

IN THE HIGH COURT AT CALCUTTA

Criminal Miscellaneous Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 119 of 2021

Ansar Ali Mondal @ Mantu

Vs.

The State of West Bengal

With

CRA 167 of 2021

Sohel Rana Mondal @ Rocket

Vs.

The State of West Bengal

For the Appellant
in CRA 119 of 2021

: Mr. Sekhar Kumar Basu
Mr. Robiul Islam
Mr. Raju Mondal
Ms. Pratima Banerjee
Ms. Firoza Begum

For the Appellant
in CRA 167 of 2021

: Mr. Masud Karim
Ms. Ranjana Talapatra
Mr. Abhijit Chatterjee
Mr. Galib Ahsan
Mr. Zahih Mehmood

For the de-facto

: Mr. Sumanta Chakraborty
Mr. Samirul Sardar

For the State

: Ms. Anasuya Sinha
Mr. Pinak Kumar Mitra

Hearing concluded on

: February 13, 2023

Judgement on

: February 13, 2023

DEBANGSU BASAK, J.:-

1. Two appeals are taken up analogously as they emanate out of the same impugned judgement of conviction and the order of sentence.
2. By the impugned judgement of conviction dated December 23, 2020, the appellants in the two appears were convicted under Sections 302/120B/34 of the Indian Penal Code, 1860 and under Sections 25/27 of the Arms Act, 1959.
3. By the impugned order of sentence, the appellants were sentenced to suffer rigorous imprisonment for the respective lives for the offence under Section 302 of the Indian Penal Code, 1860 and to pay a fine of Rs.10,000/- each in default of payment to suffer further rigorous imprisonment for five years each; suffer rigorous imprisonment for the respective lives for the offence under Sections 120B/34 of the Indian Penal Code, 1860 and to pay a fine of Rs.10,000/- each in default to suffer further rigorous imprisonment for five years each and to suffer rigorous imprisonment for the respective lives for the offence under Section 25 of the Arms Act, 1959 and to pay a fine of Rs.10,000/- each in default to suffer rigorous imprisonment for five years each.

4. The police complaint dated June 9, 2015, was lodged by P.W. 1 with regard to murders of two victims. Such police complaint was registered as a First Information Report (FIR) on June 9, 2015. On conclusion of the investigations in respect of such police case, a charge-sheet was submitted. The Court framed charges under Sections 302/120B/34 of the Indian Penal Code, 1860 and under Sections 25/27 of the Arms Act, 1959 against the appellants on January 21, 2017. The appellants pleaded to be not guilty and claimed to be tried. At the trial, the prosecution examined 14 witnesses and relied upon several documentary and material exhibits. On conclusion of the evidence of the prosecution, the appellants were examined under Section 313 of the Code of Criminal Procedure (Cr.P.C.)

5. The case of the prosecution at the trial was that, P.W. 1, who is a relative of the two victims arrived at the spot and found two victims namely, Moslem and Titu injured and to be gasping for breath. Titu disclosed to P.W. 1 that four persons murdered the victim's father, Moslem. He named the four assailants which includes the two appellants. Titu who made the oral dying declaration subsequently succumbed to his injuries. The incident happened on June 9, 2015 at about 5/5.30 p.m. at a place after

crossing of Jhajha village before Sharitala near Yatr nibas under a Kadam tree.

6. Learned senior advocate appearing for the appellant in CRA 119 of 2021 (for the sake of convenience hereinafter referred to as the first appellant) submits that, the incident is claimed to occur on June 9, 2015 at about 5/5.30 p.m. The FIR was lodged on the same day at about 11.25 p.m. He refers to the inquest report. He submits that, the inquest was held prior to the lodgment of the FIR. The inquest report does not disclose the name of any of the assailants far less the two appellants.

7. Learned senior advocate appearing for the first appellant submits that, the nature of injury suffered by the two victims as appearing from the post mortem report and the deposition of the post mortem doctor read together establishes that, the death of both the victims were instantaneous. He submits that, going by the case of the prosecution, one of the victims died before making the alleged dying declaration. The second victim, who allegedly made the oral dying declaration, was also not in a position to speak, assuming though not admitting that, such victim was alive when P.W. 1 reached the spot.

