

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL APPELLATE JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Joymalya Bagchi**

And

**The Hon'ble Justice Ajay Kumar Gupta**

***C.R.A. 287 of 2015***

***Samad Sk. & Ors.***

***-Vs-***

***The State of West Bengal***

|                           |   |                                                                                                 |
|---------------------------|---|-------------------------------------------------------------------------------------------------|
| <b>For the Appellants</b> | : | Mr. Arnab Chatterjee, Adv.<br>Ms. Dhanasree Biswas, Adv.<br>Ms. Poulami Bose, Adv.              |
| <b>For the State</b>      | : | Mr. Saswata Gopal Mukherjee .. Id. P.P.<br>Mr. Parthapratim Das, Adv.<br>Ms. Eshita Dutta, Adv. |
| <b>Heard on</b>           | : | 28.04.2023 & 01.05.2023                                                                         |
| <b>Judgment on</b>        | : | 01.05.2023                                                                                      |

**Joymalya Bagchi, J. :-**

1. Appeal is directed against judgment and order dated 17.03.2015 and 18.03.2015 passed by learned Additional Sessions Judge, 4<sup>th</sup> Court, Krishnagar, Nadia in Sessions Case No. 60(9) of 2012 arising out of Sessions Trial No. I(X) of 2012 convicting appellant nos.1 to 5 for commission of offence punishable under Sections 302/34 of the Indian Penal Code and sentencing them to suffer imprisonment for life

and to pay a fine of Rs.1000/- each, in default, to suffer rigorous imprisonment for six months more and convicting appellant no.6 for commission of offence punishable under Sections 302/120B of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs.1000/-, in default, to suffer rigorous imprisonment for six months more.

2. Prosecution case as alleged against the appellant is as follows:-

On 16.04.2004 Nilufa Biswas was married to Kamaluddin Sk., appellant no.6 herein. After the marriage, she was subjected to torture and took refuge at her parental home. A village *salishi* was held. She was sent back to her matrimonial home. Nilufa gave birth to a female child. Thereafter, torture increased upon her. She again returned to her parental home. Kamaluddin was employed in the Indian Army. As he was neglecting his wife and child, Nilufa wrote a letter to the army authorities claiming maintenance. As a result, a sum of Rs.3500/- per month was deducted from Kamaluddin's salary. Six months prior to the incident, Kamaluddin returned home and pursuant to a *salishi* brought Nilufa to her matrimonial home. He demanded Nilufa refund the maintenance paid to her. Nilufa refused and a quarrel ensued. Subsequently, Kamaluddin left for his unit. On 03.05.2012 around 1:00 A.M. Samad Sk. (elder brother-in-law of Nilufa) and her mother-in-law viz. Rachula Bewa @ Rosula Bibi set Nilufa on fire upon instruction of Kamaluddin and other in-laws i.e. Manowara Bibi @ Manoara Khan

(sister-in-law), Felu Khan @ Rohim Buxo Khan (cousin brother-in-law) and Asan Sk (uncle-in-law). Nilufa was initially admitted to the district hospital and thereafter to NRS Medical College & Hospital. While she was fighting for life, Sirajuddin Biswas (PW1) lodged written complaint at Chapra police station resulting in Chapra Police Station Case No. 193 of 2012 dated 03.05.2012 under Sections 326/498A/307/34 of the Indian Penal Code. From NRS Medical College & Hospital, Nilufa was shifted to Command Hospital, Kolkata by Kamaluddin. There she breathed her last on 14.05.2012. Section 302 IPC was added.

3. In conclusion of investigation, charge-sheet was filed against Kamaluddin and the other in-laws.

4. Charges were framed against the in-laws viz. Samad Sk. (cousin brother-in-law), Rachula Bewa @ Rosula Bibi (mother-in-law), Manowara Bibi @ Manoara Khan (sister-in-law), Felu Khan @ Rohim Buxo Khan (brother-in-law) and Asan Sk (uncle-in-law) under Sections 302/34 IPC and against Kamaluddin Sk. under Sections 302/120B IPC. Appellants pleaded not guilty and claimed to be tried.

5. In course of trial, prosecution examined 20 witnesses and exhibited a number of documents. Defence of the appellants was one of innocence and false implication.

6. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 17.03.2015 and 18.03.2015 convicted and sentenced the appellants, as aforesaid.

7. During pendency of the appeal, Rachula Bewa @ Rosula Bibi, appellant no.2 herein expired. Hence, the appeal abated so far as the said appellant is concerned.

8. Mr. Arnab Chatterjee for the appellants submits prosecution case suffers from gross contradictions and improbabilities. Dying declarations recorded by PW14 at Shaktinagar Hospital (Ext.15) as well as at NRS Medical College & Hospital (Ext.23) do not disclose the role of appellant nos.3, 4 & 5 in the murder. Oral dying declaration made to PWs.3 to 7 at the place of occurrence is suspicious. PW2 (uncle of the deceased) was also present at the spot. He does not state about the oral dying declaration at the spot. On the other hand, PWs.2 & 8 claimed victim made an oral dying declaration while she was taken from Chapra to Shaktinagar Hospital. Though PW2 is the scribe, there is no reference to the oral dying declaration in the FIR. Contents of the oral dying declarations are at variance to the declarations reduced in writing. In the oral dying declarations, all the in-laws i.e. appellant nos.1 to 5 have been implicated in the murder but in the written dying declaration recorded at Shaktinagar Hospital (Ext.15) or at NRS Medical College and Hospital (Ext.23) roles of appellant nos.3 to 5 are missing. Subsequent dying declaration recorded by the Investigating officer at NRS Medical College and Hospital (Ext.23) is doubtful. It is also relevant to note there is no signature of medical personnel or the victim on the said declaration. With regard to the role of appellant no.6 in the crime, it is submitted that

the oral evidence with regard to the manner and circumstances in which phone call was made by appellant no.6 soon after the incident does not inspire confidence. Hence, conviction and sentence are liable to be set aside.

9. On the other hand, Mr. Parthapratim Das for the State submits appellant nos.1 to 5 were present at the residence. On the fateful night when the victim had gone to the toilet, appellant no.1 set her on fire while appellant no.2 had held her by the tuft of hair. After she was set on fire other in-laws i.e. appellant nos.3 to 5 prevented her from running away. Appellant no.6 had motive to commit the crime. Prior to the incident and thereafter he made phone calls to his cousin (appellant no.4). He had enquired from appellant no.4 whether everything was done. These circumstances have been proved beyond doubt and establish the conspiracy. Dying declaration of the victim and other clinching evidence clearly establishes the guilt of the appellants. Hence, the appeal is liable to be dismissed.

10. PW1 (Sirajuddin Biswas) is the father of Nilufa. He deposed incident occurred 8/8½ years after marriage. Nilufa was subjected to mental and physical torture. She took refuge at his residence. Her husband, Kamaluddin used to work in the Army. His daughter wrote letter to Army authorities and a sum of Rs.3500/- was deducted from Kamaluddin's salary as maintenance. Six months prior to the incident, Kamaluddin returned to the village. A *salishi* was held. He took back his

wife to the matrimonial home. His daughter was asked to refund the amount that she had received as maintenance. Her daughter refused to do so and Kamaluddin threatened her with dire consequences. On the fateful day, he received news that his daughter had been burnt. He went to the matrimonial home of his daughter. Local people told him that Samad Sk. had set his daughter on fire while Rosula Bibi had held her by the tuft of her hair. Other in-laws viz. Manoara Khan, Felu Khan and Asan Sk. had prevented her daughter from fleeing away. His daughter was shifted to Chapra hospital and thereafter to Shaktinagar hospital and then to NRS Medical College & Hospital. He lodged written complaint at Chapra police station.

11. PW2 (Badaruddin Mondal) is the uncle of the deceased. He corroborated his brother (PW1) with regard to torture. He deposed on 03.05.2012 he came to the matrimonial house of Nilufa. He saw her lying in burnt condition. Nilufa stated she had been set on fire and asked him to take her to a doctor. Initially, they took her to Chapra Hospital. From Chapra Hospital they proceeded to Shaktinagar Hospital. In the vehicle Nilufa stated that Samad Sk. had poured kerosene oil and set her ablaze. Her mother-in-law i.e. Rosula Bibi had caught hold of a tuft of hair on her head. Other in-laws viz. Manoara Khan, Felu Khan and Asan Sk. prevented her from going out and caught hold of her. She was admitted to Shaktinagar Hospital. Therefrom, she was shifted to NRS Medical College & Hospital. After he returned home, he received information that

Kamaluddin had made a phone call and had asked whether everything was over. He scribed the FIR.

