
(1977) 07 CAL CK 0028
In the Calcutta High Court

Sati Kanta Guha and Another

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 25-07-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 209, 226, 227

Evidence Act, 1872 — Section 32

Penal Code, 1860 (IPC) — Section 109, 120B, 201, 302, 328

Citation : (1977) CriLJ 1644

Hon'ble Judges : R.K. Sharma, J;R. Bhattacharya, J

Bench : Division Bench

Judgement

R. Bhattacharya, J.—These three applications arise out of a Sessions Trial in the Court of the 11th Additional Sessions Judge at Alipore, 24 Parganas where several charges have been framed against the petitioners by the learned Judge after hearing the parties u/s 228 of the Cr. P. C., 1973. The petitioners have come up to this Court for quashing the proceedings u/s 482 of the new Code.

2. Briefly stated, the prosecution case is that one Surupa Guha was married to the accused Indranath Guha in 1966. After about a year of the marriage, there had been continued ill treatment towards Surupa from her husband Indranath, her father-in-law Satikanta Guha and her mother-in-law Pritilata Guha and such ill treatment at times became unbearable to her. On 4-5-1976 at about 10 or 10-15 a. m. Surupa came back home at 10, Hindusthan Road, Calcutta from the Science College Laboratory where she used to go for her research work. Thereafter she was given some food viz., cucumber and lassi by the servant of her house Jhantu, the accused. She took the food and subsequently she started vomiting and became seriously unwell. At about 11 a. m. the family physician came and as the condition of the patient was precarious, he advised for her immediate hospitalisation. At about 11-30 a. m. the patient was admitted to the S. S. K. M. Hospital previously known as P. G. Hospital. The patient was at once taken charge of and her treatment started. Before the doctors she stated at their request that she did not take any poison but took only cucumber and lassi. At

about 1 p. m. Ramendra Mohan Mukherjee, the father of Surupa got a telephonic message that his daughter had become very sick and had been removed to the hospital. Parents and relatives of Surupa came to the hospital. Parents-in-law of Surupa, Indranath, Jhantu and others also came. Satifcanta produced one bottle of Horlicks at the hospital and wanted to get it examined at the hospital. Indranath visited the Science College Laboratory for ascertaining if poison was there and got information that mercuric chloride solution was there. He also took the bed sheets and the wearing apparels of Surupa from the hospital to his house. These clothings contained the matters vomitted by Surupa. At night Indranath informed the Ballygunge Police Station that his wife, as he apprehended, might have by mistake taken some deleterious substance at the Science College or at home. The patient however died at the hospital on 4-5-1977 at about 11-30 P.M. The death certificate granted by the hospital showed that Surupa's death was due to condiorespiratory failure due to unknown poisoning. Next morning Ramendra Mohan Mukherji, the father of the deceased lodged a written complaint with Officer-in-charge of the Ballygunge Police Station for investigation into the case as he felt, considering the bad attitude of the mother-in-law and husband of Surupa, that "some kind of poison was mixed either In the cucumber or in the lassi" offered to his daughter. The police after investigation submitted charge sheet against the accused-petitioners and one Ramendranath Lahiri Under Sections 120-B, 328, 302 and 201, I. P. C. The Sub-divisional Judicial Magistrate, Alipore committed the said accused persons to the Court of Session u/s 209 of the new Cr. P. C. for trial. The case was transferred to the learned 11th Additional Sessions Judge, Alipore for disposal. The learned Additional Sessions Judge on consideration of the materials on record found no sufficient ground for proceeding against Ramendranath Lahiri and discharged him u/s 227 of the Cr. P. C.

3. The learned Judge, however, found sufficient materials to frame charges against the petitioners presuming that they had committed offences triable by the Court of Session as Indicated bellows :

Against Satikanta Guha, Pritilata Guha and Indranath Guha there are 3 heads of charges--

(1) u/s 120-B, I. P. C. on the allegation that they between February 1976 and 4th May 1976 at 10 Hindusthan Road and Ram Krishna Mission Guest House, Gol Park and elsewhere agreed to commit offences, to wit, the murder of Surupa Guha, causing evidence of murder to disappear and giving false information with the intention of screening themselves from legal punishment.

