

**C.R.A. 529 of 2010
With
CRAN 1 of 2025**

**RamuMajhi
Vs.
State of West Bengal**

Mr. Partha Sarathi Bhattacharyya,
Mr. Bhaskar Seth,
Mrs. Sukla Das Chandra,
Ms. SwarnaliSaha

... for the appellant.

Mr. SaibalBapuli,
Mr. Arani Bhattacharyya

..for the State

Mr. Manoranjan Jana

.... for the Opposite Party.

1. The instant appeal is directed against judgment and order of conviction dated 23rd February, 2010 passed by the learned Additional Sessions Judge, Fast Track Court, Mal, Jalpaiguri in Sessions Trial No. 1(8) of 2008 arising out of Sessions Case No. 50 of 2008. The appellant was convicted and sentenced to rigorous imprisonment for life together with fine of Rs. 1,000/- for the offence under Section 302 of IPC, and rigorous imprisonment for 3 years together with fine of Rs. 300/- for the offence under Section 324 of the IPC.

2. The prosecution case is that on 6th October, 2007, Lila Boti Teli (PW 1) lodged a complaint, with the Kranti Out Post of the Mal Police Station at Jalpaiguri, that the appellant struck a blow with a "Kaalam Chhuri", (a sharp cutting local long knife) on her mother's neck (Jaoni Teli) and the victim died instantly. The victim was cutting vegetables at the verandah of the house of the complainant, in preparation for lunch.

3. The appellant thereafter left the house and went to the canteen of the tea factory, where he attacked, with the said Kalam Chhuri, one Umesh Mishra, Sabita Murmu, Mangru Munda,

Kayum Shekh, Bhanu Pratap Oraon, all working with the Jogesh Chandra Tea Estate. The appellant's and the victim's residential quarters were adjacent to each other at the Dhodhoa Factory Line of the tea garden. Mal Police Station thereafter registered an FIR against the appellant on the same day under Sections 302 and 326 of the IPC.

4. At the time of the first incident, the third grandson of the victim and third son of PW-1, namely, Suraj Teli (PW 2), who was 5 & 1/2 years of age at the time, was present in the house. He had witnessed the attack by the appellant on Jaoni Teli, the first victim.

5. Inquest was conducted on the body of the victim on the same day and it was sent for postmortem. The wearing apparel of the victim was seized. After attacking the victims, the appellant was apprehended by local persons who beat him up. He was thereafter handed over to the police. The police seized the offending weapon, viz., a Kaalam Chhuri.

6. Investigation was conducted by the Investigating Officer, S.I. Abhijit Sarkar (PW-12). The postmortem indicated the following injuries on the victim.

“three deep cut injuries parallel to each other with sharp margins from over the right side of the neck. The sizes are (1) 6” x 4” x 4” and another 6” x 4” x 3 1/2” and the size of the third one 5” x 4” x 2”. Those injuries were extending from right clavicular end (sterno-clavicular joint) to the back side of the right ear. All deep structures of the neck were severely cut. All vessels of the neck, right sub-clavicular muscle were deeply cut. Cervical vertebra No. 3, 5 & 7 were deeply cut. Spinal cord was also cut to C-3 to C-4 level. Muscular bleeding with blood found at the injury side. These cut injuries gapping in nature.

In my opinion, the death was shock and hemorrhage following cut throat injury which are anti

mortem and homicidal in nature and is caused by sharp cutting edge weapon. In my opinion the death was 12 to 24 hrs before the time of holding P.M. which was held at 2.30 P.M.”

7. Charges were framed against the appellant and the trial commenced.

8. Lila Boti Teli (PW 1) was the complainant. Although in the complaint she did not state that she was not present at home when her mother was attacked by the appellant, she stated before the Trial Court that she returned home after working the morning shift, in the tea garden and found her mother dead in the veranda. She was informed by PW-2 that the appellant killed her mother with a sharp cutting instrument assaulting her on the throat. She also heard from the villagers on the way back to her house that the appellant murdered her mother and also assaulted Umesh Mishra, Sabita Murmu (PW-5), Mangru Munda (PW-3), Kasim Seikh (PW-7) and Bhanu Pratap Oraon.

