

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE PARTHA SARATHI SEN

C.R.A. No. 510 of 2005

Sanjay Majhi Gope and Anr.

-Versus-

The State of West Bengal and Ors.

For the appellant: **Mr. Mani Sankar Chattopadhyay, Adv.,
Ms. Shalini Singh, Adv.**

For the respondent/State: **Mr. Binay Panda, Adv.,
Mr. Subham Bhakat, Adv.**

Last Heard on : **03.03.2025**

Judgment on : **06.03.2025**

PARTHA SARATHI SEN, J. : -

1. In this appeal the judgement of conviction dated 20.07.2005 and the order of sentence dated 21.07.2005 as passed by the learned Additional Sessions Judge, FTC (4) Raghunathpur, Purulia, in S.T. no. 4(a)/01 (Sessions Case no.17 of 2001) is impugned. By the said judgement learned trial court convicted the accused Kalachand Majhi Gope and Sanjay Majhi Gope for the offence committed by them under Sections 323/34 and under Sections 325/34 IPC. The said trial court also convicted Sanjay Majhi Gope for the offence committed by him under Section 304 Part II IPC. Learned trial court thus sentenced both the aforesaid two convicts to pay fine of Rs. 1000/- each i.d. to suffer SI for six months each for the offence committed by them under Sections 323/34 IPC. The said two convicts were also sentenced to suffer RI for 3 years each and to pay fine of Rs.2000/- each i.d. to suffer RI for six

months each for the offence committed by them under Sections 325/34 IPC with a further direction that the sentences awarded under Sections 323/34 and under Sections 325/34 shall run concurrently.

2. The said trial court further sentenced convict Sanjay Majhi Gope to suffer RI for 7 years and to pay fine of Rs.5000/- i.d. to suffer RI for one year more for the offence committed by him under Section 304 Part II IPC with a further direction that the said sentence would also run concurrently with the previous sentences.

3. Both the aforementioned two convicts felt aggrieved and thus preferred the instant appeal.

4. For effective adjudication of the instant appeal the facts leading to initiation of the aforementioned trial are required to be looked into and those are discussed hereinbelow in a nutshell.

5. One Ajit Majhi of village Beko, P.S Kashipur, District Purulia lodged a written complaint dated 17.05.1997 with I/C Adra P.S stating inter alia that on the self same day at about 5 p.m he came to the P.S with his injured grandfather, Khudiram Majhi Gope, his mother, Satyabati Majhi Gope and his father, Dhiren Majhi Gope. It has been stated in the said written complaint that on the said very day at about 3:30 pm when he went to fetch water from Saheb pond at that time he was restrained by one Kalachand Majhi Gope, one Sanjay Majhi Gope, one Sridam Majhi Gope and one Smt. Labi Majhi Gope. It was his further version that during an altercation between them he was assaulted by Sanjay Majhi Gope by a stick to which he raised an alarm. It has been stated further in

the said written complaint that after hearing his hue and cry his said grandfather and parents rushed to the P.O in empty hands and immediately thereafter the said accused persons started abusing them with filthy languages and thereafter the said Sanjay Majhi Gope and Kalachand Majhi Gope again assaulted the informant by stick and when the parents of the informant and his grandfather tried to save them, the accused Sridam Majhi Gope assaulted the father of the informant by a stick and Kalachand Majhi Gope and Smt Labi Majhi Gope assaulted his mother on her head by a gainti (iron rod like substance having sharp edge at one end) and also assaulted on her left hand and as a result whereof the mother of the informant suffered bleeding injury on her head and she also suffered fracture injury at her left arm.

6. It has been stated further in the said written complaint that accused Sridam Majhi Gope assaulted Khudiram Majhi with a stick (dang). Accused Sanjay Majhi Gope assaulted the said Khudiram Maajhi Gope on his head by a PAT causing serious injury on his head to which the said Khudiram Majhi Gope fell down on the earth.

7. The concerned police officer of Adra P.S forwarded the said written complaint to the O/C of Kashipur P.S and on the basis of such written complaint, Kashipur P.S Case no. 47 of 1997 dated 17.05.1997 under Sections 341/323/325/326/34 IPC was started. Investigation was taken up. In course of investigation the said Khudiram Majhi Gope succumbed to his injuries and thus in the said case Section 304 IPC was added. On conclusion of investigation charge sheet under Sections

323/325/326/304/34 IPC was submitted against the aforementioned four accused persons.