(2) u/s 302 read with Section 109, I. P. C. on the allegation that in pursuance of the conspiracy as stated in the 1st charge they abetted Jhantu Charan Dutta in causing the death of Surupa Guha on 4-5-1976.

(3) u/s 201, I. P. C. on the allegation that in pursuance of the conspiracy as stated in the 1st charge, they on 4-5-1976 knowing or having reason to believe

that an offence had been committed in respect of Surupa Guha, caused evidence of the commission of the offence to disappear with the intention of screening the offenders including themselves from legal punishment or with the said intention, gave false information respecting the offence which they knew or believed to be false.

Jhantu Charan Dutta was charged as follows :

(1) u/s 120-B, I. P. C. in the same language as appears in charge No. 1 against the other 3 petitioners.

(2) u/s 302, I. P. C. for causing intentionally or knowingly the death of Surupa by administering poison or causing the same to be administered pursuant to the conspiracy mentioned in the 1st charge.

(3) u/s 201, I. P. C. in the same language of the charge as was framed against other petitioners.

4. In Criminal Revision Case No. 1171 of 1977 the applicants are Satikanta Guha and his wife Pritilata Guha. Indranath Guha has filed the Cr. Revn. Case No. 1172 of 1977 and Jhantu Charan Dutta Is the petitioner in the Case No. 1173 of 1977. This common judgment shall govern all the cases.

5. We have heard Mr. Sankardas Banerji for the petitioners, Satikanta and Pritilata, Mr. Dilip Kumar Dutt for Indranath, Mr. Prasun Chandra Ghosh for Jhantu and Mr. Deba Prosad Chowdhury for the State Opposite Party.

6. The contention put forward from the side of all the petitioners is that the learned Judge below erred in law in framing charges against the petitioners as there is no material sufficient for framing any charge whatsoever. On behalf of the State, however, it has been asserted that this being a case to be proved by circumstantial evidence, there are several facts appearing in the statements of witness recorded by the police during investigation which point out to the guilt of the petitioners. The learned Counsel for the petitioners attacked the order of the learned Judge for framing charges on the ground that his findings are based on surmises and not on actual material on record and that his presumption that the petitioners have committed the offence is utterly without any basis or material. It is further submitted that the findings of the learned Judge below were based on statements of some persons which are inadmissible as evidence and that the materials on record disprove the prosecution case of homicide.

7. In the instant case we are concerned with Sections 227 and 228 of the Cr. P. C., 1973 which we will refer to as the Code. Those two sections confer powers on the Sessions Judge to discharge any accused person before trial or for framing appropriate charges against him for trial. On this provision there has been a decision of the Supreme Court with thorough discussion as will appear in the case of State of Karnataka Vs. L. Muniswamy and Others, . In that case the learned Sessions Judge, Bangalore found sufficient materials for framing charges against 20 accused persons for trial. Of them 8 accused moved the High Court u/

s 482 of the Code for quashing the proceedings against them under its inherent power. The High Court on consideration of the materials found no sufficient ground for proceeding against the petitioners and the proceeding as against them was quashed. Against that order the State appealed before the Supreme Court. The Supreme Court agreed with the High Court and did not interfere in the matter. In that connexion the Supreme Court considered the scope of Sections 227 and 482 of the Code in particular.

8. On the question of the inherent powers of the High Court preserved in Section 482 of the Code, the Supreme Court in the above case states.

In exercise of this wholesome power, the High Court is entitled to quash a proceeding If it comes to the conclusion that allowing the proceeding to continue would be an abuse of process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers both in Civil and Criminal matters is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.

It has been further asserted in that case.

The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature.

