

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 488 of 2006**

**Md. Nadim  
-Vs-  
The State of West Bengal**

|                   |                                                                             |
|-------------------|-----------------------------------------------------------------------------|
| For the Appellant | : Mr. Tarique Quasimuddin<br>Mrs. Zainab Tahur<br>Ms. Hera Nadni            |
| For the State     | : Mr. Avishek Sinha                                                         |
| Heard on          | : 01.09.2023, 03.01.2024, 19.01.2024,<br>22.03.2024, 22.05.2024, 19.12.2024 |
| Judgment on       | : 07.05.2025                                                                |

**Ananya Bandyopadhyay, J.:-**

1. This appeal is preferred against the judgment and order of conviction dated 14.06.2006 passed by the Learned Additional Sessions Judge, 5<sup>th</sup> Fast Track Court, Calcutta in Sessions Case No.9 of 2004 and Sessions Trial No.1(7) of 2004 arising out of Burrabazar P.S. Case No.31 dated 01.02.2001 convicting the appellant under Section 393 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.5000/- in default to suffer further rigorous imprisonment for 1 month.

2. The prosecution case precisely stated on 01.02.01 after collecting a cash of Rs.10,00,000/- from ABN Amro Bank of India Exchange Place Branch, Calcutta the complainant K.K. Sodani, an employee of M/s. Fort William Industries Limited, 14, N.S. Road, Kolkata – 700001 along with one Rameswar Prosad Holani, The G.M., Finance and Accounts of the said concern was proceeding along Brabourne Road with a brief case containing the aforesaid amount to board a taxi for going to Konnagar Factory for labour payment. The complainant was carrying the brief case and said Rameswar Prosad Holani was following him. At about 18:30 hours when they reached near the crossing of Brabourne Road and Synogog Street, just in front of Central Bank of India, 4/5 miscreants armed with fire arms attacked the complainant and tried to snatch away the said brief case. There was scuffle between the complainant and the said miscreants. In the meantime said Rameswar Prosad Holani resisted the miscreants and one of them fired from his fire arm aiming at Rameswar Prosad Holani and as such, he fell down on the road and bled profusely. Local people chased the miscreants who left the spot leaving a loaded single shot fire arm. Said Rameswar Prosad Holani was taken to Medical College and Hospital where he succumbed to his bullet injury. The available witnesses had been examined by the investigating officer during investigation. Blood of the victim and loaded single shot fire arm were seized from the P.O. Post-mortem examination was held over the dead body of the victim.

3. On the basis of the aforesaid complaint, the Police initiated Burrabazar P.S. Case No.31 dated 01.02.2001 under Section 393 of Indian Penal Code against the appellant.
4. Charges were framed against the appellant to which they pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 17 witnesses and exhibited certain documents.
6. Learned Advocate representing the appellant submitted as follows:-
  - i. PW-4 one of the main eye-witness failed to identify any of the appellant persons during T.I. Parade as well on the dock.
  - ii. No briefcase containing the alleged amount was produced before the Trial Court for evidence.
  - iii. PW-9 i.e., eye-witness, failed to say during the cross-examination the premises no.1 of the bank in question and name of the police station where the place of occurrence.
  - iv. PW-9 failed to identify the appellant during the T.I. Parade and as well as on dock.
  - v. The Learned Trial Court below while passing the impugned order and judgment failed to consider that PW-8 though identified the appellant during T.I. Parade but during evidence on oath did not stated that he saw the appellant present on the place of occurrence on the relevant date and time.
  - vi. The Learned Court below illegally convicted the appellant under Section 393 of the Indian Penal Code.

vii. The appellant crave leave of this Hon'ble Court to submit any other ground or grounds at the time of hearing.

7. Learned Advocate representing the appellant further submitted as follows:-

i. The question before this Hon'ble Court lies on a very narrow spectrum as to the credibility and fairness of convicting an accused solely based on the Test Identification Parade which was held after a delay of 49 days. Moreover, the appellant was not identified by the de-facto complainant who stated in his statement, recorded before the Police that he can "identify the miscreants if he sees them again" but to the contrary a local hawker whose own identity was questionable and who could not even prove himself as a hawker of the place where the incident took place, his identification was given importance and solely based on it, the present appellant was convicted under the Section 393 of the Indian Penal Code.

