NO. 38

Judgement in Sessions Trial NO. 1(11)90 of the Court of the Additional Sessions Judge, 2nd Court, Alipore, 24-Parganas (South), Dated 12.8.91

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Ori.P.No.116.

IN THE 2ND COURT OF THE ADDITIONAL SESSIONS JUDGE
SOUTH 24 - PARGANAS AT ALIPORE

SESSIONS TRIAL NO. 1(11)90

STATE
Vs.
Accused Dhananjoy Chatterjee @ Dhana.

Under Sections 302/376/380 of the Indian Penal Code.

J U D G E M E N T

Accused stood his trial being charged for committing offences under Sections 302/376/380 of the I.P.C. for committing murder of one Hetal Parekh in flat No. 3A on 3rd floor of Anand Apartment at 57A and B, Padmapukur Road on 5th March, 1990, and for committing rape on the aforesaid Hetal Parakh before murder, and also for committing theft of a ladies "~~Ricoh~~" "Ricoh" wrist-watch from the aforesaid flat. Prosecution case in brief is as follows :-

A message was received over telephone at Bhawanipore P.S. on 5.3.90, at about 9.15 P.M. from one Mr. Nagardas Parekh of Flat No. 3A of Anand Apartment at 57A and B, Padmapukur Road, to the effect that his daughter had been murdered in his aforesaid flat in the same afternoon. P.W.28, Gurupada Som, A sub-inspector attached to Bhawanipore P.S. at the relevant point of time and who was acting as duty officer in the said P.S. at the particular point of time, recorded the particular message in G.D. Entry No.514, dated 5.3.90,

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at 9.15 hrs. in the Bhawnipore P.S. and left the ~~P.S.~~ P.S. with the Officer-in-charge and force for the particular spot to take necessary action. After reaching the particular place, police examined Jashomati Parekh, the mother of the victim, the statemenet of Jashmoti Parekh was recorded by the aforesaid S.I. Gurupada Som. The same had been read over and explained to the aforesaid Jashmoti Parekh, who admitted the same to have been correctly recorded, She recorded her signature therein. The particular statement was identified in court by P.W.3, Jashmoti Parekh and also by P.W.28. It was marked ext.2. The particular statement was treated as F.I.R., and investigation was initiated on the basis of the particular F.I.R. In Ext.2 Jashmoti Parekh stated the following :-

She had been residing with her husband Nagardas Parekh, son, Bhabesh Parekh, aged about 19 years, and daughter, Hetal Parekh, aged about 18 years, since May, 1987. Her husband was engaged in business, having his office at 71, Canning Street. Her son was studying at BhawniporeEducation Society and her daughter was studying at Welland Goldsmith School, Bowbazar. On 5.3.90, Her husband left for his place of business at 9 A.M., and her son returned from college at about 11.30 A.M., and after taking his meal, left for his father's place of business. Hetal attended I.C.S.C. Examination at Welland Goldsmith School, Bowbazar and came back to residence there from at about 1 P.M. P.W.3 had a habit of visiting Lakshmi Narayan Mandir at Sarat Bose Road at 5/5.30 P.M. everyday. On the date of the incident, that is is on 5.3.90, at about 5.20 P.M. she left for the aforesaid temple leaving behind her daughter Hetal in her aforesaid flat. She was brought down by the lift by lift-man Ramdhani. She returned to her residence from the temple at about 6.05 P.M. As she was about to enter the lift, she was told by liftman Ramdhani that one of the security guards, Dhananjoy Chatterjee attached to the particular house had gone to her flat for contacting the security agency over

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contacting the security agency over telephone. She expressed her annoyance on hearing such information, as her daughter Hetal had complained earlier on several occasions that the aforesaid security guard Dhananjoy teased her (Hetal) on her way to and back from school. She went upstairs by the lift and rang the bell at the entrance of the door. The door was not opened, even though she rang up the door bell repeatedly. Thereafter, she gave shouts and several people came to the place being attracted by her shouts. By breaking open the lock the complainant and others entered the flat. She found the door of her bed room open. Hetal was found in the particular bed room lying on her floor. Her midi-scart and blouse were found to be pulled up and her private parts and breasts were visible. Patch of blood was found near her head. Blood drops were seen on the floor. Her both the hands had blood-stained . The wearing apparels also had bloodstained. Marks of blood were found on her face. Her panty was lying near the entrance door. The victim appeared to have lost consciousness and the complainant brought her down by the lift. A doctor came there being called by some of the neighbours. He examined the victim and pronounced her dead. At about 7 P.M., Bhabesh returned from his place of business. In the meantime, another doctor also was called and he examined the victim and declared her dead. Hetal was brought up-stairs and laid on her bed in her room, after Bhabesh returned from his place of work. The husband of the de facto complainant returned around 8.30 P.M. and rang up police. On the basis of this complaint a case was registered with Bhawnipore P.S. Thereafter police swung into action, searched for the accused at different place finally nabbed him at his native place and recovered the "ricoh" wrist-watch stolen from the particular flat on the basis of statement given by the accused. Police in course of investigation took photographs of the flat and its surroundings. Sketchmaps of the police of occurrence had been prepared. On 6th March, 1990, an intimation was given to police by P.W.3 that the "ricoh" wrist-watch purchased a few days

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purchsed a few days before the incident and kept in the almirah of her bed room had been taken away by the accused. The particular letter was marked ext.3. During investigation police seized a broken chain, a cream coloured button with four holes and certain other articles from the place of occurrence. The broken chain was found to be belonging to one Gora alias Couranga, who was examined as P.W.11, and who was reported to have made over the particular chain to the accused a month before the date of the incident. The cream coloured button with four holes during investigation was found to be the one, which was missing from the shirt of the accused, which had been seized from his residence at his native place in pursuance of his statement, and which he had been wearing when the alleged offences were committed.

On completion of investigation, police submitted chargesheet against the accused for committing offences under Section 302 of the I.P.C., Section 376 of the I.P.C. and Section 394 of the I.P.C. As the alleged offences are exclusively triable by the Court of Sessions, the case was committed to the ld.Sessions Judge. Subsequently, the case was transferred to this court for disposal. Charges were framed against the accused under Section 302 ofthe I.P.C., Section 376 of the I.P.C. and Section 380 of the I.P.C. Accused pleaded not guilty to all the aforesaid charges and claimed trial. The investigation was done by Bhowanipore P.S. in part and thereafter by the Detective Department, Homicide Squad, Lalbazar. Prosecution examined 29 witnesses, including some police officers, to prove its case. On behalf of the accused however no witness was examined. The defence of the accused was taken mainly through suggestions given to the prosecution witnesses in their cross - examination and the disclousure made by the accused during his examination under Section 313 Cr.P.C. Accused specifically denied that he was involved in the incident and that he was responsible

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he was responsible for committing murder of Hetal Parekh and also for committing rape on her, and for committing theft of "ricoh" wrist-watch from the almirah in the bed room of Jashomati Parekh and Negardas Parekh. He admitted that he was a security guard in Anand Apartment at 57A and B, Padmapukur Road, being appointed by Messers Security Investigation Bureau of which P.W.21 was the owner. He admitte in his examination under Section 313 Cr.P.C. that Nagardas Parekh, his wife Jashomati Parekh and his son and daughter Bhabesh Parekh and Hetal Parekh respectively used to reside at flat No. 3A in the 3rd floor of Anand Apartment on or before 5.3.90. He den' having teased Hetal on her way and b.ck from school and asked her to accompany him to witness pictures. He also admitted that on 5.3.90. his duty hours at Anand Apartment were from 6 A.M. to 2 P.M. He howeve r denied having visited the flat of the de facto complainant during her absence for contacting the security agency over telephone. He claims to have gone to see a picture, and on his return from the cinema hall he claims to have gone back to anorama school and purchased some fruits in connection with the sacred Thread Ceremony of his younger brother at his native place. He claims to have gone back to his native place with the fruits purchased by him. He also claimed that he had been falsely implicated in the case. He specifically denied that police seized anything from his house and that he gave any statement to police leading to the recovery of anything from his house. He pleaded absolute innocence.

Decision with reasons

We have now to analyse the evidence - both oral and documentary made available by the prosecution and find out how far the prosecution case has been proved beyond reasonable doubt.

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In the first place, it is required to be escertained if the prose cution has been able to substantiate its contention that the death of Hetal Parekh was homicidal in nature, and if she had been subjected to rape before her death, and if there was a theft of "ricoh" wrist watch from the flat of the de facto complainant as claimed by her. In order to prove that the death of Hetal Parekh was homicidal in nature and that she had been subjected to rape, prosecution relied upon the testimony of P.W.20, Dr. Dipankar Guha Roy, being the medical expert, the inquest report marked ext.12, the postmortem report marked ext.19 and documents marked exts. 17 and 18 and also the oral testimonies of some witnesses.

P.W.20, Dr. Dipankar Guha Roy, being a medical officer in the department of Forensic and State Medicine, Medical College, Calcutta, at the relevant point of time, conducted the postmortem examination on the deadbody of Hetal Parekh on 6.3.90. He stated that the deadbody of Hetal Parekh had been identified to him by constable Arun Kumar Saha, who was examined as P.W.23. This particular witness P.W.23 stated that he identified the deadbody of Hetal Parekh to the doctor who conducted the postmortem examination on her body. The postmortem examination was done in Calcutta Police Morgue. The time of arrival of the deadbody in the morgue was recorded at 1.25 P.M. on 6.3.90. Twentyone injuries were noted by P.W.20 on the person of the deadbody while conducting the postmortem examination. The same may be noted below.

1. Contusion measuring 3" x 2½" with multiple abrasions over it 7 in number of sizes varying from 3/4" x ½" to ½" x ¼" on the left side of neck, one inch above the level of Suprasternalnotch and 2" behind and left of mid-line.

2. Contusion 4" x 2" with multiple abrastions of varying sizes from 1" x ½" to ¼" x ½" over right side of neck 2" behind and right to midline and 1" above the right clavicle.

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3. Abrassions-four in number of sizes varying from ¾" x ½" to ½" x ½" over left side of face, 2" anteri.. to the left angle of mandible and 1" abov: the lower border of mandible.

4. Abrassions two in numbers of sizes 1" x ½" to ⅛" x ⅛" over left side of face, ½" below the injury no. 3.

5. One abrassion 2 x ½" placed 1" below the chin over midline.

6. Abrasion 2½" x 1" over right side of the face 1" right to mid-line and 1" above the lower border of mandible.

6(a) Abrassion 2½" x 1" over left side of face, ¾" right to angle of mouth 1½" above the lower border of mandible.

7. Lacerated wound ½" x ⅛" x muscle over bridge of nose ½" below the fronto-nasal junction. On dissection there was a communated fracture of nasal bones.

8. Abrassion ½" x ½" over tip of nose.

9. Lacerated would ¼th inch x ½ inch x muscle over inner aspect of lower lip, ½ inch left to the mid-line.

10. One abrasion ½ inch x ½ inch over fronto-nasal junction.

11. One contusion 2" x 2" covered lids of left eye and adjacent part of left side of forehead.

12. Haematoma ½" x ½" on medial aspect of conjunctiva of left ey

13. Abrasion ¾" x ½" over right frontal eminence.

14. Abrasions, two in numbers, each ofsizes 2" x ⅓" over medial aspect of left upper arm 5 inch above the level of left elbow joint.

15. One contusion measuring ¼th inch x ¼th inch over posterior aspect of left elbow joint.

16. Abrasion ¾ inch x ½ inch over posterior aspect of left elbow joint.

17. Abrasions, two in number, each sizes ⅛ inch x 18 inch on the lateral aspect of right hip joint 4 inch b.. v the level of highest point of iliac-crest.

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18. Extra-vassation of blood in the subcutenious tissue and muscle on the left side of neck over xmd an area of 3" x 2" corresponding to injury no. 1.

19. Extra-vassation of blood present in and around the larynx, trachea and oesophagus, corresponding to injury nos. 1 and 2.

