
(2012) 05 CAL CK 0065
In the Calcutta High Court
Case No : C.R.A. No. 361 of 2006

Sandhya Mondal and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 02-05-2012

Acts Referred:

Evidence Act, 1872 — Section 32

Penal Code, 1860 (IPC) — Section 302, 307, 326, 34, 498A

Citation : (2012) 3 CALLT 392 : (2013) 1 CHN 267

Hon'ble Judges : Indira Banerjee, J; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : Milon Mukherjee, Mr. Saibal Mondal, Mr. S. Ganguly and Mr. Santanu Chatterjee, for the Appellant; Joy Sengupta and Mr. S. Chakraborty for the State, for the Respondent

Judgement

Girish Chandra Gupta, J.—This appeal is directed against a judgment dated 15th, May, 2006 passed in the Sessions Case No. 142 of 2001 corresponding to Sessions Trial No. 7 of 2005 by the learned Additional District Sessions Judge. Fast Track Court, Durgapur in connection with Andal P.S. Case No. 24 of 1997 dated 16th February, 1997 by which the learned Trial Court convicted the appellants of an offence punishable under sections 498A/ 302 of the Indian Penal Code read with section 34 thereof. By an order dated 16th May, 2006 the appellants were sentenced to rigorous imprisonment for 2 years as also to pay a fine of Rs. 1,000/- each in default to suffer simple imprisonment for 2 months for the offence punishable u/s 498A of the Indian Penal Code. They were also sentenced to imprisonment for life as also to pay a fine of Rs. 5,000/- each in default to suffer further simple imprisonment for a period of 6 months for the offence punishable u/s 302 read with section 34 thereof. The prosecution case briefly stated is as follows:-

On 13th June, 1992 Kabita @ Sabita was given in marriage to Sarat according to Hindu rites. Almost after a month from the marriage she was tortured at her matrimonial home. The near relations of Kabita were also ill treated by her

husband and his relations. There was illicit relationship between her husband and the accused Sandhya. As a result greater part of the married life was spent by Kabita at her paternal house. Immediately after "Bhaiphota" in the year 1996 she finally came back to her father's house. Thereafter her father lodged a complaint with the S.D.O. The S.D.O. in his turn issued summons to her husband Sarat. Before the S.D.O. the husband submitted a written undertaking that he shall not in future misbehave with his wife nor shall any of his relations misbehave with her. Based on this undertaking on 4th February, 1997 she returned to her matrimonial house. She suffered a severe burn injury in the night of 15th/ 16th February, 1997. She was hospitalised by the neighbours and the husband. In the morning of 17th February the near relations of Kabita got the information and rushed to the hospital. They came to know from Kabita that her husband, sister-in-law, nephews and the husband of the said sister-in-law had jointly poured kerosene oil on her body and ignited her. A written complaint was lodged on 16th February, 1997 at 12.15 hrs. On the basis thereof a case under sections 498A, 326/ 307 read with Section 34 of the Indian Penal Code was started. Case history was recorded by the attending doctor on 16th February, 1997 itself. A dying declaration was recorded by an Executive Magistrate on 17th February, 1997 at 12 noon. After prolonged struggle she died on 26th February, 1997.

2. All the five accused persons were charged under sections 498A/ 302 read with section 34 of the Indian Penal Code. After the charge was framed Sarat Mondal the husband of the deceased absconded. Therefore he did not face the trial. The case was split up. The rest of the 4 accused persons were convicted and sentenced as indicated above.

3. The learned Trial Judge in his judgment observed at page 51 as follows:-

In this trial prosecution case largely founded upon dying declaration and as per view of this Court, dying declaration recorded correctly by learned Magistrate in presence of doctor and I do not find any procedural infirmity in recording of dying declaration.

In this trial P.W. 1, P.W. 2, P.W. 4, P.W. 7, P.W. 9, P.W. 8 and P.W. 13 all cross-examined at length and nothing infirm elicited to cast doubt on their veracity. I find no reasons why deceased should implicate accused persons falsely at the instance of her relations. Dying declaration recorded by learned Magistrate, after due scrutiny of other statements of the deceased before doctor and some of her relations contains a ring of truth and accordingly dying declaration recorded by learned Magistrate must be relied upon.