8. Learned senior advocate appearing for the first appellant submits that, the prosecution did not produce any eye witnesses at the trial. The entire case of the prosecution is based upon an alleged oral dying declaration allegedly made by one of the victims. He refers to the injuries suffered by both the victims and in particular the injury suffered by the victim claimed to make the oral dying declaration.

9. Referring to the post mortem report of the victim, who allegedly made the dying declaration and which was marked in trial as exhibit 4, he submits that, such victim suffered six bullet injuries. Five of the bullet injuries were fatal in nature. He submits that, two bullet injuries penetrate the jaw of such victim. Two bullet injuries puncture the chest area. Therefore, it is inconceivable that such victim was alive to make the oral dying declaration and that in any event was in a position to speak.

10. Learned senior advocate appearing for the first appellant submits that, P.Ws. 3 and 6, who arrived at the spot, did not state in their oral depositions that, the surviving victim made the dying declaration to P.W. 1 or that the P.W. 1 disclosed the making of

such dying declaration to them. Therefore, the claim of P.W. 1 remained uncorroborated.

11. Learned senior advocate appearing for the first appellant submits that, the claim of the surviving victim making the alleged dying declaration was an embellishment and improvement at the trial. He relies upon **(2019) 15 SCC 511 (Gupteswar Behera Vs. State of Odisha & Anr.)**, **(2008) 11 SCC 232 (Arun Bhanudas Pawar Vs. State of Maharashtra)** and **1984 SCC(Cri) 487 (Sharad Birdhichand Sarda Vs. State of Maharashtra)**.

12. Learned senior advocate appearing for the first appellant refers to the impugned order of sentence. He submits that, the appellants were found guilty under Section 25 of the Arms Act, 1959 and sentenced to suffer a rigorous imprisonment for the remainder of his life. He submits that, the necessary ingredients to attract the provisions of the Act of 1959 to impose a punishment of the nature as imposed by the learned Trial Judge were absent. Consequently, none of the appellants would be sentenced to such quantum of punishment.

13. Referring to the materials on record, learned senior advocate appearing for the first appellant submits that, no

recovery of fire arm was made from any of the appellants for them to be convicted under the Act of 1959.

14. Learned senior advocate appearing for the first appellant submits that, the appellants should be acquitted from the charges levelled as against them.

15. Learned advocate for the appellant in CRA 167 of 2021 (hereinafter referred to as the second appellant for the sake of convenience) adopts the contentions, submissions and arguments advanced by the learned senior advocate appearing for the first appellant.

16. Learned advocate appearing for the State draws the attention of the Court to the oral testimonies of the prosecution witnesses and the documentary and material exhibits. She submits that, P.W. 1 heard the oral dying declaration made by one of the victims. P.W. 11 is a post occurrence eye witness, who saw the appellants to flee away from the spot. Therefore, taking the entire materials placed on record before the learned trial Court she submits that, the conviction and the sentences imposed should not be interfered with.

17. Learned advocate appearing for the de-facto complainant refers to the testimonies of the prosecution witnesses. He reiterates the stand taken by the learned advocate appearing for the State. In addition thereto, he draws the attention of the Court to the deposition of the Investigating Officer and submits that,, fire arm was recovered from the possession of the first appellant upon a leading statement being made by the first appellant and recorded. He submits that, the leading statement of the first appellant recorded under Section 27 of the Evidence Act, 1872 was tendered and marked as exhibit 16. Therefore, he submits that the impugned order of conviction and the order of sentence should be sustained.

18. P.W. 1 is a relative of both the victims. He stated in his evidence that, both the victims were murdered. Both the victims used to scribe deeds. Referring to the incident, he stated that, the victims were coming back from the office at about 5/5.30 p.m. on their motor cycle. He was going to Rukunpur from his house to collect medicines. A person from the opposite direction on a bicycle told him that, one of the victim was murdered and his body was lying in a field. Hearing the same, he rushed to the place of occurrence where he found one of the victim gasping for breath

lying in injured condition. He asked to the other victim, who was lying injured there, as to who committed the offence whereupon such victim told P.W. 1 the names of the four assailants which included the two appellants. He stated that, thereafter, P.W. 3 and another person arrived at the place of occurrence.

19. Titu, one of the victim told P.W. 3 as well as the other person the names of the four assailants. P.W. 1, thereafter, described, how the victims were removed to the hospital. On examination, it was informed to P.W.1 that both the victims expired.

