

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

**Present:**

**The Hon'ble Justice Debangsu Basak**

And

**The Hon'ble Justice Md. Shabbar Rashidi**

**DEATH REFERENCE NO. 04 OF 2023**

**THE STATE OF WEST BENGAL** **... APPELLANT**

**Vs.**

**BIKASH MURMU & ORS** **... RESPONDENTS**

**With**

**CRIMINAL APPEAL (DB) NO. 256 OF 2024**

**TAPATI PATRA** **... APPELLANT**

**Vs.**

**STATE OF WEST BENGAL** **... RESPONDENT**

**With**

**CRIMINAL APPEAL (DB) NO. 06 OF 2024**

**CHHOTU MUNDA** **... APPELLANT**

**Vs.**

**STATE OF WEST BENGAL** **... RESPONDENT**

**For the Appellant** : Mr. Sandipan Ganguly, Sr. Adv.  
Mr. Ranadeb Sengupta, Adv.  
Mrs. Trina Mitra, Adv.  
Mr. Khalid Ali, Adv.  
Mr. Anand Farmania, Adv.

**For the State** : Mr. Debasish Roy, Ld. P.P.  
Mrs. Amita Gaur, Adv.  
Ms. Pallavi Priyadarshee, Adv.

**Hearing concluded on** : 26.06.2025

**Judgment on** : 24.07.2025

**MD. SHABBAR RASHIDI, J.:-**

**1.** The death reference and the appeals have arisen out of the impugned judgment of conviction dated July 24, 2023 and the order of sentence dated July 25, 2023 passed by learned Additional Sessions Judge, 2<sup>nd</sup> Fast Track Court, Paschim Medinipur in connection with Sessions Trial No. 5(11) of 2022 arising out Sessions Case No. 23(08) of 2021.

**2.** By the impugned order the appellants were convicted for the offences punishable under Sections 448/376D/120B/302 of the Indian Penal Code, 1860.

**3.** By the consequent impugned order of sentence the convicts Bikash Murmu and Chotu Munda were sentenced to death for the offence punishable under Section 302 of the Indian Penal Code, 1860. The said convicts were also sentenced to pay a fine of Rs. 20,000/- each and in default of payment of such fine they were directed to suffer rigorous imprisonment for a period of two months.

**4.** The convict Tapati Patra was sentenced to imprisonment for life for the offence punishable under Section 302 of the I.P.C. with a fine of

Rs. 20,000/- and in default of payment of fine he was directed to suffer rigorous imprisonment for a further period of two months.

**5.** All the three convicts were further sentenced to life imprisonment and a fine of Rs. 10,000/- each for the offence punishable under Section 120B of the IPC. In default of payment of money for such offence the convicts were directed to suffer rigorous imprisonment for a further period of one month each.

**6.** The two convicts were also sentenced to suffer life imprisonment which would mean imprisonment for the remainder of the entire life of the convicts with a fine of Rs. 10,000/- for the offence punishable under Section 376D of the I.P.C. In default of payment of fine the said two convicts were directed to undergo rigorous imprisonment for a period of one month each.

**7.** The sentences imposed under Section 376D/120B of the IPC in respect of the two convicts were directed to run concurrently. It was also directed that it shall cease to have any effect in case the sentence for conviction under Section 302 of the I.P.C. is confirmed by the Hon'ble High Court and executed.

**8.** Learned advocate appearing for Tapati Patra submits that the case made out by the prosecution is highly doubtful and cannot be believed. It was submitted that although, the place of occurrence is quite close to the residence of the witnesses nevertheless P.W. 1 did not hear any sound while the incident was being perpetrated. It was also

submitted that the appellants were working as masons and labourer in the house of P.W. 1. Learned advocate for the appellants also submits that although witness speaks of injuries found on the person of the victim but the injuries were not detailed when such witnesses were examined by police. It was also submitted on behalf of the appellants that the presence of all the prosecution witnesses at the place of occurrence at the relevant time is highly doubtful and cannot be relied upon.

**9.** Learned advocate appearing for the appellant Tapati Patra submitted that she has been convicted on the basis of the provisions contained in Section 106 of the Evidence Act, 1872. However, the impugned judgment does not disclose any circumstance which was within special knowledge of such convict. As such, it is submitted on behalf of such convict that her conviction on the basis of Section 106 of the Evidence Act, 1872 cannot be sustained.

**10.** Learned advocate appearing for the convicts submits that the entire prosecution is based on circumstantial evidence. It was contended that the prosecution has not been able to prove the complete chain of circumstances strictly leading to the hypothesis of the guilt of the convict. For such reason, it is submitted, conviction of such appellant cannot be sustained.

**11.** Learned advocate for the appellant also submits that prosecution was not able to substantiate that the victim was in the exclusive

company of the appellants at the relevant time. It is only proved that the appellants were the only outsiders present at or near the scene of crime having been working as masons and labourer. The possibility of the intervention of a third person has not been completely ruled out by the evidence led at the trial. In support of such contention learned advocate for the appellant relied on **2024 SCC OnLine SC 1836 (Manohar Rajwade vs. State of Chattisgarh)**.

**12.** It was also contended on behalf of the appellants that the recovery of incriminating articles in terms of the provision under Section 27 of the Evidence Act, two similar statements of two different convicts have been recorded, however, prosecution did not establish at the trial as to exactly on whose statement such recovery was made. Besides that, recovery of a *bamboo stick* was made on the basis of leading statement on the body of the victim. Rather, the prosecution has proved that the death was caused due to manual strangulation. To such proposition, learned advocate for the appellant relied upon **(2021) SCC OnLine SC 1256 (Jaikam Khan Vs. State of Uttar Pradesh)**.

**13.** Learned advocate for the appellant also submits that although the report of the Forensic Science Laboratory was proved at the trial which indicate that the *ganjee* of appellant Bikash Murmu contained blood of the victim as well as that of the appellant Bikash Murmu. However, such fact was not confronted to appellant Bikash Murmu in his examination under Section 313 of the Code of Criminal Procedure.

**14.** Learned Advocate for the appellant also contended that the medical officer who conducted medical examination was not examined at the trial. The report was erroneously admitted in evidence. It was further contended that such report exhibited that the perpetrator had no injuries on his body or his private parts.

**15.** It was also contended by learned advocate for the appellant that the handler of the sniffer dog was not examined at the trial. Moreover, the seizure of alleged offending weapon was made after four days of the incident and that too, from an open space accessible to public at large. For such reason, recovery of the offending weapon on the leading statement of the convicts is of no consequence.