20. Extra-vassation of blood measuring 2" x 1" over the ventral aspect of sterno-clavicular junction.

21. Fracture and dislocation of hyoid bone on its greater cornu of left side.

P.W.20 also found internal injuries on the person of the victim Hymen of the victim showed fresh tear at 4, 5 and 7 O'clock position with evidence of extra-vassasion of blood in margin. He also stated that he held postmortem examination on 6.3.90 and found rigormortis all over the body during his examination of the deadbody . He noted the other features concerned with the deadbody. He found one dark - coloured half sleeve ganji with evidence of recent tear around the neck and one brassier. He found the deadbody covered with a sheet of cloth. He found discharge of blood-stains on nostril and face of the deadbody and also on the ganji on the person of the deadbody. The scalp hair of the victim was found to be matted with blood. In the opinion of the witness, death of the victim was due to the effects of smothering with strangullation and the same were antemortem and homicidal in nature. The witness further stated that the injuries showed evidence of vital reaction. The abrasions found by him were reddish in xhx colour and unscabbed. The contusions were also reddish incolour. The margins of lacerated wound were irregular and reddish in colour. He further stated that injuries due to smothering and strangullation that he noted were sufficient to cause the death of the victim in the ordinary course of nature. He identified injury No. 21 as one, which was sufficient to cause the death of the victim in the ordinary course of nature. He further stated that the finding as noted by him indicated that the victim girl had been raped before she was murdered.

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This witness further stated that on 6.3.90 he received a communication from Inspector-in-charge of Bhawnipore P.S. In that communication, he was asked to give his opinion on certain queries made in the particular communication during conduct of the postmortem examination. He stated that he received the particular communication in the ordinary course of business and he kept the same in his office record. He also stated that he received the same before he conducted the postmortem examination. The particular document is marked ext.17. In Ext.17 the doctor holding the postmortem examination was requested to find out and note the following :-

1. Cause of death and the details of injuries if any.
2. Time of death.
3. If injuries found on the body of deceased could have been caused by one or more persons.
4. Whether the victim was raped.
5. Any marks of violance in case of resistance offered by the victim.
6. Opinion on any other p nt of medico-legal importance.

The replies of P.W.20 on conducting the postmortem examination on the deadbody of the victim to the queries made in ext.17 pointwise were as follows :-

1. Concerned authorities were requested to look into the postmortem examination report No.232 dated 6.3.90 of Calcutta Police Morgue.

2. Injuries found on the body of the deceased could have been caused by one person.

3. Excluding the period of preservation of the body inside the cooling chamber, if any, about 6 to 18 hours before conducting of the postmortem examination.

4. Findings in the hymen and matted pubic hair indicated that the victim was subjected to sexual intercourse. Vaginal swab and matted pubic hair had been preserved.

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5. Injury nos. 14, 15, 16 and 17 mentioned in the postmortem examination report (over upper arm of left side elbow and hip) and injuries over face directly suggested that the victim offered resistance.

6. Injuries over the face of the victim indicated that her face was pressed against some hard substance.

P.W.20 recorded the aforesaid replies in a communication made by him, which was marked ext.18. He further stated that both in the S.S.K.M Hospital and Calcutta Medical College and Hospital, cold chambers were there. He further stated that on the basis of rigormortis and postmortem examination he determined the time of death in the present case. According to him, injuries 3 to 13 might have been caused by impact with hard substance. He further stated that fists and blows are such hard substances. Again, he stated that injury nos 3 to 13 on the face of the victim could have been caused if the victim had been pressed with the type of substance which he identified as the cradle, marked Mat Ext.VII. He again stated that great force was needed for fracture of hyoid bone. He asserted that in the instant case victim had been throttled to death. He further stated that smothering was caused by pressing any hard substance on the face and nose of the victim for closing air orifice of the victim. He again stated that the death of the victim was due to asphyxia. He elaborated it by stating further that he came to the aforesaid conclusion on the basis of the findings noted by him on the pluera and lungs of the victim. He proved the authorisation letter marked ext.20 granted by the appropriated authority by which he conducted postmortem examination on the person of the deaeased.

On 19.5.90, this witness examined the accused at Calcutta Police Morgue. Accused was identified to him by S.I. S.Basu Chowdhury, that is P.W.29. He examined the accused on the basis of a requisition which was proved by him and marked ext.21. On examination of the accused he prepared a report, which he identified in court, and the same was marked ext.22.

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He noted in the report that accused Dhananjoy Chatterjee was capable of performing sexual intercourse. He also stated that the particular accused was capable of over-powering a girl like victim Hetal Parekh with the intention of committing rape on her. Again he stated in the said report that the physique and general built of accused Dhananjoy Chatterjee was suggestive that he possessed physical strength to over power a girl of 18 years of age and built as was the case of the deceased Hetal Parekh. He referred to his postmortem report no. 232, dated 6.3.90, in the two cases of his aforesaid opinion. In his cross-examination, this witness stated that fracture of hyoid bone may occur due to heavy pressure of hard and blunt substance. He also stated that such fracture would not occur if a heavy substance falls on the throat with force. The particular cross-examination related to the injury no.21, as noted by P.W.20. It is evident from the testimony of this witness that the death of the victim had been caused due toasphyxia following smothering and strangullation. In the inquest report, marked ext.12, multiple abrasions were noted on mouth and right side of the neck of the victim and face. Abrasions were also noted on the tip of the nose. One lacerated injury was found on the inner side of the lowerlip. One lacerated injury was found over the bridge of the nose and there was abrasion on the left armaned on the right hip joint. A number of witnesses stated that the victim was found lying on her back with marks of injury of different parts of her body. They have also stated that her private parts were exposed. It was argued on behalf of the defence that the expert's report in this case does not indicate that any spermatozoa or semen was found on chemical analysis of the wearing apparels of the victim. In a decision reported in 1987 Cri.L.J., page 557, para - 9, it has been held that in order to prove an offence of rape it is not necessary that the accused, who commits rape must discharge semen inside the vagina after penetration. In another case reported in 1988 Cri.L.J. at page 1461 it was held that

at page 1161 it was held that the presence of tear of posterial vagina is a sure indication to arrive at a conclusion that the person, who had intercourse with her, had the intercourse against her will. In this case, P.W.20 found fresh tear in the hymen of the victim at 4,5,and 7 O'clock positions with evidence of extravasasions of blood in margin. In another decision reported in 1986 Cri.L.J., at page 956, (relevant para-18) it has been held that seminal emission is not necessary alwaysto establish rape. The presence of tear in the hymen at different positions and the medical evidence available indicate that the victim had been raped before she was murdered, and that the rape had been committed against her will. No specific suggestion was given to P.W.20 as to the cause of death. An attempt was made perhaps to make out a case that the death of the victim might have been caused by way of accident as well. This attempt is manifested in the suggestion put to the particular witness that fracture of hyoid bone as found by P.W.20 would have occurred if a heavy substance had fallen on the throat of the victim with force. P.W.20 however denied this suggestion. There is no reason to raise any doubt that the victim had actually been murdered.

As regards the theft of the "ricoh" wrist-watch, I have already recorded that an intimation was given to police on 6.3.90 by Jashomati Parekh that her newly purchased "ricoh" wrist-watch kept in the steel almirah in her bed room was found to be missing. She suspected thataccused might have taken away the particular ricoh wrist-watch after committing murder of her daughter. Jashomoti Parekh, her husband Nagardas Parekh and her son Bhabesh Prekh stated in court during their respective examination that the particular ricoh wrist watch was found missing from the almirah. A search was made for ascertaining if anything had been taken taken away by the miscreant. Thus, there are materials to indi

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Thus, there are materials to indicate that theft of the ricoh wrist watch also occurred from the flat of Nagardas Parekh and Jashmati Parekh.

Now the point for consideration is how far the prosecution has been successful to substantiate the charges of murder, rape and theft against the accused by ~~un~~ cogent and satisfactory evidence.

We have to bear in mind that there was no witness to the occurrence in the instant case. Though some witnesses have stated that accused Dhananjoy had gone to the flat of Nagardas Parekh and Joshmati Parekh, when Hetal was alone in the flat, and that accused Dhananjoy had leaned out ~~from~~ from the balcony of the fl[illegible] being called by P.W.6 and P.W.7, and that accused Dhananjoy was seen leaving the flat after sometime, no evidence was there to indicate that such persons saw Dhananjoy committing ~~xx~~ rape or murder. The entire case is based on circumstantial evidence.

In a decision reported in A.I.R. 1984, Supreme Court, at page 1622, the Hon'ble Supreme Court has laid down the conditions, which are required to be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established. The conditions as spelt out as spelt out in the aforesaid decision may be stated below :-

1. The facts relating to the guilt of the accused should be fully established.
2. The facts so established should be consistent only with the hypothesis of the guilt of the accused and inconsistent with his innocence.
3. The circumstances and facts should be of a conclusive nature and tendency.
4. The circumstances and facts should exclude every possible hypothesis except the one to be proved.

there must be a chain of evidence which would leave any reasonable ground for the conclusion consistent with the innocence of the accused, and the same would lead to a reasonable conclusion that the act must have been done by the accused.

It has also been held in the aforesaid decision that the court can use a false explanation or false defence as an additional link in a case based on circumstantial evidence when the following essential conditions are satisfied :-

1. Various links in the chain of evidence led by the prosecution have been satisfactorily proved.
2. The said circumstances point to the guilt of the accused with reasonable definiteness.
3. Circumstance is in proximity to the time and situation.

The aforesaid principles may be of some relevance to us in this case if the ground of ali bi, as taken by the accused, appears to be false plea or a false defence. We have to bear in mind that the accused has taken a spedific defence that he had gone to witness a picture in a cinema hall after being relieved of his duties at 2 P.M., and then he came back Manorama School, picked up his belongings, purchased some fruits and left for his native village in Bankura District for participating in the sacred Thread Ceremony of his brother. If it is found that the prosecution has been successful to establish all the conditions as necessary to prove a case based on circumstantial evidence, and if it is found that the defence of ali bi as taken by the accused has no basis, the false plea or false defence, as taken by him, may be used as an additional link to support the prosecution case.

Now, we have to examine the evidence on record in this case to find out if the conditions as narrated above for proving a case based on circumstantial evidence have been fulfilled in the present case or not. Before we embark on this venture, it is necessary to deal with the contention made on behalf of the defence that ext.3,

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that ext.32, which is a G.D. entry recorded by Bhawanipore P.S. at 9.15 P.M. should be treated as the F.I.R. in this case. I have already recorded that police treated the statement of Jashmoti Parekh, marked ext.? as the F.I.R. It was contended on behalf of the accused that it has come on record that P.W.4 Nagardas Parekh came to know about the incident from his wife and son after reaching his flat and, thereafter, he contacted police over telephone and gave information about the murder of his daughter in his flat. It was argued that this particular information recorded by police in the form of G.D. entry should be treated as F.I.R. and the statement of Jashomati Parekh could at best be a statement under Section 161 of the Cr.P.C., and the same cannot be treated as F.I.R. In this context, a decision reported in 1976 Cri.L.J., Supreme Court, at page 1548, was cited. It was contended that the Hon'ble Supreme Court held in the said reported decision that the first information recorded by police about the occurrence of an offence should be treated as F.I.R. It was argued that P.W.4, Nagardas Parekh in his information to police over telephone did not mention the name of the accused as the assailant of his daughter, and that implication of the name of the accused with the alleged offence, as made by P.W.3, Joshmati Parekh, was the result of an after thought. On a careful study of the facts leading to the aforesaid reported decision, I find that the facts of this case on the particular point are distinctly separate and different from the facts of the aforesaid decision on the said point. Whereas in the facts of the reported decision everything about the occurrence, except the name of the assailant had been disclosed, in the present case, there was a cryptic message by Nagardas Parekh to police over telephone that his daughter Hetal had been murdered in his flat.

It is on record that Nagardas Parekh became upset on reaching his residence when he came to know about the death of his only daughter Hetal. His wife Jashomati was by the side of her deceased daughter and was in mental shock. It is on record that Nagardas Parekh took time to regain his composure.