Apart from that, there had been many loopholes and flaws in the entire case of the prosecution.

ii. Certain factual aspects were briefly quoted as follows:-

a) The case was started against 4/5 unknown persons based on the statement of one Kamal Kumar Sodani under Sections 398/302/34 of the Indian Penal Code and Section 25(1B)(a)/27 of the Arms Act on 1.2.2001.

b) The present case has 17 witnesses out of which only 3 are the eyewitness of the incident, out of these 3, one was the de-facto complainant, and the other two eye-witnesses claimed

themselves to be local hawkers of the place but lacked any documents to prove their own identity.

c) In the year 2003, the investigating authorities arrested 3 persons and tried to implicate them in the present case.

d) The charges were framed under Sections 120B/394/302 of the Indian Penal Code and the section under the Arms Act was dropped since none of the eyewitnesses could identify from whose hand the firearm was dropped.

iii. From the entire case of the prosecution, not a single piece of evidence could be traced against the appellant apart from the identification made in the T.I. Parade by PW-8 which was held after a lapse of 49 days from the date of arrest, since the appellant was arrested on 27.09.2003 and the T.I. Parade was held on 15.11.2001, and no reasons for such delay was furnished by the prosecution.

iv. It was further argued by the Learned Advocate for the appellant as follows:-

a) Delay of 49 days in Conducting T.I. Parade: It was a very well settled principle of law which had been decided time and again by the Apex Court that the T.I.Parade should be conducted without any unreasonable delay since the more T.I. Parade was delayed there was more chance of the accused being shown to the witnesses, thus an undue delay had a serious bearing on the credibility of the identification process.

In the instant case, the appellant was alleged to be arrested from the crossing of Jatindra Mohan Avenue and Masjid Bari Lane on 27.9.2003, however he should have been produced for the T.I. Parade immediately rather it was conducted on 15.11.2003 i.e. after 49 days, which increased the possibility of witness seeing the accused itself.

In the statement recorded under Section 313 of the Code of Criminal Procedure the appellant specifically stated that he had been identified by the witness “at the instance of the Police”, which clearly indicated he had been shown to the witness before.

The legal precedent on the delay of conducting T.I. Parade are as follows:

*In Suresh Chandra Bahri v. State of Bihar, it was held that “it is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused and that all the necessary precautions and safeguards were effectively taken so that the investigation proceeds on correct lines for punishing the real culprit.... It is in adopting this course alone that justice and fair play can be assured both to the accused as well as to the prosecution. But the position may be different when the accused or a culprit who stands trial had been seen not once but*

*for quite a number of times at different point of time and places which fact may do away with the necessity of a T.I. parade.”*

In *Budhsen v. State of U.P.*, this Court set aside the conviction imposed on the therein, on the ground that no conviction can be based by solely relying on the identification made in a T.I. Parade. While holding that a 14 day delay by itself in conducting the T.I. Parade might not cause prejudice to the accused, it observed that there is a high chance of the accused being seen by the identifying witnesses outside the jail premises. In *Subash v. State of U.P.*, this Court acquitted an accused on the ground that the TIP was held three weeks after the arrest was made. This Court suspected that the delay in holding the T.I. Parade could have enabled the identifying witnesses to see the accused therein in the police lock-up or in the jail premises.

In *State of A.P. v. M.V. Ramana Reddy*, this Court acquitted Respondents 2 and 3 therein on the ground that there was a delay of 10 days in conducting the T.I. Parade, and in those 10 days, there was a high likelihood of their photographs being shown to the witnesses. In *Rajesh Govind Jagesha v. State of Maharashtra*, a delay of about one month was viewed seriously by this Court since there was a possibility of the accused being shown to the witnesses.

Thus, from the above judicial decision it was crystal clear that the conviction of the accused solely based on T.I. Parade and its delay can be decisive factor for rejecting the T.I. Parade.

- b) PW-8 was a pocket witness of the Police:- The Conviction of the appellant was solely based on the identification made by PW-8 who claimed himself to be a local hawker of the place, but was unable to prove himself as a hawker of the place both in form and documents as well as common knowledge about the place where he claimed to be hawking for last 10 years.

He submitted during his cross-examination, that his name had not been enlisted in any voter list. He had no ration card, no hawking card and no voter-identify card, no rent receipt, no documents regarding his identity as Provat Kr. Mukherjee, and no documents to show he was a hawker on the footpath of Brabourne Road.