12. PW 8 (Jainuddin Biswas) is the brother of the deceased. He corroborated PWs 1 and 2. He also stated that his sister made an oral dying declaration implicating appellant nos. 1 to 5 while she was being taken from Chapra Hospital to Shaktinagar Hospital.

13. PWs. 3 to 7 (Asadul Haque Molla, Md. Sahajahan Ali Sk., Thandu Mondal, Asan Ali Sk. and Liyakat Ali Sk.) are the neighbours. Hearing the cries of Nilufa, they came to the spot. They found Nilufa Bibi in burnt condition. Nilufa told them Samad had set her on fire. Rosula Bibi held her by the tuft of her hair. While Nilufa tried to flee away Manowara, Felu and Asan Ali Sk. caught hold of her and prevented her from fleeing away. They also claimed they had seen the appellants run away.

14. PW 4 (Md. Sahajahan Ali Sk.) further deposed after Nilufa had been taken to the hospital, he heard a mobile phone was ringing in the house. On the instruction of PW 3 he picked up the phone. He heard the voice of Kamaluddin Sk. from the other end who enquired whether everything was over. When he told the caller why he is calling as he knew everything he disconnected the phone.

15. PWs. 3 and 7 had corroborated PW 4 on this score.

16. Medical officers who were involved in the treatment of the victim are PWs 12, 14, 15 and 17.

17. PW 12 (Dr. Apurba Kumar Roy) was posted at Chapra Rural Hospital. He examined the victim and referred her to Shaktinagar District Hospital. He proved the injury report marked as Exbt.-13.

18. PW 14 (Dr. Joydip Roy) treated her at Krishnagar District Hospital i.e. Shaktinagar Hospital. He deposed the patient stated she had been murdered by pouring kerosene oil by her brother-in-law, Samad Sk. He recorded the statement in the presence of Suruk Jahan Biswas and staff nurse of the patient viz. Aparna Chakraborty. Patient put her LTI on the statement. He proved the bed head ticket marked as Exbt.-15 wherein the statement of the patient was endorsed. Patient was admitted at the hospital on 03.05.2012 at 3:15 AM at night and she was referred to N.R.S. Medical College and Hospital at 7:30A.M.

19. PW 15 (Dr. Subodh Ranjan Saha) deposed Nilufa admitted at N.R.S. Hospital in the Surgery Department. He was attached to the hospital as Professor of Surgery. Patient was found conscious. He proved the bed head ticket which was recorded by Dr. Daipayan Saha marked as Exbt.-17 series.

20. PW 17 (Dr. Bhaskar Gayen) was attached to Command Hospital, Calcutta. He deposed patient was brought by her husband from Nilratan Hospital on 04.05.2012. Her husband stated how the patient had sustained injuries. She had been set on fire by her relations i.e. in-laws. History given by her husband was recorded in the Medico

Legal case report marked as Exbt.-19. Victim died in the hospital. He proved death certificate of the victim (Exbt.-21).

21. PW 18 (Dr. Umaprasanna Ghosal) conducted postmortem over the body of the victim. He opined the following injuries:-

*“1. Infected (ulcerated) burn injuries over lateral aspects of both arms and forearms, both palms, whole of the back, right gluted region, back of right thigh and legs. The bases of the injuries were congested. The ulcerated burn injuries were covered with pas and slough. All the injuries showed evidences of vital reaction. No other injuries have been detected on through dissection and clinical examination by a hand lens.*

*Trachea : No soots detected below the bifurcation of trachea.*

*Stomach : It contained 3 ounce Oz of yellow substance, no untoward smell. Mucus membrane congested.”*

He opined death was due to burn injuries ante mortem in nature. He proved post mortem report marked as Exbt.-22.