4. At pages 56, 57 and 58 the following views were expressed by the learned Trial Court:

Dying declaration as recorded by learned Magistrate Mr. Banerjee does not show any infirmity. It was recorded when patient was found fully conscious. Concerned dying declaration as it appears was recorded in presence of doctor Sanjoy Kumar

Mondal (P.W. 8) and in apart from doctor two other witnesses were present at that time and right thumb impression (R.T.I.) of maker was taken by the Magistrate Mr. Banerjee himself.

5. Dying declaration as recorded by learned Magistrate have been corroborated by other dying declaration made by deceased Sabita before P.W. 8, P.W. 2, P.W. 4, P.W. 7, P.W. 13, P.W. 9 etc. on material particulars.

6. Dying declaration raised finger about accusation of all the accused persons in respect of their particular actions in the night of 16.2.1997 in the house of Sarat Mondal.

7. Present case is raised entirely on circumstantial evidence. Whatever mental and physical torture received by Sabita all were internal family affairs in the in laws house of Sabita and accordingly those will never be public unless expressed by the in laws members of Sabita or by any reporting made by Sabita herself to her in laws members. In such a situation independent eyewitnesses cannot be found in present circumstances. From Sabita's point of view she has stated before her father's house orally and by writing letter.

8. At least it comes from evidence that near relative of Kabita always had anxiety for her and from evidence it comes that since prior to death of Kabita they had the suspicion that Kabita may be killed. Readily there is no such evidence to the effect that husband and in laws house were not up to the choice of deceased Sabita. Plea of separation as argued from defence remained not proved. Question naturally comes why maximum period of nuptial life spent by kabita in her father's? Why P.W. 1, P.W. 2, P.W. 4 all these witnesses attempted to convince Sarat and what for? Why at the interference of S.D.O. Durgapur and upon assurance of husband Sabita reentered to her in laws house? Answers to all these questions are well available in evidence.

9. Whatever evidence came from the mouth of P.W. 2, P.W. 7, P.W. 9 and P.W. 13 all were learnt by these witnesses directly from the mouth of Kabita. Since such evidence have been corroborated with Ext. 7 and Ext. 5 in material particulars. So, evidence of all these witnesses must play a vital role in this trial.

10. Illicit relationship of Sarat with Sandhya in present fact and circumstances, as per view of this Court have been established, it was mental persistent cruelty particularly from Sarat towards deceased Kabita. Evidence also satisfactorily established that in laws members of Kabita subjected her to cruelty on domestic affairs and also relating to illicit affair in between Sarat and Sandhya Mondal.

11. Kabita died within 5 years of her marriage, as a result of extensive burn injuries. Fact of bum injuries and death have been proved from medical evidence and PM report. Considering evidence on record, it is very much clear that on the fateful night while Sabita was lying in her bed at that time all the accd. persons with common intention set fire in the persons of Kabita. Common intention of accd. persons appears to have exists before criminal, act is perpetrated. All the

accused persons as per pre-arranged plan as it appears have participated in the doing of the act. Here although evidence have come that Binoy, Kajal restrained Kabita from coming out the bed. Sandha Mondal poured kerosene oil, Purna Mondal was supplying kerosene oil, lathi or uttered slang languages, Sarat threw fire through a piece of cloth or by lightening a match stick, but the common intention of all these persons were to burn Sabita and ultimately they have succeeded. In such a view of the matter, Sarat, Sandha, Kajal, Binoy and Purna Chandra Mondal all are responsible for the death of Kabita.

12. Subsequent event i.e. taking of injured Kabita to hospital by her husband Sarat and other accd. persons does not ip so facto relieve them from their liabilities. In view of a decision of our parent High Court as reported in 2004 C.Cr.LR Cal-318, this court have assessed entire circumstantial evidences whatever have come in this trial. From circumstances of this case as well as from evidence inference of guilt against accused persons as are drawn as per my view cogently and firmly established and circumstances are conclusive in nature and definite tendency are unerringly pointing towards guilt of the accused persons and certainly I find a complete chain of evidence which wholly rule out any reasonable possibility of innocence of accused persons from any point of view."

13. Mr. Mukherjee, learned Advocate appearing on behalf of the appellants took us through the oral and documentary evidence and formulated the following points.

(A) The case is principally based on dying declaration which has neither been legally proved nor is the same believable.

