurrence. She corroborated

P.W.1 with regard to enmity between the appellant and the deceased. She stated that appellant had earlier assaulted the deceased.

P.W. 3 (Biswanath Jana) P.W. 7 (Kartick Chandra Khatua) and P.W. 8 (Narayan Maity) all resided in the same village as P.W. 1. They were acquainted to P.W. 1 and his father Durgapada. Hearing the news, they came to the place of occurrence and found the dead body of Durgapada.

P.W. 3 stated appellant had a shop for selling machinery parts at Baburhat Bazar. Deceased was a thief and used to sell the articles to the appellant. A year ago appellant had assaulted the deceased and there was a salish held over the incident. He saw various articles like sweater, chadar, a nylon carrybag and 3/ 4 small cakes lying around the dead body. P.W. 8 corroborated him with regard to slippers, attaché case and cakes lying around the body of the deceased.

P.W. 4 (Narayan Chandra Khatua) and P.W. 7 are the brothers of the deceased who are signatories to the inquest report.

P.W. 5 (Sankar Karan), P.W. 10 (Gopal Sil) and P.W. 12 (Biswa Ranjan Maity) have been declared hostile.

P.W. 12 was said to be the witness to the seizure of a “chhura” i.e. knife from the appellant. Though declared hostile, he admitted his signature on the seizure list. He stated he had signed on a blank paper.

P.W. 9 (Srikanta Jana) is the sole eyewitness. He deposed on the fateful day he along with one Sankar Seal, Tapan Hazra and Durgapada Khatua had been returning after committing theft. Subsequently, he stated that they had been returning from a cinema show. They boarded a bus and

got down at Babughat around 4:00 a.m. While others left for their residence, he and Durgapada went to the tea stall of Kalu Pal. Durgapada purchased two cakes while he purchased bread from the shop of Kalu Pal. He was proceeding on his bicycle while Durgapada proceeded towards his house through the bazar area. At that time, he noticed Bablu Das standing with a torch in one hand and chhura in the other hand. When Bablu followed Durgapada, he became suspicious due to previous enmity between them. He heard a sound "Oh go maa go". Bablu attacked Durgapada with chhura on his head. He fled from the spot. He did not inform anyone as he had been threatened with death by Bablu. He was examined by the Investigating Officer. He was taken to Superintendent of Police and before the Magistrate. Learned Magistrate recorded his statement. He proved his signature on the statement.

In cross-examination, he stated he is a resident of Kalikakundu. His house is situated at Uttarpara. After narrating the entire incident in course of cross-examination, witness suddenly stated police had forcibly taken him from his house and he was assaulted by police to give evidence. However, he denied the suggestion that he had deposed falsely against the appellant. On query by the court, he reiterated that he stated before the police and Magistrate what he had seen on the date of the incident.

P.W. 14 (Dr. Amulya Kumar Mondal) is the post-mortem doctor who noted the following injuries on the deceased :-

1. *Over neck a cut injury with sharp margin of 5" x 3" x 2" in length. Trachea was opened apart.*

2. *Below left ear a cut injury with sharp margin of 3" x 1½" x 1" upto the angle of mandible.*
3. *Outer angle of right eye a cut injury of 5" x 1" x 1" upto the right eye ball which is propped out.*
4. *Another injury with sharp margin above the injury no. 3 2" x 1" x 1". Skull bone is seen through.*
5. *Left temporal region injury with sharp margin 3" x ½" x ½". Scalp bone seen fractured with haematoma underneath.*
6. *Occipital region injury with sharp margin 2" x ½" x ½" (bone deep).*
7. *Abrasion over the right lobe of ear.*
8. *Left wrist joint a cut injury 1½" x ½" x ½". Veins and tendons cut apart on flexor surface.*
9. *Cut injury over the base of right thumb ¾" x ½" muscle deep.*
10. *Left angle of mouth 1" x ¼" x ¼".*

He opined death was due to shock and haemorrhage owing to the injuries as described above ante mortem and homicidal in nature. He identified the seized chhura in court and stated that the injuries could be caused by the said weapon.

P.W. 15 (Nirmal Kumar Majhi) was the Officer-in-charge of Mahishadal Police Station. He received the F.I.R. from P.W. 1 and drew up the formal FIR. He handed over investigation to Gopal Chandra Dutta. He held inquest over the body of the deceased (Exhibit-2/4).