8. After commitment and transfer the learned trial court considered the charges against the said four accused persons and on 17.05.2001 charges under Sections 304 Part I/326/323/34 IPC were framed against the said four accused persons namely; Sanjay Majhi Gope, Sridam Majhi Gope, Kalachand Majhi Gope, and Labi Majhi Gope. Since the said four accused persons pleaded their innocence and claimed to be tried the trial before the learned trial court proceeded.

9. Trial court record reveals further that in order to bring home the charges against the four accused persons the prosecution had examined 13 witnesses in all and some documents have been exhibited on their behalf. Trial court record reveals further that on behalf of the defence no evidence was adduced. However from the trend of cross-examination of the prosecution witnesses and the answers as given by the accused persons it appears to this Court that the defence case is based on clear denial and false implication.

10. As discussed hereinabove learned trial court after considering the evidence as adduced before him convicted accused Sanjay Majhi Gope and Kalachand Majhi Gope in the manner indicated hereinabove however, the said trial court acquitted Sridam Majhi Gope and Labi Majhi Gope from the charges as framed against them.

11. In course of his argument Mr. Chattopadhyay, learned advocate appearing on behalf of the appellants at the very outset draws attention of

this Court to the written complaint (Exhibit 1) as lodged in connection with the said trial. Attention of this Court is also drawn to the evidence of PW1. It is submitted by Mr. Chattopadhyay that from the evidence of PW1 it would reveal that at the relevant time he was a minor and he was not aware of the contents of the written complaint. It is further submitted by him that on conjoint perusal of the evidence of PW5 (scribe) and PW1 (informant) it would reveal that the written complaint was not lodged at the instance of PW1 and on the contrary the same was written as per instruction of some other persons. It is further submitted by Mr. Chattopadhyay that though in his examination-in-chief PW2 testified that deceased Khudiram suffered gainti injury but the said offending weapon was not seized by the I.O in course of investigation which raises a serious doubt with regard to the genuineness of the testimony of PW2. It is further submitted by Mr. Chattopadhyay that even seized blood soaked wearing apparels of the victim were not sent to FSL for chemical examination.

12. It is further submitted by Mr. Chattopadhyay that from the evidence of PW4 it would reveal that on the relevant day and hour there was free fighting between the members of the two families over which case and counter case have been filed and thus chances of exaggeration and false implication cannot be ruled out. It is further submitted by Mr. Chattopadhyay that though PW11 being a doctor of Bankura Sanmalani Medical College and Hospital, Bankura testified that the alleged victim Satyabati Majhi Gope was admitted in the said hospital

under his supervision but from his testimony the names of the present appellants as assailants do not transpire. It is submitted further that in course of cross-examination the said doctor further testified that the victim did not mention the name of weapon which caused her wound. Drawing attention of this Court to the evidence of PW12 it is further submitted by Mr. Chattopadhyay that the said PW12 being the I.O practically performed a perfunctory investigation inasmuch as he made no endeavour to prove the sketch map of the P.O which is very vital for the investigation as well as for the trial. It is contended further on behalf of the appellants that the said I.O conducted such investigation in a mechanical manner which should not be given much importance.

13. It is further submitted by Mr. Chattopadhyay that the learned trial court while passing the impugned judgement has miserably failed to visualize the lacuna in the investigation and at the same time has also failed to visualise that the said trial is due to family rivalry wherein the present appellants have been falsely implicated. It is further argued by Mr. Chattopadhyay that the learned trial court wrongly held the present appellants guilty under the provisions of Section 304 Part II/323/325/34 IPC.

14. Per contra, Mr. Panda, learned advocate duly assisted by Mr. Subham Bhakat, learned advocate appearing for the State at the very outset draws attention of this Court to Exhibit 10 being the inquest report of the deceased. Attention of this Court is also drawn to Exhibit 3 and Exhibit 4 being the injury reports of the victim Khudiram Majhi Gope and

Satyabati Majhi Gope. Mr. Panda also draws attention of this Court to Exhibit 11 being the post mortem report of the deceased Khudiram Majhi Gope. It is submitted by Mr. Panda that on conjoint perusal of the aforementioned exhibited documents there cannot be any doubt that the death of the deceased Khudiram Majhi Gope is homicidal in nature and such death occurred because of the injuries as inflicted by the accused persons more specifically by accused Sanjay Majhi Gope on the vital part of his organ as reveals from the oral testimony of the prosecution witnesses vis-à-vis the said injury report and the post mortem report.