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He informed the police over telephone that his daughter had been murdered in his flat. He did not state the details about the occurrence in the message given by him to police over telephone. He did not mention as to when and how he came to know about the death of his daughter and in what manner the deadbody of his daughter was recovered. P.W.28, who recorded the particular message in the G.D. entry, marked ext.32, categorically stated in his cross-examination that he came to know about the incident after reaching the premises. He also stated in his cross-examination that he took cognizance of the case after recording the statement of Jashomati Parekh as per the order of the Officer-in-charge, who was present at the place of occurrence. He also emphatically stated that there was no investigation of the case prior to the recording of statement of Jashomati Parekh. This assertion of the investigation officer cannot be brushed aside, as we find that there was a difference of only 35 minutes between the time of recording of the G.D. entry, marked ext.32, and recording of the statement of Jashomoti Parekh. This witness categorically stated that he recorded the statement of Jashomati Parekh at 9.50P.M. There was therefore no scope for initiating an investigation before the statement of Jashomoti Parekh was recorded. It is also to be noted that in ext.32 it was specifically mentioned that the maker of the G.D.entry left the police station with officer-in-charge and force for the spot for taking necessary action. It is a different matter that Nagardas Parekh did not mention the name of the accused as the assailant of his daughter in his message given to police over telephone. This particular fact may be of some relevance when we assess the evidence of Nagardas Parekh in the context of the entire prosecution case. However, there should be no scope for doubt that the process of investigation was started in this case only after the statement of Jashmoti Parekh was recorded. Thus, the statement of Jashomoti Parekh, ext.2, had been rightly treated as the F.I.R. in this case.

Ld. Special Prosecutor listed the following circumstances, which according to him, have been proved by the prosecution by leading cogent and satisfactory evidence and he also asserted that these circumstances are sufficient to incriminate the accused with the offences in respect of which he had been charged and stood by his trial.

1. Teasing of victim Hetal Parekh by the accused.
2. Transfer order issued upon the accused by his employer directing him to leave "Anand Apartment" and to move to "Paras Apartment" on a complaint lodged by Nagardas Parekh for the alleged teasing of his daughter Hetal and flouting of the same by him.
3. Entry of accused in flat no. 3A of Nagardas Parekh and Jashomati Parekh on 5.3.90 after departure of Jashomati Parekh in the afternoon, when Hetal was alone in the flat on the pretext of using the telephone for contacting the office of his employer.
4. Discovery of rico wrist watch from the native place of accused in pursuance of statement given by him to police.
5. Discovery of button and chain at the place of occurrence and the link of the accused with these articles as proved by prosecution witnesses.
6. The fact that accused was last seen in flat no.3A where the occurrence took place by some prosecution witnesses before it was discovered by breaking open the door of the particular flat that Hetal was lying on her back with injuries on various parts of her body and her private parts and breasts exposed.
7. The evidence of the autopsy surgeon on murder and rape.
8. The fact that accused absconded for a long time and evaded arrest after the fateful incident took place on 5th March, 1990.

9. Statements of Hetal to her mother about the teasing of her by t[illegible] accused, a few days before her death, which should be treated as dyin[illegible] declaration.

10. False statement and false ~~plea~~ plea of ali bii taken by accus[illegible] in his examination under Section 313 of the Cr.P.C.

11. Discovery of the wearing apparels and the ricoh wrist watch alleged to have been stolen from flat no.3A in pursuance of the statement of the accused and the legal position of such fact under the provisions of Section 27 of the Evidence Act.

12. X The clothings of the accused produced in court as one which the accused had been wearing, when he was last seen on the date of t[illegible] incident and which had been ~~identified~~ identified by prosecution witnes Murmu, who was another security guard on duty in Anand Apartment at the relevant point of time.

13. The fact that deceased was alone in the house at the relevant ~~point~~ point of time when the incident occurred.

14. Door of the flat where the incident occurred was found closed when Jashomoti Parekh returned from the temple.

15. Torn clothings of the deceased which indicated that she had been subjected to violence before she was raped and murdered.

We shall now deal with the testimonies of the prosecution witnesses and find out how far the circumstances, as spelt out by t[illegible] ld. Special P.P. and as listed above, have been proved beyond reasonable doubt.

As regards the alleged teasing, P.W.3 Jashomoti Parekh has stated in her examination in chief that for 10/15 days prior to the incident Hetal had complained to her that accused used to ~~to~~ tease her while she was on her way to and back from school. She also clai[illegible] that Hetal had stated to her that on 2nd March, 1990, accused wante[illegible] to know from her if she should accompany him to see a picture, and [illegible] she would come out with him for that.

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The witness further stated that she informed her husband of this particular fact. In her cross-examination, it transpires that Hetal used to go to school by public transport and she used to board transport from the junction of Lansdowne Road and Padmapukur Road, and that she used to go alone to school, and that nobody used to accompany her on her way to school. P.W.4, Nagardas Parekh corroborated P.W.3 by stating that on 2nd March, 1990 she came to know from his wife (P.W.3) that accused had teased Hetal while she was on her way to school and back. He claims to have called dwellers of the aprtment, including Mahendra Chouhatia and Harish Vakaria and informed them of this fact. He has also stated they gave him the option to replace the accused as a security guard. He further claimed that he asked Shaymal Karmakar who was the employee of accd to come to his residence on 3rd March 1990 and when the aforesaid Shyamal Karmakar came to his house on 3rd March, 1990, he complained to him that accused had teased his daughter Hetal and he wanted him to be replaced. He claims to have handed over a written complaint in this regard to the aforesaid Shyamal Karmakar. The same has been marked ext.4 in court. No suggestion was given to this witness to negative his contention that he came to know from his wife that accused used to tease the victim, and that there was a meeting between him and some other inmates of the house, and that a decision was taken for getting the accused replaced as a security guard, and that a formal letter was addressed in this regard to the employer of the accused. P.W.13 Mahendra Chouhatia corroborated P.W.4 by stating that on 2nd March, 1990 P.W.4 called him through intercom. This witness further stated that he along with Harish Vakaria, a resident of flat no.4C of the same apartment had been to the flat of P.W.4. He further stated that P.W.4 had reported to him that accused had been teasing his daughter Hetal and that he (P.W.4) suggested that the accused should be replaced as a security guard. This witness said that he and the another Harish Vakaria consented to the suggestion of P.W.4. He again stated that, on 3.3.90, around 8.30/9.00 P.M.

P.W.4 contacted him through intercom and informed that he had called one Karmakar, the proprietor of the Security Agency and asked him to remove the accused from the premises. This witness was not subjected to any cross-examination. P.W.21 Shyamal Karmakar, the employer of the accused corroborated P.W.4 and P.W.13 by stating that on 3.3.90 P.W.4 rang him up and asked him to meet him in the same day everything. He claimed that he met P.W.4 in the evening and he came to know that accused was teasing his daughter from time to time and he wanted him (P.W.21) to remove the accused from the particular building and place. He also claimed that a written complaint was submitted to him in this regard. He claims to have endorsed "received the original" on a copy of the application, which was marked ext.4/1. No suggestion was also given to this witness that P.W.4 did not report to him about teasing of his daughter Hetal Parekh by the accused. Ext.4 and Ext.4/1, which is a copy of Ext.4, with endorsement of P.W.21 "received the original indicate, on scrutiny, that accused used to tease the victim on her way to and back from school and a complaint in this regard had been lodged to P.W.21 on 3rd March,1990. Prosecution has led substantial evidence to indicate that the victim was being teased by the accused on her way to and back from school for sometime before the incident, and for that a written complaint was lodged with the employer of the accused for his transfer from the apartment.

Now, let us deal with the second circumstance as listed by the learned Special Prosecutor and recorded above.

The specific case of the prosecution is that accused had been transferred from Anand Apartment following the complaint made against him with his employer by P.W.4. and that accused flouted the particular transfer order. I have already analysed the testimonies of P.W.s 4, 13 and 21 and recorded how the request for transfer of accused had been made by P.W.4.

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The measures taken by P.W.21 on the request of P.W.4 for transfer of the accused have come from his evidence. The particular witness stated that after receiving the complaint against the accused from P.W.4 he handed over an order of transfer of the accused from Anand Apartment to Poras Apartment on Chakraberia Lane to his employee Rejaul Haque. He stated that Bijoy Thapa, who was acting as security guard at Poras Apartment, was deputed in-charge of Anand Apartment in place of accd. with effect from 5th March, 1990. He identified the transfer order marked as ext.23. He claimed that the same had been written by him. He claimed that he left for Bombay by Geetanjali Express on 4.3.90. Rejaul Haque was examined as P.W.9 He specifically stated in his examination in chief that P.W.21 sent a letter in a covered envelope to the accused through him on 4.3.90, and that he had made over the same to the particular accused on 4.3.90. when he was in Anand Apartment. In the cross-examination of this witness no suggestion was given to controvert this assertion. No suggestion was also given to P.W.21 to controvert his assertion that he had issued a transfer order in respect of the accused effective from 5.3.90 on the basis of a complaint received by him from P.W.4.On the contrary, it was taken from this witness from his cross-examination that he issued the transfer order in respect of the accused on the basis of the complaint by way of routine measure. Thus, the fact the transfer order had been issued for making it effective from 5.3.90, and that the same had been handed over to the accused on 4.3.90 have been established by cogent and satisfactory evidence. Accused himself admitted, as I have recorded earlier, that he performed duties from 6 A.M. to 2 P.M. on 5.3.90. A number of prosecution witnesses have also stated that accused was on duty from 6 A.M. to 2 P.M. on 5.3.90. As a matter of fact, P.W.6 Pratap Chandra Pati has stated in his examination in chief that on 5.3.90 Pati came to know on reaching his office that his employer Shyamal Karmaker had issued an order of transfer of the accused from Anand Apartment

employer Shyamal Karmakar had issued an order of transfer of the accused from Anand Apartment To Paras Apartment and that the same had been sent to the accused through Rejaul Haque on 4.3.90. He claimed that he visited Anand Apartment at 5.45 P.M. on 5.3.90 and came to know that the transfer order in respect of the accused had not been made effective. Thus, prosecution has been able to establish that the transfer order served upon the accused asking him to report to Paras Apartment with effect from 5.3.90 had been flouted. Accused however denied in his examination under Section 313 of the Cr.P.C. that he received any order of transfer. He maintained that no formal order was necessary for transfer in the establishment where he worked. This assertion of the accused does not appear to have any force in view of the specific evidence of P.W.21 that he himself issued the transfer order and sent the same through P.W.9 I have already recorded that neither P.W.21 nor P.W.9 had been confronted with any suggestion on behalf of the accused that transfer order had not been issued upon the accused for his transfer from Anand Apartment to Paras Apartment.

As regards the entry of the accused in the flat of Nagardas Parekh and Jashmoti Parekh on 5.3.90 in the afternoon after P.W.3 left her residence, the evidence led by the prosecution rests upon the testimonies of P.W.3, P.W.5 Bhabesh Parekh, P.W.6 and P.W.7 Dasarath Murmu. P.W.3 has stated in her examination in chief that on her return from temple on 5.3.90 around 6/6.30 P.M., she was told by liftman r Ramdhani, who was examined as P.W.8, that accused had gone to her flat for using the telephone there. She also stated that she became annoyed on hearing this fact. P.W.s 4 and 5 have stated that they came to know from P.W.3 that accused had entered their flat for using the telephone for contacting the office of his employer after P.W.3 had left for the temple. P.W.6 has also stated that he came to know from P.W.7 that accused had gone to the flat of P.W.3 and P.W.4 for giving a telephone call to the office of his employer. P.W.7 has corroborated P.W.6 by stating that the accused had given out to him that he would go to flat no. 3A of 3rd floor for contacting the office of his employer over telephone from there.

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He further stated that Ramdhani, the liftman, took the accused upstair by the lift. We also get it from his examination in chief that accused met him 5/6 minutes after P.W.3 left at about 5.15 P.M. on 5.3.90. Although P.W.3 claimed that she came to know from P.W.8 Ramdhani that accused had gone to her flat in her absence on the pretext of using the telephone there for contacting the office of his employer, P.W.8 did not support the particular assertion of P.W.3 on this point. He specifically denied that he had taken the accused to 3rd floor by his lift on that day. However, he stated in his examination in chief that he found the accused coming down in the staircase in the 3rd floor around 5.30/5.45 P.M. He also stated that he found supervisor of the security guards (he meant P.W.6), accused and P.W.7 standing near the gate of Anand Apartment. He further stated that the supervisor and the accused went out of the gate of the premises of Anand Apartment. According to him, P.W.3 came back 10 minutes thereafter. This witness was declared hostile subsequently on the prayer of the prosecution and was subjected to cross-examination by the prosecution. Though this witness did not corroborate the other witnesses about the entry of the accused in the flat of P.W.s 3 and 4 on 5.3.90 after P.W.3 left her flat he stated about the presence of the accused in the building by stating that he found the accused coming down by the staircase in the 3rd floor around 5.30/5.45 P.M. He also claims to have seen accused, P.W.6 and P.W.7 talking among themselves near the enterence of the building. This disclosure fits in with the testimonies of P.W.6 and P.W.7 on the particular point. Accused however stoutely denied having remained in the premises of Anand Apartment after 2 P.M. on 5.3.90. In his cross-examination on behalf of the accused, he claimed that he had stated to police that he found the accused in the staircasx in the 3rd floor when he took up mother of Aruna Shaw by his lift. P.W.28 who acted as investigation officer in part however stated in his cross-examination that P.W.8 did not give such statement to him.