9. She lodged a written complaint before the Mal Police Station scribed by Bhukhan Baraik (PW-4). She confirmed that the appellant resided in the residential quarters adjoining her's. She admitted in cross-examination that her son was studying in Class-I. No suggestion was put to her, in cross-examination by the defence that she could not have been informed by her son that the appellant murdered her mother.

10. Suraj Teli (PW 2) was 7 years old at the time of trial and hence a child witness. The Trial Judge put about 9 questions to ascertain whether PW-2 was mentally capable of deposing in Court. The Trial Judge recorded its satisfaction thereafter and proceeded to allow examination-in-chief of PW-2. He deposed that

his grandmother died a year ago at about 9 in the morning. He stated that the victim was cutting vegetables and was killed by the appellant with the help of Jhurni (sharp cutting weapon) on her throat.

11. The appellant was identified at the dock. He further stated that before slitting the throat of the victim, the appellant pressed her mouth shut with his hand. He stated that his parents were not in the house at the relevant point of time and his mother returned only at 10 am whereafter he told her about the incident and then reiterated the same to the persons who assembled at his house.

12. In cross-examination, he stated that he studied in Class I at the Tea Garden School but could not name the school. He also could not give the names of his teachers. He stated that he went to school regularly and that he had four female teachers and three male teachers. He named his friends in the school, who stay in the tea garden. He stated that there was a playground in front of his school where he played cricket with his friends. He admitted that he could not write his name. He identified the houses of his friends, Soham and Prem, near his house. He further stated in his cross-examination that he informed about the incident to one Vodro and then to his father, and then to his mother.

13. He admitted that he came to Court with his parents to depose. He also deposed that while coming to Court his father told him how to depose evidence regarding the incident about the murder of his grandmother. He could not say what happened to this grandmother immediately after the incident. He admitted

that he was examined by the police. He clearly and assertively denied the other suggestions given to him including the fact that the appellant did not kill his grandmother.

14. Mangru Munda (PW-3) was a victim in the second incident, which occurred on the same day. He deposed that the appellant approached the canteen at the tea garden, when he, along with Umesh, Sabita, Kayum, KashimSekh and others were also present in front of the canteen. He deposed that the appellant immediately attacked Umesh with a knife and injured him on his arm. The appellant thereafter attacked Sabita, who sustained injuries on her cheek. He deposed that the appellant injured him on his shoulder and neck with the knife. After attacking him, the appellant attacked Bhanu Pratap and hit him on his head with the knife. Sabita and Bhanu Pratap were referred by the tea garden doctor to the Jalpaiguri Sadar Hospital. The others were treated in the dispensary at the tea garden by Dr. Sanjoy Barat (PW-10). The appellant was apprehended by the local people. Thereafter police came and arrested the appellant.

15. He thereafter went to the house of the first victim Jaoni Teli and came to know from PW-2 that the appellant murdered Jaoni Teli in his presence. He also deposed that PW-2 informed several persons who had assembled at their residence, that the appellant had attacked and murdered his grandmother. He deposed that he was a witness to the seizure of the Kalaam Chhuri i.e. the weapon. He identified his signature on the seizure list.

16. There was no cross-examination as to the fact that PW-2 could have told PW-3 that the appellant murdered his grandmother. On the contrary, in cross-examination, it was elicited from PW-3 by the appellant that PW-2 had first told his mother about the incident and thereafter told PW-3 and several others.

17. PW-3 also deposed in cross-examination that after assaulting him and six others, the appellant was running away with the knife and the local people caught him and severely assaulted him. He stated that when the police arrived, the appellant came down and handed over the offending weapon that was seized by the police.

18. Bhukan Baraik (PW-4) deposed that the appellant attacked the persons named by PW-3. He thereafter came to the house of the deceased and was a witness to the inquest. He also admitted that he wrote the complaint under the instruction of PW-1.