**16.** Learned advocate of the appellant also submitted that the Trial Court did not consider the facts and circumstances of the case and did not return to a conclusive finding whether the case fell within the category of 'rarest of rare case', nevertheless, proceeded to award capital punishment to the victim. The learned Trial Court also did not come to a definite conclusion that the option of punishment other than death penalty was foreclosed and a sentence of imprisonment would be insufficient in the facts and circumstances of the case. It was also contended that learned Trial Court did not consider the possibility of reformation of the convicts before awarding death sentence.

**17.** One Swapan Kumar Jana lodged a written complaint with the Officer-in-Charge of Pingla Police Station on May 3, 2021 stating, inter

alia, that some work was going on in his house. In course of the ongoing works, the victim went to the bathroom of the old house for washing utensils after the de-facto complainant and his family lunched at about 2:35 p.m. He further stated that after sometime at about 3:40 p.m., the de-facto complainant started searching for the victim but she could not be found. After searching everywhere in the house, the de-facto complainant went to the abandoned house of his uncle situated on the back of his house. The victim was found in the store room of such house in a naked condition lying in a pool of blood with a noose tied around her neck. She was lying flat on the ground. The de-facto complainant took her out of the room. According to the written complaint, the de-facto complainant firmly believed that the appellants who were named in the written complaint had raped and murdered the victim.

**18.** On the basis of such written complaint, Pingla P.S. Case No. 135 of 2021 under Sections 448/376D/302/120B of the IPC were started against the appellants. The police took up investigation and on conclusion of such investigation submitted charge-sheet against the appellants. Accordingly, on the basis of the materials in the case diary, charges under Sections 448/376D/302/120B of the IPC were framed against the appellants on November 24, 2022. The appellants pleaded not guilty to the charges and claimed to be tried. In order to bring home the charges so levelled against the accused persons, prosecution

examined 28 witnesses. In addition thereto, prosecution also relied upon certain documentary as well as material evidence.

**19.** The de-facto complainant himself deposed as P.W. 1. He stated that his younger daughter died on May 3, 2021. He also stated that at the time of the alleged incident two masons and one labourer was working in his house under the control of a labour contract. The old house where the repairing work was going on was situated adjacent to the house of P.W. 1. The house of his uncle was located immediately on the back side of his old house where the repairing work was going on. His uncle was not living in the house located behind the old house of P.W. 1 where the repairing work was done. He had shifted to other place. P.W. 1 identified the appellants in Court. P.W. 1 further stated that on the date of alleged incident, after completing lunch he had kept the wash dishes and utensils in the bathroom located adjacent to his house. The victim went to the pond and threw away the waste foods and, thereafter, she went to the bathroom for washing the utensils. P.W. 1 also stated when he went to keep the used utensils in the bathroom he saw the appellant Tapati working at a distance of 7/8 hands from the bathroom. The other two male appellants were also working in his house at the relevant time. No one else except the three persons was present at the spot.

**20.** P.W. 1 also stated that when the victim did not return from the bathroom for quite some time, his wife called her daughter over mobile

phone which was not responded. They got worried and started searching for the victim. They enquired in the house of his relatives located within 200 meters of the house of P.W. 1 but she could not be found. Ultimately, the victim was found inside the store room of the paternal uncle of P.W. 1. In the light of the mobile phone of P.W. 4 who was also accompanying P.W. 1, the victim was found lying on the floor of the store room with a torn nightie on her body. The undergarments were missing and the torn nightie was completely stained with blood. P.W. 1 carried the victim in his arms and laid her on a wooden cot outside the store room. He found blood marks on her nose, mouth and private parts. He also found a sharp reddish mark on the throat of the victim. She was dead. P.W. 1 also stated that local people assembled at the spot and police had arrived within half an hour. He however could not say who informed the police. Police conducted inquest over the dead body of his daughter and prepared a report. P.W. 1 proved his signature on the inquest report. Thereafter, he lodged written complaint. He also proved the written complaint and his signature thereon. He claimed to have been interrogated by police in connection with the case.

**21.** P.W. 1 further stated that in course of investigation police seized one electric bill in the name of Tapan Kumar Jana and a small note book under a seizure list. He proved his signature on such seizure list dated May 23, 2021. P.W. 1 also stated that police seized 1½ ft. long bamboo stick as shown by appellant Chhotu Munda in his presence. He

proved his signature on the seizure list dated May 7, 2021. Police also seized black coloured half pant with stains of mud as shown by the appellant Bikash Murmu from a bamboo bush. He proved his signature on such seizure list dated May 7, 2021. Police also seized one printed lungi and a T-shirt stained with mud as shown by the appellant Bikash Murmu under a seizure list. He proved his signature on such seizure list dated May 7, 2021. A white coloured gangee stained with blood and mud was also seized by police as shown by the appellant Bikash Murmu from the bank of pond of P.W. 1. P.W. 1 proved his signature on such seizure list dated May 12, 2021. Police also seized Aadhar Card of the victim under a seizure list which was returned to appellant on a *zimmanama*. P.W. 1 was cross-examined on behalf of defence at length. However, nothing fruitful could be elucidated. P.W. 1 was further examined on article when P.W. 1 identified the torn panty, torn nightie and a bamboo stick which were admitted in evidence and marked as Mat Exhibits – I, II and III. He also proved his signature on the labels attached to the seized articles.

**22.** The uncle of the victim deposed as P.W. 2. He stated that he was the brother of P.W. 1 and resided in joint mess. The victim was a college student and died on May 3, 2021. He further stated that at the relevant time, two masons and one labourer was working in his house. P.W. 2 named such masons and labourer and identified the appellants in

Court, one of whom was attending Court through video conferencing on the date of examination of P.W. 2.

**23.** P.W. 2 further stated that after returning home and after taking lunch he went to sleep. After getting up he went to his shop and, thereafter, received a call from his son informing him that the victim was murdered. He returned home and found that the victim was murdered inside the house of his uncle. He also found the victim without any undergarments on the lower private parts of her body. A pink coloured printed nightie which she was wearing was also torn. She had bruise on her face and there was bleeding from her mouth and nose. He also found a dark reddish mark on her throat and bleeding from the lower private parts. P.W. 2 also stated that at the time of incident there were no one except the three workers who were engaged in construction work present in the house. While going to his shop P.W. 2 had talks with the appellant Bikash Murmu and Tapati Patra and he found Bikash Murmu in a disturbed state. However, none of them disclosed to P.W. 2 anything about the incident. P.W. 2 was interrogated by police. He identified the torn panty, pink torn nightie of the victim. He also identified the bamboo stick with stains of blood. He proved his signatures on the seizure lists dated May 5, 2021 and May 12, 2021.