9. In the matter of framing charges some cardinal principles have been mentioned in the case of State of Karnataka Vs. L. Muniswamy and Others, already mentioned above. Sections 226, 227 and 228 of the Code are relevant. The Court is to hear to Public Prosecutor on the allegation and charges against the accused and also the submissions of the accused or on his behalf and it shall consider the records of the case and the documents or in other words, all materials collected in the case. If upon such consideration the Judge finds no sufficient ground for proceeding against the accused, he shall discharge the accused u/s 227. If on the other hand he finds sufficient and reasonable ground for presuming that the accused has committed an offence, appropriate charges shall be framed as indicated in Section 228 of the Code for trial. If there is a reasonable likelihood of the accused being convicted of an offence, a charge should be framed. Before any charge is framed the Judge should be satisfied that there is material on record on the basis of which the Court could reasonably come to the conclusion that the accused person is in any manner connected with the incident leading to the prosecution. Referring to the case of Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another, and Century Spinning and Manufacturing Co. Ltd. and Others Vs. State of Maharashtra, , the Supreme Court in State of Karnataka Vs. L. Muniswamy and Others, says,

It is wrong to say that at the stage of framing charges the Court cannot apply its judicial mind to the consideration whether or not there is any ground for presuming the commission of the offence by the accused. As observed in the latter case, the order framing a charge affects a person's liberty substantially

and therefore, it is the duty of the Court to consider judicially whether the material warrants the framing of charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face a trial.

For the purpose of framing charge, therefore, the Judge is to consider judicially whether on consideration of the materials on record, it can be said that the accused has been reasonably connected with the offence alleged to have been committed and that on the basis of the said materials there is a reasonable probability or chance, as we normally call it, of the accused being found guilty of the offence alleged. If the answer is in the affirmative, the Judge will be at liberty to presume "that the accused has committed an offence" as mentioned in Section 228 of the Code for the purpose of framing charge. On the contrary, if the answer is in the negative for want of sufficient material, the Judge shall discharge the accused as no charge can be framed.

10. Keeping in view the principles discussed above, let us now consider the applications before us. As we have already indicated earlier, the grievance of the petitioners is that there is no material before the Court to connect them with the offences alleged to have been committed by them and that the learned Judge below failed judicially to consider the materials on record but relied on some assumptions drawn unreasonably without any basis. Both the sides agreed that the statements of the witnesses and other documents should be placed before us for our consideration to see if the petitioners are connected with the alleged crime. In fact those documents were read before us from the side of the petitioners and Mr. Chowdhury also referred us to several documents and statements in support of the prosecution.

11. We have been taken through the order of the learned Judge below framing charges. Our attention has been drawn to several portions of the same by the learned Counsel on behalf of the petitioners. It appears that the learned Judge finds that the statements of some persons relating to the deceased show that Surupa said something relating to the circumstances of her death. The statements of those witnesses say that Indranath and Pritilata in particular treated with cruelty Surupa and that Pritilata told Surupa to commit suicide. The date of such suggestion for suicide does not appear to be near about the date of death of Surupa. It cannot be said that the learned Judge was correct to hold in dealing with Section 32(1) of the Evidence Act that Surupa made any statement as to cause of her death or as to any circumstances of the transaction which resulted in her death. Under certain circumstances such statement may have tremendous effect in the mind of a Judge and it may be a reliable piece of evidence. This finding in the present case might have greatly influenced the mind of the Judge against Pritilata and Indranath, Regarding conspiracy the learned Judge says that though in latter part of April, 1976 Pritilata left her residence at 10, Hindusthan Road and started staying at the International Guest House of Ramkrishna Mission at Gol Park and other accused persons were found there once, with Pritilata, there is nothing to show for what purpose they met there, or

what they said or whether they held any deliberation at all, still depending on inference though without any basis and in expectation of future evidence at the time of trial to be considered, he presumed that the accused were in conspiracy for committing the offence for which charges have been framed u/s 120-B, I. P. C. Such inference of conspiracy as has been drawn does not appear to be justified on the materials on record.