19. Sabita Murmu (PW-5) was another victim, stabbed by the appellant near the canteen of the factory. She deposed that the appellant stabbed her on her left cheek with a knife and inflicted a cut wound of 5 to 6 inches. He also stabbed her in the back and kicked her in the abdomen. She suffered grievous injuries and was taken to the Tea Garden Hospital and later to the Jalpaiguri Sadar Hospital for treatment. She also came to know that the appellant had killed Jaoni Teli at her residence and he had assaulted PW-3 and three others.

20. In course of cross-examination she stated that the appellant was disturbed by the fact that there was some alleged

defalcation of the provident fund, payable to his mother. She, however, clarified that the mother of the appellant had already received all provident fund dues which were paid by demand draft. She stated that the appellant was holding two knives.

21. Kasim Seikh (PW-7) was another victim of the second assault by the appellant. He stated that he was a worker in the tea garden. Around 9 am, he heard a commotion from the house of the victim and he rushed to the place and found the victim lying dead. He confirmed that PW-2, Suraj Teli, told him and several other persons that the appellant murdered Jaoni Teli, the deceased victim.

22. He also stated that the appellant thereafter rushed towards the factory and attacked him and others with a Kaalam Chhuri. He sustained cut injuries on the left wrist inflicted by the appellant. There was no cross-examination that the PW-7 could not have heard from PW-2 of the appellant having killed Jaoni Teli at home. He indicated that the appellant used to ill-treat his first wife. The further indicated that the deceased protested against the same which the appellant did not like, and that was the likely motive of the murder.

23. He further stated in cross-examination that another motive for the appellant to commit the offence was that upon his second wife joining the tea garden as a worker, he was removed from his job and was disturbed therefor.

24. PW-8, Dr. Asish Kumar Sarkar, was the post mortem doctor.

25. PW-9, Sitaram Teli, was a cultivator. He was a witness to the seizure list. At around 10:30 am, when he came to know that

the victim was murdered, he rushed to her residence and was told by PW-2 that the appellant murdered the victim by slitting her throat at her residence while she was cutting vegetables that morning. Several persons had assembled at the victim's house.

26. He was a witness to the seizure of the weapon by the police and identified his signature. He confirmed that the police seized blood-stained earth from the place of occurrence and he signed as a witness to such seizure list. He identified the knife (Kalam Chhuri). His evidence could not be seriously shaken in the cross-examination, though he admitted that such knives are commonly available in the area.

27. Dr. Sanjoy Barat (PW-10) was an RMP at the tea garden dispensary. He admitted having treated all the other victims except PW-5, Sabita Murmu and Bhanu Pratap, who were sent to Jalpaiguri Sadar Hospital for better treatment.

28. SI Abhijit Sarkar (PW-12) was the investigating officer. He narrated the entire investigation conducted by him but admitted that he had not obtained the statement of PW-2.

29. The appellant was thereafter examined under Section 313 of the Code of Criminal Procedure. The answers given by the appellant indicated that he was of sound mind. Further the medical examination of the appellant, after he was assaulted by local persons on the day of occurrence, indicated that there were no neurological defects in the appellant. He stated in answer to one circumstance put to him that he was mentally disturbed at the time when the incident occurred. He pointedly denied some circumstances as false and denied knowledge of matters he could not have known.

30. Learned Counsel for the appellant would argue before this Court that the sole eye-witness to the incident of murder of Jaoni Teli, the victim, was a child of seven years old. His evidence should not have been believed since the child has admitted that he was told to depose about the murder by his father on the way to the Trial Court.