**24.** Another relative of P.W. 1 deposed as P.W. 3. He stated that the victim was the daughter of his brother-in-law and a student. The victim was murdered in an abandoned house of his uncle-in-law. P.W. 3

further stated that the appellants Chhotu Munda, Bikash Murmu and Tapati Patra murdered the victim after the male appellants committed rape upon her. He also stated that none was present except the three appellants who were engaged for the construction work in the house. When P.W. 3 reached the place of occurrence he found that the victim was lying there with nail scraps marks on her face and a dark reddish mark on her throat. There was mud and blood stains on her nose and bleeding from her private parts. The nightie that the victim was wearing was torn and her undergarments were missing. He identified the appellants in Court. One of whom was present through video conference. P.W. 3 also stated that he asked about the incident from the appellant Tapati Patra but she did not give proper reply. He claimed to have been interrogated by police in connection with the case.

**25.** Cousin brother of the victim deposed as P.W. 4. He stated that the victim died on May 3, 2021 being murdered in her house at about 2:30/4:00 p.m. He further stated that on the date and time of the alleged incident the victim had gone to wash utensils in the bathroom after they had completed lunch. The appellants were working in their house. P.W. 4 identified the appellants in Court. P.W. 4 further stated that the body of the victim was recovered from the store room of his old abandoned house situated behind the new house at a distance of half minutes. When he saw the dead body he found the pink coloured nightie worn by the victim in torn condition and bleeding from her

private parts. There were nail scraps marks all over her body and her undergarments were tied on her throat. Removing the undergarments he found a mark around the throat of the victim. Thereafter, his uncle i.e. P.W. 1 lodged written complaint. He was interrogated by police in connection with the case. Police seized Aadhar Card of the victim under a seizure list which he signed. He proved his signature on the seizure list.

**26.** The mother of the victim deposed as P.W. 5. She stated that her younger daughter who was a student was raped and murdered on May 3, 2021 in her old abandoned house. She further stated that on the date of incident after completing lunch, the victim had gone to wash utensils. After sometime as the victim did not return, she went in search of the victim but she could not find her. She inquired from the three appellants who were working at her house at the relevant time. The appellant Bikash Murmu and Chhotu Munda did not give any reply to her queries whereas the appellant Tapati Patra tried to mislead her and made several false statements. Thereafter, her husband and P.W. 4 found the victim inside the store room of the old abandoned house belonging to her uncle-in-law. P.W. 5 also stated that when she saw the dead body of the victim, she found bleeding from her lower private parts and scraps marks all over her body. Her nightie was completely torn at the lower portion and the throat was tied by her inner garments. Her

husband lodged a written complaint with the police. Police arrived at the place of occurrence and she was interrogated by police.

**27.** An autopsy surgeon was examined as P.W. 6. He stated that on May 4, 2021 he conducted post mortem over the dead body of the victim who was produced and identified by a police constable. He discovered the following injuries from the dead body:-

***“1) Abrasion measuring 2.7 cm x 0.7 cm placed over anterior surface of neck 1 cm right to midline and 4.2 cm above right clavicle with convexity towards the chin;***

***2) Cresenteric shaped abrasion 1.5 cm x 1 cm placed over the anterior surface of neck 1.2 cm left to midline and 3 cm below chin with convexity towards the chin;***

***3) Abrasion 3.4 cm x 0.7 cm placed on the face 0.3 cm right to midline and 3.2 cm below lower eyelid with convexity laterally;***

***4) Bruise measuring 3.7 cm x 4.2 cm present over the anterior surface of neck 2.3 cm right to midline and 2.7 cm below the lower border of mandible on dissection shows extravasation of blood measuring 5.5 cm x 6 cm diffused in subcutaneous tissue and muscle underneath the injury;***

***5) Bruise measuring 5.2 cm x 3.5 cm present over the anterior surface of neck 2.1 cm below the lower border of mandible and 4.8 cm left to anterior midline of neck which of dissection shows extravasation of blood measuring 8.6 cm x 6.8 cm diffused in subcutaneous tissue and muscle over region underneath the injury;***

- 6) Bruise measuring 4.2 cm x 3.8 cm present over anterior surface of left thigh 13.4 cm below left groin and 2 cm medial to the midline;
- 7) Bruise measuring 3.9 cm x 3.8 cm present over anterior surface of right thigh 10.4 cm below the right groin and 1.2 cm medial to the midline;
- 8) Bruise measuring 3.2 cm x 3.8 cm present over anterior surface of left forearm 2.4 cm above the wrist joint;
- 9) Abrasion 2.7 cm x 3 cm present over anterior surface of right shoulder joint region;
- 10) Bruise measuring 2.3 cm x 2.7 cm present at anterior midline of nose with underlying fracture of the nasal cartilage and extravasation of blood around it;
- 11) Extravasations of blood measuring 1 cm x 1 cm present on the inner aspect of lower lip and corresponding lower gum;
- 12) Extravasations of blood measuring 1.2 cm x 2 cm present on the inner aspect of upper lip and corresponding upper gum;
- 13) Fracture of left greater cornu of hyoid bone at the junction of body with inward displacement of the distal segment and extravasation of blood diffused over soft tissues situated along with line of fracture;
- 14) Multiple lacerations, four in number involving perianal skin and anal mucous membrane situated 4.7 cm from anal verge with sizes ranging from 2 cm x 2.3 cm x submucosal depth to 3.6 cm x 3.4 cm x submucosal depth with evidence of the extravasation of both liquid and clotted blood mixed with traces of faecal matters at places in and around the lacerations inside the anal canal and rectum;

**15) A lacerated injury 8.2 cm x 5.4 cm x skin and subcutaneous tissue depth involving right sided labia mjora, labia minora and right side of vulva and the upper end of injury extends up to the clitoris, 1 cm right to midline;**

**16) Bruise measuring 8 cm x 7.4 cm diffused in the skin a subcutaneous tissue of perineum along the lower margins of the vaginal intuitis;**