P.W. 16 (Debabrata Mukherjee) is the Magistrate who examined P.W. 9 under Section 164 Code of Criminal Procedure. He proved the document, Exhibit-10.

P.W. 17 (Kushal Kumar Mitra) is the second Investigating Officer of the case. He took over investigation from the first Investigating Officer, SI

G.C. Dutta on 27.11.2000 and could not be examined. G.C. Dutta had examined witnesses and recorded their statements and he had filed a charge-sheet.

Arguments at the Bar:-

Mr. Partha Sarathi Bhattacharjee, learned advocate, appearing for the appellant submits P.W. 9 who is the sole eye witness and sheet anchor of the present case is an unreliable witness and his deposition does not inspire confidence. Learned Counsel argues conduct of P.W. 9 is most unnatural. He did not disclose the incident to anyone till he was examined by police on 08.12.1999. His explanation that he had been threatened by the appellant is an afterthought. He did not disclose such fact to police. Moreover, in cross-examination, he stated that the police had threatened and assaulted him to make the statement. These circumstances coupled with delayed examination of the said witnesses renders his deposition wholly unreliable. Tapan Hazra (P.W. 11) had also not supported the said witness. Seizure of the weapon has also not been proved by P.W. 17. Thus, the appellant is entitled to an order of an acquittal.

In rebuttal, Mr. Arani Bhattacharjee, learned advocate appearing for the State submits that P.W. 9 is a wholly reliable witness. He has disclosed the circumstance in which he was present with the deceased at the time of occurrence. On the fateful day, they alighted at Babughat at 4:00 a.m. and the deceased had purchased cakes from a shop. Thereafter while P.W. 9 was proceeding towards his home in a bicycle, he noticed the appellant following the deceased with a chhura in his hand. Then, the appellant

assaulted the deceased on the head with chhura. P.W. 9 ran away and out of fear kept quiet. Subsequently, he made statement before police and Magistrate. During examination, he stated that he had been threatened by the appellant and his subsequent statement in course of cross-examination, which was conducted four years later, is a product of such threat. Evidence of P.W. 9 is corroborated by P.W.s 3 and 8 who upon arriving at the place of occurrence found two cakes lying beside the body of the deceased. Medical evidence with regard to cause of death also corroborates P.W. 9. Thus, the prosecution case is clearly proved beyond doubt.

Whether the sole eye-witness P.W. 9 is reliable?

In the light of the aforesaid evidence on record and the rival submissions of the parties it appears that P.W. 9 is the sheet anchor of the present case. Hence, it is important to evaluate whether his deposition in the backdrop of the other circumstances is truthful and reliable.

From the evidence on record it appears that P.W. 9 is the sole eyewitness. Section 134 of the Evidence Act, inter alia, provides no particular number of witnesses shall in any case be required for the proof of any fact. It is the quality and not quantity of evidence which is the foundation of legal proof. Thus, evidence of a sole eye-witness if found to be truthful and credible can be the sole basis of conviction. The parameters to evaluate the evidence of a sole eyewitness has been succinctly laid down by

the apex court in ***Lallu Manjhi And Another Vs. State of Jharkhand***¹ as follows:

“**10.** The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness”

Evidence of P.W. 9 requires to be analysed keeping the aforesaid principles in mind. Another striking feature which needs to be considered while evaluating the evidence of P.W. 9 is the manner in which the witness was examined. Interestingly, P.W. 9 the most vital eyewitness in the present case has been examined over the period of seven years. His examination-in-chief commenced on 20.02.2007. on that date, after examining the witness for sometime, Public Prosecutor prayed for deferment on the ground of his illness. Accordingly, the case was adjourned till the next day i.e. 21.02.2007. However, on the next day and on a number of subsequent dates, the witness did not appear and finally the trial court was constrained to issue witness warrant to ensure his attendance. On 18.03.2009 the witness finally surrendered and his examination-in-chief was concluded on 20.03.2009. On that date, the

¹ (2003) 2 SCC 401

witness disclosed he had received death threats from the appellant. Trial Judge recorded such fact in the order dated 20.03.2009 as follows:-

“The witness is apprehending death from the hand of this accused and he make his submission before this court to that effect. After hearing him verbal caution is given to this accused and released both the witness vis-à-vis the accused with a direction to appear on the next day fixed.”

