

CID West Bengal



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BS 1409 –

PART - I

Special Notices

Nil

PART - II

Look Out Notices.

(A) Persons wanted.

1. Accd. Gaffar Molla @ Lambu Gaffar(38) s/o Lt Rahim Box Molla of Jhupkhali, PS Sandeshkhali, District North 24-Pgs is wanted in c/w Bhupatinagar PS c/no 18 dt 19/03/02 u/s 395/397 IPC.



2. Accd. Sunil Kumar Bose s/o Lt Manindra Nath Bose of No-115, Jaynarayan Babu Ananda Dutta Lane, PS Bantra, Dist Howrah is wanted in c/w Shibpur PS c/no 163 dated 26/07/2001 u/s 465/468/471/120B IPC.



3. Accd. Amritalal Bose s/o Anil Chandra Bose of No 108 Jaynarayan Babu Ananda Dutta Lane, PS Shibpur District Howrah is wanted in c/w Shibpur PS c/no 163 dated 26/07/2001 u/s 465/468/471/120B IPC. Both the accd persons (sl no 2 & 3) opened saving account in Kasundia Co-operative Bank Ltd, Howrah in their fictitious names.



4. Accd. Mrs Rama Palit (28) built medium, height 5'4" (fictitious name)



5. Accd. Sekhar Chakraborty (45 yrs) s/o Lt Dr. Anil Chakraborty of Belashipara, Dist Dhubri, Assam both were (SI no 4 & 5) absconding and are wanted in c/w Baranagar PS c/no 38 dt 24/3/02 u/s 420/467/471/120B IPC.



6. Accd. Nur Md. Molla @ Kela Nuro (33) s/o Samsuddin Molla of Chandibari, Morepara, PS Canning, Dist South 24-Pgs wanted in c/w Bhupatinagar PS c/no 18 dt 19/3/02 u/s 395/397 IPC.



If any clue to the identity of the above persons is obtained, the Special Supdt. of Police, CID, West Bengal should be informed.

(B) Persons arrested who may be wanted elsewhere. :

1. Ali Hossain s/o Lt Md Isahaque of Karubia PS Basirhat.
2. Ayeb Ali Sardar s/o Lt Ahad Box Sardar of Sardarpara PS Basirhat.
3. Musaraf Mandal of Lt Ahead Ali Mandal of Baragobra PS Basirhat.
4. Khaleque Mandal s/o Mosaraf Mandal of Sardarpara Swarupnagar PS Basirhat.
5. Md Safique Mandal s/o Md Mandal of Golderpara PS Basirhar.
6. Sabir Ali Mandal s/o Belat Ali Mandal of Nehalpur PS Basirhat, all of Dist North 24-Pgs.

SI No 1 to 6 have been arrested in c/w Basirhat PS c/no 135 dt 23/5/03 u/s 395/397/376G IPC.

7. Md Danish (24) s/o Jabiruddn of Panpose Rourkella PS Raghunathpani Dist Sundergarh, (Orissa.)
8. Afjal Hossain (22) s/o Abdul Raub of Urdu School, Rourkella PS Plantside Rourkella, Dist Sundergarh (Orissa.)
9. Saharab Khan (23) s/o Rasid Khan, Mainroad Rourkella PS Plantside Rourkella Dist Sundergarh (Orissa.)
10. Jahangir Alam (36) s/o Lt Abdul Rahaman of Goal Bigha Main Masjid, PS Kotwali, Dist Gaya (Bihar)
11. Radhakanta Panda (40) s/o Lt Paddi Panda of Motiganj PS Motiganj Dist Balasore (Orissa).
12. Ram Chandra Sahoo (35) s/o Lt Dandapani Sahoo of Solo PS Motiganj Dist Balasore (Orissa).

SI No 7 to 12 have been arrested in c/w Kharagpur GRPS c/no 29 dated 11/06/2003 u/s 399/402 IPC & 25/27/35 Arms Act.

(C) Property found in the possession of arrested persons : Nil.

(D)(i) Property lost, stolen or seized on suspicion

1. Nabagram PS Police seized one steel grey colour Tata Sumo (FZ) No WB 20G/0544, Engine No AXZ 701201, Chassis No 41820/ AXZ901457 as unclaimed from Chuporer More on Panchgram Nabagram Road. This refers to Nabagram PS GDE No 591 dt 19/5/03.
2. Sagardighi PS seized one Scooter No HJ 4467 (Bajaj), Chasis No 03C605246815 as unclaimed from NH-34 near Bhurkunda. This refers to Sagardighi PS GDE No 24 dt 1/6/03.
3. On 1/6/03 unknown criminal committed theft in respect of one Esteem FLX Car No WB02F/0156 from the premises of one Pradip Chanchan of 847, Block-A. This refers to Laketown PS c/no 141 dt 1/6/03 u/s 379 IPC.
4. Mandirbazar PS police recovered two scooters 1) One old light green Bajaj Super Scooter No WNZ 2457, 2) One old light blue Vespa Scooter No WNG 3190. This refers to Mandirbazar PS GDE No 1390 dated 28/4/03.
5. On 15/06/03 DDI Saltlake and his staff seized one Maruti Car NO WB02D/3099 from BD-422, Saltlake City as suspicious property. This refers of Bidhannagar (N) PS GDE No 806 dated 15/06/03.

