HIGH COURT OF TRIPURA
AGARTALA

Crl.A.(J) 22 of 2024

Sri Sukanta Das
Son of Sri Harimohan Das,
Resident of No.2 Bipin Nagar, P.S: Kakraban,
District-Gomati, Tripura

---Appellant(s)

Versus

The State of Tripura

---Respondent(s)

For Appellant(s)	:	Mr. P. K. Biswas, Sr. Advocate. Mr. P. Biswas, Advocate. Mr. R. Nath, Advocate.
For Respondent(s)	:	Mr. Raju Datta, PP. Mr. Rajib Saha, Addl. PP.
Date of hearing	:	18.06.2025.
Date of pronouncement	:	24.06.2025.
Whether fit for reporting	:	Yes

HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Dr. T.Amarnath Goud, J

Heard Mr. P.K. Biswas, learned senior counsel assisted by Mr. P. Biswas, learned counsel appearing for the appellant also heard Mr. R. Saha, learned Addl. PP appearing for the state-respondent.

[2] This is an appeal under Section 374 of the Code of Criminal Procedure, 1973 against the judgment and order of conviction and sentence dated 11.12.2023 and 12.12.2023 respectively, passed by the learned Additional Sessions Judge, Sepahijala Judicial District, Bishalgarh, in case no. S.T.(Type-1) 07 of 2022 convicting the appellant under Section 302 of the Indian Penal Code and sentencing him to suffer Rigorous Imprisonment for Life and also to pay a fine of Rs. 50,000/- in default of payment of fine to suffer further R.I. for further 1 (one) year for commission of offence punishable under Section 302 of the Indian Penal Code.

[3] Prosecution case in brief is that on 04.12.2021 at 1700 hours the informant namely Ranga Dulal Debbarma A/R (Adjutant 5th Bn TSR) (IR-I) submitted a written complaint to the effect that on 04.12.2021 at about 0920 hours to 0930 hours Sub(GD) Markhasin Jamatia was talking to NK-Sub(GD) Kiran Kumar Jamatia Post I/C Konaban GCS of Konaban GCS camp unit, at that time Rifleman NK Sub(GD) of Konaban GCS post came in front of Sub(GD) Markhasin Jamatia and NK-Sub(GD) Kiran Kumnar Jamatia and talked about his leave. Meanwhile suddenly said Sukanta Das cocked his service arms and opened fire upon Sub Markhasin Jamatia, causing his spot death due to bullet injuries. While NK Subedar Kiran Kumar Jamatia tried to snatch his arms, then said Sukanta Das again opened fire upon NK Sub(GD) Kiran Kumar Jamatia causing his serious bullet injury who was subsequently shifted to Madhupur PHC for his treatment.

[4] On the basis of the written FIR of the informant, O/C Madhupur PS registered the instant case against the accused person namely Sukanta Das and the same was endorsed to SI Subhajit Deb of Madhupur PS to complete the investigation.

[5] After conclusion of investigation the I/O filed the Charge Sheet vide No. 03 of 2022 dated 13.02.2022 U/Ss. 302 of IPC and 27 of Arms Act, 1959 against the accused person namely Sukanta Das before the Court.

[6] The case record was received on commitment from the Court of Ld. Sub-Divisional Judicial Magistrate, Bishalgarh, Sepahijala after compliance with the section 207 of Cr.P.C. and charge was framed against the accused person U/Ss. 302 of IPC and 27(3) of Arms Act on 27.07.2022 and the accused person had pleaded not guilty after the charge was read over to him in Bengali. Accordingly trial commenced.

[7] The Prosecution adduced evidence of as many as 38 numbers of witnesses and also exhibited several documents. After closure of the Prosecution evidence the accused person was examined U/S 313(1)(b) of Cr.P.C. on the incriminating material available against him in the Prosecution evidence wherein the accused denied most of the evidence and declined to adduce any defence evidence from his side.

[8] After hearing both sides, the learned Court below delivered the judgment and conviction of order of sentence 11.12.2023 and 12.12.2023 respectively in the following manner:

> *In the result, the convict, namely, Sri Sukanta Das is sentenced to suffer Rigorous Imprisonment for life and to pay a fine of Rs.50,000/- in default of payment he shall suffer R.I. for further one year for commission of offence punishable U/S 302 of IPC.*

[9] Being aggrieved by and dissatisfied with the judgment and order of conviction, the present appeal has been preferred by the appellant.

[10] It is contended by the counsel for the appellant that PW-1, being the informant, lodged the FIR on 04.12.2021 at 5.00 p.m. and he also admitted that he reached the place of occurrence immediately after the occurrence on getting the information, but in the FIR he is silent from whom he got the information. He did not mentioned in the FIR the name of the eye witnesses of the alleged incident though he was in the place of occurrence for about 8 hours till filing of the FIR and he has admitted that there was conversation with the staffs of TSR who claimed to be eye witnesses, but none of them including himself lodged any FIR and on perusal of the FIR it is crystal clear that he did not mention that there was any eye witness to the alleged occurrence and, therefore, the learned trial court should have disbelieved the prosecution story on this ground alone;

[11] He further stated that PW-6, also stated in his cross-examination that 04.12.2021 at about 1.30 p.m. police recorded his statement, but the

investigating officer stated that his statement was recorded on the following day of the occurrence and no explanation has been furnished why as soon as police arrived at the place of occurrence, he did not reveal anything regarding the alleged incident.