**17) Multiple (four in number) hymenal lacerations noted at 5 o'clock, 7 o'clock, 10 o'clock and 2 o'clock positions. The margins of the lacerations re-sharp and show evidence of extravasation of blood and few blood clots adherent at places;**

**18) A lacerated injury noted over the posterior wall of vault of vagina measuring 5.2 cm x 4.3 cm x through and through the vaginal wall surrounded by diffuse extravasation of red blood both clotted and liquid;**

**19) Liquid and clotted blood measuring 250 ml present in pelvic cavity. The abrasions are red and non-scabbed. Extravagated blood red in colour. Bruises were red in colour. The margins of the lacerated injuries are irregular with extravasations of blood. All the injuries show evidence of vital reaction. No other injuries external or internal can be detected after dissection and observation under hand lens."**

**28.** P.W. 6, on the basis of the injuries noted by him, opined that the death was caused due to the effect of asphyxia caused by manual strangulation. According to him, the time of death was within 18 to 36 hours from the post mortem examination. In his deposition, P.W. 6 also stated that when the dead body was brought to him, he found a pink

coloured printed nightie with blood stains and a black innerwear, both torn at places, present on the dead body. He also found perianal skin with blood and evidence of blood stained fluid coming out from both the nostrils of the victim. On retraction of the eyelids subconjunctival haemorrhage was seen. Petechial haemorrhage present in pleura, both lungs pericardium and heart at places. All the viscera were congested which were signs of asphyxial death.

**29.** In the opinion of P.W. 6, injury Nos. 1, 2, 3, 4, 5, and 13 in his post mortem were suggestive of manual strangulation. Injury No. 14 noted in the report suggested forceful anal penetration and injury Nos. 15, 16, 17 and 18 were suggestive of forceful vaginal penetration. Injury Nos. 6 and 7 of the post mortem were suggestive of application of forceful sexual assault on the victim. On the basis of the injuries found on the dead body, P.W. 6 opined that since there were multiple injuries over different parts of the body of the victim both anterior and posterior position and on both left and right side of the body of the victim with signs of sexual assault, vaginal penetration and anal penetration and manual strangulation, this suggested of certain involvement of more than one person in the commission of the offence. P.W. 6 further opined that the injuries found on the person of the victim were heinous and severe in nature which was sufficient to cause death of a person. He proved the post mortem report prepared in his pen and signature which was admitted in evidence and marked as Exhibit-11 series. He also

prepared a special report as per the request of the investigating officer giving his special opinion in writing on the cause of death, time of death, manner of death, type of death, preservation of vaginal swab, nail scraps and whether any marks of violence/sexual harassment injuries were found on the body. Such report was proved by P.W. 6 as Exhibit-12 series.

**30.** Brother of P.W. 5 deposed as P.W. 7. He stated that on afternoon of May 2, 2021 he received a phone call from his elder sister who informed him about the death of the victim. He came to the house of his elder sister and found the dead body of the victim laid down on a cot. P.W. 7 came to know that the victim was raped by two male masons with the help of one female labourer and was murdered by them. The masons had been working at the house of his sister at the relevant time. P.W. 7 accompanied P.W. 1 and others to police station where P.W. 1 lodged a written complaint scribed by one Sabyasachi Sinha. Police arrived at the place of occurrence and seized an electricity bill produced by P.W. 1. P.W. 1 proved his signature on the seizure list.

**31.** Another brother of P.W. 5 deposed as P.W. 8. He also received a phone call at about 3/4 p.m. on May 3, 2021 from his elder sister who informed him that the victim was missing. Thereafter, P.W. 5 again called her and informed that the victim died. Her dead body was recovered from the store room adjacent to the house of P.W. 5. Being so informed, P.W. 8 immediately came to the house of his sister and saw

the dead body. He also saw that the nightie worn by the victim was completely torn on the lower part and there were several marks of injuries on the body of the victim. He also found profuse bleeding from the lower private part of the victim. P.W. 8 also stated that at the relevant time two male masons and one female labourer were working in the house of his sister and there was no outsider except the said masons and labourer. He was interrogated by police. His sister (P.W. 5) narrated the entire incident to him. P.W. 8 also stated that police seized blood stained soil and controlled earth from the place of occurrence along with one torn panty of the victim. P.W. 8 proved his signature on the seizure list dated May 3, 2021. He identified the appellants in Court.

**32.** A co-villager was examined as P.W. 9. He stated that he knew P.W. 1, his wife and the victim. The victim was raped and murdered on May 3, 2021. He further stated that on the said date the victim could not be found whereupon her parents and family members searched for her everywhere and ultimately recovered her body in a half-naked condition from the store room of the *kaccha* house behind the new house of P.W. 1. He further stated that at that time three workers of whom two male persons and one female labourer were working in the house of P.W. 1. Except these three persons no other outsider was present in the house of P.W. 1. He saw the three appellants who were working there. He identified the appellants in Court.

**33.** P.W. 9 also stated that on the following day police brought a sniffer dog at the spot who dragged police from the spot where the masons were working to the store room, where the dead body of the victim was found. From the store room the sniffer dog ran to a spot where the masons were binding rods. P.W. 9 stated that the dog handler from the activity of the dog could understand that the dog was trying to indicate that the offenders had also been working at that place and, subsequently, the family members of the victim informed that the accused persons had frequented those two places on the date of the alleged incident. He was interrogated by police.

**34.** Labour contractor deposed as P.W. 10. He stated that he had taken a contract to make some construction work in the house of P.W. 1. As a contractor, he had appointed the appellants to work in the house of P.W. 1 for such construction work. P.W. 10 also stated that he knew the victim was raped and murdered two years ago. He was interrogated by police in connection with the case.

**35.** The nephew of P.W. 1 who scribed the written complaint was examined as PW 11. He stated that the victim died two years ago after being raped and murdered. He was informed about the incident over telephone by the sister of the victim and by P.W. 1 that the victim was missing. Thereafter, by a second phone call P.W. 11 was informed by one Tapas Jana that the victim was recovered from an abandoned room from the house of P.W. 1 and that she was found in half-naked

condition. She had been raped and was bleeding from her lower private part. P.W. 11 received the phone call at about 3/4 p.m. Receiving such information, he went to the place of occurrence and reached there within 40/45 minutes and found the dead body being taken by police. He accompanied P.W. 1 and others to the police station. He scribed a written complaint as per the instruction of P.W. 1. He proved the written complaint which was marked as Exhibit-1.