It was important to note that the Photographer who took the pictures of the place of occurrence stated during his evidence that there was no existing structure of either Polythene or rope of hawker and was even unable to state from such photographs whether there was light on the light-post of the footpath and also the Plan Maker submitted that there was no existing structure permanent or temporary of the hawker on the footpath. There was no fuse call or tap undercover on the footpath of the place of occurrence in Ext.-3.

The above two submissions of the Prosecution witness indicated that there was no hawker on the footpath and that was the sole reason PW-8 struggled to prove himself as the hawker of the said footpath since he was not a hawker of that place rather a pocket witness who at the instance of the Police identified the appellant.

Another important point was that in his Cross- Examination, PW-8 himself submitted that he did not even remember how many cases were filed against him for hawking on the footpath and he frequently used to visit Police Station for the same, thus inference could be drawn from his submission that there was great possibility of the appellant being shown to the PW-8, thus his identification should not be considered and the conviction of the appellant should be set aside.

Moreover, PW-8 claimed to be present at the P.O. and the firearm was seized in his presence but the seizure did not contained his signature, which was sufficient to create a doubt that he was not even present at the place of occurrence and identified the appellant at the instant of the police.

- c) Other Lacuna in the prosecution case:- There had been many lacunae in the entire investigation process where no fingerprints on the seized revolver were taken, the seizure witness turned hostile, no description of the victim or the de facto was provided by the PW-8 and PW-9 in their statement under Section 161 of

the Code of Criminal Procedure, the F.S.L reports of the seized articles came after a delay of about 2 years, no seizure of the briefcase or the alleged amount in the briefcase was made, no statement of the traffic police was recorded, no statement of the doctor was recorded.

Thus, in order to hide the flaws in the investigation process, the investigating officer produced a pocket witness to identify the appellant and to implicate him falsely in that case.

Thus, the conviction of the appellant based solely on the identification by the PW-8 should be set aside, since the trial court has erred in convicting the appellant under the Section 393 of the Indian Penal Code based solely on the T.I. Parade without taking into consideration 49 days delay in conducting the T.I. Parade without any explanation.

The Trial Court also ignored that the appellant was not identified by the de-facto complainant with whom the incident took place and who clearly deposed that if he had seen the miscreants he would identify them, but he did not identify the appellant, but on contrary a local hawker who did not even specified in his statement under Section 161 of the Code of Criminal Procedure about the description of age, dress, etc., of the victim and the de facto complainant and also from what distance did he witnessed the incident and how a person who did not even possess any identity proof was served a notice to

attend the T.I. Parade held after 3 years and he went there and identified the accused which was absurd.

8. The Learned Advocate representing the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses supported by medical evidence and the appeal shall be dismissed.

9. A circumspection of the prosecution witnesses revealed as follows:-

- i. PW-1, a constable from the Photography Section, had taken photographs of the place of occurrence (P.O.) and of the deceased at the morgue, which were marked as material exhibits. However, during cross-examination, he admitted that there was no demarcation of the exact spot of incident in the photographs, that he had received only a verbal requisition, and had not maintained any diary entry.
- ii. PW-2, the plan maker, deposed that there existed no structure, permanent or temporary, of any hawker at the P.O., nor was there any fuse call or tap undercover as per the site plan marked Ext.3.
- iii. PW-3, an Assistant Vice President of ABN Amro Bank, deposed that the cheque seized had no police seal either on the instrument or on the seizure list.
- iv. PW-4, Kamal Kumar Sodani, was claimed to be an eyewitness and companion of the victim during the incident, but failed to identify the appellant either in the dock or in the T.I. Parade. Notably, he was not summoned for the T.I. Parade where the appellant was presented.
- v. PW-5, a medical officer, had prepared the injury report of the victim, marked as Exbt.-7 series.