6. On 25/06/03 evening DEB officers of Howrah held raid at 2, Kings Road at a godown cum-office of one Bajrang Agarwal and seized 320 cartons of bearings of different size containing 37988 pcs worth Rs. 7,00,000/- approx. who was running this clandestine business of such unauthorised bearings (Japan make). Police arrested Bajrang Agarwal and his Manager. This refers to Golabari PS c/no 149 dated 25/06/03 u/s 379/411/413/414 IPC.
7. On 23/06/03 night some unknown miscreants stole away one Hero Honda red coloured motor cycle No WB42D/4763, Chassis No 00C12F00568 from the courtyard of one Sadhan Mondal of Surulia. This refers to Mongalkote PS c/no 72 dt 23/06/03 u/s 379 IPC.
8. One Himkar Pandey of 41E/12 Anupam Housing Complex, PS Rajarhat complained that on 19/06/03 at 09:00 hrs some unknown miscreants stole away one Hero Honda Splender red coloured motor cycle No WB20F/7422, Engine No 20J18E15067 and Chassis No 20JF19007 from his house. This refers to Rajarhat PS c/no 184 dt 22/06/03 u/s 379 IPC.
9. Sri Chayan Sarkar of Naihati complained that on 22/06/03 night some unknown miscreants stole away his Hero Honda motor cycle No WB012/8532, Engine No 97K17E03246 & Chassis No 97K19F03831 from his house. This refers to Gopalnagar PS c/no 61 dt 22/06/03 u/s 461/379 IPC.

(D) (ii) Arms and ammunition - loss, theft and recovery. Nil.

(E) Unidentified Corpses.

1. Marginally noted photograph of an un-identified dead body of a female aged about 35 years, who was found in an open field near Ukhra Ananda More under Andal PS District Burdwan. This refers to Andal PS c/no 119 dt 01/08/02 u/s 302/201 IPC.



- Marginally noted photograph of an unidentified dead body of a male who was found lying in the east side of Jessore Road at Baluiagachi in a bush under PS Habra, District North 24-Pgs. This refers to Habra PS c/no 105 dt 13.05.02 u/s 302/201/34 IPC.



- Marginally noted photograph of a dead body of China Bibi was found lying on the Railway Track in between Prantik and Bolpore Railway Station for publication for proper identification and whereabouts of her. This refers to Bolpur PS c/no 170 dt 28.09.02 u/s 147/148/341/325/304/201 IPC.



- Marginally noted photograph of un-identified of youth dead body with throat cut injury packed in a jute gunny bag was found in the drain near the go-down of one Banshi Show behind Jahar Uddyan, BL-6, Kankinara PS Jagatdal. This refers to Jagatdal PS c/no 272 dt 03.08.2002 u/s 302/201 IPC



5. Marginally noted photograph of an unidentified male dead body was found lying at the northern side of Sealdah – Dankuni Railway Line on the Delhi Road with multiple bleeding injuries. This refers to Belghoria PS c/no 236 dt 29.12.01 u/s 302/201 IPC.



6. Marginally noted photograph of an unknown female dead body aged about 50 years recovered on the west side of Kalyani Express way at Dhakhin Narayanpur, PS Jagatdal on 17.12.02. This refers to Jagatdal PS c/no 55 dt 09.02.03 u/s 302 IPC.



7. Marginally noted photograph of an unknown dead body of a male person aged 32/35 years with bleeding injuries on his head was found lying dead at the field of Khudirampally, Sursuna, PS Thakurpukur on 04.03.03. This refers to Thakurpukur PS c/no 79 dt 04.03.03 u/s 302 IPC.



8. Marginally noted photograph of an unknown dead body of a Hindu male aged about 40 years was found lying dead beside a canal at Bandhgora, Bolpur Town. Over this Bolpur PS UD c/no 205 dt 30/12/02 was started..



9. Marginally noted photograph of an unknown dead body of a male aged about (30/32) years was found lying dead by the side of the village path of Ganga Action Plan, adjacent Pacha Khal, Ghughupara under PS Liluah. This refers to Liluah PS c/no 8 dt 24/1/03 u/s 302/201 IPC.



It any clue to the identity of above deceased be obtained the concerned SP of the District or the Special Superintendent of Police, CID, West Bengal, Bhabani Bhaban, Alipore, may please be informed.

(F) Persons missing:

1. Dhiman Ch. Das (25) s/o Haran Chandra Das of Ekbalpore PO Nalikul, PS Haripal District Hooghly has been missing since 18.11.02 from his residence. MPB File No 49-2003/5/M (35)



2. Gopal Chandra Das (18) s/o Sri Ashok Kr. Das of village Narayanpur, Bhalia, PS Arambagh District Hooghly has been missing since 16.05.03 from Howrah Railway Station. MPB File No 49-2003/5/M (27).



3. Gomej Bhakat (19) s/o Krishna Bhakat of Keshabganj (Amtala) PS & Dist Burdwan has been missing since 23.02.03 from Keshabganj Chati. MPB File No 49-2003/6/M (16).



4. Jhuma Sarkar (13) d/o Sri Nemaï Sarkar of village Choto Girakpore, Sasti Colony PO+PS Basirhat District North 24-Parganas has been missing since 29.04.03 from her residence. MPB File No 49-2003/1A/F (25).