20. P.W. 1 lodged a complaint with regard to the incident. He identified the two appellants in Court. He stated that, two other assailants were present in Court. He was cross examined at length by the defence.

21. P.W. 2 is another relative of the two victims. He stated that, he saw the two victims at the place of occurrence lying with a bleeding condition. He claimed that, Titu was alive. He claimed that, P.W. 1 told him that, Titu informed P.W. 1 as to the assailants. In cross examination, he stated that he cannot say when the police arrived at the spot. He also stated that, many

persons were standing at the place of occurrence waiting for the arrival of the police.

22. P.W. 3 is an acquaintance of one of the victims namely, Titu. He stated that, he reached the place of occurrence and found the two victims to be lying on the ground in a bleeding condition. He found P.W. 1, P.W. 2 and another person to be present there. He was told by P.W. 1 that four assailants murdered the two victims. He claimed that, P.W. 1 told him that, Titu told P.W. 1 about the incident. He witnessed the two inquest of the two dead bodies. The inquest reports were tendered as exhibits 1 and 2. He identified the two appellants in Court.

23. In cross-examination, P.W. 3 stated that, he did not state about the incident to anybody apart from the relatives.

24. P.W. 4 and P.W. 5 were tendered by the prosecution as witnesses without any question being put to them. They were tendered for the purpose of cross examination. The defence declined to cross examine P.Ws. 4 and 5.

25. P.W. 6 is another relative of one of the victims namely Titu. He stated that, he was not present at the time of the incident. He went to the place of the incident and saw one victim to be dead

and Titu to be still alive. He stated that, P.W. 1, P.W. 3 and many other persons were present at the place of occurrence. He also witnessed the two inquests.

26. P.W.7 is another relative of Titu. He also went to the place of occurrence upon getting the news thereof and found one victim to be dead and Titu to be gasping for breath. P.W. 1 told him that Titu told P.W. 1 about the assailants. He identified the appellants in Court.

27. The doctor, who performed the post mortem examination of the two dead bodies of the victims deposed as P.W. 8. In respect of the dead body of Moslem, one of the victim, he found seven injuries. With regard to the dead body of Titu, he found 11 injuries. He stated that, all the injuries were ante mortem in nature. He opined that the death was due to the effects of multiple fire arm injuries, ante mortem and homicidal in nature. He tendered the post mortem report in respect of Moslem, which was marked as exhibit 3 and the post mortem report of Titu, which was marked as exhibit 4.

28. In cross examination, P.W. 8 stated that, the injuries were of serious type caused to the vital parts of the body resulting in

almost instantaneous death. He also stated that, profuse bleeding is supposed to make a patient too weak.

29. A constable of the police deposed as P.W. 9. He is a seizure list witness. The seizure list was tendered and marked as exhibit 5. The dead body challans were tendered in evidence and marked as exhibits 6 and 7.

30. The police personnel, who started the police case deposed as P.W. 10. He tendered the formal FIR, which was marked as exhibit 8. He identified his signature on the written complaint, which was marked as exhibit 9.

31. The Judicial Magistrate, who recorded the 164 Cr.P.C. statement deposed as P.W. 11.

32. One of the police personnel, who responded to the incident first in point of time, deposed as P.W. 12. He deposed that, he found one blue coloured motor cycle and some live cartridges and some empty cartridges at the place of occurrence. He described the articles seized. He arrested the first appellant. He stated that, on June 25, 2015, on the leading statement made by the first appellant, the police party entered into a building of the first appellant and recovered the fire arm from beneath the cot of the

first appellant. The police recovered one magazine tilts with five round bullets. The seizure list was tendered in evidence and marked as exhibit 12. The fire arms were sent for forensic examination.

33. The neighbour of the victims deposed as P.W. 13. He claimed that, he was going to Rukunpur from his house by cycle. When he reached Saritala More, he heard some sounds. Out of fear, he proceeded further and found two persons lying on the road. Thereafter, he found seven persons to ride on the three motor cycles. He claimed that he could identify four out of six-seven persons. He identified them as the two appellants and two other persons. He claimed that, he saw the victims lying in a bleeding condition Titu tossing with pain. Out of fear, he went back to his home.

34. In cross examination, P.W. 13 stated that, he was an accused in some criminal cases. In those criminal cases, the appellants were witnesses in favour of the complainant of those cases. He went to the Magistrate to record 164 Cr.P.C. statement after one month and 45 days from the date of the incident.