However, his testimony relating to the presence of the accused with P.W.6 and ~~Rh~~ P.W.7 near the gate of Anand Apartment, and departure of P.W.6 with the accused after 5.30/5.45 P.M. has remained unassailed. No suggestion was given to this witness to controvert the assertion made by him on the particular point. Even though this witness was declared hostile, there is no difficulty to rely upon a particular part of his statement which is found to corroborate the testimonies of other prosecution witnesses.

As regards the ricoh wrist watch, which according to the prosecution, had been stolen from the flat of P.W.s 3 and 4 on 5.3.90, and recovered from the house of the accused in pursuance of his statement, I have recorded that on 6.3.90 an information was lodged with police (vide ext.3) that the ricoh-wrist watch purchased at 350/- had been stolen by the accused after he committed rape on Hetal Parekh and murdered her. P.W.18 Md. Fakuruddin, who is a salesman of Messers H.M. Watch Company at 147 and 148, Radhabazar Street proved the guarantee card for the sale of the ricoh wrist watch from his shop on 21.2.90. The particular guarantee card was marked ext.15. He claimed that the contents of the same had been written and signed by him. He also stated that the particular wrist watch was sold to one Jashomoti Parekh of 57A and B, Padmapukur Road at a price of Rs.350/-. P.W.19 Debdulal Mukherjee, a resident of village Chhatna, has stated in his examination ~~in~~ in ~~his~~ chief that the 2nd officer of Chhatna P.S. met him on 12.5.90, at about 12/12.30 O'clock at night, when he was having chat with Nandababu in front of the sweetmeat shop of his elder brother and stated that a murder and rape had been committed in Calcutta and that a wrist watch had been stolen and that police officers from Calcutta had come. This witness further stated that the particular police officer wanted him and Nandababu to accompany him (the particular police officer) to village Kuludihi. He has also stated that he and

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He xkxxx has also stated that he and Nandababu accompanied the police party, including the police officers from Calcutta and the 2nd officer of Chhatna police station to village Kuludihi. It is also evident from his testimony that the house of accused was searched by police. He was not found there. Subsequently, the accused was found sitting behind a stack of straw. According to him, police apprehended the accused from there and police had some talks with him. He also stated that one wrist was recovered from the house of the accused and the same was seized in his presence. He identified his signature in the seizure list by which the particular wrist watch was seized. His signature in the seizure list was marked ext.16/1. He also identified the wrist watch which according to him xh had been seized from the residence of the xxxxxxxxh. accused. It was marked material Ext.IV and the signature of the witness on the label of the wrist watch was marked ext.IV/1. Thus itis evident from thiswitness that the particular wrist watch which has been identified as material ext.IV was seized from the residence of the accused. This wrist watch was identified by P.W.3 as one, which had been purchased by her, and which had been stolen from her flat and in respect of which she lodged a complaint with police.

P.W.24, Pranab Kumar Chatterjee is a Sub-Inspector of Chhatna P.S. He claims to have accompanied to officers of the Detective Department for conducting the raid in the house of the accused at village Kuludihi on 12.5.90. He also corroborated P.W.19 by stating that the ladies ricoh wrist watch, which he identified in court, and which was marked as material ext.IV, had been brought out by the accused from his house. He signed in the seizurelist, marked ext.16. P.W.29, Sub-Inspector Salil Basu Chowdhury, an officer of the Detective Department, who submitted the chargesheet in this case, and who acted as the principal investigating officer, stated that on 12.5.90, he conducted raid in the house of the accused at village Kuludihi alo along with two witnesses, named Nandagopal Deoghoria and Debdulal Mukherjee and S.I. P.Chatterjee of Chhatna P.S. and also some police personnel of the said police station.

He stated in details how he apprehended the accused after searching three house, including the house of accused consecutively. He claims to have found the accused concealing behind a /stack of straw. He also claims to have recorded statement of the accused which was marked ext.34 on his identification. He also claimed that the accused brought out the wrist watch and the wearing apparels. He claims to have seized the wrist watch under seizurelist, marked ext.16.Accused however denied that the wrist watch had been recovered from his house and that he gave any statement to police. On behalf of the defence the authenticity of the claim of the prosecution that the particular wrist watch and the wearing apparels had been seized from the house of the accused on his identification and in pursuance of his statement has been very much called in question. As a matter of fact, ld. lawyer for the accused contended that satisfactory materials were not made available to indicate that the particular wrist watch actually belonged to P.W.3 and that the same had been kept in the almirah of the room where the incident occurred. It was claimed that the receipt showing purchase of wrist watch was not made available, although P.W.18 claimed in his evidence that receipts were granted for purchase of wrist watch from the shop where he works. It was also contended that ext.34 did not fulfil the requirements of Section 27 of the Indian Evidence Act, and, therefore, on the basis of this document it cannot be stated that the wrist watch and the wearing apparels had been seized by police in pursuance of the statement of the accused. P.W.4 in his cross-examination stated that he got a cash memo for the purchase of the wrist watch of his wife, but he could not produce the same. His failure to produce the particular cash memo was called in question on behalf of the defence. It was also contended on behalf of the accused that there was no evidence to indicate that anybody had seen the particular wrist watch on 5.3.90 or before that date in the flat of P.W.s 3 and 4.

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Ext.34 bears receipts in details as to how the alleged offence was committed. Statements made in this regard by the accused an incrimi natory and the same is not admissible. Thus, except a small portion of the statement relating to the recovery of thewearing apparels of th the accused and the ladies wrist watch purported to have been stolen by him from the flat of P.W.s 3 and 4 in ext.34, other statements purported to have been made by the accused are not admissible under the Evidence Act. In this context, ld. Special P.P. in his fairness submitted that the portion of the statement in ext.34 which is admissible under the Evidence Act has also come from the testimony of P.W.29, who recorded the particular statement. The relevant portion of the statement and the testimony of P.W.29 on the point may be read as follows :-

" I kept the ladies wrist watch with golden metal band, which was stolen by me from flat no.3A of Anand Apartment on 5.3.90, on the rack of our house. I also kept my garments by wearing which I committed rape on Hetal Parekh and killed her, on another rack of our house. I will point out the racks and those articles". It was argued on behalf of the accused that the aforesaid statement was self-incriminatory and therefore not admissible under the Evidence Act, and any discovery in pursuance of such statement cannot be said to be discovery under Section 27 of the Indian Evidence Act. It was also argued that it was known to police from beforehand that the wrist watch was in the custody of the accused, as it would be evident from various statements made by police and other witnesses thataccus ed had actually committed theft of the wrist watch from the flat of P.W.s 3 and 4. It was contended that P.W.19 stated before the court that he came to know from police that accused had committed theft of the wrist watch. Thus, it was pointed out that in view of this position discovery of the wrist watch and the wearing apparels cannot be said to be the discovery under the provisions of Section 27 of the Indian Evidence Act. In this connection, a decision reported in 1970 Cri.L.J., Supreme Court, at page 1659, was cited.

In the particular decision it was held that when police knew that one accused had got the stolen articles but did not know where the said accused was to be found, the information given by another accused that the accused having custody of the stolen articles could be found out in pursuance of his statement is a fact leading to the whereabouts of the accused and not about the stolen articles. The facts leading to the aforesaid decision are not identical with the facts of this case. In this case, a doubt was expressed that accused might have committed theft in respect of the watch and the same was found missing from the almirah in the bed room. of P.W.s 3 and 4. The particular wrist watch, according to prosecution, was thereafter recovered recovered following a statement made by the accused. In that statement the accused mentioned that the wrist watch taken by him from the flat of 3A of Anand Apartment on 5.3.90 had been kept by him on the rack of his house and that he would point out the same and bring the article. This fact very much comes within the provisions of Section 27 of the Indian Evidence Act. It is true that the factum of the commission of theft by the accused cannot be established in pursuance of the statement, but the discovery of the stolen articles in pursuance of the statement can very well be said to be under the provisions of Section 27 of the Indian Evidence Act. Same is the case relating to the statement leading to the discovery of the wearing apparels of the accused from his residence in pursuance of Ext.34. The factum of commission of rape and murder, as stated by the accused in ext.34 by wearing the wearing apparels as brought out by him, cannot be established in pursuance of this statement. But, the recovery of the wearing apparels as wrapped by a newspaper, if found to have been proved by satisfactory evidence, in pursuance of the statement made in Ext.34, can be said to be under the provisions of Section 27 of the Indian Evidence Act.

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On behalf of the prosecution a decision reported in 1968 Cri.L.J. at page 107 (relevent para - 50) was cited to substantiate its contention that the recitals made in ext.34 about the recovery of the wearing apparels and the wrist watch, and stated by P.W.29 in his evidence before the court are in strict compliance of Section 27 of the Evidence Act. In the aforesaid decision, the statement made by the accused leading to the recovery had not been quoted by the investigating officer in his evidence. A plea, as such was made on behalf of the defence that the evidence leading to the recovery under Section 27 of the Evidence Act should be rejected on the ground that information leading to the recovery was not quoted by the investigating officer ~~in~~ in so many words in his evidence. It was held that, in strict compliance of Section 27 of the Evidence Act the investigating officer should have deposed to the words of the accused, which distinctly lead to the fact discovered. In the present case, it was argued that the statutory requirements have been properly complied with, in as much as, the investigating officer stated in his testimony that the accused had reported to him that he committed the offence of rape and murder, while he was wearing the wearing apparels, which had been brought out by him, and he also committed theft in respect of the wrist watch, which had been kept by him in a rock, and brought by him subsequently after the statement was recorded. In another decision reported in 1988, Cri.L J., at page 1293, as cited on behalf of the prosecution, it has been held that even when no statement is made by the accused leading to the discovery of any incriminating articles, and where provisions of Section 27 of the Indian Evidence Act cannot be invoked, discovery of any incriminating article at the instance of the accused, and being shown by him, is admissible as conduct of ~~h~~ the accused under Section 8 of the Evidence Act. It was contended that the specific case of the prosecution is that accused, after being apprehended from his hide-out, gave a statement to police and led P.W.29 and others to the place where

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P.W.29 and others to the place where he kept the wearing apparels and the wrist watch, and he brought out the same. It is further contended that not only that the testimony fulfilled the requirements of the provisions of Section 27 of the Indian Evidence Act, but also the same warrants a legitimate inference that the accused had the knowledge that the particular articles were there. Another decision reported in 1976 Cri.L.J. Supreme Court, at page 1759, (para 14) was cited on behalf of the prosecution to substantiate the contention of the prosecution that a specific statement is necessary by the accused for invoking the prosivisions of Section 27 of the Evidence Act that a particular weapon recovered in pursuance of his statement had been used by him for the commission of the crime. In the particular case, the discovery of the incriminating materials in pursuance of the statement of the accused was not accepted as discovery under the provisions of Section 27 of the Evidence Act, as the accused did not say that he used the weapon recovered at his instance for the killing of the victim. It was argued that in the present case accused categorically stated that he committed rape and murder by wearing the wearing apparels, which he had kept in the rack, and would be brought by him, and that he also committed theft in respect of the wrist watch which was also kept by him in a rack, and to be brought by him. Thus, it was argued that the statement made by the accused related to the discovery of facts, which are very much relevant under Section 27 of the Evidence Act. The legal principles enunciated in the aforesaid decisions unmistakebly lead to a conclusion that the provisions of Section 27 of the Evidence Act had been duly complied with in the present case.