5. Jayanta Mandal (18) s/o Sri Charitra Mandal of village Loharpara, Nitan Chati, PS Bankura District Bankura has been missing from 10.04.03 from his residence. MPB File No 49-2003/8/M (5)



6. Kartick Naskar (17) s/o Biswanath Naskar of Begampore, PS Chanditala District Hooghly has been missing on 04.05.02 from Krishna Ranipuragan. MPB File No 49-2003/5/M (36)



7. Kumari Kripa Mandal (16) d/o Sri Krishna Deb Mandal of Jharkhali No 3 PS Jharkhali Bazar PS Basanti District South 24-Parganas has been missing since 06.02.03 from her residence. MPB File NO 49-2003/1/F (35).



It whereabouts of these missing persons are established, prompt action should be taken to effect recovery with an intimation to the Special Superintendent of Police, CID, West Bengal, Bhabani Bhaban, Alipore, Kolkata-700 027. (Telephone No 2479-1901).

PART - III

Peculiar Modus Operandi.

1. On 1/6/03 Insp of DEB North 24-Pgs and others held raid in the house of Subal Chandra Das s/o Lt Ratan Das of Sureshbari and seized huge quantity of duplicate medicine, dexorange syrup and others adulterated medicine an raw materials, punching machine, sealing machine. Accd Subal Chandra Das and his son Sankar Das fled away. This refers to Rajarhat PS c/no 164 dated 2/6/03 u/s 465/471/472/420/120B IPC & 63/68A Copy Right Act & 25 Drug Act.

PART – IV

(1) Miscellaneous Notices.

Order of the Hon'ble Delhi Supreme Court citation 2003 Crr. LJ in c/w 5,3,4,15 of PITA.

Mumtaj vs. State

1. Offences under Act - Validity - Search, Investigations, arrest and prosecution conducted by Sub-Inspector who was not appointed as special police officer under Act - Is illegal - Trial vitiated.

(Para 6)

(8) Immoral Traffic (Prevention) Act (104 of 1956), Ss. 3, 4 - Keeping/Managing of brothel - No decoy customer used for the purpose of proving sexual exploitation of girls for monitory gain - Mere fact that accused is the owner of the building kotha - Would not be sufficient to make out offence under S. 3, in absence of any definite evidence to prove that said kotha was used for prostitution with the connivance of accused - Girl found confined in kotha not stating that she even paid any amount to accused nor any other girl has been examined to prove it - Offence under S.. 4 also not made out.

(Paras 8. 9. 10)

Cases Referred: Chronological Paras.

Raghublr Singh v. State, 2001 AD (Crl) 386 (Delhi)

Bal Radha v. State of Gujarat.1970 Crl LJ 1279 : AIR 1970 SC 1396

Delhi Administration v. Ram Singh, 1962 (1) Crl LJ 106: AIR 1962 SC 63 3,5.6

Mr. K. K. Datta, for Appellant: Mr. V.K. Malik, for Respondent.

JUDGMENT:- This appeal is directed against the impugned order of conviction dated 10th January, 2002 and order on sentence dated 1st February, 2002 passed by Ld. ASJ and whereby the appellant was convicted under Sections 3 and 4 of Immoral Traffic (Prevention) Act (for short 'the Act') and was sentenced to undergo

RI for two years and a fine of Rs. 1,000/-, in default thereof, imprisonment for five months for the offence under Section 3 of the Act and to undergo

RI for a period of 7 years for the offence under Section 4 of the Act in case SC. No. 298/01 FIR No. 94/2001 PS Kamla Market, Delhi.

2. Briefly narrated the facts leading to the appeal are that on 25th February, 2001 at about 9.30 P.M. SI V. P. Jha, Police Station Kamala Market was on patrolling duty in the area and when they reached at Chowk Nihartyari along with H. C .Makhan Singh, Lady Constable Pulkra, he received a secret information that some girls, were illegally confined in Kotha No. 50. G.B. Road. On receipt of this information. SI V.P. Jha along with the Constables reached Kotha No. 50 G.B. Road. On enquiry he came to know that one girl was forcibly confined on the 1st floor. Girl namely Allivellu met the police officials and told them that she had been forcibly confined there. Girl was speaking Telgu. SI V. P. Jha called constable K. Ahamed who knew the said language. With the help of Constable K. Ahamed, SI V. P. Jha recorded the statement of Allivellu, SI V. P. Jha got the case registered and thereafter on the pointing out of Allivellu SI apprehended both the accused persons (namely Nagina and Mumtaj) and they were arrested (statement of Allivellu was got recorded under S. 164. Cr.PC. before the Magistrate). After completing investigations, challan was filed against Nagina and Mumtaj under Sections 342/323/363/368/373/109/506/34 IPC and under Ss. 3, 4, 5 and 6 of the Act. Learned ASJ framed charges under Sections 368/373/363/342/323/506 IPC against both the accused persons. They were also charged separately under Sections 3, 4, 5 and 6 of Act. Both the accused persons pleaded not guilty to the charges and claimed trial. In order to prove its version, prosecution examined as many as 11 witnesses. After consideration Learned ASJ convicted Nagina for the offences under Sections 368/373/363/342/322/506. IPC and also 3, 4, 5 and 6 of the Act. Appellant Mumtaj was convicted only under Ss. 3 and 4 of the Act and mentioned as stated earlier. Present appeal has been filed by Mumtaj only.