35. The Investigating Officer had deposed as P.W. 14. He narrated the course of investigation in the police case. He stated about the interrogation and that on June 25, 2015, the first appellant facilitated recovery of a fire arm pursuant to his leading statement. The leading statement was tendered in evidence and marked as exhibit 16.

36. The appellants were examined under Section 313 of the Cr.P.C. on conclusion of the evidence of the prosecution. The appellants claimed that they were innocent and falsely implicated. They declined to adduce any defence witness.

37. Two persons namely Moslem and Titu died in the incident of June 9, 2015. Post-mortem of the dead bodies of these two persons was conducted by P.W 8. Post-mortem report of Moslem was tendered in evidence and marked as Exhibit-3.

38. P.W 8 and Exhibit-3 read together establishes that, Moslem died out of firearm injuries. The firearm injuries were ante-mortem and homicidal in nature. The death was due to the effects of multiple fire arm injuries. Therefore, it was established by the prosecution that Moslem was murdered by gunshot injuries.

39. The post-mortem of Titu was tendered in evidence and marked

as Exhibit-4. Eleven injuries were found on the dead body of Titu. Post-mortem doctor being P.W 8 stated that, all the injuries found on the dead body of Titu were ante-mortem and homicidal in nature. The death was due to the effects of multiple firearm injuries.

40. Therefore, in respect of death of Titu, it was established by the prosecution that, Titu was murdered by inflicting firearm injuries on him.

41. P.W 1 claimed that Titu made a dying declaration to him with regard to the assailants. P.W 1 told some of the other prosecution witnesses, who arrived at the place of occurrence, subsequent to him, that Titu made such dying declaration to him. Significantly, such prosecution witnesses were witnesses to the two inquest reports of the two victims. At the time of the inquest, such prosecution witnesses who were allegedly told by P.W 1, as to the identity of the assailants, did not speak about the assailants at the time of the inquest of the two dead bodies.

42. P.W 1 in his evidence claimed that, both the victims were gasping for breath and Titu made the dying declaration.

43. In such circumstances, it would be necessary to understand the injuries suffered by Titu and whether, there is any possibility of

Titu making the dying declaration as claimed or at least whether the prosecution was able to establish beyond reasonable doubt that Titu was in a position to make the dying declaration as claimed.

44. Exhibit-4 and the evidence of P.W 8 specify the eleven injuries suffered by Titu on his body which are as follows:-

- “1) Entry wound of fire arm on the left side from of chest. The bullet was recovered from the right lungs.*
- 2) Entry wound of fire arm on the midline of chest and the bullet was recovered from T. 11 Vertebra.*
- 3) Entry wound of fire arm on the right side of face.*
- 4) Exit wound of fire arm on the left side of face just below the pinna.*
- 5) Entry wound of fire arm on the left subclavicular.*
- 6) Exit wound on the right side mastoid area.*
- 7) Entry wound on the left side of neck.*
- 8) Exit wound on the right side back of neck.*
- 9) Entry wound on the front of right arm.*
- 10) Exit wound on the right arm below the elbow.*
- 11) Graze injury of fire arm on the right thumb.”*

45. Titu suffered six bullet injuries. One bullet injury was on the left side front of chest with the bullet being recovered from the right

lungs. Another bullet injury was on the midline of chest with the bullet being recovered from T-11 Vertebra. The third firearm wound was found on the right side of the face. Exit wound of firearm on the left side of face just below the pinna was found. Entry wound of firearm on the left subclavicular area was found. Exit wound on the right side of mastoid area was also noticed. Entry wound on the left side of the neck with an exit wound on the right side back of the neck were found. There was also an entry wound on the front of right arm with an exit wound thereon.

46. The post-mortem doctor opined that death of Titu and Moslem were almost instantaneous. The injuries recorded in the post-mortem report and the deposition of P.W 8 establish that there is substance in the opinion of the post-mortem doctor that the death of Titu was instantaneous.

47. P.W 1 was not present at the place of occurrence when the situation was developing. He was at a distance. He did not claim that he heard the gunshot sounds, reacted thereto, and came to the place of occurrence. The evidence is that, he was informed by a person travelling towards him from the place of occurrence whereupon he proceeded to the place of occurrence.