[12] PW-4, also stated that the incident took place on 04.12.2021 at 9.20 to 9.30 a.m., but he also did not make any complaint to the police who arrived at the place of occurrence just after the alleged occurrence.

[13] PW-2, who claimed to be the eye witness stated that police arrived at the place of occurrence within 15-20 minutes of the occurrence, but he did not lodge any complaint to the police present there and he also did not give any explanation for not disclosing the fact to the police.

[14] Similarly, PW-1, informant, also stated that he was informed by Havilder Arjun Singh (PW-2) at 9.45 a.m. on 04.12.2021 that the appellant has committed murder of two Officers, namely, Markhasin Jamatia and NK-Sub(GD) Kiran Kumar Jamatia and he also admitted in cross-examination that he reached the place of occurrence in between 10.45 to 11.00 a.m., but nobody disclosed to him about the version took place amongst the appellant, Markhasin Jamatia and Kiran Kumar Jamatia and he also did not enquire from any of the TSR personnel who claimed to be the eye witnesses why they did not lodge any complaint and he also did not mention any explanation though he arrived at the place of occurrence just after the occurrence and also did not give any explanation as to why he lodged the FIR after 7 hours.

[15] PW-20 specifically stated that when the appellant went to the police station with rifle he was not willing to handover the rifle and after scuffling, PW-20 was succeeded to snatch the rifle from him which goes to show that the appellant did not go to the police station for surrender or did not say that he has committed the murder and it is the specific stand of the defence that he went to

the police station for lodging the information that over his leave there was a scuffling and the deceased tried to snatch his rifle when the incident took place and he is completely innocent and in that line the FIR of the present case lodged at that time, but surprisingly suppressing the same at 5.00 pm another complaint has been placed by removing the earlier complaint, and as such, the order of conviction and sentence is liable to be quashed/set aside.

[16] To support his case, Mr. PK. Biswas, learned senior counsel has placed his reliance on a judgment of the apex court in ***Ganesh Bhavan Patel and another vs. State of Maharashtra*** reported in ***AIR 1979 SC 135*** where the apex court has observed in the following manner:

> *18. In this connection, the second circumstance, which enhances the potentiality of this delay as a factor undermining the prosecution case, is the order of priority or sequence in which the investigating officer recorded the statements of witnesses. Normally, in a case where the commission of the crime is alleged to have been seen by witnesses who are easily available, a prudent investigator would give to the examination of such witnesses precedence, over the evidence of other witnesses Here, the natural order of priorities seems to have been reversed. The investigating officer first recorded the statement of Ravji, in all probability, between 12.45 and 3 a.m. On the 30th, of Constable Shinde, at 4 a.m., and thereafter of Walji, Kanjibhai (P.W. 7), Santukbai (P.W. 6), Pramila, and Kuvarbai, between 8 a.m. and 1 p.m.*
>
> *19. The investigating officers made a futile attempt to explain away their conduct in not promptly recording the statements of the alleged eyewitnesses. Inspector Tipnis and Sub-Inspector Pathak stated that after the completion of the panchnamas at the spot, they made efforts to contact the material witnesses, including Pramila, Santukbai and Kuvarbai. Santukbai was actually questioned by the investigating officers, but they did not then record her statement, because she was in an anguished state of mind and was wailing.*
>
> *27. The most important of these circumstances is the conduct of S.I. Patil in not recording that "first information" allegedly given by Shinde and Ravji on that occasion. S. I. Patil admitted that he did not record the information given to him by Shinde and Ravji about the occurrence on that occasion. The information, which he then received, was about the commission of a cognizable offence. It was, therefore, the duty of S.I. Patil (who was incharge of the Police Station) to record it in accordance with the provisions of Section 154 Cr. P.C., but he did not do so. The explanation given by him was that it was the practice of his Police Station not to record such information until a message was received from the Hospital with regard to the condition of the injured person. This explanation of Patil's failure to do what was his statutory duty. was mere moonshine and was rightly repelled by the learned trial Judge.*
>
> *29. Thus considered in the light of the surrounding circumstances, this inordinate delay in registration of the 'F.I.R.' and further delay in recording the statements of the material witnesses, casts a cloud of*

> *suspicion on the credibility of the entire warp and woof of the prosecution story.*

[17] In ***State of Andhra Pradesh vs. Punati Ramulu and Others*** reported in ***AIR 1993 SC 2644*** where the apex court has observed in the following manner:

> *5. According to the evidence of PW 22, Circle Inspector, he had received information of the incident from police constable No. 1278, who was on 'bandobast' duty. On receiving the information of the occurrence, PW 22 left for the village of occurrence and started the investigation in the case. Before proceeding to the village to take up the investigation, it is conceded by PW 22 in his evidence, that he made no entry in the daily diary or record in the general diary about the information that had been given to him by constable 1278, who was the first person to give information to him on the basis of which he had proceeded to the spot and taken up the investigation in hand. It was only when PW 1 returned from the police station along with the written complaint to the village that the same was registered by the circle inspector, PW 22, during the investigation of the case at about 12.30 Noon, as the F.I.R., Ex. P-1. In our opinion, the complaint, Ex. P-1, could not be treated as the F.I.R. in the case as it certainly would be a statement made during the investigation of a case and hit by Section 162, Cr.P.C. As a matter of fact the High Court recorded a categorical finding to the effect that Ex. P-1 had not been prepared at Narasaraopet and that it had "been brought into existence at Pamidipadu itself, after due deliberation". Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stooped to fabricate evidence and create false clues. Though we agree that mere relationship of the witnesses PW 3 and PW 4, the children of the deceased or of PW 1 and PW 2 who are also related to the deceased, by itself is not enough to discard their testimony and that the relationship or the partisan nature of the evidence only puts the Court on its guard to scrutinise the evidence more carefully, we find that in this case when the bona fides of the investigation has been successfully assailed, it would not be safe to rely upon the testimony of these witnesses either in the absence of strong corroborative evidence of a clinching nature, which is found wanting in this case.*

[18] In ***Vijaybhai Bhanabhai Patel vs. Navnitbhai Nathubhai Patel and Others*** reported in ***(2004) 10 SCC 583*** where the apex court has observed in the following manner:

> *4. The learned Counsel for the appellant submitted that PW 7 and PW 4 who claimed to be eyewitnesses cannot be believed for various reasons. It was submitted that the incident happened on 13.11.1985 but these two witnesses were questioned by the Investigation Officer only on 15.11.1985. No proper explanation was given by the Investigation Officer. There is evidence to show that the Investigation Officer had visited the house of the deceased on the very next day. It seems that there was an attempt by the prosecution to show that PW 7 the widow of the deceased was unconscious during this period and therefore, she*

> *could not be questioned by the Police. But they could have questioned PW 4, the son of the deceased at least on the very next day. The delay in questioning these witnesses by the Investigation Officer is a serious mistake on the part of the prosecution. We do not think that the High Court erred in disbelieving these witnesses.*
>
> *5. PW 11, the brother of the deceased gave the FI Statement wherein he stated that he was the eyewitness. He gave a detailed account regarding the alleged manner in which the incident happened but when he was examined as a witness, he stated that he came to the scene of occurrence only after the incident and the accused were found standing near the deceased with various weapons. Therefore, the evidence of PW 11 also is tainted with certain embellishments. The learned Counsel for the respondents pointed out various infirmities in the prosecution case. According to PW 7 and PW 4, the accused came to their house, pulled the deceased out of the house and took him to a nearby babul tree. Why the accused who were armed with weapons did not assault the deceased at the house itself still remained a mystery? This caused some suspicion as the defence version was that the deceased was having an affair with another woman and in that connection, there was a quarrel and he must have been done away with by some other assailants and they brought the dead body near the Babul tree and left it there.*

[19] It is finally contended by the counsel for the appellant that the prosecution examined so many witnesses and all the witnesses claimed to be the eye witnesses have categorically stated that police arrived at the place of occurrence just after the incident, but none of them lodged any complaint to the police till the FIR was lodged by PW-1 at 1700 hours, and as such, the learned trial court should have held that the allegation made against the appellant is a result of afterthought, but the findings of the learned trial court ignoring the settled proposition of law of Hon'ble Supreme Court that on the ground of delay in lodging the FIR, prosecution case cannot be doubted unless there is any explanation regarding the delay in lodging either the FIR or recording of statement, and as such, the impugned order of conviction and sentence is liable to be quashed/set aside on this sole ground.

[20] On the contrary, Mr. Rajib Saha, learned Addl. PP appearing for the state-respondent has contended before this court that the impugned judgment and order of conviction and sentence dated 11.12.2023 and 12.12.2023 respectively, passed by the learned Additional Sessions Judge, Sepahijala Judicial District,

Bishalgarh, in case no. S.T.(Type-1) 07 of 2022 is just and proper and needs no interference from this court.

[21] To support his contention, learned Addl. PP has drawn the attention of the statement recorded under Section 313 of the CrPC of the accused-appellant. The accused appellant has deposed in the following manner before the learned court below:

> *Question No. 7:PW 2 Sri Arjun Ch. Shil deposed that on 04.12.2021 he was posted as Habildar in the Konaban GCS Post and on that day at about 9.30 a.m. Subedar Markhasin Jamatia arrived at their Post and met with Nayek Subedar Kiran Kumar Jamatia and after few minutes Sukanta went to talk to them in that Chamber and after 10/12 minutes he heard sound of some firing came from inside of their Camp and then and there he saw Sukanta crossed the Sentry Post giving big steps having firearm in his hand and he became scared and some how hide himself from him and he left the place with a bike.*
>
> *Do you like to say anything in this context?*
>
> *Answer: I went to Sir to talk about by my leave.*
>
> *Question No.12: PW 3 Sri Kanu Ch. Nama deposed that on 04.12.2021 he was posted as Habildar CHM in the Konaban RO 7 Post and on that day at about 9.20 a.m. RFN Sukanta Das called him in his mobile phone and told that he was nominated for the Refresher Training and requested him to talk to the Officer to cancel his nomination and in reply he told that the concerned Officer was going to visit his place of posting and he may talk to Sir directly and in the meantime he told him that Sir reached in that place and with a view to talk to Sir he disconnected the call and he knew Sukanta Das who was present that day in the Court.*
>
> *Do you like to say anything in this context ?*
>
> *Answer: I went to talk about my leave.*
>
> *Question No. 13: PW 4 Sri Dipak Karmakar deposed that on 04.12.2021 he was posted as Rifleman in the Konaban GCS Post and on that day at about 9.20/9.30 a.m. while he was returning after taking his bath he saw Markhasin Jamatia and Kiran Kumar Jamatia were talking to each other standing under the Jam tree and at that time accused Sukanta Das was coming from the Sentry point side with a rifle.*
>
> *Do you like to say anything in this context ?*
>
> *Answer: Had said the truth.*
>
> *Question No.15: PW 5 Sri Galendra Reang deposed that on 04.12.2021 he was posted as Rifleman in the Konaban GCS Post and on that day at about 9 a.m. he went to RO 20 Camp to talk to Markhasin Sir to discuss with him about his leave and going there he came to know that Markhasin Sir went to their camp i.e. GCS camp and accordingly he came back to their camp immediately.*
>
> *Do you like to say anything in this context.*
>
> *Answer: True*
>
> *Question No. 27: P. W. 8 further deposed that on that words Sukanta Koked his rifle towards Markhasin. Kiran Sir at that time asked Sukanta why he koked rifle towards Markhasin and without making any reply*

> *Sukanta made a gun shot on Markhasin due to which Markhasin fell down on the ground and out of fear they left the place.*
>
> *Do you like to say anything in this context?*
>
> *Answer: False, The gun went off while struggling.*
>
> *Question No. 31: PW 9 further deposed that at that time Sukanta Das, who was carrying his rifle, was asking Markhasin Sir to allow him to go on leave and in reply Markhasin Sir told him that he was to attend a Refresher Training Program and so he was to go there and in reply Sukanta told him that he wanted to avail leave on that month and to attend the Training Program on the next month and then Markhasin Sir told him that in place of Sukanta some one was to be deputed and so he would inform Sukanta about his leave later on and then Sukanta told that he was in need of leave on that very day.*
>
> *Answer: I was told that I will be suspended.*

[22] In the course of his argument, the learned Addl. PP for the State-respondent contended before this Court that the accused-appellant was present at the scene with the weapon, and that none but he himself had fired the shot, causing the death of the two senior officials. He further submitted that the accused-appellant had acted with clear intention and full knowledge of the consequences, thereby establishing his criminal intent behind the act.

[23] The attention of this court has also been drawn to the deposition made by the PWs 5, 8, 9, 10, 11 and 17. According to him, a bare perusal of their depositions shows that the findings reached by the learned court below is apt and proper and does not need any interference from this court.

[24] On 04.12.2021, PW No.5 was posted as a Rifleman at the Konaban GCS Post. At around 9:00 a.m. on that day, he went to RO 20 Camp to meet Subedar Markhasin Jamatia regarding his leave. Upon reaching there, he was informed that Markhasin Jamatia had gone to their camp, i.e., the GCS Camp. Accordingly, he immediately returned to the camp. Upon arrival, he saw Subedar Markhasin Jamatia, Nayek Subedar Kiran Kumar Jamatia, and the accused, Sukanta Das, standing and talking in front of Kiran Kumar Jamatia's room. Behind them stood two other individuals Ranjan Debbarma and one Shil, whose full name the witness could not recall at that moment. While the witness was proceeding to the bathroom through the corridor of the barrack, he suddenly

observed that Sukanta Das cocked his rifle. In response, Kiran Kumar questioned Sukanta about his action. Immediately thereafter, Sukanta fired at Markhasin Jamatia. Frightened by the incident, the witness rushed inside a room. He then heard two to three more gunshots. After about three to four minutes, he came out of the room and found Markhasin Jamatia lying on the ground, while Kiran Kumar Jamatia was crying out for help and urging that Markhasin be taken to a hospital. The witness, along with Dipak Karmakar and Karnaram Debbarma, then took Kiran Kumar Jamatia to Madhupur Hospital. From there, he was referred to Hapania Hospital, where he later succumbed to his injuries. The accused, Sukanta Das, is present in Court today.

[25] On 04.12.2021, P.W.No.8 was posted as a Rifleman at Konaban GCS ONGC. Between 9:00 a.m. and 9:45 a.m. on that day, Subedar GD Markhasin Jamatia visited the station to meet Nayek Subedar Kiran Kumar Jamatia. Upon his arrival, he engaged in a conversation with Kiran Kumar near a Jam tree adjacent to the barrack. At that time, the witness and Dulal Ch. Shil were standing approximately 10 to 12 feet away from them. Suddenly, Sukanta Das appeared at the spot and asked Markhasin Jamatia for leave. In response, Markhasin Sir told him that he was required to attend a training program and therefore had to report there. Upon hearing this, Sukanta allegedly cocked his rifle and aimed it at Markhasin. Kiran Kumar Jamatia immediately questioned Sukanta as to why he had cocked the rifle. Without responding, Sukanta fired at Markhasin, causing him to fall to the ground. Frightened by the incident, the witness and Dulal left the scene. After approximately 10 to 15 minutes, they returned and found the dead body of Markhasin Jamatia lying there. They were also informed that Kiran Kumar Jamatia had been taken to the hospital.