3. The first and foremost challenge of learned counsel for the appellant was as to legality and validity of entire process of raid, arrest, investigation and prosecution of the appellant. Submission of learned counsel for the appellant was that Section 13 of the Act mandates State Government to appoint special Police Officer for dealing with the offences under the Act. Such special Police Officer shall not be below the rank of an Inspector of Police. Further Section 15 of the Act requires that search and arrest can be carried out only by the Special Police Officer or some officer subordinate to him and authorised by him in writing. In the present case. SI V. P. Jha who conducted search, investigated and arrested the accused persons, did not have the power of Special Police Officer and therefore all proceedings conducted by him are illegal and unauthorised. Learned counsel for the appellant referred to a decision of three Judges Bench of Supreme Court in the case of Delhi Administration v. Ram Singh AIR 1962 SC 63:(1962 (1) CrL LJ 106) wherein the facts were that the respondent who was suspected of having committed an offence under Section 6 of the Act was prosecuted vide challan filed by Sub-Inspector who had not been appointed as Special Police Officer by the State Government. The Magistrate quashed the charge sheets holding that the SI was not competent to investigate the case. On revision by the State, High Court agreed with the view of the Magistrate and

dismissed the revision. Delhi Administration preferred appeal before the Supreme Court. After a detailed analysis of various provisions of Act, Hon'ble Supreme Court observed that the Act is a complete Code with respect to what is to be done under it. The entire police duties in connection with the purposes of Act within a certain area have been put in the charge of a special police officer. The expression 'police duties' under S. 2(i) includes all the functions of the police in connection with the purpose of the Act and in the special context of the Act they will include the detection, prevention and investigation of offences and the other duties which have been specially imposed on them under the Act. Hon'ble Supreme Court further observed that if powers of the Special Police Officer to deal with the offences under the Act and therefore to investigate into the offences, be not held exclusive, there can be two investigations carried on by two different agencies one by Special Police Officer and the other by the ordinary police. It is easy to imagine the difficulties which such duplication of proceedings can lead to. There is nothing in the Act to coordinate the activities of the regular police with respect to the cognizable offences under the Act and those of the Special Police Officer. It was further held that only the Special police officer appointed under the act is competent to investigate offences under the act and the police officers not specially appointed as special police officer cannot investigate offences under the Act even though they are cognizable offences. Accordingly, the appeal filed by the Delhi Administration was dismissed.

4. The same view was taken by this Court in the case of Raghubir Singh v. State 2001 AD (Cr.) DHC 386 wherein prosecution under Ss. 3, 4 and 6 of the Act was quashed by invoking S. 482, Cr. P.C. as the investigation was not conducted by Special Police Officer.

5. Mr. V. K Malik. Advocate appearing for the State countered this argument on the strength of a subsequent decision of Hon'ble Supreme Court in the case of Bal Radha v. State of Gujarat AIR 1970 SC 1396 : (1970 CrLJ 1279). In that case investigation was carried out by a Special Police Officer. But while conducting the search the provision of Section 15 of the Act viz. recording of grounds of belief for conducting search and joining two or more public witness was not complied with. Hon'ble Supreme Court held that this irregularity does not vitiate the trial. The judgment in the case of Delhi Admn. (supra) was also referred in para No.5 but was distinguished on the ground that the police officer who visited the premises where the offences were alleged to have been committed was not a special police officer who alone is authorised to do the various things under the provisions of the Act. So the law laid down in the said Judgment would not apply to the case of Bal Radha (supra). In that case investigation was conducted by Special Police Officer. The only point involved in the case of Bal Radha (supra) was whether the trial is vitiated if the search has not been made in strict compliance with the provisions of section 15 of the Act.

6. In this case, the entire proceedings were conducted by SI V. P. Jha who was not appointed as Special Police Officer under the Act. It is not a question of mere irregularity in the procedure. It goes to the very root, competence and Jurisdiction. Therefore, on the strength of law laid down by the Supreme Court in the case of

Delhi Admn. (supra), the entire proceedings namely search, investigations, arrest and prosecution by S.I. V.P. Jha has to be held to be illegal.

7. Besides, on merits also find that prosecution has failed to prove the case under Sections 3 and 4 of the Act against the appellant. Section 3 of the Act provides the punishment for keeping/managing of assistant in keeping or managing of a brothel. Section 2(a) of the Act defines that 'brothel' includes any house, room or place or any portion of any house, room or place which is used for the purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes. It is obvious that for proving an offence under S. 3 of the Act some specific instances of prostitution must be proved and then it must further be proved that the accused was managing/keeping the place with the knowledge that same is being used for the purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two, or more prostitutes.

8. In the present case, the police did not send any decoy customer to the Kotha to strike a deal with the appellant for providing girl for prostitution. Even the girl Allivellu PW-3 does not say that appellant ever provided girls for prostitution or allowed any body else to use Kotha for prostitution. In examination-in-chief PW-3 Allivellu has completely exonerated the appellant by stating clearly "I do not know the other accused present in Court". Her entire statement is against the other accused Nagina. But in cross-examination she states that the appellant was the owner of the Kotha and she used to take money from the girls. The factum of ownership of Kotha has been admitted by the appellant herself in her statement under S. 313. Cr. P.C. but there is no evidence, whatsoever that she took money from prostitutes. PW-3 herself did not say that she ever paid any amount to the appellant. Her statement was that the appellant was the owner of the Kotha and she used to be called Badi Didi and she used to take money from the other girls. PW-3 Allivellu herself denied that the appellant used to help Nagina in prostitution and used to take earnings of the prostitution. So the mere fact that the appellant is the owner of the building/kotha. In absence of any definite evidence to prove any specific instances of prostitution or that the said kotha was used for prostitution with the connivance of the appellant, would not be sufficient to make out offence under Section 3 of the Act. For the same reason, offence under S. 4 of the Act also is not made out because PW-3 never stated that she ever paid any amount to the appellant nor any other girl has been examined to prove it.