15. In course of his argument Mr. Panda draws attention of this Court to the evidence of PW1, PW2 and PW7. It is submitted by Mr. Panda that the evidence of PW1 and PW2 being the eye witnesses to the alleged incident as well as one of the injured witnesses to the said incident gets due support and/or corroboration from the evidence of PW7 i.e. the doctor of Raghunathpur Sub-divisional Hospital who initially treated the injured Satyabati Majhi Gope (PW2) and Khudiram Majhi Gope (since deceased).

16. Drawing attention to page nos. 58 and 59 of the paper book it is submitted by Mr. Panda that in internal page nos. 10 and 11 of the impugned judgement learned trial court has elaborately dealt with the role of the present appellants in the alleged crime and thus there cannot be any reason to disbelieve their testimony. It is further submitted by Mr. Panda that in internal page no.11 of the impugned judgement learned trial court has elaborately discussed as to how and as to why the said Court invoked the provision of Section 304 Part II IPC. According to Mr.

Panda the said trial court noticed that the alleged occurrence took place on spur of moment and it was not a premeditated murder though the accused had knowledge that his act was likely to cause death but without any intention. It is thus submitted by Mr. Panda that the appellants have miserably failed to establish that the alleged act of appellant Sanjay Majhi Gope does not come under the purview of Section 304 Part II IPC and thus there cannot be any reason to interfere with the said finding of the impugned judgement.

17. It is further submitted by Mr. Panda that involvement of the present two appellants in assaulting PW2, Satyabati Majhi Gope and her other family members have been duly proved from the evidence of the prosecution witness both oral and documentary. Mr. Panda thus submits that it is a fit case for dismissal of the instant appeal.

18. Since in the impugned judgement learned trial court has elaborately discussed the evidence of the prosecution witnesses this Court considers that the detailed discussion of the evidence of all the prosecution witnesses is not necessary except to the extent the same is required for effective adjudication of the instant appeal.

19. As discussed supra the informant Ajit Majhi Gope adduced evidence before the learned trial court as PW1 and in his examination-in-chief he had practically reproduced the version as made by him in the written complaint. The said PW1 clearly testified with regard to the role of the appellant Kalachand Majhi Gope and the appellant Sanjay Majhi Gope. From his testimony it reveals that on the fateful day and hour the

appellant Kalachand assaulted his mother causing fracture of her upper and lower limb while the appellant Sanjay Majhi Gope gave a blow by gainti on the head of his grandfather i.e Khudiram Majhi Gope.

20. On careful scrutiny of the cross-examination of PW1 it reveals to this Court that PW1 remained absolutely consistent in his cross-examination and nothing came out from his mouth which makes his testimony unbelievable.

21. In course of his argument Mr. Chattopadhyay was very vocal regarding tender age of PW1 at the time of lodging written complaint. In considered view of this Court such argument of Mr. Chattopadhyay is found to be not at all convincing since it has been noticed by this Court that while deposing PW1 was very consistent and there was nothing to disbelieve his testimony. From the trial court record it reveals further that another alleged injured/victim i.e Satyabati Majhi Gope tendered her evidence as PW2 and in her examination-in-chief she also testified that appellant Kalachand assaulted her with a 'thanga' as a result whereof she suffered fracture on her left hand and right leg. She further testified that the appellant Sanjay Majhi Gope gave a blow on her head by a lathi (stick).

22. From the evidence of PW4 who is the father of PW1 and the husband of PW2 it reveals that the said PW4 clearly testified that on the fateful day and hour the appellant Sanjay gave a gainti blow on the head of his father causing grievous injury. He further testified that the said Sanjay also assaulted his wife by giving a stick blow on her head. He

further testified that the appellant Kalachand had caused fracture in the hand of his wife.

23. At this juncture if I look to the evidence of PW7 i.e the doctor attached to Raghunathpur Sub-divisional Hospital it reveals from his evidence that on the fateful day and hour he examined PW2 at about 6 p.m and he found the following injuries:-

“On that date I also examined one Smt. Satya Maji 28 years Hindu Female W/O.Sri Dhiren Maji Gope of village & P.O.Beko, P.S.Kashipur, District-Purulia. She was also referred by Adra I/C. She was brought to Hospital by Sri Tapan Mandal and Swapan Mandal her neighbours. I examined her at 6.00 P.M. She had following injury:-

1)Over scalp at Sagital plane about 4" long with skin deep with active bleeding, curved with lacerated margin. The wound extends on both sides over the mid line.