In view of the apprehension expressed by the witness, police officer was directed to give him security till the next date of hearing i.e. 03.04.2009 which was fixed for cross-examination. Interestingly on that day the accused-appellant absented himself and warrant had to be issued to ensure his apprehension. He was finally produced before the court on 22.06.2009. However, the witness was not cross-examined on one pretext or the other and finally on 18.08.2009 further prayer for adjournment of cross-examination was turned down by the trial court. This order was challenged by this court in revision being CRR No. 3237 of 2009 which came to be disposed of by order dated 1st April, 2014 wherein the defence was given a last opportunity to cross-examine the said witness within one day. Pursuant to such direction, witness was finally cross-examined on 28.05.2014 wherein he stated for the first time that he had been detained and threatened by the police to make statement.

I have set out the aforesaid chronology of examination of the witness to demonstrate the lackadaisical manner in which the most vital and sole eyewitness was examined giving ample opportunity to the accused to win him over through threats or inducement. Thus evidence of the aforesaid witness requires to be examined in the backdrop of these

circumstances in order to assess its truthfulness and reliability. Examination-in-chief of the said witness had commenced on 20.02.2007. Soon thereafter, he was threatened and as a result he was unwilling to appear and depose. Finally when the witness warrant was issued he was compelled to appear and, he disclosed such fact to the court which came to be recorded in the order dated 20.03.2009. He was given police protection till the next day fixed for his cross-examination. However, by the evasive conduct of the appellant who absconded and other subterfuges, his cross-examination was postponed and the trial Court closed his evidence in 2009. After a lapse of about five years, pursuant to direction given by this Court in CRR 3237 of 2009, he was cross-examined on 28.05.2014. This inordinate gap of time between the examination-in-chief and cross of the witnesses gave ample opportunity to influence him so that in course of cross-examination he tried to dilute his earlier version by claiming he had been forcibly taken from his house and assaulted to make statement.

This statement of the witness, therefore, cannot be taken out of context and used to discredit his otherwise convincing version in law. It has to be examined in the background of his entire deposition, manner in which he was examined and other attending circumstances. At no point of time during his chief, the witness had claimed that he had been forced to make any statement. No contemporaneous complaint was lodged by him before the court or any other authority to that effect. On the other hand, on 20.03.2009, when he was brought to Court in execution of witness warrant he informed the court he had been threatened by the accused. Thus, this

stray observation made by the witness with regard to force and coercion by police is out and out false and a product of machination by the accused. It cannot be a ground to discredit the version of the witness in Court.

Now I proceed to evaluate whether P.W. 9 is a truthful witness in the background of the attending circumstances of the case. Evidence has come on record that the deceased was a person of shady background. He was a petty thief and had disputes with the appellant who had a machinery shop in Baburhat bazar. Prosecution evidence also establishes that the deceased used to sell stolen articles to the appellant and there were disputes between them. P.W. 9 initially in his deposition claimed that he was returning with the appellant after having committed theft. Subsequently, he claimed they had gone to watch movie. Change of circumstance on the part of P.W. 9 has been commented upon by Mr. Bhattacharyya, learned advocate, to impress that he is an unreliable witness.

I am unable to subscribe to his view. P.W. 9 was hesitant to disclosure in court that he was comrade in arms with the deceased in unlawful activities. Immediately after disclosing such fact, the witness tried to cover his tracks and stated that they had gone out to watch a movie. This behaviour on the part of the witness is most natural keeping in mind the background of the parties. The witness further stated that they alighted from a bus at Baburghat Bazar around 4 a.m. Tapan Hazra and Sankar Seal who were accompanying them left the spot. He along with the deceased went to the tea shop of Kalu Pal. Deceased purchased two cakes