9. In all such cases, it will be almost impossible for prosecution to succeed unless some specific instances of prostitution are proved and that is why while organizing raids decoy customer is generally used for the purpose of proving sexual exploitation of girls for monetary gain of another person or for the mutual gain of two or more persons.

10. In the result, appeal is accepted. The impugned order whereby the appellant was convicted and sentenced under Sections 3 and 4 of the Act is hereby set aside.

Appeal stands disposed of. " ,

Appeal allowed

2)

C.R.R. 805 of 200
The State of West Bengal

Petitioner.

Vs

Jaya Bhowmick - Opposite Party

Mr. Kazi Safiullah - Public Prosecutor,

Mr. Swapn Kumar Mullick - for the Petitioner.

The state of West Bengal has moved this application against the order passed by the learned Sub Divisional Judicial Magistrate, Barrackpore dated 15/2/3003 thereby directing the D.I.G., C.I.D., West Bengal to investigate into the petition filed under Section 156(3) of the code of Criminal Procedure by the opposite party. Relying on a decision of the Supreme Court in the case of Central Bureau of Investigation through S.P. Jaipur Vs State of Rajasthan and Another reported in 2001 C. Cr. LR (SC) 116, the learned Public Prosecutor assisted by Mr. Mullick for the State has submitted that the order is clearly illegal as the learned Magistrate has overstepped his position in terms of Section 156(3) of the code of Criminal Procedure and has to be set aside.

In view of the nature of the order proposed to be passed, this application is being disposed of at this state even without hearing the opposite party.

Considering the position as settled by the decision of the Supreme Court in the case of Central Bureau of Investigation through S.P. Jaipur Vs State of Rajasthan and another (Supra) the order of the learned Magistrate is clearly bad in law and cannot be sustained. That apart, Section 156(3) of the code of Criminal Procedure entitles the learned Magistrate to direct an Officer-in-Charge of his local jurisdiction to initiate action on the basis of the complaint filed by the opposite party and the direction upon the D.I.G., C.I.D. West Bengal who was situated beyond his jurisdiction was not apposite more so in view of the assessments made in the petition.

That apart, the practice followed by the learned Magistrate in writing the order on the Petition itself is also depreciable in terms of Rule 179 Nos 1 of the Criminal Rules and orders Vol-I as no judicial order should be written on a petition and it was necessary that the learned Magistrate should have recorded the said order on a separate order sheet. The impugned order dated 15/02/2003 passed by the learned Sub Divisional Judicial Magistrate, Barrackpore in case no M.P. 55 of 2003 is set aside and the Revisional Application is allowed.

However, in view of the proposition of Section 156(3) of the code of Criminal Procedure, the petition now be sent to the Officer-in-Charge, Khardah Police Station for necessary action in terms of the prayer.

Let a copy of this order be sent down to the learned Registrar General, Appellate Side for circulation to all the learned Chief Judicial Magistrate and Sub Divisional Judicial Magistrate and Judicial Magistrates holding independent charge for their information and necessary action.

Let a Xerox copy of this order countersigned by the Assistant Registrar (Court) be given to the learned Advocate for the State.

(Amit TALUKDER. J.)

3) AIR 2003 SUPREME COURT 660 (From: Allahabad).

S. RAJENORA BABU AND ARUN

KUMAR, JJ.

Criminal Appeals Nos. 577-578 of 1995,
D/- 10-12_2002.

State of V. P. Appellant v. Jagdeo and
Others Respondents.

(A) Penal Code (45 of 1860), S. 300, Murder - Evidence of eye-witnesses consistent - Their version tallied with each other - Evidence also, clinching and clearly implicating accused persons - One of eye-witnesses receiving injury in incident only - Evidence of eye-witnesses cannot be discarded only on ground that they were interested being related to deceased. .

Crl. A. Nos. 2270 and 2424 of 1979, D/- 24-2-1994 (All), Reversed.

- Crl a Nos 2270 and 2424 of 1979, D/24-4-1994 (All)
- LT/LT/S200180/2002/JJS/RTT/28829/2002

(Para – 7)

(B) Penal Code (45 of 1860), S. 300 Murder - Evidence - Ghastly crime - All eight accused persons armed with deadly weapons attacking unarmed members of victims family who were sleeping at night in the open - Accused cannot be acquitted only on ground that Investigation was faulty - For fault of prosecution, perpetrators of such a ghastly crime cannot be allowed to go Scot-free.

Crl. A. Nos. 2270 and 2424 of 1979, D/- 24-2-1994 (All), Reversed.
Criminal P. C. (2 of 1974), S. 156.

(Para 8)

(C) Penal Code (45 of '1860), S. 300 Murder - Evidence - Strong evidence on record implicating accused persons - Fact of alleged improper recording of time of lodging of FIR - Not sufficient to dislodge verdict of convictions passed by court .