- vi. PW-6, an Executive Magistrate, conducted the inquest and noted a gunshot injury on the right side of the chest with blackening around the wound.
- vii. PW-7, a police constable, had accompanied the body for inquest and identification.
- viii. PW-8, claiming to be a hawker, was the sole witness to identify the appellant during the T.I. Parade. However, his credibility was significantly undermined during cross-examination wherein he failed to establish his identity as Provat Kumar Mukherjee. He possessed no documents to prove he was a hawker at the site or that he was even Provat Kumar Mukherjee. Inconsistencies were evident as he denied chasing the miscreants despite earlier asserting the same, and his signature was missing from the seizure list despite claiming presence. He admitted to frequent prosecution for hawking and could not name adjacent roads at the P.O.
- ix. PW-9, another hawker and purported eyewitness, identified a different accused during the T.I. Parade but not the appellant.
- x. PW-10 and PW-11 merely signed on documents marked Exbt.-9 series but admitted in cross-examination to having no knowledge of the contents thereof.
- xi. PW-12, who conducted the post-mortem, opined the injury was caused by a gunshot fired from within 4 inches. He could not confirm whether the investigating officer had provided any questionnaire, and

- the bullet extracted during the autopsy was handed to the police without a production list.
- xii. PW-13, a Senior Scientific Officer at the FSL, deposed to having examined the exhibits and submitted his findings, which were marked accordingly.
  - xiii. PW-14, the Metropolitan Magistrate who conducted the T.I. Parades, confirmed that the witness PW-8 did not disclose key details such as the date, time, or nature of the offence and that no verification of the undertrial status of the accused was made. The report omitted mention of the appearance or attire of either accused or witnesses, and no satisfaction note regarding identification was recorded.
  - xiv. PW-15, the first Investigating Officer, admitted during cross-examination that he could not identify the seized cartridge due to the absence of any marking and that the 161 CrPC statements of PW-8 and PW-9 lacked basic descriptive particulars.
  - xv. PW-16, the subsequent Investigating Officer, deposed that the seized items were forwarded to FSL. However, no arrests were made during his tenure.
  - xvi. PW-17, the final I.O., arrested the appellant and conducted T.I. Parade proceedings but conceded that the appellant was not produced in the first T.I. Parade due to being in a different correctional facility. The de-facto complainant was not produced for identification, and there was no seizure of cash or the briefcase allegedly connected to

the offence. No fingerprint examination was conducted on the seized weapon.

10. In the case of **Raja and Ors. vs. State**<sup>1</sup> the following was held:-

*11. At this stage we would first refer to the decisions upon which reliance is placed. In the case of Soni (1982) 3 SCC 368 this Court observed that a delay of 42 days in holding the identification parade throws a doubt on genuineness thereof, apart from the fact that it is difficult that after a lapse of such a long time the witnesses would be remembering facial expression of the Appellant. In the case of Mohd. Abdul Hafeez v. State of A.P. MANU/SC/0091/1982 : (1983) 1 SCC 143 the Court while dealing with a robbery case observed that as no identification parade was held, no reliance can be placed on the identification of the Accused after a lapse of four months in the Court. In the case of Hari Nath MANU/SC/0229/1987 : (1988) 1 SCC 14 the Court observed that evidence of test identification is admissible Under Section 9 of the Evidence Act. But the value of test identification, apart from the other safeguards appropriate to a fair test of identification depends upon the promptitude in point of time with which the suspected persons are put up for test identification. If there is an unexplained and unreasonable delay in putting up the Accused persons for a test identification, the delay by itself detracts from the credibility of the test. The Court further referred to (para 9) Prof. Borchard: Convicting the Innocent on the basis of error in identification of the Accused. The learned author has observed:*

*The emotional balance of the victim or eyewitness is so disturbed by his extraordinary experience that his powers of perception become distorted and his identification is frequently most untrustworthy. Into the identification enter other motives not necessarily stimulated originally by the Accused personally--the desire to requite a crime, to exact vengeance upon the person believed guilty, to find a scapegoat, to support,*

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<sup>1</sup> MANU/SC/1717/2019

*consciously or unconsciously, an identification already made by another. Thus, doubts are resolved against the Accused.*

*12. In AIR paras 10 and 11, the Court has observed as under: (SCC p. 21, paras 19-21)*

*19. The evidence of identification merely corroborates and strengthens the oral testimony in court which alone is the primary and substantive evidence as to identity. In S.K. Hasib v. State of Bihar MANU/SC/0180/1971 : (1972) 4 SCC 773 this Court observed: (SCC p. 777, para 5)*

*... the purpose of test identification is to test that evidence, the safe Rule being that the sworn testimony of the witness in court as to the identity of the Accused who is a stranger to him, as a general rule, requires corroboration in the form of an earlier identification proceeding.*