while he purchased bread. Thereafter while he was proceeding to his residence in a bicycle he saw the appellant with a chhura (knife) in hand. Appellant was following the deceased. Out of suspicion, P.W. 9 watched them and witnessed the incident of assault. The manner and course of narration of the incident by P.W. 9 appears to be most natural and convincing. He had seen the appellant with a knife in hand. He was aware of earlier enmity between the parties. Hence, he kept watch on the activities of the appellant who was following the deceased with a chhura in hand. Seeing the appellant armed P.W. 9 did not venture to risk his life and save the deceased. Conduct of the P.W. 9 in this regard has been criticised as wholly unnatural. I am unable to accept such submission. P.W. 9 was not a relative of the deceased and, therefore, upon seeing the appellant armed and proceeding to attack the deceased he did not want to risk his own life to save the deceased. It is relevant to note that behaviour of witnesses and their reactions would differ from individual to individual. Hence, failure on the part of P.W. 9 to intervene and save the deceased who was not one his own by no stretch of imagination can be said to be so unnatural so as to improbabilise his presence at the place of occurrence.

It is also argued that P.W. 9 did not disclose the incident to any one till he was examined by police on 08.12.1999. As discussed earlier, P.W. 9 is neither a relative of the deceased nor a co-villager. He stays in a different village and it appears he was acquainted with the deceased in connection with illegal activities. In this backdrop, when the deceased was attacked by the appellant who was also involved in dealing with stolen

properties, it created a sceptre of apprehension and fear in the mind of P.W. 9 and the latter out of a desire of self preservation kept mum. Silence of P.W. 9 cannot be equated with that of a near relation or a next door neighbour. On the other hand, keeping in mind the background of the deceased and the nature of association between him and P.W. 9 it is all but natural P.W. 9 would be shy to approach the law enforcement agencies on his own. Only when in the course of investigation identity of P.W. 9 came to light he was interviewed on 08.12.1999 by SI G.C. Dutta, the first investigating officer. It must be borne in mind, identity of P.W. 9 was neither known to the de-facto complaint nor to the neighbour of the deceased. His identity came to light during investigation and he was interrogated on 08.12.1999. Thereafter, appellant was arrested. Hence, delay in examination of P.W. 9 is clearly explained in the facts of the case. Unfortunately, the first investigating officer, SI G.C. Dutta had died and could not be examined in Court. Under such circumstances, I am of the opinion delay in examination of P.W. 9 by the first investigating officer is clearly explained and does it create a brooding doubt over the unfolding of the prosecution case. It has been argued Tapan Hazra (P.W. 11) has not supported the evidence of P.W. 9. It is true that Tapan Hazra was present with P.W. 9 and the deceased till they arrived at Baburhat Bazar. Tapan was examined but he remained silent. Prosecution ought to have declared the said witness hostile and cross-examined him with his earlier statement. No such exercise was done. However, narration of P.W. 9 shows the said witness had left immediately after they had alighted from the bus at

Baburhat. He was not present at the spot when the incident occurred. Thus, I am of the opinion unfolding of the prosecution case through the mouth of P.W. 9 does not suffer a jolt due to lack of support from him.

It is trite law witnesses may lie but circumstances do not. P.W. 9 deposed after alighting from the bus they went to a shop and the deceased had purchased a cake. Soon thereafter, the appellant assaulted the deceased on his head resulting in his death. P.Ws. 3 and 8, neighbours of the deceased, who came to the spot hearing about the incident, saw two cakes lying beside his body apart from slippers and other articles. This circumstance of post-occurrence witnesses noticing cakes lying beside the body of the deceased corroborates the version of P.W. 9 and probabalising his presence with the deceased at the place of occurrence. Furthermore, manner of assault alleged by P.W. 9 is corroborated by the nature of injuries noted by the post mortem doctor, P.W. 14 in the post mortem report. P.W. 9 stated the deceased was assaulted by a knife (chhura) on the head. Multiple injuries which may be caused by knife/chhura were noted on the head and face of the deceased during post mortem examination. His ocular version, therefore, receives substantial corroboration from the medical evidence.

In the light of the aforesaid discussion, I am of the opinion that deposition of the eyewitness (P.W. 9) is substantially corroborated by other circumstances including medical evidence. There is a ring of truth in his version. This was sought to be polluted by the defence through various efforts and subterfuge. Examination of the witness was protracted by

holding out threats and other subterfuges. Witness complained to the court with regard to death threats made by the appellant. After an ordeal of seven years his cross-examination could be finally completed.