2) Lt. Forearm both bones fracture.

3) Swelling over Rt.knee joint. At that time Patient couldnot lift her leg(Rt)

4) Complaints pain over Lt.knee.

The injury was grievous in nature. Such injury can be caused by hard blunt instrument like lathi. The patient was referred to Purulia Sadar Hospital.”

24. It thus appears to this court that the evidence of PW1, PW2 and PW4 thus gets due corroboration from the evidence of PW7.

25. In course of his argument Mr. Chattopadhyay submitted before this Court that since on the fateful day there occurred a free fight between the two family members after which case and counter case have been lodged it would not be safe to rely on the evidence of the alleged eye witnesses

and /or injured witnesses since there is every apprehension that the said witnesses may either tell contrary to the truth and/or they may exaggerate the actual incident.

26. At this juncture this Court proposes to look to the reported decision of ***Indra Pal Singh Vs. State of UP*** reported in **(2008)16 SCC 648** wherein the Hon'ble Apex Court while dealing with the evidentiary value of an eye witness expressed the following view:-

"It is well settled that if the eye witnesses is related to the deceased, his evidence has to be accepted if found to be reliable and believable because he would honestly be interested in ensuring that the real culprits are punished."

27. Keeping in mind the proposition of law as discussed in the reported decision of ***Indra Pal Singh (supra)*** this Court finds that the learned trial court committed no error of fact and/or of law in placing reliance upon the evidence of PW1, PW2 and PW4 and since their evidence are found to be very much trustworthy and their evidence gets due corroboration from the evidence of PW7.

28. In course of his argument Mr. Chattopadhyay, learned advocate appearing on behalf of the appellants though contended that non-recovery of weapons allegedly used in crime has materially affected the genuineness of the prosecution case but in considered view of this Court such argument is found to be not at all convincing especially when there are sufficient evidence which can rope the accused persons with the offences for which they have been tried. In the reported decision of ***Gurmail Singh and Anr. vs. State of Uttar Pradesh and Anr.*** reported

in **(2022) SCC Online SC 1439: (2022) 10 SCC 684** the Hon'ble Apex Court had occasion to consider the impact on account of non-recovery of weapons allegedly used in crime and while considering the same the Hon'ble Apex Court expressed the following view:-

“For convicting an accused recovery of the weapon used in commission of offence is not a sine qua non.”

29. In view of the proposition of law as discussed in the reported decision of **Gurmail Singh (supra)** this Court has no hesitation to hold that failure on the part of the investigating agency to seize the offending weapon cannot affect the merits of the instant case in view of the availability of sufficient oral evidence of the eye witnesses as well as of the injured witnesses with regard to the alleged role of the present appellants in the alleged crime on the fateful day and hour.

30. In course of his argument Mr. Chattopadhyay was also vocal with regard to the genuineness of the FIR since it has been submitted by him that from the evidence of PW5 it would reveal that the said written complaint was not written as per dictation of the PW1 who was at that material time a minor.

31. This Court has meticulously gone through the evidence of PW5. It reveals from his evidence that he testified before the trial court that after writing the compliant he read over and explained the same to PW1 and thereafter he (PW1) put his LTI. It is trite law that an FIR is not considered as a substantive piece of evidence. The same can be at best used to corroborate or contradict the informant's evidence in court. The same has

been held in the reported decision of ***Munshi Prasad and Ors. vs. State of Bihar reported in (2002) SCC Cri 175: (2002) 1 SCC 351*** as well as in the case of ***State of Bombay vs. Rusy Mistry reported in AIR 1960 SC 391: 1960 Cri LJ 532***. As already been discussed that on perusal of the evidence of PW1 this Court finds no contradiction in his version as has been stated by him in his written complaint.