Criminal P. C. (2 of 1974), S, 154.

Crl. A. Nos. 2270 and 2424 of 1979

D/- 24-2-1994 (All), Reversed.

Para-8)

Praveen Swarup, Pramod Swarup, Ms. Pareena Swarup, Devesh Singh Advocates, for Appellant : S. P. Singh. Advocate for Respondents.

ARUN KUMAR, J. :-These appeals arise from a judgment of the High Court dated 24th February, 1994 acquitting all the accused persons of the charge of committing murder of Ram Lachhan and Rajendra. As a matter of fact, ten persons namely, Bhola, Lallan, Jagdeo, Sumer, Amardeo, Babban, Shrikishun, Jagdish, Deep Chaudhary and Sheoji were charged for offences under Sections 302/149/148/147 IPC for the murder of the said two persons. Out of the ten accused, two accused namely, Jagdish and Deep Chaudhary were discharged under Section 227 of the Criminal Procedure Code while the remaining eight were tried. The trial Court convicted all the accused persons. Accused Bhola, Lallan, Jagdeo, Sumer, Amardeo, Babban, Shrikishun and Sheoji were each sentenced by the trial Court to undergo imprisonment for life under Sections 302/147 IPC. They were further sentenced to undergo rigorous imprisonment for five years each under Section 307 read with Section 149 IPC. Accused Bhola, Lallan, Amardeo, Babban and Sheoji were sentenced to undergo rigorous imprisonment for two years each under Section 148 IPC and accused Jagdeo, Sumer and Shrikishun were sentenced to undergo rigorous imprisonment for one year each under Section 147 IPC. All the sentences of the accused persons were directed by the Sessions Court to run concurrently.

2. According to the prosecution case the accused persons formed an unlawful assembly on 10th July, 1978 at about 9.00 p.m. at the tube well of P.W. 1 - Ramraj in village Amghat Police Station Bansdih Road with common object of murdering family members of Ramraj. Accused Bhola and Lallan were said to be armed with guns, accused Babban and Sheoji were armed with revolvers while Amardeo had spear. Rest of the accused had lathies with them. In furtherance of the common object of the unlawful assembly, Ram Lachhan - father of Ramraj - P.W. 1 and Rajendra son of P.W. 4 (Sudama) were murdered. Sudama - P.W., 4 also received gun-shot injuries. Deceased Ram Lachhan along with his four sons - P.W. 1 Ramraj; P.W. 4 - Sudama, Sudarshan and Ram Nath was residing in a house in village Amghat. The house of Ram Lachhan was surrounded on three sides by the houses of the accused persons. The house of accused Lallan and Jagdeo adjoins the court-yard of the house of the deceased Ram Lachhan towards the east. The cause of trouble between the accused persons and the family of the victim is said to be that some of the accused were extending their houses so as to encroach on the court-yard of Ram Lachhan - deceased. Members of the family of Ram Lachhan were objecting to this. About 15 days before the incident a quarrel had taken place between the families on this score. As a result of this, the efforts of Lallan

and Jagdeo to encroach towards the house of the deceased could not fructify. Gangadhari, brother of the accused Bhola was arrested in some other matter. However, the accused had the feeling that he had been arrested on account of the dispute between the two families referred to above. At the time of arrest of Gangadhari, he and his brother Bhola had threatened the family of the deceased to take revenge.

3. On the night of 10th July, 1978 at about 9.00 p.m. P.W. I - Ramraj and his brother Sudarshan and Ramnath were sleeping on the roof of the tube well about three furlongs away from their house. Deceased Ram Lachhan and Rajendra along with P.W. 4 - Sudama - father of Rajendra were also lying on cots in the open space towards the east of the tube well room. There were three electric bulbs fixed at the tube well and in the adjoining courtyard. The bulbs were of 100 watts strength and were lightened at the time of incident. All the accused persons came armed as mentioned earlier. They asked as to where P.W.1 - Ramraj was. Bhola remarked that these persons had got his brother arrested for which he would teach them a lesson. Sudama replied back that they had no hand in the arrest of Bhola's brother - Gangadhari. However, Bhola exhorted the other accused to kill the persons of victim's family and see that none of them escaped. Thereupon, the accused started firing with their firearms injuring Rajendra, Sudama and Ram Lachhan. Hearing noise of gun fire P.W.1 - Ramraj and his two brothers silently crept down the roof of the tube well. The noise attracted P.W. 2 - Firangi from the neighborhood who came with lathi and torch. He saw the incident and raised an alarm. The accused thereupon ran away towards the south-west corner. P.W. I - Ramraj and P. W. 2 - Firangi came near the injured. Ram Lachhan was already dead. Rajendra also died a few moments later. Sudama was lying on the ground in a seriously injured condition. P.W. 1 prepared written report and signed the same. He arranged a cot for Sudama and sent Sudama to Bansdih Road Police Station with Sudarshan. The written report reached the police station at 10.15 p.m. Formal FIR was drawn on the basis of the written report and was registered. The investigating Officer tried to record the statement of Sudama in which he succeeded only partly. Sudama was thereafter sent to hospital in a jeep. The investigating Officer came to the spot at 11.00 p.m. and took the statement of Ramraj - P.W.1. The dead bodies were sent for postmortem. The statement of P.W. 2 - Firangi was also recorded. The Investigating Officer inspected the spot and prepared the site plan. He collected blood from the spot. He found pellets and bullets at the spot and collected them. Memos were prepared with respect to all these. During the course of investigation, the electric bulbs were found to be in working condition. The accused persons were untraceable. Accused - Bhola was arrested next day while other accused could not be arrested immediately. Ultimately all the accused except Sheoji surrendered in court. They were charge sheeted. Sheoji was declared as an absconder. During night at about 11.30 p.m. Sudama - P.W. 4 was examined by the investigating Officer. Five Injuries of serious nature were found on his body. The injuries were fresh. The injury report is Ex. Ka.2. The doctor gave the opinion that these injuries could have been caused on the same night at about 9.00 p.m. According to the doctor, the condition of the injured was precarious. The injured was sent to Varanasi for treatment. Doctor S. R Sanyal - Medical Superintendent. District Hospital, Ballia - P.W. 9 performed the autopsy on Rajendra and Ram Lachhan on 11th July, 1978. The post-mortem reports gave details of injuries found on the dead bodies of Ram Lachhan and Rajendra. It is a long list which need not be reproduced. The injuries were found sufficient to cause death.