Now, let us turn our attention as to the genuineness of the testimonies of P.W.19, P.W.24 and P.W.29 about the discovery of the wrist watch and the wearing apparels in pursuance of the statement of the accused, in the context of the specific defence taken by the accused. P.W.19 categorically stated in his cross-examination that

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in his cross-examination that he did not see the accused on any day earlier than 12.5.90, and that he never visited his house earlier. He also stated that before 12.5.90 he did not know the house of the accused. The accused in his examination under Section 313 of the Cr.P.C. however claimed that P.W.19 is his friend, and whatever was stated by him was false. He also claimed that P.W.19 was called to the police station for bringing tea when he was brought to police station in the morning. He also claimed that neither P.W.19, nor Nandababu was present when search was conducted in his house. No suggestion was given to this witness that he is a friend of the accused, and that he had put in his signatures as claimed by him in his examination in chief on different articles, namely the labels on the wrist ~~xxxxxxx~~ watch and the wearing apparels at the police station. There is therefore no basis of the claim of the accused that this particular witness was his friend, and that he signed the seizurelist and the other papers, as stated by him in his examination in chief, in the police station in the morning. This witness identified theweering apparels seized in his presence from the residence of the accused. Same was marked ext.XII (collectively). He identified his signatures on the two weering apparels which were marked ext.XII/1 (collectively), He also identified his signature on a newspaper (Basumati, dated 25th Agrahayan, 1396 B.S.). The particular newspaper was marked material Ext.XIII and his signature there on was marked ext.XIII/1. The witness specifically stated that the wearingapparels, marked material ext.XII (collectively) had been wrapped by the newspaper marked Ext.XIII. We also get it from his cross-examination that the date below his signature was given by him. He identified the date as 12.5.90 below his signature, marked ext.IV/1. He also stated that he identified the wrist watch marked material Ext.IV in court by looking at his signature in the label attached to the ~~x~~ wrist watch, and also the golden colour of the wrist watch, and he could very well recognize that this particular

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and he could very well recognize that this particular wrist watch had been recovered from the residence of the accused and seized in his presence. We also get it from his cross-examination that except the residents of the house of the accused no other person was present when police apprehended the accused and made the seizure.

I have already recorded that P.W.24 also identified his signature in the seizurelist marked ext.16/2, and his signature on the label of the wrist watch marked ext.IV/2. This witness also identified his signature on the newspaper by which the wearing apparels were stated to have been wrapped up. His signature was marked Ext.XIII/2. He identified his signatures on the trousers and shirt seized under Ext.16, and his signatures thereon marked as ~~ext.XIII~~ ext.XII/2. We get it from his cross-examination that he put his signature on the label after the wrist watch was packed in a plastic cover. The label was put inside the plastic cover and the wrist watch was packed in the plastic cover in his presence.

P.W.29 has stated in his examination in chief that after arrest of the accused and seizure of the wrist watch and wearing apparels from his custody, the accd had been produced before the Chief Judicial Magistrate at Bankura with a prayer for retaining the seized articles in the custody of the police. No suggestion was given to him to controvert his assertion in this regard. It will be interesting to read the recitals made by the accused during his examination under Section 313 of the Cr.P.C. relating to the seizure of the wrist watch and the wearing apparels from his possession in pursuance of his statement, and his production before the learned Chief Judicial Magistrate at Bankura. I have already recorded that accused claimed that P.W.19 was his friend and that he was called to serve tea at Chhatna P.S. in the morning and signature was taken there. He also claimed that neither P.W.19 nor Nandababu came to his house to witness the seizure. He claimed that newspaper is not used in his house. According to him, the investigating officer asked for a newspaper for wrapping

newspaper for wrapping the trouser and the shirt brought by him, and the Officer-in-charge of Chattna P.S. brought a newspaper from his residence. He also claimed that the trouser and the shirt had been taken from the trunk of his wife, which had been given to him from his in laws house. He also claimed that ornaments of his wife had been taken by police, but the same were handed over to his wife after the receipts thereof were made available. According to him, the bag in which his tickets for witnessing the picture on the date of incident and other papers relating to his office had been kept was taken away by police. He claimed that the wrist watch had been shown to him at Lalbazar and he had been beaten there and one of his fingers had been fractured due to the beating. There is nothing on record to indicate that accused ever complained after his arrest before any authority that some wearing apparels, as given to him from his inlaws house, had been brought from the trunk of his wife at his residence, and that he had been assaulted at Lalbazar, and that one of his fingers had been broken due to such assaults. It appears that accused has cooked up all these stories for frustrating the claim of the prosecution about the seizure of the wrist watch and the wearing apparels from his residence.

It was argued on behalf of the accused that the possibility of recovery of the wearing apparels and the wrist watch from the residence of the accused was there earlier than his arrest, as it has come out from the evidence of P.W.29 and other witnesses accompanying him to the native place of the accused that the house of the accused was searched prior to his apprehension in another house. P.W.29 has stated in his cross-examination that he looked for the accused only when he conducted search in the house of the accused and that he did not look for the incriminating articles. It is to be borne in mind that search had been conducted earlier in the house of the accused, as it is evident from thedocuments marked ext.28 and ext.29. P.W.25 S.I. Anil Kar of the Detective

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P.W.25 S.I. Anil Kar of the Detective Department stated that on 7.3.90 and 8.3.90 he searched for the accused at different places. He proved the requisition dated 9.3.90, marked ext.29. Another requisition with the Chattna P.S. made by him was marked ext.28. ext.29, on ~~xx xx~~ scrutinye indicated that search was conducted in the native place of the accused with the assistance of Chhatna P.S. but to no effect. A requisition was made for the production of the accu after he was arrested by Chhatna P.S. Requisition, dated 8.3.90, marked ext.28 indicates that a a request was made with the Officer-in-charge of Chhatna P.S. for rendering assistance for causing searc of the residence of the accused at village ~~Kxk~~ Kuludihi. Thus, it i found that the residence of the accused at village Kuludihi had been searched earlier, but neither the accused nor the articles brought out from his residence in pursuance of his statement were found at that time. P.W.24 stood the test of cross-examination. The positive testimonies of these two witnesses namely P.W.19 of P.W.29 and the testimony of P.W.29, coupled with the document marked ext.34 and documents marked ext.16, ext.16/1 and ext.16/2, and also assertion of P.W.29 that he produced the accused with the seized articles before the ld. ~~Xxxx~~ C.J.M. at Bankura unmistakebly tend to establish that the ricoh wrist watch and the wearing apparels seized under ext.2 16 had actually been seized from the residence of the accused in pursuance of his statement, as recorded in ext.34, which was in consonance with the provisions of Section 27 of the Evidence Act. Accused has not denied about the seizure of the wearing apparels, but has denied about the seizure of the wrist watch. As regards the seizure of the wearing apparels he has got a different story, as I have already stated earlier. The manner in which the seizure was made by ~~xxx~~ bef ~~xx~~ secution has been disputed by the accused. I shall deal with ~~xx~~ in end question whether the wearing apparels ~~xxxx~~ seized by police at the residence of the accused had actually been worn by t accused at the time of commission of the alleged offence, as

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commission of the alleged offence, as alleged by the prosecution at a later stage. There are conclusive evidence to establish that the ricoh wrist watch and the wearing apparels, as seized under the document marked ext.16, had actually been seized from the residence of the accused in pursuance of his statement as recorded in ext.34.

Now let us consider the question re-lating to the ownership of the Ricoh wrist watch ~~xxx~~ was recovered from the house of the accused at Kuludihi. I have already recorded that P.W.18 identified the guarantee card, marked ext.15 for sale of Ricoh wrist watch from his shop on 21.2.90 in favour of Yashomati ~~xxxxx~~ Parekh of 57/A & B, Padma Pukur Road. P.W.3 and 4 have corroborated each other and P.W.18 regarding purchase of the particular wrist watch. The ~~xxx~~ wrist watch recovered and seized from the house of accused at Kuludihi was identified by P.W.3 and P.W.4 as one which had been purchased for P.W.3 from the shop of P.W.18. Though a suggestion was given to P.W.3 on behalf of the accused that the particular wrist watch, marked material ext.IV, did not belong to her, no such suggestion was given to P.W.4 although he very much claimed that he purchased the particular wrist watch for his wife. The accused did not advance any claim of ownership of the particular wrist watch. Intimation of the theft of the wrist watch was given on 6.3.90, immediately after it was found on search of the almirah in the bedroom of P.W.3 and P.W.4 that the particular wrist watch was missing therefrom. The description of the wrist watch as given in the particular report, marked ext.3, tallies with the description of the wrist watch as given in the seizure list marked ext.16. Thus, is no scope for any doubt that the wrist watch seized from the residence of the accused [illegible] village Kuludihi actually belonged to P.W.3 and the same had bee[illegible]ased from the shop of P.W.18 Failure on the part of P.W.3 and P.W.4 to produce the cash memo for purchase of the wrist watch and to mention the number of the wrist watch cannot override the positive and specific evidence that has come before the court relating to the ownership of the particular wrist watch.

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There is, therefore, no scope for any doubt that the wrist watch recovered from the house of accused at village Kuludihi is the same wrist watch which had been purchased from the shop of P.W.18 and which was found missing from the almirah in the bed room of P.W.3 & P.W.4, when a search was made by the inmates of house of P.W.3 in the particular almirah, which was found open and in ransacked condition after the crime was detected.

Now, let us deal with the circumstance relating to the discovery of the broken chain and the button as canvassed on behalf of the prosecution. P.W.4 and P.W.5 in their respective testimonies have stated that they found a broken chain and a cream coloured button with four holes on the bed room of P.W.3 and P.W.4 where Hetal was found lying. The particular broken chain and the button along with some other articles had been seized by police on 6.3.90 between 00.30 hours from the northern side room of flat no.3A premises no. 57 A & B, Padma Pukur Road. The seizure was made by P.W.28. He too stated that he found the cream coloured button and the broken chain on the floor of the bed room of P.W.3 and P.W.4 where the incident occurred. He also found some marks of blood in that room. P.W.10, Rajiv Bakharia, a friend of P.W.5, who had come to the place of occurrence on getting a call from P.W.5, also, witnessed the seizure of aforesaid two articles and identified his signature in the seizure list, marked ext.9. His signature was identified as ext.9/2. No suggestion was given to him that he did not visit the particular flat in the night of the incident, as claimed by him, and that he did not witness the seizure of the broken chain and the cream coloured button. Thus, prosecution had been successful to establish beyond any doubt that a broken chain and a cream coloured button had been found in the bed room of P.W.3 and P.W.4 where Hetal was lying and that the same had been seized by P.W.28 in the presence of P.W.5 and 10. As regards the chain, P.W.11 Gouranga Chandra Raut, who was in the employment of one Aruna Shah, a resident

a resident of Anand Apartment, when the incident occurred, identified the chain which had been marked material ext.XI, as one which he had been given to the accused a month prior to the date of the incident. He could not give the actual date when he handed over the particular chain to the accused. However, we get it from the testimony of P.W.28 that he sent for P.W.11 for identification of the broken chain found in the bed room of Nagardas Parekh. According to him, Gora identified the particular chain. This assertion of P.W.28 was not confronted on behalf of the accused by putting any specific suggestion to him that the particular chain had not been identified by P.W.11, Gora. Thus, it is established that Gora had identified the broken chain which he had found in the bed room of P.W.3 and P.W.4 as one belonging to him and made over to accused a month prior to the incident. No motive could be ascribed to P.W.11 for his coming to court for giving evidence falsely against the accused. He categorically denied the suggestion that he deposed falsely at the instance of police.