32. Since the learned trial court convicted accused Sanjay Majhi Gope under Section 304 Part II IPC this Court at the very outset proposes to look to the relevant portion of the evidence of PW7 who at the material time was posted as a medical officer at Raghunathpur Sub-divisional Hospital and in that capacity on the fateful day at about 6 pm he undertook treatment of victim Khudiram Majhi Gope. Before the learned trial court PW7 testified in the following manner:-

“On that date I examined Khudiram Majhi Gope 70 years old of village and P.O. Beko P.S.Kashipur, District-Purulia. He was referred from Adra I/C brought to the Hospital by Tapan Mondal and Swapan Mandal, both neighbours. I examined him at 6.00 P.M. and found the following injuries.

Scalp in the frontal area just above Rt. eyebrow Lacerated wound. Bone deep/ active bleeding, Eye was black.

Rt.fore-leg 1) Lower end of upper third of fore leg anterior aspect, along the lateral border of tibia about 1" long, bone deep, linear with sharp margins.

2) At the junction of upper third and middle third, anterior aspect, along the lateral border of tibia, 1" long, bone deep, linear with sharp margin

Patient was also bleeding, through nose and had swollen Lt. wrist. There were history of repeated attacks of vomiting, Pulse Pulse 120/m. Semi conscious. The nature of injury was grievous.

Such injury can be caused by any sharp cutting instrument or weapon like Gaiti, as scalp injury cannot be caused by any hard blunt weapon.”

33. Admittedly before the learned trial court the autopsy surgeon who performed post mortem over the deceased was not examined. However, the post mortem report of the deceased Khudiram Majhi Gope was marked Exhibit 11 on the basis of an application under Section 294 CrPC by the learned trial court under cover of its order no.52 dated 15.03.2005. This Court considers that the said order no.52 dated 15.03.2005 is required to be looked into and the same is reproduced hereinbelow in verbatim:-

“ All accused persons/on C.B. are present. Today is date for evidence of doctor and for examination of the accused persons U/S.313 Cr.P.C. O.C. Kashipur P.S. has failed and neglected to execute witness warrant against the doctor J.N. Dey who held P.M. examination of the dead body Khudiram Majhi (Gope)

In the above circumstances since several dates have been given to the prosecution for examination of the doctor to prove P.M. report, the application dated 21/2/05 filed by the Ld. P.P. In-charge is taken up for hearing and consideration.

Perused the petition. It is contended that inspite of best effort even after issuance of W.A. doctor J.N.Dey could not be produced for his evidence.

Accordingly prosecution has prayed for exhibiting P.M. report as per provision of Sec.294 Cr.P.C. read with Sec.32 (2) and Sec. 35 Evidence Act.

Objection raised by learned defence.

Considered

Let the P.M. report be marked ext. 11 on formal proof being dispensed with."

34. It is pertinent to mention herein that though before the learned trial court objection as to the marking of the said post mortem report as exhibit has been raised by the defence but from the impugned judgement it nowhere transpires that defence has raised any question with regard to the genuineness of the post mortem report. In course of his argument Mr. Chattopadhyay raised no doubt with regard to the genuineness of the post mortem report.

35. On careful consideration of the post mortem report as has been exhibited by the learned trial court as Exhibit 11 it reveals that the deceased died on the very next day of the alleged incident and it further reveals that the said autopsy surgeon noted various injuries at column no.2 of the post mortem report. It further reveals that from the impugned judgment that learned trial court has noticed that considering the injuries as found in the dead body of the deceased the autopsy surgeon had opined that those injuries are ante mortem in nature and the death in the opinion of the said autopsy surgeon is homicidal in nature. Such factum is also not disputed by Mr. Chattopadhyay in course of his argument though he contended that injuries as noticed in column no.2 of the post mortem report (Exhibit 11) are not properly legible and therefore it cannot be ascertained as to whether such injuries are sufficient to cause the death of the deceased.

36. In the reported decision of **Akhtar and Ors vs. State of Uttaranchal** reported in **(2009) 13 SCC 722** the Hon'ble Apex Court duly considered the effect of non-examination of the medical officers vis-à-vis the evidentiary value of a document as has been exhibited as per the provision of Section 294 (3) CrPC and in doing so the Hon'ble Apex Court expressed the following view:-

“21. It has been argued that non-examination of the medical officers concerned is fatal for the prosecution. However, there is no denial of the fact that the defence admitted the genuineness of the injury reports and the post mortem reports before the trial court. So the genuineness and authenticity of the documents stands proved and shall be treated as valid evidence u/s 294 CrPC. It is settled position of law that if the genuineness of any document filed by a party is not disputed by the opposite party it can be read as a substantive evidence under Section 294 (3) CrPC. Accordingly, the post mortem report, if its genuineness is not disputed by the opposite party, the said post mortem report can be read as substantive evidence to prove the correctness of its contents without the doctor concerned being examined.”