**36.** A co villager of the de facto complainant deposed as PW12. He stated that he knew the victim who died two years ago. On the date of incident at about 2.00/3.00 p.m. he rushed to the place of occurrence, hearing hue and cry and found that the body of the victim was being laid on a cot. He saw bleeding injuries and scratch marks on different parts of the body. There was no undergarment or wearing apparel on the lower portion of the body of the victim. PW12 also stated that the appellants, whom he identified in court, were the only outsiders present in the house of PW1. They were engaged for some construction work. He further stated that police brought sniffer dog which indicated the place where the appellants were working. He informed police over phone and he was interrogated by police.

**37.** Another co villager was examined as PW13. He also came to the place of occurrence upon hearing commotion at about 2 p.m. and found the dead body inside the abandoned store room in the house of PW1. He stated that the victim was raped and murdered by the masons and

labourer working in the house of PW1. He found also found bleeding injuries and several scratch marks all over the body of the victim. She had no undergarments or wearing apparel on her lower body. PW13 corroborated the statement of PW12 as to the identification of the place where the appellants had been working by the sniffer dog. He further stated that at the relevant time, the appellants, whom he identified in court, were the only outsiders present in the house of PW1. He also claimed to be interrogated by the police.

**38.** Yet another co-villager was examined as PW 14. He stated that his house was at 4/5 minutes' walk from that of PW1. He knew the victim. He further stated that on May 3, 2021 in the afternoon he had hue and cry from the house of PW1. He went there and saw that the wife of PW1 was crying stating that the two male accused persons had killed her daughter. PW 14 saw the victim laid down on the cot. There was profuse bleeding from the lower private parts of the victim and there were several marks of injuries and scratches all over her body. PW 14 further stated that he saw the appellants at the spot. He first enquired about the incident from Tapati Patra. On such query, she stated that she did not know anything and advised PW 14 to enquire from the male accused persons. He then enquired from Bikas Murmu whereupon; he burst into tears and asked for forgiveness. Immediately thereafter police came and arrested them. He identified the appellants in court. He also stated that the victim was raped and murdered by the

appellants. He was interrogated by the police. PW 14 also stated that he recorded her statement under Section 164 of the Code of Criminal Procedure. It proved his signature on such statement.

**39.** PW 15 is also a co-villager of PW1. He also stated that the victim died in the afternoon of the month of May 2021. He went to the house of PW1 hearing hue and cry and found the wife of PW1 crying stating that the accused persons had killed her daughter. PW 15 found all the three appellants at this spot whom he identified in court. The appellants were working in the house of PW 1 carrying out some construction work. He further stated that he saw the victim laid down on a cot and her wearing apparels were in torn and tattered condition. He also saw profuse bleeding from her lower private part and there were several marks of injuries and scratches all over her body. He was interrogated by police. PW 15 also recorded her statement under Section 164 of the Code of Criminal Procedure. He proved his signature on such statement as well as on the seizure list dated May 23, 2021.

**40.** Another co villager and neighbour of the de facto complainant deposed as PW16. He also visited the house of PW1 hearing hue and cry. He along with his wife went to the house of PW1 and found the dead body of the victim on the cot. He heard that the victim was raped and murdered. He also found profuse bleeding from the lower private parts of the victim. She had several injury marks all over her body. There was no wearing apparel or undergarments on the lower part of

the victim. He also found the three appellants present at the spot, whom, he identified in court. He was interrogated by police in connection with the case.

**41.** The wife of PW16 was examined as PW17. She fully corroborated the statements of PW16. She was also interrogated by police in connection with the case. She added further that she did not see any outsider except the appellants in and around the house of PW1, since morning on the date of incident.

**42.** The house of PW18 was situated at a distance of 5/6 minutes' walk from that of PW1. He knew the victim who was raped and murdered in the afternoon of May 3, 2021 by the two male and a female appellants. They were engaged for some construction work in the house of PW1 and were working there. He identified the appellants in court. PW18 also went to the house of de facto complainant after hearing hue and cry and saw the dead body of the victim. He also found several injury marks on her body and bleeding from her lower private part. The nighty she was wearing was torn. He further stated that on May 4, 2021, police brought sniffer dog which indicated the place where the appellants were busy in binding rods. He was also interrogated by police.

**43.** PW19 is another co villager of de facto complainant having his house at 5/7 minutes' walk from that of PW1. He also corroborated the statements of PW17, PW18 and other witnesses. He also arrived in the

house of PW1 hearing hue and cry and found the dead body of the victim lying on a cot. He found the injuries and bleeding on the body of the victim as described by the other witnesses. He also stated that the sniffer dog brought by police indicated a place where the appellants had been working and binding rods. He identified the appellants in court as the persons who were present at the spot on the relevant date. He also claimed to have been interrogated by the police.

**44.** A medical officer, who examined the appellant Bikash Murmu, was examined as PW20. He examined Bikash Murmu on May 5, 2021 and found:

- i. There was nothing to suggest that Bikash Murmu was incapable of performing sexual intercourse.
- ii. No injuries were detected either in his private part or in any other areas of his body.
- iii. No foreign body was detected in his private part.
- iv. Semen could not be collected however urethral smear and swab were collected for examination by FSL.
- v. Scalp hair, pubic hair nail cutting and scrapping were collected and preserved.

PW20 proved the report prepared after such examination containing his signature and that of the accused, which was admitted in evidence and marked as exhibit 15 series.

**45.** A staff of Kharagpur Sub-divisional hospital deposed as PW21. He stated that wearing apparel, vaginal swab, pubic hair, scalp hair and other articles were seized by the police in connection with Pingla P.S. Case No. 135 of 2021 dated May 3, 2021 in his presence. He identified and proved his signature on the seizure lists (Exhibits 16 and 17).

**46.** Another medical officer was examined as PW22. He stated that he examined the victim on May 3, 2021 and found her brought dead. He accordingly, informed Pingla Police Station for necessary action in writing.

**47.** The recording officer deposed as PW23. He received a written complaint from PW1 on May 3, 2021. On the basis of such written complaint he started specific case by filling up the formal First Information Report. The case was endorsed by the officer-in-charge to SI Prasanta Chakraborty for investigation. PW23 proved his endorsement of receipt of the written complaint (exhibit 2/2), the formal First Information Report (exhibit 18) and endorsement by the officer-in-charge (exhibit 18/1).

**48.** PW24 is the police constable who carried the dead body to the hospital under a dead body challan and identified the dead body to the doctor in terms of the directions of the investigating officer. He identified the copy of such challan.