31. The reliability of the deposition of a child witness is to be tested with reference of the decision of the Supreme Court in the case of ***Pradeep v. State of Haryana***, reported in **2023 SCC OnLine SC 777** wherein it was held as follows:-

9. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution

32. Indeed at first glance, it would appear that the child witness may have been tutored by his father before deposing on the said date. What, however, compels this Court to accept the evidence of PW-2 are as follows:

(a) The Trial Judge is the best person to determine the demeanor and competence of a witness, more particularly the child witness. In this regard, the decision of the Supreme Court in the case of ***Jagdish Singh v. Madhuri Devi*** reported in **(2008) 10 SCC 497** may be referred to:-

“28. At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial

court in appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable

Emphasis applied

(b) The Trial Judge having found the child witness competent enough to depose in the trial, it would be grossly inappropriate for the High Court sitting in appeal to discard the evidence of such child witness. Admittedly, PW 2 stated that he came to Court with his parents on a bicycle. It is only natural that a child will ask his father where they were going. It is equally natural for the father to tell the child that he was being taken to depose in evidence in the trial of this case i.e. regarding the death of his grandmother. PW2 has not said that his father had told him to depose in any particular manner or state anything in particular. PW-2 therefore cannot be called a tutored witness. This situation can be related to the guidance, confidence, and encouragement given by parents to their children before the latter proceed to enter in the examination hall to write the most important exam of their lives. PW 2, on that relevant day, indeed was going to depose about the toughest and most traumatized spell of his life namely, telling the truth about the murder of his grandmother in our adversarial system of justice.

(c) The factum of the child witness having told several persons including PW-3, PW-4, PW-5 and PW-7 on the date of the incident that he saw the appellant, pressing the mouth of his grandmother and slitting her throat, corroborates the evidence deposed by PW-2 albeit a child witness;

(d) None of the witnesses to the prosecution were cross-examined to the effect that the PW-2 did not or could not have told them of the act of the appellant in slit the throat of the victim after pressing her mouth.

(e) The child witness has clearly and distinctly stated that his grandmother was sitting in the veranda of the house and cutting vegetables to prepare a meal for the family. PW-2 has identified and named his friends both from the School that he attended and from near his house. PW-2 named his two elder brothers. He also deposed that there was playground in front of his school where he played cricket with his friends.

(f) The fact that PW3 was at home with his grandmother was confirmed by PW-1. There is no cross examination to the contrary by the defense.

33. This Court has come across the research paper titled ***‘Eyewitness Testimony in Children’*** authored by 7 authors, including- Ms. Sue D. Hobbs, California State University, Mr. Jonni Johnson, University of California, and Mr. Davis Daniel Bederian, University of California , published by Researchgate on 16 December 2013, which has dealt with the deposition of a child witnesses in the criminal justice system. The relevant findings thereof are set out below:-

CHILDREN’S AGE

Children can at times recall things that happened years before when they were quite young (Peterson, 2012). However, it is extremely unlikely that children (or adults) can remember and report events that occurred before age 1 (Peterson). Additionally, many individuals cannot remember traumatic or nontraumatic events that occurred before age 3 (Malloy &Quas, 2009; Terr, 1988), a phenomenon often referred to as infantile amnesia. Although the age at which the infantile amnesia barrier is considered to take hold has been gradually lowered by researchers (e.g., some older children and adults can recall

information down to 2 years of age; Usher & Neisser, 1993), the offset of infantile amnesia usually is thought of as around 3 to 4 years of age, such that most older children and adults cannot accurately retrieve memories of events that occurred before those ages (Peterson, 2012). In any case, children's ability to remember and accurately report events continues to improve with age.

CENTRAL VERSUS PERIPHERAL DETAILS

An important factor that plays a role in memory for events in general is the centrality of the information (i.e., how central or peripheral the details are that need to be remembered). For traumatic events, however, a "tunnel effect" can occur in memory, with heightened memory for central details and diminished memory for peripheral details (Christianson, 1992). Typically (albeit not always), in criminal investigations, central details are of most importance. **As a general rule, crime witnesses are most likely to encode and remember central aspects of the crime better than more peripheral details. This trend holds for older and younger child witnesses, as least once children reach the age of approximately 5 years** (e.g., Eisen, Goodman, Qin, Davis, & Crayton, 2007).