12. Let us consider the materials on record as against each individual accused. With regard to the petitioner Satikanfca Guha there is no statement of any - witness examined by the investigating officer suggesting that there was any quarrel between Satikanta and Surupa or any ill feeling or bad behaviour which might prompt him to think about killing her by poison or otherwise. According to some statements, on 24-4-1976 the mother of Surupa along with her husband's brother went to the Guest House of Ramkrishna Mission where Pritilata was temporarily staying and it was seen that Satikanta, Indranath, Jhantu and two others, Ramen who has been discharged and one Mrs.Vincent were having conversation amongst themselves in the room of Pritilata. According to prosecution this meeting is a piece of evidence of conspiracy amongst the accused. The learned Judge himself found that there was nothing to say why the meeting was held and what deliberation took place. It is but natural that when Pritilata was staying at the guest house due to quarrel, annoyance or otherwise, the members of her family, viz. her husband, son, servant and Ramen and Mrs. Vincent who were working in her school should see her there. Moreover, they were not meeting secretly. We have no doubt that this meeting is no evidence of conspiracy for commission of any offence. The only other material suggested by Mr. Chowdhury to connect Satikanta with offences charged against him is that at the hospital when Surupa was being treated by the doctors, Satikanta wanted to get a bottle containing Horlicks produced there examined to ascertain if there was any poison therein. The suggestion is that Satikanta wanted to mislead the people so that they might think that Horlicks was given to Surupa for breakfast and that no poison was administered to the patient through food as supplied by Jhantu. This suggestion is unacceptable to connect Satikanta with the offences mentioned in the charges. No other circumstances or materials have been brought to our notice to implicate Satikanta, We have gone through the statements and documents placed before us and we have no doubt to hold that there is no material on record or any sufficient ground for the charges as framed and proceeding against him for trial. The decision of the learned Judge below against Satikanta is liable to be set aside.

13. Coming to the case of Pritilata, we get from the statement of some persons examined by the police that Surupa told them, of course not on the day of her death but on some earlier occasions, about the ill-treatment of Pritilata towards her and that Pritilata asked her to commit suicide. It was also stated that such ill-treatment was unbearable to Surupa, Further material as pointed out by Mr. Chowdhury against Pritilata is that on 24-4-1976 when the mother of Surupa with her brother-in-law went to see Pritilata at the Guest House of Ramkrishna

Mission, she found Satikanta, Indranath, Jhantu and others talking in the room where Pritilata was staying. We have considered about it while dealing with the case of Satikanta. We find no reason on the materials to think that there was any conference or talk about Surupa, It cannot be said that Pritilata had any conspiracy for causing the death of Surnpa. Pritilata said that she had no "Rahai" meaning probably "escape" at that place also. On the materials, as they are, it may at best be suggested that due to the bad relation between Surupa and herself. Pritilata left her residence to stay at the guest house but there also the mother of Surupa appeared to her displeasure as she wanted to avoid her, This indicates that Pritilata did not like the mother of Surupa. It may be said that Pritilata did not take Surupa and her parents in good grace and disliked them. We also get from the statements recorded that in spite of her dislike for Surupa, Pritilata was approached by Surupa and at her request she came back home. On the materials on record it may be said at most that Pritilata was ill-tempered lady quarrelling with her daughter-in-law and that she told her to commit suicide. She might have utterly disliked her daughter-in law and was cruel to her, but there is no other material to connect Pritilata with any action for or leading to any of the offences for which charges have been framed against her. There is no sufficient material or ground for framing charges or proceeding against her for, trial. Proceeding against Pritilata and Satikanta on the materials on record will cause abuse of processes of Court, and unnecessary harassment to them. The learned Sessions Judge relied much on assumptions not based on material and on future anticipation of evidence at the trial. Ends of justice and the principles of law demanded, in our view, that the charges framed against Satikanta and Pritilata should be set aside.