37. The same view was taken in the reported decision of **Saddiq and Ors. vs. State** reported in **(1981) Cri LJ 379 (FB) of Allahabad High Court**.

38. Keeping in mind the proposition of law as discussed hereinabove if I once again look to the evidence of prosecution witnesses both oral and documentary as recorded in the trial court it appears to this Court that in their respective evidence PW1, PW2 and PW4 unerringly testified that it is Sanjay who on the fateful day and hour assaulted Khudiram on his head

by a gainti. Such deposition gets due corroboration from the evidence of PW7 (medical officer). From column no.2 of the injury report of the deceased (Exhibit 11) it reveals to the Court that the scalp injuries mentioned therein have been noticed by the autopsy surgeon and he thus found that those injuries are ante mortem and homicidal in nature as has been rightly noticed by the learned trial court while passing the impugned judgement.

39. This Court further noticed that alleged incident of culpable homicide of Khudiram occurred on account of a sudden fight between the two family members and there was no premeditation and the act done by the appellants was in the hit of passion without the appellant taking any undue advantage as rightly noticed by the learned trial court in the impugned judgement.

40. In view of the discussion made hereinabove this Court thus finds no scope to interfere with the judgement impugned.

41. From the materials as available before the learned trial court it reveals that the incident as involved in the instant appeal occurred on 17.05.1997 and the judgement of conviction was pronounced by the learned trial court on 20.07.2005 and the order of sentence was passed on 21.07.2005. It thus appears to this Court that substantial time has elapsed from the date of incident. Admittedly the appellants before this Court had undergone exorbitant agony on account of long pendency of the instant appeal. Considering the entire circumstances, this Court considers that justice would be met if the appellant Sanjay Majhi Gope is

sentenced to suffer RI for a term of three years and to pay a fine of Rs. 3 lacs i.d. to suffer RI for a period of six months more for the offence committed by him under Section 304 Part II IPC and the appellants Kalachand Majhi Gope and Snajoy Majhi Gope are sentenced to suffer R.I for a term of one year each and to pay a fine of Rs. 1 lac each i.d. to suffer RI for three months each for the offence committed by them under Sections 325/34 IPC. The nature and extent of the sentence of the present appellants is thus altered in view of the provision of Section 386 (b) (iii) of the Code of Criminal Procedure.

42. The appellant Sanjay Majhi Gope is thus sentenced to suffer RI for a term of three years and to pay a fine of Rs. 3 lacs i.d. to suffer RI for a period of six months more for the offence committed by him under Section 304 Part II IPC.

43. The appellants Kalachand Majhi Gope and Sanjay Majhi Gope are sentenced to suffer R.I for a term of one year each and to pay a fine of Rs. 1 lac each i.d. to suffer RI for three months each for the offence committed by them under Sections 325/34 IPC.

44. However the sentence of the appellants Kalachand Majhi Gope and Sanjay Majhi Gope for the offence under Sections 323/34 IPC as awarded by the learned trial court remains unaltered.

45. It is further directed that both the above substantive sentences shall run concurrently. It is further directed that in the event the fine is paid the same shall be disbursed for payment of the compensation to the son of deceased Khudiran Majhi Gope i.e. Dhiren Majhi Gope and in case

of his absence to the legal heirs of the said Dhiren Majhi Gope in equal proportions under Section 357 of the Code of Criminal Procedure.

46. It is made further clear that the period already undergone by the present appellants shall be set off from their substantive part of sentence.

47. The instant appeal is thus disposed of in the light of the observations as made hereinabove.

48. In view of the disposal of the instant appeal the bail bond of the present two appellants namely; Sanjay Majhi Gope and Kalachand Majhi Gope stands hereby cancelled.

49. Both the appellants namely; Sanjay Majhi Gope and Kalachand Majhi Gope are directed to surrender before the learned trial court within 30 days from today failing which the learned trial court is hereby directed to issue non-bailable warrant of arrest against the present two appellants namely; Sanjay Majhi Gope and Kalachand Majhi Gope for their apprehension and detention.

50. Department is hereby directed to send down the trial court record along with a copy of this judgement forthwith.

51. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)