Now let us turn our attention to the cream coloured button recovered from the place of occurrence. The particular button was sent by police to the Forensic Science Laboratory, along with the wearing apparels seized from the native place of the accused by the I.O. and various other articles under communication marked ext.35 (collectively). P.W.27 Partha Sinha, a Senior Scientific Officer attached to the Physics Divisions of the Forensic Science Laboratory Government of West Bengal, examined the particular button and also the shirt sent to the Forensic Science Laboratory in connection with this case by police. He has stated in his examination in chief that ext.C examined by him was a faint cream-coloured button and Ext.U was a cream coloured full sleeved open breast synthetic shirt. He stated further that all the buttons stitched on the particular shirt, except the third button from the top of the front vertical button plate were light cream coloured andstitched in similar

coloured and stitched in similar pattern with of white thread of 3 ply and X type twist. He further stated that the 3rd button was wh[illegible], stitched in a different pattern with milky white thread of 2 ply and Z type twist. He submitted a report in this regard, which was marked Ext.30. It is evident from the testimony of this witness that the 3rd button on the shirt examined by him was distinctly separate and different from the other buttons found on the shirt. It is also evident from his testimony that the stitching pattern of the other buttons was distinct and separate from the stitching pattern of the 3rd button. His testimony on this point leads to the inevitable conclusion that the 3rd button had been replaced and stitched in a different manner. This witness also stated that mark of application of force down-ward with respect to the shirt could be observed beneath the 3rd white button at the position where the original button had been stitched. Again, this witness stated that all the buttons on the front button plate of the shirt marked U, except the 3rd white button were cut off and compared with the button marked C. He again stated that the button marked C was found similar with the buttons cut off from the shirt in respect of shape, dimensions, colour and weight upto the hundredth part of a miligram. His testimony indicates here that the button marked C, which was found at the place of occurrence, was identical and similar with the five other buttons cut off from the front button plate of the shirt marked U, which is the shirt seized by police from the residence of the accused. In the cross-examination of this witness it transpires that five buttons in the shirt marked U had been cut off by him for the purpose of comparison. He also stated in his cross-examination that there were six buttons in the shirt and that one of the buttons had been kept intact and the five others were cut off by him. He identified those five buttons and the same were marked material Ext.XIV (collectively). He also stated in his cross-examination that he measured the wright of each of the five buttons and recorded the same. We also get it from his cross-examination that the button, marked C in his report, was packed

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was packed by him in the similar manner as the other five buttons had been kept. He also claims to have taken the weight of that particular button which was marked C. Material Ext.X is the particular cream-coloured button. This button on examination is found to be identical wi with the five other buttons marked Ext.XIV (collectively). Thus, there are material allegations to indicate that the button found at the place of occurrence is similar and identical with the five other buttons found on the front plate of the shirt of the accused which was seized from his native place. It is also evident from the testimony of this witness that the 3rd button was found to have been replaced and there was evidence of application of force down-ward with respect to the shirt beneath the 3rd white button. In his cross-examination this witness stated that the button from the front place of the shirt could be severed if the same comes in contact with a hard and blunt substance, like hook, and if it is pulled. It is not understood why this suggestion was given to this witness. No attempt was made to establish a theory that the button got severed due to its coming in contact with a hook or any other hard and blunt substance. Again, the accused specifically claimed in his examination under Section 313 of the Cr.P.C. that the shirt seized from his residence was a new one and it was given to him by his father-in-law. If that be so, there was no reason that one of the buttons would be distinct and separate from the five other buttons, and the stitching pattern of that button on the front plate would be different from the stitching pattern of the five other buttons. The particular shirt along with the trouser seized from the residence of the accused at his native place have been identified by P.W.7 as the shirt and the trouser which the accused was wearing on 5.3.90 at about 5.25 P.M. P.W.7 also stated that accused was dressed in a grey coloured trouser and a cream coloured shirt when he came after the departure of P.W.3 Jeshamoti Parekh.

Thus, it is evident that the accused had been wearing the particular shirt and the trouser when he was found by P.W.7. The discovery of the button at the place of occurrence and the testimony of P.W.27 that there was evidence of application of force down-ward at the place where the 3rd button was located inevitably lead to the conclusion that the button must have come out when the victim had scuffles with the accused while resisting him.

Now, let us deal with the circumstance as spelt out by the prosecution relating to the fact that the accused was last seen in flat no.3A where the occurrence took place by some prosecution witnesses before it was discovered by breaking open the door of the particular flat that Hetal was lying on her back with injuries on various parts of her body, and her private parts and breasts being exposed. The testimonies of P.W.6 and P.W.7 have been relied upon by the prosecution to prove the circumstance. P.W.6 has stated that after reaching Anand Apartment and ascertaining from P.W.7 that accused had performed his duties upto 2 P.M. that day, and having come to know that accused had gone to contact the office of his employer from the flat of P.W.3 and P.W.4, he asked P.W.7 to call the accused. He also stated that efforts were made to contact the accused in the flat of P.W.3 and P.W.4 through intercom, but, connection was not obtained through intercom. This witness further stated that thereafter P.W.7 called the accused by his name from down stairs from his duty place. It is also evident from the testimony of this witness that the accused leaned out of the balcony of the 3rd floor flat of P.W.3 and P.W.4 and gave out that he was coming down. According to him, the accused thereafter came down. He claimed that he wanted to talk to the accused, but the accused wanted to leave the place hurriedly and asked him to come out. The witness claims to have ascertained from the accused that he had received the transfer order, and that due to some works he could not report to Paras Apartment for duty. The witness claims to have directed the accused to report to Paras Apartment for duty with effect from 6.3.90 without fail.

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P.W.7 has corroborated P.W.6 by stating that P.W.6 had enquired with him after coming to Anand Apartment at 5.45 P.M. as to where the accused was. This witness claimed that he had reported to P.W.6 that accused had gone to flat No.3A for contacting the office of the security agency over telephone. He also corroborated P.W.6 by stating that P.W.6 had asked him to call the accused. He claims to have tried to contact the accused in flat No.3A through intercom, but did not get the connection. He claims to have shouted 4/5 times by naming the accused from the gate of the building, and thereafter accused is reported to have come to the verandah of flat No.3A and gave out that he would be coming soon. He corroborated P.W.7 by stating that P.W.6 was with him at that time. Again, he corroborated P.W.6 by stating that accused came down a short time thereafter and had talks with P.W.6. We also get it from his evidence that accused went out of the gate of the building by side tracking P.W.6 and asked P.W.6 to come out saying that he would talk to him after going out of the building. In the cross-examination of P.W.6, it transpires that there is a balcony in each of the flats of Anand Apartment and such balconies exist on the same line in upward direction. He denied a specific suggestion that it was not possible to say from the ground floor as to the particular balcony in any flat wherefrom a person responds to a call from the ground floor of the building. He also denied a specific suggestion that accused did not respond to the call of P.W.7 by coming out in the balcony of P.W.3 and P.W.4 and that P.W.7 did not report to him that accused had gone to flat of P.W.3 and P.W.4 for contacting the office of the security agency. It was suggested to this witness that out of enmity with the accused he had deposed falsely. There is not an iota of material to indicate that this witness had any enmity with the accused. The credibility of P.W.7 as a witness was attempted to be tainted by suggesting to him that he had an enmity with the accused as the accused had complained against him to Vakariabbu about his alleged

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Vakariabsbu about his alleged illicit relationship with a maid servant working in that flat. This witness specifically denied the suggestion. There is no satisfactory material to indicate that this particular witness had any illicit connection with anybody, far less a maidservant working in the flat of Vakariabsbu, and that the accused had complained anything against this witness for such alleged illicit relationship between him and the maidservant. The testimonies of P.W.s 6 and 7 on the particular point about the presence of accused in the balcony of the flat of P.W.s 3 and 4 for responding to the call of P.W.7 have remained totally unshaken in their respective cross-examination. It was argued on behalf of the accused that it was not natural for the accused to come to the balcony to show his presence after committing such a ghastly crime and, thus, it was contended that the court should not rely upon the testimonies of P.W.s6 and 7 on their claim that they had seen the accused leaning out of the balcony of flat no.3A and responding to their call. In the context of specific evidence of P.W.6 and P.W.7 that they had seen the accused responding to the call of P.W. 7 from the balcony of flat no. 3A, there is no scope for any presumption as to whether it was natural on the part of the accused to come to the balcony and identify his presence there after committing the alleged crime. It may be that the accused wanted to give an impression that he was in normal in his behaviour even after committing the alleged crime. We have to bear in mind in this context th that according to the version of P.W.7, accused was aware that P.W. 7 knew that he had gone to the flat of P.W.s 3 and 4 for giving a call to the office of his employer. Thus, it was not unnatural for him to respond to the call of P.W.7.

Now, let us deal with the circumstance relating to the fact that the accused absconded for along time. According to the version of the accused, he performed his duty at Anand Apartment upto 2 P.M. on 5.3.90. I have already recorded that accused has

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I have already recorded that accused has taken a specific plea that he went to witness a cineme show on completion of his duty, and on his return from cinema hall he collected his belongings from Monorama school and purchased some fruits and left for his native place. He also attempted to establish a defence that he had been to the house of his in laws and thereafter he returned to his residence. The fact remains that accused did not send any intimatio either to his employer or to anybody else about his visit to his native place or any other place. It has come on record in the testimony of P.W.3 that immediately after Vimal was found lying in the floor of her bed room in the condition as stated by her, a thorough search was made for the accused, but he was not found. A number of prosecution witnesses including P.W.3, P.W.7 and others have stated that accused used to reside in the generator room of Anand Apartment when the occurrence took place. P.W.28 has stated that he searched the generator room where accused used to live but he did not find him or any of his belongings there. I have already recorded that P.W.25 stated that he searched for the accused on 7.3.90 and 8.3.90 at different places. I have discussed about the documents marked ext.27 and ext.28. There are sufficient materials to indicate that accused kept himself totally concealed after the occurrence on 5.3.90 and till his arrest on 12.5.90. He even did not make any attempt to contact his employer and collect the salary that was due to him. Had he been innocent he would have contacted his employer and sent application for leave or would have intimation to his employer specifyings the reasons for which he had to leave without any notice. On the contrary, P.W.6 has specifically stated that accused left Anand Apartment on 5.3.90 by saying that he would report to Paras Apartment on the next day. The fact that the accused absconded for such a long period speaks volume against him and it is boundto raise accusing fingers towards him relating to his involvement with the alleged offence.

It was argued by the ld. Special P.P. that the fact that accused absconded for such a long time immediately after the alleged offence was committed is relevant to prove hisconduct as envisaged under Section 8 of the Evidence Act.

Some reported decisions were cited on behalf of both the parties on the point of the circumstance relating to the alleged presence of the accused in the balcony of flat No. 3A, that is relatings to the contention of the prosecution that accused was last seen in the flat of the victim. On behalf of the prosecution a decision reported in 1988 Cri.L.J. at page 1293 was cited. In the particular decision it has been held that the circumstance that the accused and the deceased were last seen together along with other circumstances proved by the prosecution by substantial evidence were inconsistent with the innocence of the accused, and inevitably lead to the conclusion that accused only committed the murder of the deceased. On behalf of the defence decisions reported in 1981 Cri.L.J. at page 1857, 1982 Supreme Court Cases (Criminal), page 431 and 1989(2) (Criminal) at page 7110 were x cited to highlight its contention that the circumstance that the accused and victim were last seen together by itself is not sufficient to prove the guilt of the accused. The principles enunciated in the aforesaid three decision can hardly be called in question. It has been held in numerous judicial pronouncements that a person cannot be said to to have committed murder of the deceased only on the ground that he was last seen together with the deceased. The prosecution case is not based only on the circumstantial evidence relatings to the fact that the accused was last seen with the victim. Prosecution has spelt out several other circumstances. If it is established that accused was last seen together with the victim, and if some of the other circumstances as spelt out by the prosecution are proved beyond reasonable doubt, and if it is found that these circumstances taken together inevitably lead to the conclusion that accused alone committed the

that accused alone committed the murder, then and only then the circumstance relating to the fact that the accused was last seen together with the victim would be relevant.

Now, we shall deal with the prosecution case relating to the circumstance that the deceased was alone in the flat before the alleged offence was committed. We have to turn our attention again to the testimony of P.W.3 in this regard. This witness categorically stated that he used to leave for temple everyday in the afternoon around 5.15 P.M. She also stated that on the date of the incident too she left for the temple around 5/5.15 P.M. and Hetal was lone in the flat when she left for the temple. That she had gone to the temple has been corroborated by P.W.7 and P.W.8. P.W.7 categorically stated that he found P.W.3 going out of the apartment on 5.3.90 around 5.15 P.M. Though P.W.8 was declared hostile on the prayer of the prosecution subsequently, he stated earlier that he brought down P.W.3 on the date of the incident about 10/15 minutes after he took charge of the lift at 4 P.M. He also stated that P.W.3 used to go out everyday around that time to visit a temple. Hetal was found alone in the flat lying in the bed room. of P.W.3 and P.W.4 when the door of the flat had to be broken open due to non-availability of any response from inside on the banging of the door and ringing up the door bell. Thus prosecution have been able to make available cogent and satisfactory evidence to establish its contention that Hetal was alone in the flat on 5.3.90 after P.W.3 left around 5.15 P.M.