22. PW 16 (Apurba Lal Das) is the forensic officer. He was attached to the State Forensic Laboratory. He deposed he found inflammable petroleum product on the saree of the deceased. He proved his report marked as Exbt.-18.

23. PW 19 (Goutam Modak, S.I.) recorded the dying declaration of the victim at NRS Hospital in presence of Dr. Ghosh. Victim put her signature on the statement. Dr. Ghosh also put his signature on the statement. He proved the dying declaration marked as Exbt.-23.

24. PW 20 (Abdur Rahim, S.I.) is the investigating officer. He went to the place of occurrence. He prepared rough sketch map with index. He seized a plastic jar having smell of kerosene oil. He also seized brown

coloured kantha saree which was burnt. He examined the complainant and other witnesses. He examined Nilufa Bibi and recorded her statement under Section 161 of the Code of Criminal Procedure in presence of doctors and PW 8. Statements of the witnesses were also recorded under Section 164 of the Code of Criminal Procedure. He collected mobile phone of Kamaluddin Sk. Number of the said phone is 7697617609. He obtained the call detail records of the said mobile phone which was marked as Ext. 19. Mobile phone bearing number 9333082285 stood in the name of the subscriber i.e. Rahim Bux Khan. From the call detail records he found phone calls had been made from the mobile phone of Kamaluddin on 02.05.2012 at 7:57 hours and at 4:35 hours to that of Rahim Bux Khan. On 03.05.2012 again two calls were made from the phone of Kamaluddin at 4:35 hours and 4:48 hours respectively to the said phone. He filed charge-sheet.

25. The aforesaid evidence on record shows prosecution case is based on multiple dying declarations. When a case is based on multiple dying declarations contents whereof are not consistent, an onerous duty is cast on the Court to examine the nature of inconsistencies and truthfulness of the dying declarations are to be assessed in the light of the surrounding circumstances and on the touchstone of broad

probabilities of human conduct. In **Amol Singh vs. State of Madhya Pradesh**<sup>1</sup> the Apex Court held as follows:-

*“13. ... if there are more than one dying declaration they should be consistent. (See Kundula Bala Subrahmanyam v. State of A.P. [(1993) 2 SCC 684] However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.”*

26. First, let me examine the oral dying declarations. PWs 3 to 7 are neighbours. They deposed hearing cries “bachao” ”bachao” of Nilufa Bibi they rushed to the house. Nilufa told them her elder brother-in-law Samad had set her on fire while her mother-in-law Rosula Bibi held her by the tuft of her hair. She also stated other in-laws i.e. Manowara Bibi, Felu and Asan Ali Sk. obstructed her from fleeing away. Their version with regard to the aforesaid oral dying declaration at the spot is not supported by PW 2, Badaruddin Mondal. He is the uncle of the victim girl. He had also rushed to the spot hearing cries from the matrimonial home. PW 2 deposed Nilufa Bibi merely stated that she had been set on fire and requested him to take her to the hospital. It is also relevant to note that soon after the incident Sirajuddin Biwas (PW 1) had come to the spot. He talked with the aforesaid neighbours who claimed to have disclosed the oral dying declaration to him. Significantly in the FIR lodged by Sirajuddin there is no whisper of the oral dying declaration made at the spot. In the light of the dichotomy between the version of the

---

<sup>1</sup> (2008) 5 SCC 468

neighbours (PWs. 3 to 7) vis-à-vis PW 2 regarding the oral dying declaration at the spot and the absence of any reference of the said dying declaration in the FIR, I am not inclined to rely on the oral dying declaration as narrated by PWs 3 to 7.

27. Second oral dying declaration is said to have been made by Nilufa when she was being transferred from Chapra Hospital to Shaktinagar Hospital. PWs 2 and 8 claimed she made dying declaration to them. Though PW 2 scribed the FIR, the vital fact is absent in the FIR. This circumstance persuades me to hold the oral dying declaration coming from the mouth of PWs 1 and 8 is an embellished afterthought to rope in all the in-laws.