48. In his testimony, P.W 1 stated that the distance between the place

of occurrence and his residence was about 5 kilometres. At the same time, he stated that, at the time of the occurrence, he was proceeding towards the place of occurrence in order to buy some medicine. Therefore, in the conspectus of the facts narrated above, some time lapsed between the two victims suffering the gunshot injuries and P.W 1 arriving at the place of occurrence. P.W 1 did not see any of the alleged assailant to flee away the place of occurrence. Therefore, this is another indication to the fact that time lapsed between the victims suffering the gunshot injuries and the assailants fleeing the place of occurrence.

49. The entire case of the prosecution is founded upon the dying declaration of Titu made to P.W 1 implicating the two appellants. The appellants were convicted and punished on the anvil of such a case of the prosecution.

50. None of the other prosecution witnesses heard Titu making the dying declaration. The other prosecution witnesses claimed that P.W 1 informed them that Titu made the dying declaration. Again as noted above, such prosecution witnesses although, being witnesses to the inquest of the two victims did not disclose the identity of the assailants.

51. **Sharad Birdhichand Sarda (supra)** is of the view that, when the

close relatives and friends of the deceased testify with regard to murder, there is a natural tendency of such witnesses to exaggerate or add facts which may not be stated to that at all. Not that this is done consciously but even unconsciously the love and affection for the deceased would create psychological hatred against the supposed murdered and therefore, the Court is required to examine such evidence with great care and caution.

52. **Arun Bhanudas Pawar (supra)** is of the view that, oral dying declaration made by the deceased ought to be treated with care and caution, since the maker of the statement cannot be subjected to any cross-examination.

53. **Gupteswar Behera (supra)**, in the facts of that case found that the deceased could not have survived for a period of time to make the kind of dying declaration as claimed.

54. In the facts and circumstances of the present case, it is claimed by the prosecution that, one victim made a dying declaration identifying the assailants to P.W 1. P.W 1 is a relative. The nature of injuries that Titu, the victim who, it is claimed by the prosecution, to make the dying declaration, suffered at least six bullet injuries. At least four of the bullet injuries were such that if not causing instantaneous death would result in debilitating Titu to an extent Titu

not being in a position to speak. Two bullets were found in the chest one being lodged in the vertebra. The jaw of Titu was found to be injured caused by a firearm. It is doubtful as to whether Titu survived such assault to make the oral dying declaration and if surviving the assault was capable to do so.

55. Post-mortem doctor being P.W 8 stated in cross-examination that the death of both the victims including Titu was almost instantaneous. P.W 1 who claimed to hear the oral declaration was not present at the place of occurrence when the situation was developing. He arrived at the place of occurrence on being informed by another person.

56. P.W 1 is a relative of the two victims. No other independent witnesses came to the witness box to adduce evidence of any dying declaration being made by Titu. Prosecution did not produce any witness to corroborate the claim of P.W 1 that, Titu made a dying declaration to him. In such circumstances, there is an element of doubt as to whether Titu was in a position to make the oral dying declaration to P.W 1 or even in fact, did so. At least, the prosecution did not establish it beyond reasonable doubt at the trial that, Titu made the oral dying declaration to P.W 1

57. Prosecution examined P.W 13 to establish that the two appellants

were amongst the several persons seen fleeing the place of occurrence immediately after the incident. Claim of P.W 13 to the effect that the two appellants are involved in the assault and murder of the two victim is unreliable. He did not witness the incident. He was an accused in some criminal cases. In those criminal cases the accused persons herein were the witnesses in favour of the complainant in all those cases. He recorded his statement under Section 164 of the Criminal Procedure Code being Exhibit 10 on July 30, 2015 which was more than one and half months from the date of the incident.

58. In such circumstances the possibility of P.W 13 falsely implicating the accused persons for his personal benefits cannot be overlooked. His exposure to the accused persons as elucidated in the cross-examination does not inspire confidence in his testimony relating to the involvement of the accused persons.

59. In such circumstances, we are unable to sustain the conviction of the appellants under Section 302/102B/34 of the Indian Penal Code, 1860.

60. There is a statement recorded under Section 161 of the Code of Criminal Procedure of the first appellant while in custody. He was taken in custody on June 25, 2015. A portion of such statement was tendered in evidence and marked as Exhibit 16 under Section 27 of

the Evidence Act, 1872. Pursuant to Exhibit 16, that is the leading statement of the first appellant, a firearm was recovered from underneath the cot belonging to the first appellant, at the house of the first appellant.