Even if children remember fewer peripheral compared to central details or remember peripheral details incorrectly, **memory for central details still can be quite accurate....**

PARTICIPANT VERSUS BYSTANDER CHILD WITNESSES

Many child eyewitness memory studies concern bystander witnesses—for example, children who view others performing actions. **However, there is evidence to suggest that children who actively participate in events, more as a victim might, remember the event better than do bystander witnesses** (e.g., Rudy & Goodman, 1991).

LYING

When a child discloses information to authorities, concerns may be raised about the child's honesty. There are many legal situations in which children may be motivated to lie (e.g., if coached not to reveal a parental transgression). An antisocial lie is specifically meant to protect oneself from harm or to provide oneself with personal gain (Talwar & Lee, 2008a). Although children's antisocial lies can certainly play a role in legal cases (e.g., when the child is accused of delinquent acts), when the child is a witness or victim, concerns usually center on the child being coached to knowingly make a false allegation (e.g., in a custody case, to accuse the father of sexual abuse so that the child can stay with the mother) or **protect a culprit who has asked the child to lie or keep a secret.**

Lying appears to develop through three main stages: (1) beginning to make untrue statements at around 2 to 3 years of age, (2) lying to conceal one's own transgressions at 3- to 4 years of age, and (3) being able to maintain lies at 7 to 8 years of age (Talwar & Lee, 2008a). The development of children's lie-telling is related to Theory of Mind ability (Talwar, Gordon, & Lee, 2007) and executive functioning (Talwar & Lee, 2008b). Of interest, most research has not shown a relation between understanding of lying and lying to conceal a transgression generally (London & Nunez, 2002; Talwar, Lee, Bala, & Lindsay, 2002). **However, understanding of lying was related to lie telling when it involved concealing a transgression by a parent** (Talwar, Lee, Bala, & Lindsay, 2004) or when lie telling involved maltreated children making a false allegation (Lyon & Dorado, 2008).

A forensically relevant question with respect to children's lying is whether the lie is to conceal a transgression committed by someone emotionally close to the children. **Children may be unlikely to lie to conceal the transgression of a relative stranger,** although younger children are more likely to do so than older children (Pipe & Wilson, 1994). Talwar et al. (2004) examined whether 3- to 11-year-old children would cover up their parents' transgression and found that most children would disclose the transgression even with the parent in the room at the time of the interview. However, the children were more likely to lie to protect a parent if they themselves could not be blamed for the transgression. In a study of 3- to 6-year-olds, Bottoms, Goodman, Schwartz-Kenney, and Thomas (2002) reported that older

children told to keep a secret by their parents were more likely to withhold information about their parent's transgression than older children who were not told by their parents to keep the acts a secret. Although such findings provide important insight about children's lying behavior, it should be noted that the transgressions in these studies were quite mild (e.g., breaking a toy). The dynamics could well change for lies about more serious acts, such as child maltreatment and other types of violent crime.

Children can and do lie to protect themselves and to protect others. When children are lying in such a manner, can these lies be detected? Most studies indicate that adults are not accurate at detecting children's lies (Crossman & Lewis, 2006; Goodman et al., 2006) and that they are no better at detecting children's lies than adults' lies (Goodman et al., 2006). Coached lies by older children may be particularly difficult to detect (K. L. Warren, Dodd, Raynor, & Peterson, 2012). **However, NysseCarris, Bottoms, and Salerno (2011) found that adults could detect 3- to 6-year-old children's lies about their parents' transgressions at above chance levels.** A goal for future research is to better explain the difficulty in the detecting children's lying

Emphasis applied

34. What follows from the above is that, a child is more likely to lie to protect himself/herself, and/or his near and dear ones, whom the child is emotionally attached to. They are more likely to tell the truth about the acts of strangers and/or the persons with whom they have no emotional attachment. More importantly, the lies of children aged 5-7 years, is easily detectable. Humans are better at providing central/broad details of a crime. The same also applies to a child. The children, who are victims of the crime, by being a participant thereof, are more likely to tell the truth. Children must have strong personal motivation to lie. A child will keep a secret if he or she is asked to do so.