[26] On 04.12.2021, P.W.No. 9 was posted as a Nayek Operator at Konaban RO 7 Post. At around 9:15 a.m. on that day, he, along with Subedar GD

Markhasin Jamatia, left their post to visit Konaban GCS ONGC and reached there at approximately 9:20 a.m. At that station, personnel of the TSR 5th Battalion were posted, and they were under the command of Subedar Markhasin Jamatia. Upon arrival, Subedar Markhasin Jamatia engaged in a conversation with Nayek Subedar Kiran Kumar Jamatia beneath a Jam tree in front of the barrack. At that time, the accused Sukanta Das was on sentry duty at the front gate. The witness and Rifleman Ranjan Debbarma were standing approximately 10 to 15 feet away from them. While the conversation was ongoing, Sukanta Das, who was carrying his service rifle, approached and requested Markhasin Jamatia to grant him leave. In response, Markhasin Jamatia informed him that he was scheduled to attend a Refresher Training Program and therefore had to report for that. Sukanta then replied that he wished to take leave during that month and preferred to attend the training the following month. Markhasin Jamatia explained that a substitute would need to be deputed in his place and that the matter of his leave would be informed to him later. However, Sukanta insisted that he needed leave on that very day. At that point, he allegedly cocked his rifle and fired at Markhasin Jamatia, causing him to fall to the ground. The witness also saw that when Kiran Kumar Jamatia attempted to intervene, Sukanta fired at him as well. Out of fear, the witness ran behind the barrack. After approximately 30 minutes, the witness and Ranjan Debbarma learned that Sukanta Das, along with his rifle, had left for Madhupur Police Station on his motorcycle. The witness further heard that Kiran Kumar Jamatia had been shifted to the hospital by Dipak Karmakar, Balendra Reang, and the official vehicle driver. The witness also saw that Markhasin Jamatia had died on the spot.

[27] P.W. No.10 stated that on 04.12.2021, he was posted as the Mess Commander at Konaban GCS ONGC. After completing his mess-related duties on that day, he went to his barrack. At around 9:30 a.m., while proceeding from

the barrack towards the bathroom, he observed Subedar GD Markhasin Jamatia, Nayek Subedar Kiran Kumar Jamatia, and Rifleman Sukanta Das, who was carrying his INSAS rifle, engaged in a conversation in front of Kiran Kumar Jamatia's room beneath a Jam tree. He was standing at a distance of approximately 20 to 25 cubits from them and, therefore, could not hear the conversation. However, he clearly witnessed Sukanta Das suddenly firing at Markhasin Jamatia with his rifle. Immediately thereafter, Sukanta pointed the rifle at Kiran Kumar Jamatia and fired at him as well. Out of fear, the witness rushed back inside the barrack and concealed himself behind a wall. While inside, he heard the sound of 2 to 3 additional gunshots. After about 10 minutes, when no further sound of firing was heard, he and others cautiously came out of the barrack. They found Markhasin Jamatia lying dead, and Kiran Kumar Jamatia was howling and requesting to be taken to the hospital. Accordingly, P.W. No.10, along with others, helped shift Kiran Kumar Jamatia into a Gypsy vehicle, and he was transported to the hospital.

[28] On 04.12.2021, PW No. 11 was posted as the Mess Commander at Konaban GCS ONGC. On that day, after completing his duties related to mess work, he returned to his barrack. At around 9:30 a.m., while proceeding towards the bathroom from the barrack, he observed Subedar GD Markhasin Jamatia, Nayek Subedar Kiran Kumar Jamatia, and Rifleman Sukanta Das who was armed with his INSAS rifle engaged in a conversation in front of Kiran Kumar Jamatia’s room, beneath a Jam tree. The witness was approximately 20 to 25 cubits away from them and, as such, could not hear the conversation clearly. However, he clearly saw Sukanta Das suddenly fire his rifle at Subedar Markhasin Jamatia. Immediately thereafter, Sukanta turned the rifle towards Kiran Kumar Jamatia and fired at him as well. Out of fear, the witness rushed inside the barrack and concealed himself behind a wall. While hiding, he heard the sound of two to three

additional gunshots. After about ten minutes, when no further gunfire was heard, the witness and others cautiously came out of the barrack. They found Markhasin Jamatia lying dead on the ground, and Kiran Kumar Jamatia was crying out to be taken to the hospital. Accordingly, the witness, along with others, helped lift Kiran Kumar Jamatia into a Gypsy vehicle and transported him to the hospital.