**49.** Another police constable deposed as PW25. The investigating officer of the case seized certain articles from the appellant Chhotu

Munda and Bikash Murmu in his presence under separate seizure lists on May 5, 2021. PW25 proved his signature on such seizure lists (exhibit 19 and exhibit 20).

**50.** PW26 is a NVF and another witness to seizure lists dated May 5, 2021. He proved his signature on such seizure lists (exhibit 19/1 and exhibit 20/1).

**51.** Another police constable deposed as PW27. He happens to be a witness to seizure lists dated May 12, 2021 through which viscera, post mortem blood, nail scraps, scalp hair etc. and the wearing apparel of the victim were seized by the investigating officer. PW27 proved his signature on such seizure lists (exhibit 17/1 and exhibit 16/1).

**52.** The investigating officer deposed as PW28. He described the different steps taken by him in course of investigation of the case. He visited the place of occurrence and prepared rough sketch map thereof, examined available witnesses and recorded their statements. He also received and seized several articles under seizure lists which he proved and sent the articles for chemical examination. He also arrested the appellants, recorded their statements and seized certain articles as per leading statement of appellants. He also arranged for post mortem examination of the victim and collected its report. On conclusion of the investigation, he submitted charge sheet under Sections 448/376D/302/120B of the Indian Penal Code, against the appellants. He proved several seizure lists through which he seized several articles. He also

proved the labels attached to the seized articles. PW28 also proved the relevant portion of the statement of appellant Bikash Murmu, on the basis of which the wearing apparels of the victim as well as such appellant were recovered (exhibit 51 and exhibit 53, 54 and 55). He also proved the relevant portion of the statement of appellant Chhotu Munda, on the basis of which the wearing apparels of the victim and the offending weapon were recovered (exhibit 52). PW28 also proved the Forensic Science Laboratory (FSL) report received and collected by him (Exhibit 56). He submitted a supplementary charge sheet upon receipt of FSL report.

**53.** On conclusion of the evidence on behalf of the prosecution, the appellants were examined under Section 313 of the Code of Criminal Procedure, where, the appellants claimed to be innocent having been falsely implicated in the case. They pleaded ignorance with the incident. However, being invited, they declined to adduce any defence witness.

**54.** According to the case of the prosecution, the victim was raped and murdered. PW1, PW2 and PW5 stated in their deposition that after taking lunch in the afternoon, the victim went to wash utensils in the abandoned old house of PW1 which was beside the new house where they resided. When she did not return for quite some time, they started looking for her. Later they found the victim lying dead in naked condition in the store room of abandoned house. She had her wearing apparels torn, inner garments missing. Her body contained several

injuries including scratch marks all over the body of the victim. They also found bleeding from her lower private parts. All other witnesses corroborated such facts. They also saw torn wearing apparel, missing undergarments and bleeding from the private part of the victim. The dead body was brought from the place it was found and was kept on a cot. Police was informed. On arrival of police, the dead body was taken to hospital for post mortem examination.

**55.** Upon post mortem examination, PW6 found as many as 19 injuries on the person of the victim. All such injuries showed vital reaction confirming the injuries to be ante mortem in nature. PW6 also opined in his report that injury nos. 1, 2, 3, 4, 5, and 13 noted in his report marked as exhibit 11 were suggestive of manual strangulation. He also prepared a special report based on the post mortem report as per the request of the investigating officer marked exhibit 12. The testimony of PW1, PW2 and PW5 as well as other prosecution witnesses together with that of PW6 and that of exhibit 11, sufficiently establishes that victim died an unnatural death.

**56.** Besides, PW6 also opined in his deposition that injury no. 14 noted in exhibit 11 suggested forceful anal penetrations whereas; injury nos. 15, 16 and 17 described in his report were suggestive of forceful vaginal penetration. He specifically testified that injury nos. 6 and 7 of his report, exhibit 11, suggested forceful sexual assault upon the victim. Therefore, in consideration of the evidence of PW6 coupled with the

testimony of exhibit 11 and exhibit 12 it is quite established that victim was sexually assaulted prior to her death and that such sexual assault was forceful and consequently, against her will. As such, the victim was raped before her death.

**57.** As regards the person responsible for committing rape upon the victim and causing her death, it is not in dispute that the case is absolutely based on circumstantial evidence. Undoubtedly, there is no eyewitness to the incident. The evidence adduced on behalf of the prosecution is required to be considered to see if the prosecution has been able to convincingly establish the circumstances which support the hypothesis of guilt of the appellants to the exclusion of all others.

**58.** According to the case made out by the prosecution, PW1 and PW5, the parents of the victim testified that on the date of incident i.e. on May 3, 2021 in the afternoon, after they had their meal, the victim went to wash the utensils. At the relevant point of time, they were residing in the newly constructed house. There was an old abandoned house just adjacent to such house. The victim had gone to the old house for washing the utensils. After some time, they noticed that the victim had not returned after washing utensils. Then they started looking for her but she could not be found. After conducting search for some time, they went into the old house and found the victim lying dead in the store room of such house. On such discovery, they found the dead body in a naked condition with numerous injuries and scratch marks. The

wearing apparels were in torn condition with undergarments missing. The panty of the victim was found to be tightly tied around her neck. The dead body was brought to the residence of PW1 and laid down on a cot.

**59.** The condition of the dead body that of the wearing apparels of victim and the injuries found on the body including profuse bleeding from lower private part has been corroborated by almost all the witnesses examined on behalf of the prosecution. Such witnesses are the relatives of victim her neighbours and co-villagers of the de facto complainant. Their arrival at the place of occurrence after hearing hue and cry cannot be doubted. All the aforesaid witnesses including the parents of the victim have monotonously described the condition of the dead body, the state of the wearing apparel on the body of the victim. They have also described the nature of injuries found on the dead body and that there was profuse bleeding from the lower private parts. All such witnesses, in unison, have spoken of the presence of a reddish injury on the throat of the victim which was possibly the proximate cause of her death. The evidence offered by the prosecution, left no ambiguity with regard to the condition of the body and the nature of injuries found on it.

**60.** The materials on record demonstrate overwhelming evidence that the appellants, at the relevant time of incident, were working in the house of PW1 as masons and labourer as certain construction work was

going on there. The two male appellants were working as masons whereas the lady appellant was working as labourer. The labour contractor, PW10, testified that he received contract of repairing/construction work at the house of PW1 and he engaged and deployed the appellants for such work there. Defence has not been able to imprint any dent in such testimony of the prosecution evidence that the appellants were working in the house of PW1 at the relevant date and time of incident.