14. Let us next come to the case of Jhantu Charan Dutta. We get from the statement of Kalu Nayak, a sweeper of the house of Satikanta and Jitendra Tilak, a friend of Indranath that in the morning of 4th April, 1976, Jhantu gave food to Surupa and sometime thereafter she started vomiting and ultimately she had to be removed to hospital where she died. The doctors held that it was a case of poisoning. After post mortem examination on the dead body of Surupa and on consideration of the Chemical Examiner's report in respect of viscera, blood and other exhibits, the histopathological findings of the sections of stomach, kidneys, liver etc., Dr. J. B. Mukherji was of the opinion that the death of Surupa Guha was due to the effects of acute poisoning by salt of mercury and the findings were more consistent with that of acute Mercuric Chloride poisoning, antemortum in nature, It has been argued by Mr. Ghosh, the learned Counsel for Jhantu that it was a case of suicide committed by Surupa herself and that the materials on record will show that Surupa was found in her room bolted from within and that after the breaking of the door of the attached bathroom, Surupa was found in helpless condition unable to move out of her bed and vomiting. Mr, Ghosh has further submitted that neither cucumber nor lassi was found either in the matter vomitted or in the stomach. It has been further contended that Mercuric Chloride Solution was found at the Science College Laboratory where

Surupa used to research.

15. Mr. Ghosh's point is that when on records there are some materials supportins a case of suicide, no charge should be framed. According to law, as it stands now, if the materials on record show that there is simply a probability of the accused being convicted, a charge may be framed for decision on trial. The materials on record are in the crude form and at the time of trial the matters collected would be placed in the form of evidence as would be admissible according to the Evidence Act. At that time if any material collected cannot be used as evidence, that would be of no use. At the present stage for consideration if charges are to be framed, the question of strict admissibility of evidence does not arise. That question of admissibility of evidence according to law will be considered when evidence would be adduced at the trial. Again if there are materials on record going in favour of the accused and going against the prosecution, they can be used at the time of trial by the defence. For framing charge the Court will not consider the reliability or the worth of the materials on record. At this stage the prosecution is not to prove the case against the accused beyond all reasonable doubts. Such a case beyond reasonable doubts must have to be proved at the trial. We cannot consider now whether the materials proving a prima facie case can be accepted as dependable or the materials supporting the defence case should be accepted. Of course in ascertaining if a prima facie or probable case against the accused has been made out by the materials on record, the Judge must apply his judicial mind to consider the materials, facts and circumstances and certainly will not accept any material which is something impossible or absurd on the very face of it, In the case before us we find sufficient materials for framing charge against Jhantu u/s 302 of the I. P. C.

16. Regarding conspiracy u/s 120-B, I.P. C we have already spoken about the nature of evidence of meeting in the room of Pritilata on 24-4-1976. No other material has been brought to our notice except that some persons have stated that immediately after the occurrence Jhantu did not give out that the door of the room where Surupa was found vomiting had been broken to get access to her. Mr. Ghosh has referred us to the statement of Haimanti, the daughter of Surupa, aged about five years who said that the door had been broken, Mr. Chowdhury submitted that she is a tiny girl and being in the custody of the accused persons after the death of her mother, she had been taught a false story to counteract the prosecution case. The truth of the statement cannot be tested at this stage. On the charge u/s 201, I. P. C., again, no material has been placed before us. There is no statement of any witness that Jhantu removed or destroyed any evidence of crime or gave any false information regarding any offence. In our view, therefore, a charge u/s 302, I. P. C. has been made out against the petitioner Jhantu but the other two charges framed against him are not based on sufficient material. Those two charges are to be set aside.

17. Lastly we take up the case of Indranath Guha. Regarding the charge for general conspiracy framed u/s 120-B, I. P. C. on the allegations made therein,

the meeting in the room of Pritilata at the Guest House of Ramkrishna Mission as already alleged against him. We find no other material in support of this charge, This charge cannot stand for want of sufficient material.