[29] To support his contention, learned Add.PP has placed his reliance on a judgment of the apex court in ***Dharnidhar Vs State of Uttar Pradesh and others and batch matters*** reported in ***(2010) 7 SCC 759*** where the apex court has observed in the following manner:

> *27. Still another aspect of this case is that when the accused were being examined under Section 313 Cr.P.C., they, barely, denied the incident and stated that there were land disputes. No evidence in that behalf had been adduced by the accused persons. Even if this statement is assumed to be correct, now the accused cannot turn their back and deny the existence of dispute between the parties. This would further be one of the links in the chain completing the crime of murder. Besides giving a general denial even to the basic facts, the accused in the last two questions put to them by the Court, in their statements under Section 313 of the Cr.P.C., stated that Deopal etc. are from the same family and they have falsely given evidence against them. They also stated that Deopal and the family of the deceased wanted to grab their land and, therefore, they have falsely implicated them in the present case.*
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> *28. It is a settled principle of law that the statement made by the accused under Section 313 of the Cr.P.C. can be used by the Court to the extent that it is in line with the case of the prosecution. The same cannot be the sole basis for convicting an accused. In the present case, the statement of accused before the Court, to some extent, falls in line with the case of the prosecution and to that extent, the case of the prosecution can be substantiated and treated as correct by the Court. The legislative intent behind this section appears to have twin objects. Firstly, to provide an opportunity to the accused to explain the circumstances appearing against him. Secondly, for the Court to have an opportunity to examine the accused and to elicit an explanation from him, which may be free from the fear of being trapped for an embarrassing admission or statement.*
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> *29….*
>
> *30….*
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> *31. In Hate Singh Bhagat Singh vs. State of Madhya Bharat [AIR1953 SC 468], while dealing with Section 342 of the old Cr.P.C. equivalent to Section 313 of the present Cr.P.C. observed that answer of the accused given can be used in other enquiries or trials for other offences. In the case of Narayan Singh vs. State of Punjab [(1963) 3 SCR 678 a Three Judge Bench of this Court held as under:*
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> > *"4…….Under Section 342 of the Cr.P.C. of Criminal Procedure by the first Sub-section, insofar as it is material, the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination under Section 342 is primarily to be directed to those*

matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation if any, of the incident which forms the subject matter of the charge and his defence. By Sub-section (3), the answers given by the accused may "be taken into consideration" at the enquiry or the trial. If the accused person in his examination under Section 342 confesses to the commission of the offence charged against him the Court may, relying upon that confession, proceed to convict him, but if he does not confess and in explaining circumstance appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety."

[30] In ***State of Maharashtra vs. Sukhdev Singh and Another*** reported in ***(1992) 3 SCC 700***, the apex court has observed in the following manner:

"That brings us to the question whether such a statement recorded under section 313 of the Code can constitute the sole basis for conviction. Since no oath is administered to the accused, the statements made by the accused will not be evidence stricto sensu. That is why sub-section (3) says that the accused shall not render himself liable to punishment if he givens false answers. Then comes sub- section (4) which reads:

> *"313. (4). The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed."*

Thus the answers given by the accused in response to his examination under section 313 can be taken into consideration in such inquiry or trial. This much is clear on a plain reading of the above sub-section. Therefore, though not strictly evidence, sub-section (4) permits that it may be taken into consideration in the said inquiry or trial. See State of Maharasthra v. R.B. Chowdhari, [1967] 3 SCR 708. This court in the case of Hate Singh v. State of Madhya Bharat, 1953 Crl.L.J.1933 held that an answer given by an accused under section 313 examination can be used for proving his guilt as much as the evidence given by a prosecution witness. In Narain Singh v. State of Punjab. [1963] 3 SCR 678 this Court held that if the accused confesses to the commission of the offence with which he is charged the Court may, relying upon that confession, proceed to convict him. To state the exact language in which the three-Judge Bench answered the question it would be advantageous to reproduce the relevant observations at pages 684-685 :

> *"Under section 342 of the Code of Criminal Procedure by the first sub-section, insofar as it is material, the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination under section 342 is primarily to be directed to those mattes on which evidence has been led for the prosecution to ascertain from the accused his version or explanation - if any, of the incident which forms the subject-matter of the charge and his defence. By sub-section (3), the answers given by the accused may "be taken into consideration" at the enquiry of the trial. If the accused person in his examination under section 342 con- fesses to the commission of the offence charges against him the court may, relying upon that confession,*

> *proceed to convict him, but if he does not confess and in explaining circumstance appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety."*
>
> *(Emphasis supplied)*
>
> *Sub-section (1) of section 313 corresponds to sub- section (1) of section 342 of the old Code except that it now stands bifurcated in two parts with the proviso added thereto clarifying that in summons cases where the presence of the accused is dispensed with his examination under clause (b) may also be dispensed with. Sub-section (2) of section 313 reproduces the old sub-section (4) and the present sub-section (3) corresponds to the old sub-section (2) except for the change necessitated on account of the abolition of the jury system. The present sub-section (4) with which we are concerned is a verbatim reproduction of the old sub-section (3). Therefore, the aforestated observations apply with equal force.*

[31] In ***Brajendrasingh vs. State of Madhyra Pradesh*** reported in ***AIR 2012 SC 1552***, the apex court has observed in the following manner:

> *"10. It is a settled principle of law that the statement of an accused under Section 313 Cr.P.C. can be used as evidence against the accused, insofar as it supports the case of the prosecution. Equally true is that the statement under Section 313 Cr.P.C. simplicitor normally cannot be made the basis for conviction of the accused. But where the statement of the accused under Section 313 Cr.P.C. is in line with the case of the prosecution, then certainly the heavy onus of proof on the prosecution is, to some extent, reduced. We may refer to a recent judgment of this Court in the case of Ramnaresh & Ors. v. State of Chhattisgarh, (being pronounced today) wherein this Court held as under :*
>
> *In terms of Section 313 Cr.P.C., the accused has the freedom to maintain silence during the investigation as well as before the Court. The accused may choose to maintain silence or complete denial even when his statement under Section 313 Cr.P.C. is being recorded, of course, the Court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law. Right to fair trial, presumption of innocence unless proven guilty and proof by the prosecution of its case beyond any reasonable doubt are the fundamentals of our criminal jurisprudence. When we speak of prejudice to an accused, it has to be shown that the accused has suffered some disability or detriment in relation to any of these protections substantially. Such prejudice should also demonstrate that it has occasioned failure of justice to the accused. One of the other cardinal principles of criminal justice administration is that the courts should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage, as this expression is perhaps too pliable. [Ref. Rafiq Ahmed @ Rafi v. State of Uttar Pradesh [(2011) 8 SCC 300].*
>
> *It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 Cr.P.C. is upon the Court. One of the main objects of recording of a statement under this provision of the Cr.P.C. is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 Cr.P.C., in so far as it supports the case of the prosecution, can be*

used against him for rendering conviction. Even under the latter, he faces the consequences in law."

16. There is no doubt that it is not a case of direct evidence but the conviction of the accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis, i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete so as not to leave any substantial doubt in the mind of the Court. Irresistibly, the evidence should lead to the conclusion inconsistent with the innocence of the accused and the only possibility that the accused has committed the crime. To put it simply, the circumstances forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such circumstances, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. Furthermore, the rule which needs to be observed by the Court while dealing with the cases of circumstantial evidence is that the best evidence must be adduced which the nature of the case admits. The circumstances have to be examined cumulatively. The Court has to examine the complete chain of events and then see whether all the material facts sought to be established by the prosecution to bring home the guilt of the accused, have been proved beyond reasonable doubt. It has to be kept in mind that all these principles are based upon one basic cannon of our criminal jurisprudence that the accused is innocent till proven guilty and that the accused is entitled to a just and fair trial. [Ref. Dhananajoy Chatterjee vs. State of W.B. [JT 1994 (1) SC 33]; Shivu & Anr. v. R.G. High Court of Karnataka [(2007) 4 SCC 713]; and Shivaji @ Dadya Shankar Alhat v. State of Maharashtra [(AIR 2009 SC 56].

[32] In ***Ramesh Harijn vs. State of Uttar Pradesh*** reported in ***(2012) 5 SCC 777***, the apex court has observed in the following manner:

28. A similar view has been re-iterated in Appabhai & Anr. v. State of Gujarat, AIR 1988 SC 696, wherein this Court has cautioned the courts below not to give undue importance to minor discrepancies which do not shake the basic version of the prosecution case. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness for the reason that witnesses now-a-days go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. However, the courts should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.

29. In Sucha Singh v. State of Punjab, AIR 2003 SC 3617, this Court had taken note of its various earlier judgments and held that even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, it is the duty of the court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno falsus in omnibus has no application in India and the witness cannot be branded as a liar. In case this maxim is applied in all the cases it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of

credence, and merely because in some respects the court considers the same to be insufficient or unworthy of reliance, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well.

[33] In ***Kalabhai Hamibhai Kachhot vs State of Gujarat*** reported in ***(2021) 19 SCC 555***, the apex court has observed in the following manner:

23. Learned counsel for the respondent-State has also relied on the judgment of this Court in the case of Naresh & Ors.5. In the aforesaid judgment, this Court has held that the evidence of injured witnesses cannot be brushed aside without assigning cogent reasons. Paragraphs 27 and 30 of the judgment which are relevant, read as under :

"27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide Jarnail Singh v. State of Punjab [(2009) 9 SCC 719, Balraje v. State of Maharashtra [(2010) 6 SCC 673, and Abdul Sayeed v. State of M.P. [(2010) 10 SCC 259.

30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

"9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." [Ed.: As observed in Bihari Nath Goswami v. Shiv Kumar Singh, (2004) 9 SCC 186, p. 192, para 9.]

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of

> *the witness liable to be discredited. [Vide State v. Saravanan [(2008) 17 SCC 587, Arumugam v. State [(2008) 15 SCC 590, Mahendra Pratap Singh v. State of U.P. [(2009) 11 SCC 334 and Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra [(2010) 13 SCC 657"*
>
> *25. By applying the aforesaid ratio, as laid down by this Court coupled with the evidence on record, we are clearly of the view that the prosecution has proved the case against all the appellant-accused beyond reasonable doubt. The omissions like not seizing the motorcycle and also not seizing the gold chain of one of the victims, by itself, is no ground to discredit the testimony of key witnesses who were examined on behalf of the prosecution, whose say is consistent, natural and trustworthy.*