4. On appreciation of the entire evidence including medical evidence and the evidence of the eye-witnesses, the Sessions Court found that the case of the prosecution stood established and the eight accused persons were fully responsible for commission of the crime. The FIR had been promptly lodged and the contents of the FIR tallied with the facts found in the course of the investigation. There could be no doubt about presence of the eye-witnesses at the time of occurrence. The main eye-witnesses, that is, Ramraj - P.W. 1 and Sudama - P.W. 4 belonged to the same family. Ram Lachhan - deceased is the father of Ramraj P.W. 1 while Rajendra deceased is the son of Sudama - P.W. 4. Sudama himself received gun shot injuries during the incident for which he had to be hospitalised for a long time. The presence of the eye-witnesses was therefore fully established. The evidence of the eye-witnesses is consistent and is natural. Therefore, there is no reason to doubt the same. The defence raised *flimsy* arguments in a bid to dislodge the prosecution case. It was argued:-

1. Investigation was faulty.
2. The incident is said to have taken at 9.00 p.m. in the night there was no sufficient light at that time. Therefore the eyewitnesses could not have seen the occurrence.
3. Doubt has been thrown about the presence of the eye-witnesses.
4. The Sessions Court in its well considered judgment found these arguments flimsy and untenable and rejected the same. However, the High Court in a highly cursory and cavalier fashion, totally ignoring the evidence of eye-witnesses, set aside all the conviction merely on the ground that investigation was faulty pointing out some minor discrepancies in the evidence
5. We fail to appreciate the manner in which the High Court has dealt with such a serious case like the present one where at least eight accused persons formed an unlawful assembly and armed with lethal weapons committed the murder of two persons belonging to same family and seriously injured a third person. The motive of the crime is also explained on the record which is land dispute between the family of the victim and the accused persons. The houses of the accused persons surround the house of the victim's family. The accused persons were gradually trying to extend their houses so as to encroach on the house and court-yard belonging to the victims' family to which the later objected. This was the cause of friction between the two groups which resulted in quarrels and ultimately led to the ghastly crime.
6. There are three eye witnesses of the incident, that is, P. W. 1 – Ramraj son of the deceased Ram Lachhan, P. W. 2 Firangi and P. W. 4 - Sudama, who is an injured witness and whose son - Rajendra is the other deceased. The High Court doubted in the evidence of these eye-witnesses merely on the ground that they had motive in supporting the prosecution case. Legally speaking, we are unable to accept this reasoning. Most of the times eye-witnesses happen to be family members of close associates because unless a crime is committed in a public place, strangers are not likely to be present at the time of occurrence. Ultimately, eye-witnesses have to be persons who have reason to be present on the scene of occurrence because they happen either to be friends or family members of the victim. The law is long settled that for the mere reason that an eye-witness can be said to be an interested witness, his/her testimony need not be rejected. For the interest which an eye-witness may have, the court can while considering his or her evidence exercise caution and give a reasonable discount, if required. But this surely cannot be reason to ignore the evidence of eye-witnesses. The High Court was clearly in error in not considering the

evidence of eye-witnesses at all in the present case for the reason that they were interested witnesses. As seen earlier, one of the eye-witnesses is an injured person who received injuries in the incident itself. He was rather seriously injured. If he was not present at the time of occurrence, where from he received the injuries, would be an obvious question. In fact, P.W. 4 is also the father of the deceased Rajendra. It is common in villages that male members of a family sleep together in the open during summer season. Sleeping near the tube-well is understandable because that would lend some coolness to the atmosphere. The High Court totally ignored the other aspect of the evidence of the eye-witnesses. That is, the evidence was consistent and the version of the witnesses tallied with each other. In our view, there was no reason to discard the evidence of the eye-witnesses. This evidence is clinching and it clearly implicates the accused persons. There is no reason to doubt the veracity of the evidence of at least P. W. 1 and P. W. 4 and that is sufficient to convict the accused persons.