28. Moreover, immediately after reaching Shaktinagar Hospital, history of injury was recorded in the bed head ticket by the treating doctor (PW 14). In the said document (Ext.15) Nilufa Bibi refers to the role of Samad alone. She does not attribute any role to the other in-laws. It is pertinent to note this dying declaration bears the left thumb impression of Nilufa Bibi and was recorded in the presence of one of her relations. This is the first dying declaration which was reduced into writing. The second dying declaration was recorded at NRS Medical College and Hospital by PW 19, a police officer attached to Entally Police Station. It was recorded in the presence of one Dr. S. Ghosh. In the said declaration, Nilufa implicated her elder brother in law Samad Sk. and mother-in-law. She stated both of them had set her on fire. But in this

dying declaration too she is silent with regard to the roles of other in-laws i.e Manowara Bibi, Felu and Asan Ali in the crime. This dying declaration also bears the signature of the maker. The third declaration was recorded by the investigating officer, PW 20 during investigation. PW 20 stated he made a requisition to the Superintendent, NRS Hospital and pursuant to his permission he recorded the statement of the victim under Section 161 of the Code of Criminal Procedure. He claimed the declaration was recorded in the presence of doctors. No signature of any doctor is endorsed on the said statement marked as exbt.-28.

29. Finally, history of injury as disclosed by her husband Kamaluddin (appellant no. 6 herein) was recorded at Command Hospital by PW17 (Ext 21). Therein appellant no. 6 claimed his wife had been set on fire by her in-laws.

30. With regard to the multiple written dying declarations, I am of the view the manner and circumstance in which dying declarations were recorded by PW14 at Shaktinagar Hospital and by PW19 at NRS hospital inspires confidence for the following reasons. Firstly, PW14 was the treating doctor. He is the best witness with regard to capacity of the patient to make the dying statement. Moreover, the dying statement (Ext.15) bore the left thumb impression of the victim as well as her relation. Though the first dying statement (Ext 23) recorded at NRS hospital was recorded by a police officer i.e. PW19 the same was done in presence of a medical officer, Dr. S Ghosh. Signature of Dr. Ghosh

appears in the body of the said statement. Signature of the victim is also endorsed therein. But the so-called dying statement recorded by investigating Officer PW20 does not bear the signature of any of the doctors whom he claims to be present at the time of recording statement. Neither LTI nor signature of the victim is also endorsed on the said statement (Ext 28). PW 8, brother of the victim, was present when the statement was recorded by the investigating officer. Possibility of tutoring the victim by the said witness and the investigating officer cannot be ruled out. For these reasons, I am not inclined to rely on the statement (Ext.28) recorded by the investigating officer (PW 20). In the other two dying statements (i.e. Ext 15 and Ext 23) recorded by PW14 and PW19 respectively, Nilufa is completely silent with regard to role of Manowara Bibi, Felu Khan and Asan Sk. in her murder. In both the dying declarations she refers to the role of her elder brother-in-law Samad Sk. and in one of them she refers to her mother in law Rasula Bibi. Rasula Bibi has expired and the appeal has abated so far she is concerned. Hence, I have not laboured with regard to her culpability in the case.

31. In view of the aforesaid discussion, I am of the opinion the oral dying declarations as narrated by the prosecution witnesses are an embellishment and unreliable in nature. Similarly, one cannot rule out the possibility of tutoring by the investigating officer and PW8 at the time of recording victim's statement (Ext.28) implicating all the in-laws i.e. appellant nos. 3, 4 and 5. It is common knowledge aggrieved relations of

a housewife tend to exaggerate and may even tutor her to implicate all the in-laws. Dying declarations are inconsistent with regard to the role of Manoara Khan, Felu Khan @ Rohim Buxo Khan and Asan Sk. in the crime. But the declarations which implicate them, for reasons, recorded hereinbelow, do not inspire confidence. Hence, I am inclined to acquit appellant nos. 2, 3 and 4 herein.