61. Prosecution did not produce any evidence to establish that the firearm recovered from the possession of the P.W was the firearm used for the purpose of inflicting the firearm injuries on the two victims. Therefore, from such angle also, conviction of the two appellants with regard to the murder of the two victims cannot be sustained.

62. The appellants were charged under Section 25/27 of the Arms Act, 1959 also. They were convicted for such offences also.

63. The learned Trial Judge overlooked the fact that, the firearm was recovered from the first appellant only. The prosecution could not establish that the firearm so recovered was being used for the purpose of murdering the two victims. Prosecution did establish any other nexus between the firearm recovered and the second appellant save and except being the weapon of murder. Therefore, the conviction of the second appellant under the provisions of the Arms Act, 1959 is unsustainable.

64. So far as the first appellant is concerned, on the basis of whose

leading statement, the firearm was recovered from such first appellant committed the offence under Section 25(1) of the Arms Act, 1959.

65. The conviction of the first appellant under Section 25(1) of the Arms Act, 1959 and the order of sentence thereunder are sustained.

66. In view of the discussions above, the impugned judgement of conviction and the order of sentence under Sections 302/120B/34 of the Indian Penal code, 1806 in respect of both the appellants are set aside.

67. The impugned judgement of conviction and the order of sentence under Section 25 of the Arms Act, 1959 for the second appellant is set aside.

68. Consequently, the impugned judgement of conviction and the order of sentence cannot be sustained. The same are hereby set aside. The second appellant, namely, Sohail Rana Mondal @ Rocket is acquitted of the charges. The second appellant if in custody, be released forthwith if not required in connection with any other case. The second appellant shall, however, furnish a bail bond to the satisfaction of the trial Court which shall continue for six months from date in terms of Section 437A of the Criminal Procedure Code.

69. Learned senior advocate appearing for the first appellant submits that, the learned judge erred in convicting the first appellant under

Section 25/27 of the Arms Act, 1959. There was no material before the learned trial judge to suggest let alone establish that the firearm allegedly recovered from the possession of the first appellant was ever used. He relies upon **AIR 1973 SC 2288 (Mahendra Singh -Vs.- State of West Bengal)** in support of his contention.

70. So far as the first appellant is concerned, a firearm was recovered from his possession on his leading statement. The leading statement was tendered in evidence and marked as Exhibit 16. User of the firearm was not established. Therefore, conviction of the first appellant under Section 27 of the Arms Act, 1959 was not warranted. Such conviction of the first appellant is set aside.

71. However, so far as the conviction under Section 25 of the Arms Act, 1959 is concerned, as noted above, the first appellant was found in possession of a firearm without any valid authority for such possession. The first appellant, therefore, committed an offence under Section 25(1B)(a) of the Arms Act, 1959. Section 25(1B)(a) of the Arms Act, 1959 prescribes an imprisonment for a term which would not be less than two years but which may extend to five years and shall also be liable to fine.

72. In **Mahendra Singh (supra)**, the Supreme Court found that it was not possible to hold that the possession of the firearm of the

appellant was without the knowledge of the appellant. Therefore, the conviction under Section 25(1)(a) of the Arms Act, 1959 was set aside due to lack of evidence.

73. The Arms Act, 1959 underwent various amendments subsequent to the judgement of ***Mahendra Singh (supra)*** which was rendered on April 24, 1993.
74. In the facts and circumstances of the present case we find that the first appellant is guilty under Section 25(1B)(a) of the Arms Act, 1959.
75. Charge under Section 25 was framed as against the first appellant at the trial. We therefore, convict the first appellant under Section 25(1B)(a) of the Arms Act, 1959 and sentence the first appellant to an imprisonment of five years and impose a fine of Rs. 10,000/- (Rupees ten thousand only) on him, in default of payment of such fine, to suffer rigorous imprisonment for six months.
76. The period of detention undergone by the first appellant during investigation, trial and the pendency of the appeal be set off against the sentence imposed.

77. CRA 119 of 2021 and CRA 167 of 2021 are accordingly disposed of.
78. The trial court records along with a copy of this judgement and order be sent to the appropriate court at once for necessary action.
79. Urgent photostat certified copy be made available to the applying parties on compliance of requisite formalities.

[DEBANGSU BASAK, J.]

80. I agree.

[MD. SHABBAR RASHIDI, J]