18. In support of the charge u/s 302 read with Section 109, I. P. C, certain materials in particular have been brought to our notice. Indranath is the Principal of the South Point School. From the statements of Sukumar Nayak and Subodh Das, connected with laboratories of the South Point School, it appears that as Principal Indranath as also other teachers had access to the laboratory where there was Mercuric Chloride. The materials on records show that in the afternoon of 4-5-1976 when Surupa was being treated, Indranath went to the Science College Laboratory where Surupa used to do research work and wanted to know if any poison was available, He obtained a list of poison including an item showing Mercuric Chloride Solution. Indranath thereafter came back to hospital but there is no material that he gave this information about Mercuric Chloride Solution to the attending physicians for the treatment of the patient when they were eager to know the poison Surupa had taken. There is also material to show that Indranath took away the bed sheet and wearing apparels of Surupa tainted with her vomit and they were ultimately seized next day on 5-5-1976 at 10, Hindusthan Road. We also get from the record of the case that Indranath sent an information to the Ballygunge Police Station in the night of 4th April, 1976 stating that at about 10 in the morning Ms wife was so ill that she had to be immediately taken to S. S. K. M, Hospital and that as it was apprehended that she might have, by mistake, taken some deleterious substance, he was lodging the information, It also appears from the statement of persons recorded during investigation that the feeling of Indranath towards Surupa was bitter and for several days Indranath spent night alone in a different room at 10. Hindusthan Road, On the materials on record and on consideration of the circumstances a prima facie and probable case has been made out and we find sufficient ground for framing a charge u/s 302 read with Section 109, I. P. C, The cancellation of the charge u/s 120-B, I. P. C. as was framed does not however create any bar to the framing of a charge u/s 109 for abetment which may include conspiracy for the purpose of abetment. Similarly we find sufficient materials for the purpose of framing a charge u/s 201 of the I. P. C.

19. It has been argued on behalf of the petitioners that the language and the form in which the charges have been framed are not appropriate and that the charges as framed are vague and not explicit, We have heard both the sides, As submitted by the learned Counsel for the petitioners, we find that the allegation about the nature of offence requires to be more specific in the charge. Consequently we propose that the charges against Jhantu Charan Dutta and Indranath Guha may be framed in the manner following :

Re :Jhantu Charan Dutta

That you on or about the 4th day of May, 1976 at 10 Hindusthan Road, Calcutta, did commit murder by intentionally or knowingly causing the death of Surupa

Guha, alias Dola by administering poison to her through food or causing the same to be administered and thereby commit an offence punishable u/s 302 of the I. P. C.

Re : Indranath Guha

(Charges with two heads).

First--That you on or about the 4th day of May, 1976 at Hindusthan Road, Calcutta abetted the commission of the offence of murder of Surupa Guha alias Dola by Jhantu Charan Dutta which offence was committed in consequence of your abetment and supply of poison by administration of which the said Surupa's death was caused and that you have thereby committed an offence punishable u/s 302 read with Section 109 of the I, P. C

Secondly--That you on or about the 4th day of May, 1976 in Calcutta, knowing or having reason to believe that an offence has been committed in respect of Surupa Guha alias Dola by administration of poison to her at 10, Hindusthan Road, Calcutta on the date above mentioned, caused evidence of the commission of that offence to disappear by removing from S. S. K. M. Hospital the bed sheet and the wearing apparels of the said Surupa Guha alias Dola having traces of poison administered to her with the intention of screening the offenders including yourself from legal punishment and with the aforesaid intention you gave information to the Officer-in-Charge, Ballygunge P. S., Calcutta on the day mentioned hereinbefore to the effect that the said Surupa Guha by mistake, might have taken some deleterious substance as mentioned in your letter knowing or believing the said information to be false and thereby committed an offence punishable u/s 201 of the I. P. C

20. In view of our discussions and findings above, the application of Satikanta and Pritilata succeeds and the other two applications fail except that some of the charges against Indranath and Jhantu are set aside as indicated above, In order to avoid embarrassment to the learned Additional Sessions Judge and the accused-petitioners who are to face the trial and for ends of justice, we hold that the trial of Indranath and Jhantu should be held by some other Judge as would be selected by the Sessions Judge, 24 Parganas, We make it clear that the findings arrived at in these cases are based on materials collected during investigation end meant only for the purpose of framing charges. Whether an accused is guilty of an offence or not will be proved at the trial and the learned trying Judge will come to his findings on the basis of the evidence that may be adduced and tested, facts and circumstances and on hearing the parties concerned.