14. Mr. Mukherjee relied on a judgment in the case of Maniram Vs. State of M.P., wherein the Apex Court set aside the conviction recorded by the High Court and restored the order of acquittal passed by the learned Trial Court because the sole basis of conviction was a dying declaration which was of a highly doubtful nature.

15. The Second judgment cited by Mr. Mukherjee was in the case of Jagga Singh Vs. State of Punjab, wherein the conviction was set aside and it was reiterated that "it is a settled law that for a dying declaration to provide the basis for conviction, the same has to be beyond any reproach."

16. The third judgment cited by Mr. Mukherjee was in the case of Shakuntala Vs. State of Punjab, wherein it was reiterated that in order to record a conviction on the basis of a dying declaration the Court must be satisfied that it was wholly reliable and the same should not suffer from any major infirmity. In that case the dying declaration was inconsistent and therefore the conviction was set aside.

17. The last and the fourth judgment cited by Mr. Mukherjee was in the case of Chinnamma v. State of Kerala reported in AIR 2004 SC 2816 wherein the dying declaration was discarded and the conviction set aside because the possibility of the deceased being influenced by her parents in making the dying declaration could not be ruled out.

(B) There is no sufficient evidence to sustain even a charge u/s 498A of the Indian Penal Code.

(C) The written complaint was admittedly lodged on the basis of consultation and advise.

(D) No G/D entry was produced to show that the Police had visited the hospital where the written complaint was allegedly made over, on the basis of any information given to them.

18. Mr. Sengupta, learned Advocate appearing for the State submitted that some amount of inconsistency in the evidence of the witnesses is bound to be there. There is adequate documentary evidence in the form of a dying declaration recorded by an Executive Magistrate, which leaves no manner of doubt, as regards the complicity of the appellants and, therefore, this Court should refrain from interfering with the judgment under challenge.

19. The principal question according to us is whether the dying declaration Ext. 5 is true and believable regard being had to the fact that there is no eyewitness.

20. The second question for determination is whether the charge u/s 498A IPC has adequately been proved against the appellants.

21. Before we embark upon an analysis of the evidence it is necessary to indicate the identity of the witnesses. 14 witnesses were examined. P.W. 1 Bijoy is a brother of the deceased. P.W. 2 Sitala is an aunt of the deceased. P.W. 4 is a cousin of the deceased, P.W. 7 Pradip is another brother of the deceased. P.W. 13 is yet another brother of the deceased. P.W. 3 is a neighbour of the appellants. P.W. 8 Dr. S.K. Mondal is a witness to the dying declaration (ext. 5). P.W. 9 is Dr. P.R. Ray who had taken down the history of the case from the patient herself. Rest of the witnesses are all official witnesses. The Executive Magistrate who recorded the dying declaration was not examined. His handwriting and signature in Ext. 5 were both proved by a process server (P.W. 10). The autopsy surgeon was also not examined in this case. The 1.0 (P.W. 14) as a matter of fact admitted during cross-examination that "It is true that in P.M. report it has not been specifically mentioned whether death was accidental, suicidal or homicidal in nature. I did not examine any medical expert to ascertain the fact whether it was accidental, suicidal or homicidal."

22. In order to answer the first question formulated above we shall notice the dying declaration in extenso which reads as follows:-

Dying declaration of Smt. Sabita Mandal W/O Sri Sarat Mandal of Village-Baska P.S. Andal.

(The patient being fully conscious)

23. My sister-in-law Sandhya Mandal wife of My husband's elder brother Puma Mandal had some illegal relationship with my husband Sarat. I have seen in my own eye of their illegal sexual relation, when I objected my husband. Purna

Mandal and Sandhya Mandal used to beat me. My husband used to do business of coal and he used to pay money of his income to his elder brother and sister-in-law, Sandhya, on Saturday when I was asleep then I found fire on my body at night.

24. When I woke up I saw my husband Sarat, my brother-in-law Purna Mandal and Sam (sic) Mandal, near me and also Kajal (sic) and Bijay, They also beat me regularly. Sandhya was also present during catching fire. They had kerosene bottle in their hand.

Recorded by me u/s 32 of Indian Evidence Act as per requisition of Police.