*20. In Rameshwar Singh v. State of J&K MANU/SC/0174/1971 : (1971) 2 SCC 715 this Court observed: [SCC p. 718, SCC (Cri.) p. 641, para 6]*

*... it may be remembered that the substantive evidence of a witness is his evidence in court, but when the Accused person is not previously known to the witness concerned then identification of the Accused by the witness soon after the former's arrest is of vital importance because it furnishes to the investigating agency an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial.*

*21. It is, no doubt, true that absence of corroboration by test identification may not assume any materiality if either the witness had known the Accused earlier or where the reasons for gaining an enduring impress of the identity on the mind and memory of the witness are, otherwise, brought out. It is also rightly said that:*

*Courts ought not to increase the difficulties by magnifying the theoretical possibilities. It is their province to deal with matters actual and material to promote order and not surrender it by excessive theorising or by magnifying what in practice is really unimportant.*

11. In the case of **Republic of India and Ors. vs. Rabindra Kumar Pal and Ors.**<sup>2</sup>, the Orissa High Court held the following:-

*It is well settled now that substantive evidence of a witness is his statement in the Court; but the purpose of identification is to test that evidence and the safe rule is that the sworn testimony of the witness in Court as to the identity of the accused who are strangers to the witness generally speaking, requires corroboration which should be in form of an earlier identification proceeding. (See Vaikuntam Chandrappa v. State of Andhra Pradesh MANU/SC/0224/1959 : AIR 1960 S.C. 1340). It has been held by the Supreme Court in Mohanlal Gangaram Gehani v. State of Maharashtra MANU/SC/0090/1982 : A.I.R. 1982 S.C. 839, that if a witness did not know the accused before the occurrence and no Test Identification Parade was held to test his power of identification and he was also shown by the Police before he identified the accused in Court, his evidence becomes absolutely valueless on the question of identification. Here, in the instant case before us all the eye-witnesses were shown the photographs of the miscreants and therefore, identification of the Appellants for the first time in the trial Court without being corroborated by Test Identification Parade held before a Magistrate or otherwise is absolutely without any value. Same view has been reiterated by the Supreme Court in Harinath v. State of U.P. MANU/SC/0229/1987 : AIR 1988 S.C. 345, and State of Maharashtra v. Sukhdeo Singh 1992 Cr.L.J. 3454. Similarly, the Supreme Court held in the case of Mohd. Abdul Hafeez v. State of Andhra Pradesh MANU/SC/0091/1982 : AIR 1983 S.C. 367 that in a case of robbery, the victim identified the accused in the Court for the first time after a lapse of four months from the date of occurrence without being corroborated by Test Identification Parade. It was held by the Supreme Court in this case that no reliance could at all be placed on such evidence of Test Identification Parade. In Kanan v. State*

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<sup>2</sup> MANU/OR/0579/2005

*MANU/SC/0139/1979 : AIR 1979 S.C. 1127, it was held by the apex Court that evidence of a witness given in Court as to the identification may be accepted only if he identified the same persons in a previously held Test Identification Parade in jail. We have already seen while discussing the evidence of eye-witnesses that Test Identification Parade on the basis of photographs of suspects was held by the Investigating Officer. It was held by the Supreme Court in Ramkishan Mithanlal Sharma and Ors. v. State of Bombay MANU/SC/0044/1954 : AIR 1955 S.C. 104 that the Test Identification Parade can be held by panch witnesses (ordinary citizens) or by the Police or by the Magistrate. In the case of Test Identification Parade arranged by the Police and held in presence of panch witnesses only, the process of identification would be statements made by the identifying witnesses (whether it is identification of person or property) to the panch witnesses and would be outside Section 162, Code of Criminal Procedure, provided process of identification is carried out under the supervision of the panch witness only and police have completely obliterated themselves for the parade. When identification parade is conducted wholly by the police, the evidence of identification of person or property is hit by Section 162, Code of Criminal Procedure We have seen already that C.B.I. Investigating Officer placed the photographs of the suspects mixed with photographs of Ors. before the identifying witnesses in course of investigation and on that basis, the identifying witnesses picked up some of the photographs. Therefore, this is a Test Identification Parade on the basis of photographs of suspects arranged by police and this is clearly hit by Section 162, Code of Criminal Procedure What is applicable to Test Identification Parade of suspects whenever it is held by Police will be equally applicable to Test Identification Parade held by the Police on the basis of photographs of the suspects. There is absolutely no reason to apply different standards in respect of identification organised by the Police on the basis of photographs of suspects ..... In Budhsen and Anr. v. State of U.P. MANU/SC/0103/1970 : AIR 1970 S.C. 1321, it has been*