Another circumstance relied upon by the prosecution in this case is that the door of the flat where the incident occurred was found closed. P...3 in her testimony categorically stated that on her return from the temple she rang the door bell but nobody responded from inside. P...3 in his cross-examination on behalf of the prosecution stated that P.W.3 started shouting after ringing the calling

after ringing the calling bell 2/4 times and he x enquired from her as to what had happened and that she had stated to him that Hetal was not opening the door. He further stated in his cross-examination on behalf of the prosecution that the servants, female occupants and children residing in the flat came there. We also get it from his cross-examination made by the prosecution that the door at the entrance of the flat of P.W.3 was beoken open by Panchu and Ramesh. He also stated that from outside the flat he could see that Hetal was lying on the floor inside the hall of the flat and that P.W.3 brought Hetal and came down-stairs by using his lift for taking Hetal to hospital. P.W.15 Harish Chandra Desai, an occupant of a flat in the same apartment, stated that around 6 P.M. on 5.3.90 on his return to his residence along with his mother and sister he heard sounds of knocking and came down stairs and found P.W.3 knocking at the door at the entrance of her flat. He also stated that P.W.3 was asking Hetal to open the door in a loud voice and that P.W.3 and other persons were present there at that time. We also get it from his examination in chief that some people assembled there and pushed the door at the entrance of the flat but no response came from inside. He corroborated P.W.3 by stating that Panchu, Ramesh and Ramdhani took measures to break the door open. He claims to have seen Hetal on the floor of the flat of P.W.3 and P.W.4. We also get it from his testimony that Hetal was lying on her back and that x the lower part of her body was bare. He claims to have gone upstairs on seeing this sight. This witness was not cross-examined on behalf of the accused. P.W.28 in his test testimony has stated that he found a latch-cum-lock in broken condition on the floor inside the flat. One screw of unknown metal and one broken screw of unknow metal were also found there. These articles had been seized under a seizure list marked ext.10.

These articles had been sent to the expert for verification by communication marked ext.35 (collectively). P.W.27 stated in court that he examined the latch-cum-lock marked "B" by the authority sending the particular article in connection with this case. He stated that it was a latch - cum - lock having sliding bold which keeps a door bolted from inside by spring action when the door is pushed out-ward from inside or pulled from outside. He also stated that the only way to unbolt a door thus bolted from outside the door is by operating a key through a key-hole and from inside the room by operating the unbolting knob. P.W.3 in her corss-examination stated that when she left the flat in the afternoon on the date of the incident, she pulled the door and the same got locked, The testimony of P.W.27 and the report submitted by him marked ext.31 indicate that the system of latch on the door at the entrance was such that it could be closed by pulling it from outside. The seizure of the broken latch-cum-lock with the screws indicate that force was applied to break it open. Sufficient evidence have come to conclude that force had been applied from outside to break open the lock of the door. No response was given from inside on the ringing of the door bell and pushing of the door and calling the deceased by her name from outside by her mother. The materials on record indicate that P.W.3 returned from temple a short time after accused was seen leaving the apartment. He was seen in the balcony of the flat a short time before that. Thus, the prosecution has been successful to establish that the door of the flat at the entrance was found closed and the same had to be broken open, and, thereafter, Rebel was found lying in the bed room of P.W.3 and P.W.4.

Now, let us deal with the evidence relating to the other circumstances relied upon by the prosecution relating to the torn condition of the wearing apparels of the victim. I have already recorded the condition in which the victim was seen after the door

in which the victim was seen after the door at the entrance of the flat was broken open. P.W.3 stated that the panty of Hetal was found in the drawing room. The clothings on her body were found disturbed. Her private parts were visible. Some other witnesses have also stated as I have recorded earlier that the private parts of the victim were found visible. Under the seizurelist marked ext.11 the clothings of the victim had been seized. Descriptions of the article seized ~~indicate~~ indicate that one white coloured underwear of "midi" having marks of blood and panty in torn condition and one black coloured "midi" scart having marks of blood and dirt were seized. P.W.27 examined the wearing apparels of the victim which had been sent to him under communication marked ext.35 (collectively). He categorically stated that he found marks of application of force in the form of disc intin of stitches 5 cm. on the right and 4.5 cm. on the left of the left shoulder joint. He was not cross-~~examination~~ examined at all on the disclosure made by him in this regard. Thus, it is evident that there was indication of application of force for removing the wearing apparels of the victim. The condition of the victim in which she was found in the bed room of P.W.3 and P.W.4 and the condition of her wearing apparels and also the report of P.W.20 unmistakebly tend to indicate that the victim had been ravished before she was murdered.

It has been contended on behalf of the prosecution that the statement of the victim to her mother that she was being ~~teased~~ teased by the accused before the incident occurred, and the measures taken by P.W.4 on that in asking the employer or the accused to get him transferred from Anand Apartment should be treated as dying declaration. It was argued that the victim died within a few days of the statement she made to her mother on the particular point. I have already discussed the evidence led by the prosecution on the point of teasing of the victim by the accused. I have recorded that the prosecution had conclusive evidence to indicate that the accused used to tease the victim on her way to and back from school, and

and that there was a meeting between the father of the victim and some other residents of the Apartment over this teasing of the victim by the accused. It has also been established that a complaint was lodged to P.W.21 by the father of the victim over the teasing of the victim by the accused and measures had been taken to get the accused transferred from Anand Apartment. It was contended that the evidence led by the prosecution on the point comes within the ambit of Sub-section (1)of Section 32 of the Evidence Act and, thus, the particular statement of the victim should be treated as dying declaration. Reliance was placed in this context on two decisions reported in 1984 Cri.L.J. Supreme Court at page 1738, relevant para 18 and 21 and 1991 Calcutta Criminal Law Reporter page 61 (para-20). Both the decisions cited were referred to highlight the contention of the prosecution that the death of the victim occurred within the close proximity of her making the statement to her mother about her teasing by the accused. In the decision reported in 1984 Cri.L.J., Supreme Court, at page 1738, their lordships held that in order to make a statement under Section 32 of the Evidence Act admissible, it is necessary that the death of such person is by way of homicide or suicide and the statement made by him or her relates to the cause of death or exhibit circumstances leading to the death. In the other decision also the statement made by the victim had a nexus to the cause of death. In the instant case, there is nothing on record to indicate that the victim ever gave out that any threat upon her life had been made by the accused during teasing by him. It is true that victim died within a very few days of the statement she made to her mother and measures taken on the basis of her complaint for getting the accused transferred from Anand Apartment. The statement made by the victim is otherwise relevant to impute a motive to the accused for the commission of the offence. It however cannot be taken as a dying declaration coming within the ambit of Section 32(1) of the Evidence Act. The death of the victim within a very short time of her making the statement to her mother about her teasing of the accused,

and the effective measure taken by her father to get the accused transferred from the apartment, and the other circumstances against the accused as brought out by the prosecution are bound to raise accusing fingers towards the accused.

Now, let us deal with the plea of alibi as taken by the accused in this case. I have recorded earlier that accused took a specific plea that he was not in Anand Apartment when the occurrence took place. This plea was taken by him during his examination under Section 313 of the Cr.P.C. He stated that on 5.3.90 he left Anand Apartment to witness a picture in a cinema hall after being relieved of his duties at 2 P.M. He claimed that he returned to Monorama School and collected his belongings, and, thereafter, left for his native place after purchasing some fruits in connection with the secred Thread Ceremony of his brother. He also claimed that he went to his inlaws house with his wife thereafter. According to him, counterfoil of the cinema ticket had been kept by him in a bag which was taken by police from his residence after his arrest. No suggestion was given to P.W.29, the investigating officer of this case, and who apprehended the accused at his native village Kuludihi, that he had taken away the bag belonging to the accused where in the counterfoil of the cinema ticket showing that the accused witnessed a picture on 5.3.90 in the matinee show was there. No suggestion was given to P.W.6 and P.W.7 that the accused had gone to witness a picture after completing his duty at 2 P.M. on 5.3.90, and that he returned to Monorama School and left for his native place. No suggestion in this regard was also given to P.W.21 the employer of the accused. I have already recorded that accused did not send any intimation to P.W.21 or anybody else that he had to leave for his native place for participating in the secred Thread Ceremony of his brother. There is nothing on record to indicate that any application was filed by the accused with P.W.21 or anybody praying for leave for attending the secred Thread Ceremony of his brother. There is not an iota of evidence to indicate that any

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There is not an iota of evidence to indicate that any sacred Thread Ceremony of his younger brother took place at his native village as claimed by him after 5.3.90. In a decision reported in 1984 Cri.L.J. at page 4, the Hon'ble Supreme Court held that a plea of alibi must be proved with absolute certainty so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence. In another decision reported in 1986 Cri.L.J., at page 1620, (relevant paras 13 and 18), a Division Bench of the Calcutta High Court also held that a plea of alibi is required to be proved by cogent and satisfactory evidence. In the instant case, accused made no effort to prove the plea of alibi taken by him in his examination under Section 313 of the Cr.P.C. The very claim that he kept the counterfoil of the cinema ticket for about two months to prove his innocence is bound to raise suspicion about his desire to speak the truth. If he had any reason to retain the counterfoil of the cinema ticket to prove his innocence, he would have been the first person to exhibit it and bring it on record at the earliest opportunity to prove his innocence. I have already recorded that there is no reason to disbelieve the specific version of P.W.6 and P.W.7 that they had seen the accused in the balcony of flat No. 3A on 5.3.90 when he was called by name by P.W.7. There is also no reason to disbelieve P.W.8 when he stated that he found the accused around 5.30/5.45 P.M. in the staircase of the 3rd floor and leaving the gate of Anand Apartment along with P.W.6. The accused intentionally has taken a false plea of alibi and made no effort to substantiate the plea. This conduct on the part of the accused is a strong circumstance to implicate him with the alleged offence.

On a careful scrutiny and analysis of the evidence, facts and materials on record in this case, I find that all the 16 circumstances as spelt out by the prosecution, except the circumstance relating to the dying declaration of the victim have been established beyond any reasonable doubt. I have also recorded that the statement of the victim to her mother about a few days before the occurrence that she had been teased by the accused and asked to accompany him to a cinema hall is relevant to prove the conduct and motive of the accused relating to the alleged offence. The death of the victim within a very short time of the aforesaid teasing in her flat, coupled with other circumstances, as discussed above, unmistakably tend to indicate that the accused took revenge for the measures taken by the father of the victim for getting him (accused) transferred from Anand Apartment. He also was bent upon to satisfy his lust and thus seized the opportunity to visit the flat of the victim during the absence of her mother and thus committed the crime.

I have already recorded in analysing a decision reported in A.I.R. 1984 Supreme Court, at page 1622, that the Hon'ble Supreme Court held that when it is found that an accused has taken a false plea or false defence, and when prosecution establishes all the conditions that are necessary to prove a case based on circumstantial evidence, the false plea or false defence taken by the accused may be used as an additional link to support the prosecution case. By applying this principle, it can very well be stated that the false plea and false defence taken by the accused in this case should form an additional link to support the prosecution case.

On behalf of the defence it was contended that some doubts were bround to crop up about the genuineness of the prosecution case. It was argued that prosecution could not make available the

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It was argued that prosecution could not make available the reason why the collapsible gate at the entrance of the flat was not closed by Hetal or her mother (P.W.3) when she (P.W.3) left for the temple. It was also contended that there was no possibility for the accused to come to the flat otherwise as a collapsible gate and a sliding window were there from the door leading to the balcony of the flat. It was further argued that no evidence came before the court to indicate that anybody saw the accused entering the flat of the victim when the incident occurred. Again, it was contended that it was not in conformity with the normal human conduct that accused would show his face being called by P.W.7 after committing the crime. It was argued that no human blood was found either on the broken chain or on the cream coloured button, although the specific evidence of the prosecution was that blood was found all over the body of the victim and also on the floor of the bed room where the victim was lying. Again, it was contended that there is no material to indicate that there was a drop of blood in the wearing apparels of the accused. It was argued that in view of the doubts raised about the genuineness of the prosecution case for the reason stated above, accused was entitled to get an order of acquittal. In this connection, a decision reported in 1976 Supreme Court Cases (Criminal), at page 671, was cited. In the particular decision it was held that in a criminal case it is not necessary for the defence to prove its case with the same vigour as the prosecution is required to prove its case, and it is sufficient if the defence succeeds in raising a reasonable doubt on the prosecution case, which is sufficient to enable the court to reject the prosecution version. This decision does not seem to have any application in this case, in as much as, there is no doubt about the genuineness of the prosecution case.