25. The dying declaration was recorded by the Executive Magistrate Sri Tapan Kr. Banerjee as indicated above. The said Sri Tapan Kr. Banerjee was not called as a witness. His handwriting and signature was proved by the process server (P.W. 10) who admitted during his cross-examination that he had no personal knowledge as regards the dying declaration. From the dying declaration (ext. 5) it appears that the same was witnessed by Sri Manju Majhi and Smt. S. Pal wife of Muchipada Pal neither of these two witnesses was examined. Only other witnesses to the dying declaration is Dr. Sanjay Kr. Mandal who is P.W. 8. He deposed during his examination-in-chief as follows:-

Now I am posted in D.S.P. main hospital as Assistant Director. On 17.2.97 I was in same place and post. This dying declaration was taken by Executive Magistrate in my presence. It was dying declaration of Smt. Sabita Mondal wife of Sarat Mondal of village Baska. P.S. Andal. This is my signature with date and time. Let signature of witness upon dying declaration be marked as Ext. 5/1.

Q. Why did you put your signature ?

A. Because I was present on the spot. Dying declaration was made in my presence.

The patient was conscious at that time and she was able to talk. Dying declaration was written by Magistrate in my presence and signed by me.

26. During his cross-examination he deposed inter alia as follows :-

It is true that I have not given any certificate here in this dying declaration written by my own hand writing, to the effect that patient was fit mentally. I have also not noted in my certificate by my own handwriting that patient was not under any sedative drugs. I have no personal acquaintance or any connection with the patient party (objected to). Bed head ticket not mentioned in this dying declaration. It has not been mentioned in dying declaration that such declaration was made in my presence. Not a fact, that subsequently Magistrate obtained my signature. I do agree that at the time of noting of dying declaration it should be in the verbatim language of the patient (obj.to). Not a fact, that I have deposed here falsely being tutored, otherwise (obj.to). It is true that patient was conscious, that patient was oriented not, written by my own hand writing.

27. P.W. 9 Dr. P.R. Roy who had attended the patient admitted that" it is true that Morphin injection was administered to the patient. Bed head ticket is in the name of Kabita Mondal. Patient was given oxygen also."

28. In the perspective that morphine was injected the following evidence of P.W. 8 is material "it is true that due to use of sedative drugs there is possibility of drowsyness. It is true that on administering sedative drugs patient concern will have no such control over his/her nervous system."

29. What is most significant is the fact that the sole witness to the dying declaration namely Dr. S.K. Mondal (P.W. 8) did not utter a word stating that the declaration was correctly or truly recorded in English by the learned Executive Magistrate in his presence. No one proved the alleged RTI of the deceased. No Kerosene bottles were seized by the Police. The P.W. 9 Dr. P.R. Roy had recorded the case history (Ext. 7/1) which reads as follows:-

16.2.1997

A case of 80% burn.

As per statement of the patient: she was married 4 years back and was childless. Her husband was characterless and she used to live with another woman. She was not properly looked after in her in laws house. She was sleeping and suddenly at around 1.30 a.m. her husband, brother-in-law, sister-in-law, son-in-law all tortured and burnt her after pouring kerosene.

As per statement of the husband:- He was sleeping and suddenly he saw there was fire. He tried to douse the fire (No mark of burning in his hand).

30. The case history appearing to have been recorded by the P.W. 9 is materially different from the dying declaration ext. 5, recorded by the Executive Magistrate. Ext. 7/1 reads that" she was sleeping and suddenly at around 1.30 a.m. her husband, brother-in-law, sister-in-law, son-in-law (nephews) all tortured and burnt her after pouring kerosene" is irreconcilable with that portion of ext. 5 which reads as follows:-

When I was asleep then I found fire on my body at night. When I woke up I saw my husband Sarat, my brother-in-law Purna Mondal and saw Mondal near me and also Kajal and Binoy they also beat me regularly. Sandhya was also present during catching fire they had kerosene bottle in their hand.

31. Ext. 5 projects circumstantial evidence to suggest that the accused may have attempted to murder her whereas Ext. 7/1 contains an assertion that they in fact burnt her.

32. Pradip (P.W. 7) brother of the deceased deposed during examination-in-chief that "I had talked with Kabita in hospital where I came to know from her mouth that Kerosene oil was poured in her persons either by Sandhya Mondal or Sarat Mondal and within a few second she felt that fire already set in her persons."

33. The declaration made to the P.W. 7 suggests that the deceased did not for certain know as to who had set her on fire because she was asleep.