*held by the apex Court that evidence of the identification of the accused during trial for the first time is from its very nature inherently of weak character. It is accordingly considered a safe rule of prudence to generally look for corroboration of sworn testimony of witnesses in Courts as to the identity of the accused who are strangers to them in the form of earlier Test Identification Parade. Here, in this case before us Test Identification Parade on the basis of photographs of the suspects was held by the Investigating Officer. As we have already held, such statement is hit by Section 162 Code of Criminal Procedure.*

12. Indisputably, an offence has been committed under Section 393 of the Indian Penal Code wherein one of the victims expired. However, there had been lapses on the part of the prosecution to attribute the role of criminality to the present appellant to inculcate him.
13. PW-4 one of the main witnesses failed to identify any of the appellants either during T.I. Parade or on dock.
14. PW-9, the eye witness failed to state the premises of the bank in question as well as he failed to name the jurisdiction of the police station wherein the incident occurred. He too failed to identify the appellant during T.I Parade as well as on dock.
15. The prosecution failed to establish the location of PW-8 who claimed himself to be a hawker being stationed in the profession in the proximity in the place of incident. Though, he was present at the time when the firearm was seized by the police but curiously his signature was not present in the seizure-list. His deposition appeared to be tutored and unreliable. He could not even prove his identity through relevant document and stated that he did not possess any ration card, hawking card, voter identity card, rent receipt etc.

His presence at the spot on the relevant point of time creates suspicion as to his authenticity of evidence and fabrication. Moreover, criminal cases were pending against him for hawking on the footpath which he was unaware of.

16. PW-9 similarly being the prosecution failed to coherently and substantially prove his identity and avocation as a hawker as well as the veracity of his evidence. He identified one of the miscreants in the Presidency Jail. PW-9 was unaware as to what and why his signature was asked to be taken on paper akin to that of the evidence of PW-11 who acknowledged his ignorance of the reason to sign the paper marked as Exhibit 9 as well as Exhibit 9/1.
17. The report of the Senior Scientific Officer attached to the Biology Division of Forensic Science Laboratory, PW-13 was inconclusive as the samples were either non-identifiable or dissipated with lapse of time.
18. The evidence of PW-14 fortified the incongruity and ineffectivity of the evidence of PW-8 who completely destroyed the investigation process denying to have witnessed the incident from a distance. The recovery to have been conducted in his presence or that the miscreants fired at the victim as a result of which the victim died. He also did not disclose that he attended the previous T.I Parade in connection with the same case.
19. PW-15, the S.I. of Police being the first I.O. to have prepared seizure-list marked as Exhibit 9/2 and 9/3 could not identify the cartridge to have been seized by him in absence of an identification mark. Moreover, he endorsed that the statement recorded under Section 161 of Cr.P.C. pertaining to PW-8 and PW-9 did not describe the age, dress etc of the victim.

20. The delay in conducting the Test Identification Parade after 49 days of the incident along with the incoherent and inconsistent evidence of PW-8 and PW-9 did create a supposition of manipulation. Apart from the hawkers to be cited as eye witnesses, credible and trustworthy evidence through other independent witnesses pertaining to such an incident of magnitude could not be produced by the prosecution.
21. There had been severe lapses on the part of the Investigating Agency whether the fingerprints on the seized revolver had not been examined, proper description of the victim could not be produced by PW-8 or PW-9, hostility of the seizure-list witnesses. The seizure of the briefcase and the alleged amount in the briefcase was not proved before the Court through their proper presentation.
22. In view of the above observation, it appeared that the prosecution failed to prove its case due to the delay in conducting the T.I. Parade, non-identification of the miscreants through independent eye witnesses. The seized articles too have been failed to produce before the Court etc. as cited above.
23. In view of the above discussions, the sentence is modified to the extent of the imprisonment undergone by appellant in custody.
24. Accordingly, the instant criminal appeal being CRA 488 of 2006 stands allowed.
25. There is no order as to costs.
26. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

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

**(Ananya Bandyopadhyay, J.)**