Witnesses are the eyes and ears of justice. It is through the deposition of a truthful and fearless witness can the court dispense of justice and bring the offenders to book. This case is a glaring example where the sole eyewitness was sought to be won over or intimidated through various unlawful efforts. However, the efforts were not successful and his deposition came to be recorded at last, which, in my estimation, is truthful and corroborated by other materials on record.

While dealing with cases involving vulnerable eye-witnesses the Apex Court has repeatedly sounded a note of warning in the manner of examination of such witnesses. The Court held that vulnerable witnesses who are liable to be won over must be examined as promptly as possible and there should not be inordinate delay in course of examination. It issued the following directions in ***Doongar Singh And Others vs. State of Rajasthan***²:-

“10.1. The trial courts must carry out the mandate of section 309 CrPC as reiterated in judgments of this Court, inter alia, in *State of U.P. v. Shambhu Nath Singh*³, *Mohd. Khalid v. State of W.B.*⁴ and *Vinod Kumar v. State of Punjab*⁵.

10.2. The eye-witnesses must be examined by the prosecution as soon as possible.

10.3. Statement of eye-witnesses should invariably be recorded under section 164 CrPC as per procedure prescribed thereunder.”

² (2018) 13 SCC 741

³ (2001) 4 SCC 667

⁴ (2002) 7 SCC 334

⁵ (2015) 3 SCC 220

Direction of the Apex Court has been completely given a go by in the present case where the examination of the most vital witness lingered for seven years. However, evidence of the said witness which came to be finally recorded is the precious life line on which the prosecution case came to be salvaged.

Authorities distinguished:-

Authorities relied upon by Mr. Bhattacharya, are factually distinguishable. In ***Shivasharanappa And Others Vs. State of Karnataka***⁶ the Court disbelieved the eyewitness who was the mother of the deceased as she had not disclosed the kidnapping of her own daughter to other relations. P.W. 9 was neither a relation nor even a neighbour of the deceased. Therefore, his conduct cannot be said to be equated to that of a distressed mother who inspite of coming to know of the kidnapping of her own daughter remains mum. While silence of the mother is absurd, in the case of P.W. 9 remaining mum is not so in view of the shady nature of association between him and the deceased and the hostile attitude of the appellant.

In ***Lallu Manjhi And Another Vs. State of Jharkhand***⁷ the sole eye witness's version was at variance with the medical opinion as to cause of death. There were gross embellishments. In the present case, manner of assault as deposed by P.W. 9 is corroborated by medical evidence and other circumstances.

⁶ (2013) 5 SCC 705

⁷ (2003) 2 SCC 401

Learned Counsel appearing for the appellant have relied on **Surajit Sarkar Vs. State of West Bengal**⁸ to emphasise delayed examination of a witness who do not disclose the incident to the family members is unreliable. As discussed earlier, P.W. 9 is not a family member nor a neighbour of the de facto complainant (P.W. 1). P.W. 1 was not aware of the fact that P.W. 9 was with his father at the time of the incident. Identity of P.W. 9 came to be known to the investigating agency during investigation and he was interrogated. Hence, delay in examining P.W. 9 is clearly explained in the facts of the case and cannot be said to be unnatural. Delay in examining a witness per se is not a ground to discard his evidence.

In the cited report itself the Court clarified :-

“45. We agree that delay per se may not be a clinching factor but when there is a whole range of facts that need to be explained but cannot, then the cumulative effect of all the facts could have an impact on the case of the prosecution.”

The circumstances in the present case clearly explains away the delay in examination of P.W. 9 and when seen in the backdrop of whole range of facts cannot be said to be unnatural.

Similarly, in **Anil Phukan Vs. State of Assam**⁹ the appellant was acquitted as the sole eye witness had attributed the principal assault to another accused and not to him.

None of the authorities, therefore, come in aid of the appellant's plea to discredit the version of the sole eye witness (P.W. 9).

⁸ (2013) 2 SCC 146

⁹ AIR 1993 SC 1462

Conclusion:-

In the light of the aforesaid discussion, I, uphold the conviction and sentence of the appellant.

The appeal being CRA 267 of 2015 is, accordingly, dismissed.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of 428 of the Code of Criminal procedure.

Lower court records along with copies of this judgment be sent down at once to the learned trial court for necessary compliance.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)