32. Next comes the role of the husband Kamaluddin as a conspirator in the murder. Admittedly, Kamaluddin was not present at the place of occurrence. Prosecution contends Kamaluddin had motive to commit the crime. Before and after the incident he had made telephone calls to a co-accused Rohim Box Khan. The last call is said to have been received by PW4 who claimed that Kamaluddin had enquired whether everything was done. I have given anxious consideration to such submission. Evidence on record shows relationship between the couple was strained. Nilufa had withdrawn from the matrimonial home and was staying at her parental house. Kamaluddin was employed in the Indian Army and used to stay ordinarily at his place of posting. Evidence has also come on record Nilufa wrote to the Army authorities and a sum of Rs. 3500/- was deducted from Kamaluddin's salary as maintenance. Six months prior to the incident Kamaluddin returned to his village and a salish was held. Nilufa returned to the matrimonial home. Though witnesses claimed that there was difference between Kamal and Nilufa over refund of maintenance amount, this fact has not been narrated in

the FIR. Be that as it may, Kamal was not present when the incident occurred. To prove the charge of conspiracy prosecution relied on two phone calls made prior to the incident made by Kamal to his cousin Rohim Khan on 2.5.2012 at 7.45 hrs and 16.34 hrs respectively. Contents of the said calls are unknown. Sinister motive vis-à-vis the calls appear to have been introduced through PWs 3, 4 and 7. PW4 claimed after Nilufa had been shifted to hospital he saw a mobile phone ringing at her matrimonial home. On instruction of PW3 he picked up the phone and heard a voice which resembled Kamaluddin. Kamaluddin enquired whether everything was done. When PW4 stated if he knew everything why was he enquiring, Kamaluddin disconnected the phone. Version of the aforesaid witnesses is sought to be corroborated by CDRs (Ext 29) of the mobile phone of Kamaluddin. Relevant entries are set out hereinbelow:-

| <b><i>Calling (LRN-A) Party<br/>Telephone Number</i></b> | <b><i>Called (LRN+B) Party<br/>Telephone Number</i></b> | <b><i>Call Date</i></b> | <b><i>Call Time</i></b> |
|----------------------------------------------------------|---------------------------------------------------------|-------------------------|-------------------------|
| 917697617609                                             | 919333082285                                            | 03/05/2012              | 4:35:27 AM              |
| 917697617609                                             | 919333082285                                            | 03/05/2012              | 4:48:25 AM              |

33. The aforesaid entries show two phone calls were made from a mobile phone bearing no. 7697617609 (belonging to Kamaluddin) to the mobile phone bearing no. 9333082285 (belonging to Rohim Khan) on 3.5.2012 on 4.35 hrs and 4.48 hrs respectively. The first call was for a duration of 708 seconds i.e. over ten minutes. Thereafter, within three

minutes, another call of duration more than one minute was made. None of the witnesses spoke about two calls made from the mobile phone number of Kamaluddin to that of Rahim Ali Box. The calls were made contemporaneously, that is, within three minutes from the termination of the first call and it is absurd that PWs 3, 4 and 7 would be aware of only one and not two calls made from the mobile of Kamaluddin. Furthermore, nature of conversation and the so-called abrupt disconnection by Kamaluddin do not find resonance with the manner in which the calls were made as per the CDRs. It appears PWs 3, 4 and 7 have not come out with the true state of affairs in this regard.

34. Hence, I am of the view it is inadvisable to rely on the oral version of PWs 3, 4 and 7 with regard to the nature of conversation made in the course of the aforesaid phone calls. Appellants are related to one another and a couple of phone calls between them cannot by itself form the foundation of conspiracy between Kamaluddin and the others to commit the murder. Hence, I am inclined to extend the benefit of doubt to Kamaluddin.

35. In the light of the aforesaid discussion, conviction and sentence of appellant no. 1, i.e. Samad Sk are upheld.

36. Appellant nos. 3 to 6, namely, Manowara Bibi @ Manoara Khan, Felu Khan @ Rohim Buxo Khan, Asan Sk and Kamaluddin Sk. herein are acquitted of the charges recorded against them.

37. Appeal is allowed to the aforesaid extent.

38. Period of detention suffered by appellant no. 1 during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon them in terms of section 428 of the Code of Criminal Procedure.

39. Appellant Nos. 3, 4, 5 and 6, namely, Manowara Bibi @ Manoara Khan, Felu Khan @ Rohim Buxo Khan, Asan Sk and Kamaluddin Sk shall be discharged from their bail bonds after six months in terms of section 437 A Cr.P.C.

40. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

41. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant upon completion of all formalities.

I agree.

**(Ajay Kumar Gupta, J.)**

**(Joymalya Bagchi, J.)**