The circumstances as spelt out by the prosecution have been established by cogent and satisfactory evidence and the same unmistakebly lead an accusing finger towards the accused. The circumstances are consistent with the guilt of the accused and inconsistent with his innocence. P.W.3 categorically stated that she pulled the door at the entrance of the flat when she left for the temple. She stated in her cross-examination that she did not use to close the collapsible gate for going to temple. She further stated that the collapsible gate was used to be opened in the morning and closed at night. Thus, there is no question of closing the collapsible gate when P.W.3 left for the temple. It is true that none of the prosecution witnesses came forward to say that he found the accused entering the flat of the victim when her mother left for the temple. P.W.7 has categorically stated that accused went to the flat of the victim after P.W.3 left for the temple saying that he would contact the office of his employer over telephone from there. He was found in the balcony of the flat responding to the call of P.W.7 when P.W.6 asked P.W.7 when ~~xxxxx~~ to call him after they failed to get him through intercom. The presence of accused in the staircase around 5.30/5.45 P.M., as stated by P.W.8, also indicate that he had been to the 3rd floor of the apartment. I have already recorded that there is no reason to disbelieve the version of P.W.6, P.W.7 and even of P.W.8, though he was declared hostile at a certain stage on the prayer of the prosecution. There is no basis of the claim made on behalf of the accused, as it was suggested to P.W.6, P.W.7 and P.W.8 that they had enmity with the accused. Mere absence of blood on the button ~~xxxxxxxxxxxx~~ and the broken chain and the wearing apparels of the victim does not absolve himself of the crime in the backdrop of the volume of circumstantial evidence that has been made available by the prosecution in this case. The circumstances as discussed in the foregoing paragraphs link up a complete chain which are consistent with the guilt of the

which are consistent with the guilt of the accused and inconsistent with the guilt of the accused and inconsistent of his innocence. The circumstances unmistakebly tend to establish that it is the accused who committed rape on the victim, killed her and then committed theft of the ladies ricoh wrist watch from the steel almirah in the bed room of P.W.3 and P.W.4. The victim offered stiff resistance and sustained several injuries on her body. The autopsy report indicates that she had been raped before her death and she had been over-powered by the accused. Prosecution thus has been successful to establish its case beyond reasonable doubt.

The location of flat No. 3A has come from the sketchmap prepared by P.W.1 Shantanu Bose who is a plan maker attached to Detective Department, Calcutta Police. He categorically stated that he had been to premises No.57A and B, Padmapukur Road on 7.3.90 on receiving a requisition from Bhawanipore Police Station. He proved the sketchman prepared by him which was marked ext.1. Final sketch-map prepared by him on the basis of rough sketch was marked ext.2, and the blue print of ext.2 was marked as ext.3. We get it from his evidence that there are three rooms, one dining space, two bath rooms and a balcony and a kitchen in the first floor. He depicted the same in the plan. It is evident from ext.3 that the particular balcony faces east. Thus the existence of the balcony where the accused was found leaning out and responding to the call of P.W.7 has been established by cogent and satisfactory evidence.

P.W.2 Mahammed S. Alam is a official photographer attached to Lalbazar. He stated that he visited premises No.57A and B, Padmapukur Road on 5.3.90 on receiving a telephonic message of the Officer-in-charge, Control Room. He also claims to have taken 13 snaps inside the flat No.3A in the 3rd floor of the particular building. He identified the prints of those snaps and the same were marked material Ext.I (collectively). The negatives of those prints were marked material Ext.II (collectively).

The report of the autopsy surgeon indicates that brutal force was applied to silience the victim. The cradle inside the bed room of P.W.3 and P.W.4 was found to have marks of blood. The particular doctor also stated that the injuries showed evidence of vital reaction. He wanted to suggest that the victim resisted when she was being ravished and subsequently killed. The time of death of the victim as noted by P.W.20 in his evidence supports the prosecution case that the occurrence took place during the period between the time of departure of P.W.3 and her return. Prosecution has been successful to establish its case by cogent and satisfactory evidence. The discussions made in the foregoing paragraphs on the basis of analysis of the evidence of the prosecution witnesses lead to the inevitable conclusion about involvement of the accused with the alleged offence. Prosecution has thus proved all the three charges framed against the accused. I find the accused guilty for committing offences under Section 302, Section 376 and Section 380 of the Indian Penal Code and convict him thereunder.

Before I conclude, I consider it necessary to record that the investigating agency conducted the investigation in the proper truck from the very beginning. All the incriminating materials available from the place of occurrence had been properly taken note of and seized. The services of experts were also taken at the appropriate stage. Accused was also apprehended without loss of much time and the wrist watch stolen by him from the flat of P.W.3 and P.W.4 had been recovered from his possession in pursuance of his statement. The shirt by wearing which he committed the offences was subjected to examination by an expert. The proper masures taken by the investigating agency has resulted in the detection of the crime and bringing the offender to book. I must also place on record the co-operation I received both from the learned defence lawyer and the learned Special P.P. during the trial.

I received both from the learned defence lawyer and the learned Special P.P. during the trial.

Dictated & corrected by me
Sd/- R.N.Kali
Additional Sessions Judge.

Sd/- R.N.Kali
Additional Sessions Judge
2nd Court, Alipore
9.8.91.

LATER

Convict be sent back to jail for having a reflection and for making his submission on the point of sentence to be inflicted upon him. He will be produced before me on 12.8.91 for a hearing on the point of sentence.

Dictated & corrected by me
Sd/-R.N.Kali
Additional Sessions Judge.

Sd/- R.N.Kali
Additional Sessions Judge
2nd Court, Alipore.

Order
Dated : 12.8.91

Convict is produced from jail custody in pursuance of my order dated 9.8.91. He is informed that he had been sent back to jail on 9.8.91 after he was found guilty for committing offences under Section 302, Section 376 and Section 380 of the Indian Penal Code and was given time for reflection and deliberation over the sentence he would have to receive for committing such offences. He is now asked to make his submission and plea on the point of sentence. Convict submi as follows :-

" I am aged 26 years. I have my aged parents. I am the only earning member in the family. I did not commit any offence earlier. I married only one year and half back. I pray for leniency".

Heard the ld.Special P.P. on the point of sentence. He sub that the instant case comes within the purview of the rule of rare rare cases and as such Capital Punishment would be just and prope punishment for the offence committed u/s 302 I.P.C. in this case defence lawyer submits that the instant case does not come withi

does not come within the purview of the rarest of rare cases and he has cited a decision reported in A.I.R. 1989 Supreme Court at page 1456.

Put up the record for recording sentence at 3 P.M.

Dictated & corrected by me
Sd/- R.N.Kali
Additional Sessions Judge.

Sd/- R.N.Kali
Additional Sessions Judge
2nd Court, Alipore.

L A T E R A T 3 P.M.

Convict is produced as per previous order.

Conviction has been recorded in this case under Section 302, Section 376 and Section 380 of the Indian Penal Code. For a conviction under Section 302 of the I.P.C. there are only two modes of sentence- one is Capital Punishment and the other is Imprisonment for Life. The maximum sentence for an offence under Section 376 of the I.P.C. is is Imprisonment for life and the maximum sentence for an offence under Section 380 of the I.P.C. is imprisonment for 7 years.

Prosecution prayed for imposing Capital Punishment upon in this case for the conviction recorded under Section 302 of the I.P.C.

The uniformity of judicial pronouncements by the Apex Court, as made from time to time, is that Imprisonment for Life is the the general rule of sentence upon the conviction on a charge of murder, and a sentence of death upon such conviction is an exception, which should be inflicted only in the "rareest of the rare cases" of murder. In a decision reported in 1983 Cri.L.J. at page 1457, the Hon'ble Supreme Court laid down the guidelines in determining a case which can be termed as the "rarest of rare cases" warranting a sentence of death. It was held that the sentence of death should be inflicted only in the gravest cases of extreme culpability. In other words, when the court finds that the Imprisonment for Life is inadequate punishment, having regard to the relevant circumstances of the crime, the court should opt for the death sentence. In recording whether the case comes within the rule of the "rarest of the rare

"rarest of the rare cases", the mitigating circumstances relating to the "offender" are also required to be taken into consideration. The Hon'ble Supreme Court further held in the said decision in elaborating this finding that in order to inflict a sentence of death, Court must see that there is something uncommon about the crime which renders a sentence of Imprisonment for Life inadequate and the circumstances of the crime are such that there is no alternative but to impose Death Sentence.

It is contended on behalf of the prosecution that the murder of the victim in the instant case was brutal, savage and diabolical and there are no extenuating circumstances to take lenient view for imposing a sentence for Imprisonment of Life. In this context, the famous decision of Indira Gandhi Murder Case, reported in 1989 Cri. L.J. at page 1 is cited. In the particular decision, the Hon'ble Supreme Court held that the accused, being security guards of the victim, caused the death of the victim in a brutal manner and, as such, they should get only the sentence of death. It is contended by the learned Special P.P. that in the present case the accused was the security guard of the apartment and his duties were to provide security to the residents of the apartment. Instead of providing security, he committed the gravest offence of rape and murder on an innocent and defenceless girl, ostensibly for no provocation from her part. The decision reported in A.I.R. 1989, Supreme Court, at page 1456, as cited on behalf of the accused stipulates that special reason have to be given for imposing death penalty, and that only because the murder was committed in a dastardly manner, a sentence of death should not be recorded. I have already recorded that it is necessary to record all the facts and circumstances to take note of the mitigating circumstances relating to the "offender", and thereafter to find out if the case comes within the rule of "rarest of Rare Cases" warranting a sentence of death.

The murder was committed in the present case in cold blood and in a planned manner. Victim had been teased by the convict and indecent proposals had been made to herby the convict only a few days before the occurrence. As the father of the victim took measures for the transfer of the convict from the apartment, he retaliated by taking recourse to the most henious crime. He visited the flat of the victim when everybody was out. He raped the victim and strangullated her to death. Victim received 21 injuries on her person. Even after committing the crime, the convict remained totally unmoved and left the apartment quietry without telling anything to anybody. Being the security guard his conduct was deplorable and unbelieveable that he would rape and kill a defenceless girl of 18 years in her flat by taking advantage of her helpless condition. This case definitely comes within the precints of the decision reported in 1989 Cri.L.J. at page - 1. It is true that accused is very young in age. He married only one year and a half back. He has his parents. But these circumstances do not out-weigh the severity and diabolical nature of the crime. The convict claimed he did not have any past record of crime. This assertion of the convict is of no consequence in this case in view of the diabolical and gruesome nature of the murder and rape of the victim, and also the manner and precision and the brutality with which the murder and rape had been committed. All these reflect the very criminal and savage mind of the convict who prepetrated the crime on an innocent girl. Even during the trial he took one false plea after another and appeared to be no repentant for the crime he committed. Thus, having regard to all the facts and circumstances on record in this case, including the plea taken by the convict, I am confident that a sentence for imprisonment of life would not be adequate punishment. The Capital Punishment would would be the just and proper punishment that should be inflicted upon the convict for his conviction on the charge of murder under Section 302 of the Indian Penal Code in this case.

Accordingly, convict be sentenced to be hanged by neck till death for the conviction recorded against him under Section 302 of the Indian Penal Code. He is also sentenced to imprisonment for life for his conviction under Section 376 of the Indian Penal Code. He is further sentenced to undergo Rigorous Imprisonment for 5 years for his conviction under Section 380 of the I.P.C. The sentence recorded for the conviction under Section 302 of the Indian Penal Code is subject to confirmation by the Hon'ble High Court. This sentence shall not be executed unless it is confirmed by the Hon'ble High Court. The other two sentences shall however run concurrently and they would cease to have any effect in case the sentence for the conviction under Section 302 of the Indian Penal Code is confirmed by the Hon'ble High Court and executed. Under the provisions of Section 366 of the Criminal Procedure Code, the entire proceeding be submitted to the Hon'ble High Court on a reference for the confirmation of the Sentence of Death.

Dictated & Corrected by me
Sd/- R.N.Kali
Additional Sessions Judge

Sd/- R.N.Kali
Additional Sessions Judge,
2nd Court, Alipore
12.8.91

Additional Dist. & Sessions Judge
2nd Court, Alipore (S)

Addl.Dist.Sess. Judge
2nd Court, Alipore (S)