7. Coming to the aspect of the investigation being allegedly faulty, we would like to say that we do not agree with the view taken by High Court. We would rather like to say that assuming the investigation was faulty, for that alone the accused persons cannot be let off or acquitted. For the fault of the prosecution, the perpetrators of such a ghastly crime cannot be allowed to go Scot-free. All the accused persons were armed with deadly weapons and they attacked the members of the victim's family who were totally unarmed and were sleeping at night in the open. The High Court has expressed a doubt about the FIR being lodged at the time alleged by the prosecution and the manner in which it is so stated by the prosecution. The question however is; is it sufficient to acquit all the persons? The trial Court had discussed all the elements leading to the brutal murder in this case and found them against the accused persons. Unfortunately, the High Court remained on the periphery and never attempted to grapple with the substance of the evidence on record. This peripheral approach of the High Court led to the impugned judgment of acquittal being passed. In the presence of such a strong evidence on record implicating the accused persons, things like alleged improper recording of time of lodging of FIR are not sufficient to dislodge the verdict of convictions passed by the Sessions Court. In our considered view the evidence of the eye-witnesses in the present case completely proves the prosecution case. The doubt thrown by the High Court on the presence of the eyewitnesses at the time of occurrence is totally unacceptable. The impugned judgment of the High Court whereby all the accused persons have been acquitted is hereby set aside. These appeals are allowed and the judgment of the Sessions Court is hereby restored. The accused persons shall be taken into custody to serve the remaining sentence as imposed on each of them by the Sessions Court.

Appeals allowed.

Ordered accordingly.

(2) Motor Cars and Motor Cycles (Stolen).

SL No	Name of the articles with makers name	Cars Number	Special identification mark if any	Case Reference
1	Hero Honda Motor Cycle	WB-24D/1895	Black coloured	Kardah PS c/no 172 dt 28/5/03 u/s 379 IPC
2	Hero Honda Motor Cycle	WB-01Q/6533	Black coloured	Bidhannagar(N) PS PS c/no 84 dt 29/5/03 u/s 379 IPC
3	Hero Honda Motor Cycle	WB-58A/4242		Berhampur PS c/no 142 d 1/6/03 u/s 379 IPC
4	Hero Honda Motor Cycle	WB-52G/2259	Black coloured	Nabadwip PS c/no 89 dt 1/6/03 u/s 461/379 IPC
5	Hero Honda Motor Cycle	WB-16D/3932		Chinsurah PS c/no 89 dt 1/6/03 u/s 379 IPC
6	Hero Honda Motor Cycle	WB-20E/6295		Purba Jadavpur PS c/no 55 dt 31/5/03 u/s 379 IPC
7	Hero Honda Motor Cycle	WB-26B/2133		Haringhata PS c/no 66 dt 29/5/03 u/s 379 IPC
8	Tata Sumo	WB-02J/4500		Rajarhat PS c/no 360 dt 28/5/03 u/s 379 IPC
9	Motor Cycle(Suzuki Samurai)	WB-58A/4242		Berhampur PS c/no 137 dt 31/5/03 u/s 461/379 IPC
10	Motor Cycle(M-80)	WB-16E/1043		Arambagh PS c/no 107 dt 30/5/03 u/s 379 IPC
11	Taxi	WB-04/CO835		Tiljala PS c/no 157 dt 1/6/03 u/s 379 IPC
12	Taxi	WB-04B/2955		Bhangore PS c/no 52 dt 1/6/03 u/s 379 IPC
13	Motor Cycle	WB-54B/2788	Blue coloured	Sainthia PS c/no 34 dt 2/6/03 u/s 379 IPC
14	Motor Cycle	WB-16T/7989		Tarakeswar PS c/no 50 dt 1/6/03 u/s 379 IPC
15	Motor Cycle(Suzuki Samurai)	WB 26B/7097	Red coloured	Rajarhat PS c/no 161 dt 30/5/03 u/s 379 IPC

(3) Crime Statistics

Comparative Figure of dacoity cases (Range-wise) from April'03 May'03
(Excluding Kolkata)

April - 2003

Range	April'03	April'02	March'02
Jalpaiguri	1	X	3
Maldah	1	2	4
Murshidabad	4	2	2
Presidency	4	5	2
Burdwan	7	2	X
Midnapur	3	3	2
Railway	1	X	1
TOTAL	21	14	14

May - 2003

Range	May'03	May'02	April'03
Jalpaiguri	1	1	1
Maldah	1	1	1
Murshidabad	3	2	4
Presidency	6	5	4
Burdwan	2	1	7
Midnapur	1	4	3
Railway	X	X	1
TOTAL	14	14	21

(4) Interesting detections.

Ref. Sankrail PS c/no 64 dt 20/5/03 u/s 407/120B/34 IPC changed to Section 396/412 IPC.

On 4/3/2003 Hewlett Packard India Ltd., Mumbai despatched 938 cartons of Computer accessories loaded in Truck No MHB/AP/3527 through carrying Corporation of India for delivery to it's office in Kolkata. The truck entered in West Bengal through Chichira Check Post (PS Jamboni, Dist Paschim Midndpore) on 9/3/2003. Since then the driver and the truck was untraced. CID, WB assumed control of the case on 22/5/03.

In pursuant to a tip off, CID WB learnt that the truck in question had been looted after killing the driver and cleaner. O/C Highway Crime Cell, CID with his staff went to Patna in disguise of customers, took two godown keepers of Patna in confidence and recovered 819 cartons of stolen Computer accessories and secured the arrest of 10 persons who were directly involved in the crime and the case was detected.

R. K. Mohanty
Addl. Director General of Police
CID, West Bengal.