34. The learned Public Prosecutor presumably out of panic put the following leading question which was objected to by the defence and the learned Trial Court has recorded the question and answer in extenso which reads as follows:-

Q. Did Kajal do anything did Binoy do anything ? (Obj.to)

A. Kajal, Binoy held her and Sarat ignited the fire.

35. This information is neither contained in the Ext. 5 nor in Ext. 7/1. The allegation as regards illicit relationship between Sarat and Sandhya is not the (sic) which contains the earliest statement of the deceased. These (sic) are also conspicuous by their absence in the written complaint (sic) P.W. 1, yet another brother of the deceased, after having (sic) facts from the deceased. Reference in this regard may be made (sic) evidence of P.W. 1 during his cross-examination "the fact of (sic) which I deposed in chief has not been stated in FIR allegation of compromising position which I deposed in chief also not been noted in FIR. I cannot recollect the date and month when I was assaulted in the house of my sister-in-laws house." It is alleged in the dying declaration that the husband of the victim was engaged in coal business whereas evidence of the P.W. 1 is that "Sarat was an agricultural labourer." The relations of the deceased kept on improving their version, which was also confirmed by the I.O. (P.W. 14) during his cross-examination.

36. Ext. 9, is a letter appearing to have been written by the victim herself, though was not strictly speaking proved in accordance with law but the document was tendered in evidence without any objection. The letter written in vernacular when translated in English would read as follows:-

30th Magh JAY MA

I came here on 21st Magh but did not get the status of husband and wife. No one talked to me when I entered the house. I was not allowed to do any work. Things are continuing as before. My sister-in-law Sandhya, her mother Gandhyasari, niece, the elder brother-in-law have embittered the relationship. They have all been united and have been conspiring to kill me. I, therefore, am unable to follow how shall I live among them. I am not allowed to convince my husband when he is at home. My husband shall treat a Snake as a rope (frog) if that is dictated by my sister-in-law. My greatest misfortune is that I did not get the attention of my husband. No married woman would like to live at her paternal house leaving the household of her husband. But in my case that is not true. Various attempts are made to harm me and having followed that I do not go out of the house after the evening. When I came here along with the elder brother he brought a packet of sweets but nobody touched the same. They threw it to the Cows. I am not treated as a member of the family which I am unable to bear. I do not know how did I become a sinner in the eyes of god. After the

marriage I have been spending my days or the long 5 years in the same fashion. If I had any shelter from any quarter at my matrimonial home I could have lived under that. Those who are responsible for my life are my sister-in-law both my brothers-in-law, mother of my sister-in-law, the niece, Kajol, Binoy and my husband. My elder brother-in-law is a terror. He does not allow me to talk to any outsider. As a stranger I somehow pass my days. As soon as darkness sets in I become apprehensive as to how shall I pass the night. My husband is always outside the matrimonial home after I came here. He tells me that my sister-in-law is my eye shore. Kajol's marriage is on 9th Falgun. What more shall I write. I have written hurriedly and stealthily and it is already 12'o clock in the night. If I have not been able to write the letter correctly kindly read it correctly with extra efforts. My earnest request to you is that the persons who oppressed me should be avenged.

Unless avenged my soul shall not get peace even if I die.

Yours

Kabita

(P.S.) All of you must steadily take up the cudgel on my behalf. Do not break down. Would I have been better off if I had shown firmness at the time of my marriage?

37. From the contents of the aforesaid letter it appears that the same was written on 12th, February, 1997 corresponding to 30th Magh. This letter does not even remotely hint at any illicit relationship between Sarat and Sandhya.

38. As regards alleged illicit relationship between the accused Sandhya and the accused Sarat the following evidence of P.W. 1 is also important" at the time of marriage of Sabita, Kajal Mondal was aged about 25/26 years. Binoy Mondal at that time may be probably 2/21/2 years younger to Kajal. Kajal, Binoy are the two sons of Sandhya Mondal. I do not know whether at the time of marriage of Purna Ch. Mondal, Sarat Mondal was about 11 years old or not."

39. From the evidence on record it emerges that Sandhya had grown up sons, one of whom was 25/26 years old. The allegations that Sandhya had illicit relationship with Sarat, who was only 11 years old, at the time of her marriage with his elder brother, is improbable, if not unbelievable. The victim apparently resented the obedient character of Sarat to his elder sister-in-law Sandhya.