21. In the result, the Cr. Revn. Appln, No. 1171 of 1977 is allowed. The order of the learned Sessions Judge below framing the charges against Satikanta Guha and PritUata Guha is set aside and the proceeding as against them is quashed

22. The other two applications viz., Applications Nos. 1172 and 1173 of 1977

filed by Indranath Guha and Jhantu Charan Dutta respectively for quashing the proceeding against them are rejected. The orders framing charges u/s 120-B, I. P. C. against Indranath Guha and Jhantu Charan Dutta and also the charges u/s 201, I. P. C. against Jhantu Charan are set aside. The learned Sessions Judge, 24 Parganas will transfer or assign the Sessions Case against Indranath and Jhantu Charan to some Additional Sessions Judge at Alipore for their trial. The learned Judge to whose file the case will be transferred for trial shall recast the charges in prescribed form u/s 302 read with Section 109, I. P. C. and u/s 201, I. P. C. against Indranath and also the charge u/s 302, I. P. C. against Jhantu Charan as Indicated in our judgment, read over the same to them, take their pleas and proceed according to law for trial on the date fixed or at any convenient day. The learned Judge will see that there should be an expeditious trial.

23. Send down the records of the trial court immediately.

Sharma, J.

24. While agreeing with the order just now passed by my Lord Mr. Justice Bhattacharya, I desire to place on record a few words of my own in the manner of a foot-note to what has already fallen from my Lord.

25. On making an analytical and critical study of the materials, which at this stage of the case necessarily consisted of various statements recorded either u/s 161 or 164 of the Cr. P. C, multifarious medical reports and different seizure lists, I am of opinion that there is not sufficient materials to meet the requirements of Section 228 of the Code aforesaid for framing charges against accused Satikanta Guha and Pritilata Guha. Although some of their actions and conduct could afford materials for suspicion In a suspecting bent of mind, there is, however, not enough substance In those behavioural materials to satisfy an unsuspecting judicial mind, which must proceed on the assumption of innocence of the accused, that there are sufficient materials on re cord to justify the framing of charges under the present requirements of the law which by the enactment in 1973 has been slightly further weighed in favour ; of the accused. In making this assessment I am not overlooking the position in law emphasized upon by Mr. Choudhury, the learned advocate for the prosecution that in a case dependent on circumstantial evidence inevitable Inferences have got to be drawn from facts which are available and likely to be established in trial, When circumstantial evidence is the mainstay of the prosecution case, links must be there for creating an unbroken chain and for that purpose inferences drawable must also be such as to rule out an equally plausible rival inference. Therefore, keeping in mind all this as well as the paucity of materials, I have been driven to the conclusion that charges framed against the accused aforementioned have got to be quashed. In this connection I should point out that Section 227 read with Section 228 of the Cr. P. C., is a precious safeguard, so to express, a prebattle protection conferred by Parliament in its wisdom upon accused persons charge-sheeted by the Police for trial in a court of session without collecting and collating materials sufficient to warrant a full-fledged trial. This provision in law is calculated to eliminate further

harassment to the accused persons when the evidentiary materials gathered after a prolonged and thorough investigation of the occurrence fall short of minimum legal requirement, Therefore, this provision of law cannot be reduced into a dead letter and accused persons made to undergo the rigour of a futile trial, where such a trial on materials available is palpably not warranted against them.

26. As regards the case of Jhantu Charan Dutta and Indranath Guha, there are circumstances and materials which cannot be overlooked at this stage. The strength and timbre of those materials as well as legitimate inferences to be drawn from some peculiar circumstances are matters which are required to be tested on the touch-stone of a full-fledged trial, This Is not the proper stage for liberal comments and observations on those materials. Be it also noted here that those materials painstakingly gathered by the Investigating Officer are of courses under severe challenge. Therefore, to dwell upon those materials at this stage and to subject them to fuller microscopic scrutiny or to make inflating or deflating comments may prejudice the trial to follow. Any observation or comment made at this stage does not carry the stamp of final consideration. Hence I refrain from proceeding further in this direction. Suffice it to say that I find no justification to quash the charges framed against the aforementioned two accused persons entirely.

27. Hence, I agree, In view of the materials available, to the order made by my Lord Mr. Justice Bhattacharya.