**61.** The victim went missing to be discovered dead when she went to wash utensils after the family had finished their afternoon meal. Evidence on behalf of prosecution is explicit that at the material time of incident, the appellants were the only outsiders present at or around the place of occurrence. In fact, prosecution has been able to establish that at the material point of time; only the appellants were present in and around the place of occurrence. Presence of any other person around the place of occurrence at the date and time of incident is completely ruled out.

**62.** Such circumstances were specifically confronted to the appellants in their examination under Section 313 of the Code of Criminal Procedure. The appellant Bikash Murmu in an answer to question no. 78, Chhotu Munda in his answer to question no. 28 admitted that at the relevant point of time they were the only persons present at the place of occurrence. Appellant Tapati Murmu in answer to the questions

put to her in her examination under Section 313 of the Code of Criminal Procedure, admitted to have seen the victim with her father, going to wash utensils and asking for the washing bar from her father, just prior to the incident. She also admitted in such examination that she was deployed for the work by Ajoy Khatua, PW10. In an answer to a question that she was the only person working at the relevant time, she replied in the affirmative and went on to say that at that time appellant Chhotu Munda was engaged in binding rods but appellant Bikash was neither with her nor with Chhotu.

**63.** The appellants, in their examination under Section 313 of the Code of Criminal Procedure were not only confronted in relation to their presence at the place of occurrence but they were also specifically asked that no one else except they themselves were present at the place of occurrence. In answer to such questions, the appellants answered in the affirmative.

**64.** Apart from that Exhibit- 4 goes to show that 1½ feet long bamboo stick was recovered by police as per the leading statement of the appellant Bikash Murmu. The said bamboo stick was stained with blood and was alleged to be used at the time of causing murder of the victim. A mud stained black coloured half pant and one gamcha were also recovered at the leading statement of Bikash Murmu which was seized through Exhibit- 5 series. Similarly, through Exhibit- 7 series, a light coloured torn blood stained white sleeveless vest on which mud

stains were visible alleged to be worn by the appellant Bikash Murmu together with a light yellow mud stained T-shirt was recovered as per the leading statement of the appellant Bikash Murmu. At the same time, a green and black-white printed lungi with mud stain and one yellow T-shirt with black colours were also recovered at the leading statement of the appellant Chhotu Munda which were seized through Exhibit- 6 series. The aforesaid articles were seized at the leading statement of the two male appellants in terms of the provision contained in Section 27 of the Indian Evidence Act. Such facts with regard to the recovery of aforesaid articles as per the leading statement of the appellants were duly confronted with the said appellants in their examination under Section 313 of the Code of Criminal Procedure. Exhibits- 44, 45, 46 and 47 series are the labels attached to such articles recovered at the instance of two male appellants recorded under Section 161 of the Code of Criminal Procedure were also proved as Exhibits- 50, 51, 52, 53, 54 and 55. In the facts obtaining from the evidence on record, the ratio laid down in the case of ***Jaikam Khan*** (supra) has not manner of application in the present case.

**65.** The aforesaid articles so recovered were sent for chemical examination by the Forensic Sciences Laboratory (for short, FSL). On examination by the FSL blood could be detected on the contents of earth sample, T-shirt, torn vest (*shandow gangee*), *gamcha*, *bamboo stick* and PM blood. In its chemical examination report, FSL opined that

the source of blood from the vest (*shandow gangee*) of Bikash Murmu contained blood both on the appellant Bikash Murmu and the victim. FSL also opined that the vaginal swab of the victim resembled the DNA profile found from the nail, hair of the appellant Bikash Murmu.

**66.** The argument has been advanced on behalf of the appellant Bikash Murmu that the attention of such appellant was not drawn to the chemical examination report submitted by the FSL, at the time of his examination under Section 313 of the Code of Criminal Procedure. Statement of such appellant was recorded under Section 161 of the Code of Criminal Procedure by the investigating officer and on the basis of specific portion leading to recovery, blood stained waste and bamboo stick was recovered in terms of the provisions of Section 27 of the Indian Evidence Act. Such articles recovered at the leading statement of the appellant were stained with blood.

**67.** In such view of the facts, the appellants were under obligation to explain the circumstances under which the victim died. No explanation whatsoever has been offered by the appellant Bikash Murmu as to how and under what circumstances his wearing apparel (*shandow gangee*) as well as bamboo stick recovered at his leading statement were stained with blood. No such explanation is forthcoming on the part of the appellants in discharge of their obligation. In ***Manohar Rajwade*** (supra) the Hon'ble Supreme Court noted that the prosecution must discharge its burden on it by adducing cogent evidence to prove the

presence of the accused at the place of occurrence. In the fact of the present case, the prosecution evidence has sufficiently proved the presence of the appellant at the date, time and place of occurrence. Not only that the appellant, in his examination under Section 313 of the Code of Criminal Procedure, admitted his presence at such place of occurrence.

**68.** Although certain articles like wearing apparels belonging to appellant Chhotu Munda was also recovered and seized by police on his leading statement. Significantly, such articles were not stained with blood or the FSL did not find blood on any of the wearing apparel recovered at the instance of appellant Chhotu Munda. As noted above, in her examination under Section 313 of the Code of Criminal Procedure, the appellant Tapati Patra categorically stated that she was present and working in the house of P.W. 1. She also described that the appellant Chhotu Munda was binding rods at the relevant point of time but the appellant Bikash Murmu was neither with her nor with Chhotu Munda. The circumstances appearing from the evidence adduced on behalf of the prosecution is quite evidence that the victim was raped. Murder was a fall out of the commission of the offence of rape. We have noted hereinbefore that the vaginal swab of the victim contained articles which confirmed the DNA profile of the appellant Bikash Murmu. His wearing apparels were also found to contain the blood of the victim. The appellant Bikash Murmu also failed to discharge his obligation to

explain the circumstances as to how his wearing apparels were stained with blood. In the light of such evidence, we are of the opinion that there are overwhelming evidence to establish that the appellant Bikash Murmu committed rape upon the victim.