35. PW-2 was 5 and half years old when he witnessed the crime. He was 7 years old when he deposed before the Trial Court. Hence, if he had lied, the Trial Court could have easily detected it. PW-2 was not there to depose about his parents or relatives. Hence, he did not have any interest in falsely implicating the accused. PW-2 is a victim in a broader sense of the term. Witnessing the murder of one's grandmother is by itself

a traumatic incident. Therefore he will not lie, and will tell the truth to see that the real culprit is brought to justice. There is no evidence on record which would suggest that PW-2 was asked by anyone to keep any event/fact secret from the Court. The decision of the Supreme Court in the case of ***Dalip Singh v. State of Punjab*** reported in **(1953) 2 SCC 36** may be referred to in this regard:

26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. **Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person**

Emphasis Applied

36. In the facts and circumstances of the aforesaid, this Court is of the view that the evidence of PW-2, albeit a child, cannot be discarded. The Trial Court has rightly relied upon the evidence of PW-2, duly corroborated by the other witnesses.

37. This Court notes from experience that the deposition of a child witness, who withstood cross-examination in an adversarial system like ours, involves a certain degree of sanctity. A child may lie or may have been taught to lie. His examination-in-chief may also accurately spell out lie. However, on being subjected to cross-examination, there is a high probability that a child will break down, if he/she had lied in the examination-in-chief. On the contrary, an adult and mature witness may have the ability to switch stands and overcome pensive suggestions given during the cross-examination. A child witness cannot do the same.

38. The subsequent attacks on five other persons by the appellant and inflicting injuries of various degrees on them and grievous injuries on two of them are sufficient to prove both the

incident of murder of Jaoni Teli in the first round and attacking the five employees of a Tea Garden Factory later at the Canteen, are clearly established.

39. The aforesaid subsequent conduct of the accused influences one of the facts in the issue namely, the murder of the victim by the accused (his previous conduct). The previous and subsequent conduct of the accused form part of the same transaction given that he immediately and on the same spell attacked the other victims, that too, with the same weapon he used to murder the victim.

40. The findings of injuries in the post-mortem indicates that the injuries have been caused by a knife/sharp weapon. Sections 6 and 7 of the Evidence Act may be referred to for the proposition of relevance of facts forming part of the same transaction:-

6. Relevancy of facts forming part of same transaction.- Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant whether they occurred at the same time and place or at different times and places.

7. Facts which are the occasion, cause or effect of facts in issue.- Facts which are the occasion, cause or effect, **immediate** or otherwise, of relevant facts, or facts in issue, or **which constitute the state of things under which they happened**, or which afforded an opportunity for their occurrence or transaction, are relevant.

Emphasis applied

41. The Supreme Court in ***A.N. Venkatesh and Anr. v. State of Karnataka*** reported in ***(2005) 7 SCC 714*** in dealing with the proposition namely, the conduct of an accused being admissible as evidence under Sec. 8 of the Evidence Act, provided that the conduct influences a fact in issue. Paragraph 9 thereof is setout below:-

“9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct

under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in *Prakash Chand v. State (Delhi Admn.)* [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] . Even if we hold that the disclosure statement made by the accused-appellants (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW 4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act.”

emphasis applied

42. In the backdrop of the above, this Court is of the clear and unequivocal view that the finding of the Trial Judge against the appellant for having committed offence under Sections 302 and 324 of the Indian Penal Code calls for no interference whatsoever.

43. The instant criminal appeal fails and is hereby dismissed.

44. Before parting with this case, this Court would like to record its appreciation for the very sincere and dedicated efforts put in by the learned counsel for the appellant Mr. Partha Sarathi Bhattacharyya, in canvassing the case of his client.

45. Let a copy of this judgment be sent down to the Court below for information.

46. Let the T.C.R. be returned to the Court below at once.

47. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)