40. The P.W. 1 deposed during his examination-in-chief that "after Astha Mongla Sarod Mondal, Binoy Mondal, Kajol Mondal, Sandhya Mondal and Purna Ch. Mondal started torture upon my sister. My sister was being assaulted there and even she was not provided any food in her in-laws house. I was informed about all these facts from a letter sent by my sister and also from my house members where my sister reported."

41 The allegation that the victim was not provided food at her matrimonial home,

made from the witness box by the P.W. 1 and supported by rest of the witnesses, is not borne out by the contents of Ext. 9 which we have set out in extenso. There is no allegation in that letter of denial by the in-laws, of food to the victim. Similarly, the allegation that she was physically assaulted or tortured, is not supported by Ext. 9.

42. The marriage evidently was a mismatch. The victim apparently resented the closeness of her husband to his family members and the respect shown by him to the accused Sandhya. It is also not unlikely that the accused Sarat was indifferent towards the victim. The victim in her turn may have entertained the belief that there was something between the accused Sandhya and Sarat, which had kept the accused Sarat away from her, which in all likelihood was the root of discontent.

43 The written complaint lodged by the father of the deceased with the S.D.O. would have been a very material piece of evidence to show the nature of torture inflicted upon the victim at her matrimonial home. But the prosecution has omitted to produce that document.

44. The contents of Ext. 9 suggests that the victim was unhappy because her husband was indifferent to her. The victim harbored the belief that accused appellants were instigating her husband to distance himself from her.

45. Ext. 9 is a reflection of the state of the victim's mind shortly before her death. The victim was it appears, in a distressed state of mind which made her mentally weak and unstable.

46. The allegations of attempts to harm the victim are vague and devoid of particulars. There is no allegation of any threat to her life. The victim would perhaps have returned to her parents as she had done before, had there been any real threat to her life. It seems more probable from the language and tenor of Ext. 9 that the victim feared that she would not be able to suffer the indifference and the illtreatment made out to her by her husband on the instigation of his sister-in-law Sandhya.

47. In the absence of any evidence whatsoever to indicate whether the death was suicidal or homicidal or accidental and considering the contents of Ext. 9, the possibility of self-inflicted injury and false implication of the appellants cannot be ruled out. The letter being Ext. 9 smacks of vengeance. May be the victim became revengeful, in view of the treatment that was meted out to her. The question, however, is whether the charge against the accused appellants u/s 302 of the Indian Penal Code has been proved beyond reasonable doubt.

48. From the letter being Ext. 9 it appears that Sandhya's son Kajal was scheduled to get married on 21st February, 1997. It seems improbable that the appellants would set the victim on fire on the night on 15/16th February, 1997, just 5 days before the marriage.

49. As discussed above, the purported dying declaration on the basis of which

the accused appellants have been convicted u/s 302 of the Indian Penal Code is not free from reproach and/or doubt. The declaration may have resulted from intense anger and vengeance of the victim towards her husband and the accused appellants, particularly Sandhya, who she believed, had ruined her life and driven her to put an end to it.

50. We are for the reasons discussed above unable to rely on the dying declaration the ext. 5. Therefore, the conviction u/s 302 IPC cannot be maintained and is therefore set aside.

51. There are no specific allegations against the accused Purna Chandra Mondal or his accused sons Kajal and Benoy, which constitute the ingredients of an offence u/s 498A of the Indian Penal Code. Conviction cannot be sustained on vague omnibus accusations of bad behaviour devoid of particulars.

52. The conviction of the accused Purna ch. Mondal and the accused Kajal and the accused Binoy u/s 498A IPC cannot therefore be maintained for the reasons discussed above. Therefore their conviction u/s 498A IPC is also set aside.

53. The conviction of the accused Sandhya u/s 498A IPC is however maintained. The sentence passed by the learned Trial Court in that regard is also upheld. She is directed to surrender forthwith to serve out the sentence. The learned Trial Court shall take coercive measures if she does not surrender within a fortnight from date.

4 This judgment shall in no way influence the learned Trial Court in the trial of the accused Sarat as and when he may surrender or may be arrested.

55. The appeal is thus disposed of.

56. Lower Court Records with a copy of this judgment be sent down to the learned Trial Court forthwith for information and necessary action.

Urgent xerox certified copy of this judgment, be delivered to the learned Advocates for the parties, if applied for, upon compliance for all formalities.

Indira Banerjee, J.

I agree.