**69.** The circumstances obtaining from the evidence on record indicates that no case of previous enmity or previous planning of commission of the offence stood made out by the prosecution. The victim was raped and as a fall out of such offence, she was murdered, obviously, by the person who committed rape upon her. We have held hereinbefore, on the basis of the evidence on record, that it was the appellant Bikash Murmu who committed rape upon the victim. No previous meeting of mind for the commission of such offences of rape and murder can be attributed upon other two appellants, namely, Chhotu Munda and Tapati Patra. There is nothing to suggest that such appellants shared common intention in committing the offence. There is also nothing to establish that the three appellants were working in tandem in the commission of the offences.

**70.** In such view of the facts, there appears no evidence to hold that the appellants Chhotu Munda and Tapati Patra can be held guilty for the offences they were charged with. Their complicity in the commission of the offences charged are not established beyond all reasonable doubt. The evidence on record and the circumstances proved at the trial established that it was the appellant Bikash Murmu alone responsible

for committing rape upon the victim and causing her death. The other two appellants namely Chhotu Munda and Tapati Patra are entitled to be acquitted on such score.

**71.** All the three appellants were charged with the offences punishable under Sections 448/276D/302/120B of the Indian Penal Code, 1860. Since, on the basis of evidence on record as well as circumstances proved at the trial, we have held that although, the appellant Bikash Murmu alone committed rape upon the victim and that the other two appellants Chhotu Munda and Tapati Patra, neither participated in the crime nor shared common intention towards the commission of such crime, a conviction under Section 376D of the Indian Penal Code, does not stand. Appellant Bikash Murmu, alone can be held guilty and can well be convicted for the offence punishable under Section 376 (1) of the Code of 1860 applying the principles envisaged under Section 222 of the Code of Criminal Procedure. Similarly, the said appellant Bikash Murmu, alone was also responsible for causing death of the victim in an effort to thwart her from disclosing such incident.

**72.** The entirety of the evidence on record speaks that the appellants were working in the house of P.W. 1 as masons and labourer. P.W. 10 stated that he procured a contract of repairing work at the house of P.W. 1 and accordingly he engaged and deployed the appellants in his house. P.Ws. 1, 5 and other witnesses have also stated that the appellants were working as masons and labourer in the house of P.W.

1. If that be so, the appellants cannot be said to be trespassers in the house of P.W. 1. They were working in the said house in such capacity duly authorised by the owner of the house. Therefore, a conviction under Section 448 of the Indian Penal Code, 1860 cannot be sustained. Similarly, since we have held that the appellant Bikash Murmu was the only person responsible for the commission of offence of rape and murder of the victim, no question of a conviction under Section 120B of the Code of 1860 does arise at all.

**73.** The offence punishable under Section 302 of the Indian Penal Code, 1860 prescribes a punishment for death. Death sentence has been imposed in the case. It is well-settled principle of law that imposition of death sentence upon a convict should be the last resort when the option of imposing any punishment other than the death sentence is squarely foreclosed. It is also trite law to evaluate the aggravating circumstances and mitigating circumstances and while imposing sentence of death, the Court must come up with a definite conclusion that the convict was beyond reformation and would be a menace to the society if allowed to return to the society after a certain period.

**74.** We have considered the psychological evaluation report as well as a report on the socio-economic background of the convict. According to such report, convict Bikash Murmu is aged about 32 years and hails from a village within the district of Paschim Midnapore. He comes from

a poor background. The report also indicates that there was no history of violence or neglect on the part of the parents of such appellant. The said convict has his wife and a daughter who is a student of class – VII. Convict Bikash Murmu left his studies at primary level. He has been working as a mason and used to help his father financially. His wife and daughter are dependent upon his father. The report also indicates that there was no previous criminal antecedent of any type against such convict. The convict Bikash Murmu was found physically fit and mentally sound and his conduct in the correctional home was reported to be good. The medical examination report of the convict Bikash Murmu showed clinically no psychotic symptoms present. However, the mood was objectively found to be depressed.

**75.** Therefore, from the aforesaid reports it is quite evident that the appellant Bikash Murmu comes from a poor family background having no landed properties or permanent source of income for the family. He has his wife and children totally dependent upon his income. He is aged about 32 years. His overall conduct in the correctional home was good and he had no criminal antecedents whatsoever. In consideration of such report, it cannot be said that the appellant is beyond reformation and the option of awarding any sentence other than death penalty is foreclosed and would be insufficient in the facts and circumstances of the case. On the basis of the circumstances proved at the trial, we are

not in a position to return a definite finding that the case falls under the category of 'rarest of rare case'.

**76.** In the light of discussions made hereinbefore, we are of the opinion that in the facts and circumstances of the present case, imprisonment for life would be a sufficient punishment instead of death penalty. However, considering the nature of the incident and the manner in which it was committed and also taking into account the age of the appellant Bikash Murmu, who is now aged about 32 years, we are of the opinion that life imprisonment of the victim should be without remission for 40 years from the date of his arrest. We are not minded to confirm the death sentence awarded by the learned trial court. We accordingly commute the death sentence, imposed upon the appellant Bikash Murmu, into one of life imprisonment without remission for 40 years from the date of his arrest.

**77.** Therefore, in view of the discussions made hereinbefore, the appellants Chhotu Munda and Tapati Patra are hereby acquitted of all the charges. They be set at liberty forthwith, if not wanted in connection with any other case, subject to execution of a bond to the satisfaction of the learned Trial Court which shall remain in force for a period of six months, in terms of Section 437A of the Code of Criminal Procedure. Connected applications, including pending bail applications, if any, shall also stand disposed of.

**78.** In the result, thus, **Death Reference No. 4 of 2023** along with the appeal being **C.R.A. (DB) 6 of 2024** and **C.R.A. (DB) 256 of 2024** are disposed of accordingly.

**79.** A copy of this judgment along with the Trial Court records be remitted to the appropriate Trial Court forthwith. In view of the commutation of the death penalty of Bikash Murmu, any warrant issued by the appropriate Court with regard thereto in respect of Bikash Murmu stands modified in terms of this judgment and order. Department will inform the Correctional Home, where the appellant is lodged, as to this judgment and order. The Correctional Home will record the fact of commutation of death penalty to the sentence awarded by this judgment and order in respect of Bikash Murmu, in their records.

**80.** Period of detention already undergone by the appellants shall be set off against the substantive punishment in terms of the provisions contained in Section 428 of the Code of Criminal Procedure.

**81.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

**[MD. SHABBAR RASHIDI, J.]**

**82.** I agree.

**[DEBANGSU BASAK, J.]**