[34] It is an admitted fact that the accused went to the victims to discuss about his leave matter. It is also not challenged that the accused was nominated for a Training Program and he was to attend that program due to which leave was not granted. It is also came out from the evidence of PWs 8 & 9 that the leave petition of the accused was not considered and it was told that his leave matter would be considered later on but the accused in reply told he was in need of leave on that very day. So, the dispute regarding the leave matter cannot be ignored and can be considered as the main issue which ended with the death of two officials of TSR. The defence story as discussed in the initial part of the Judgment also very clear about such issue, but defence could not adduce any evidence nor could extract anything in support of the fact that the victims tried to snatch the rifle from the accused and during such snatching the accidental fire took place. Thus, rejection of the leave petition and nomination for a Training program are indicative of dissatisfaction and an intention to take revenge on the part of the accused against the victims. From the evidence so far discussed it is found that PW 8 Ranjan Debbarma and PW 9 Dulal Ch. Shil were present on the spot when conversation was going on in between the accused and the victims and when Sukanta pointed his rifle towards Markhasin, another victim Kiran Kumar Jamatia asked Sukanta why he cocked rifle towards Markhasin which was a caution for the accused but in spite of that caution, he fired from his service rifle. Likewise, PW 9 Dulal Ch. Shil also deposed that after making of gun shot on

Markhasin when Kiran Kumar tried to resist Sukanta he made gun shots on him also. PW 5 Galendra Reang also deposed in the tune of PW 8 that he found suddenly Sukanta Das cocked his rifle and then Kiran Kumar Jamatia asked him what was he doing and then and there Sukanta fired Markhasin. Thus, all such evidence clearly revealed the intention of the accused to commit murder of both the victims. Thus, evidence of the eye witnesses are prima facie proving the fact that the accused made gun shots upon the victims with an intention to commit their murder.

[35] In the present case, it is admitted that the death of the victims caused due to the bullet injuries sustained by them fired from the service rifle of the accused which has been seized by the Police. There is also no denial of the fact that the wearing apparels and belongings of the accused were seized and sent to the SFSL for scientific examination. There is also no plea or proof that nothing was seized from the spot by the Forensic team and those were not examined scientifically. It is also not denied that the wearing apparels of deceased Markhasin Jamatia and blood stains collected from the spot were sent for scientific examination after seizure. It is also not denied that the viscera collected during Post-Mortem examination of the victims have been sent to the SFSL and those have been scientifically examined. Thus, where there is no denial of seizure, no denial of scientific examination of seized articles and it is admitted that the seized Insas rifle was the weapon of offence, there is no scope to deny the evidence laid down by the seizure witnesses only making a general statement that those were never packed and sealed.

[36] Moreover, it is apparent from the deposition of the PW No.34 that the cause of death of the victims was due to gun shot (rifled bullet) injury. His deposition is extracted herein below for ready reference:

On the same day I conducted Post Mortem examination over the dead body of Kiran Kumar Jamatia along with Dr. Shibasish Bhadra. We have started examination on that day at 1.45 p.m. and concluded the same at3.35 p.m. During examination we have found 4 bullet injuries over the dead body of Kiran Kumar Jamatia, the 4th one was superficial.

The ante mortem external injuries are mentioned below: 1) Bullet injury No. 1: a) One star shaped bullet entry wound of size 4 cm X 1 cm was present over the left side of the lower frontal chest wall which was situated 23 cm above to the left anterior superior iliac spine and 16.5 cm away from the middle. The entry wound was surrounded by 0.5 cm to 1 cm contused margins with inverted dark red coloured margin.

b) One bullet exit wound of size 5.5 cm X 4 cm was present over the left side of the frontal abdominal wall. The inner margin of the wound was situated 1.5 cm away from the midline and outer margin was situated 7 cm away from the midline. Protrusion of

small intestine and omentum was seen from the exit wound. c) Both the bullets entry and exit wounds was having 24.7 cm length of bullet track. The direction of track was downwards, medially and back to front.

2) Bullet injury No. 2: a) One bullet entry wound of size 1 cm X 0.5 cm was present over the inner aspect of back of right thigh, which was situated 65 cm above to the right heel. The margins of the entry wound was inverted with irregular margins.

b) One bullet exit wound of size 5 cm X 3 cm was present over the front of the right thigh, upper margin of the exit wound was situated 22 cm below the right anterior superior iliac spine and lower margin of the exit wound was situated 70 cm above the right heel. The margins of the exit wound was everted with protrusion of sub subcutaneous fat, tissues along with blood.

c) Both the bullet entry and exit wound was having 21.5 cm length of bullet track. The direction of the track was slightly upwards, laterally and from back to front.

3) Bullet Injury No. 3: a) One bullet entry wound of size 1 cm X 0.6 cm was present over the front of the right shoulder, upper margin of the entry wound was situated 10 cm below the tip of right shoulder joint and inner margin of the entry wound was situated 15.5 cm away from the midline. The margins of entry wound was inverted with dark red coloured thin margins. Blackening around the wound was present.

b) One bullet exit wound of size 9 cm X 4 cm was present over the outer border of the right scapula. The upper margin of the wound was situated 13.5 cm backwards and downwards to the tip of the shoulder joint.

c) Both the bullet entry and exit wound was having 22 cm length of bullet track. The direction of the track was downwards, laterally and front to back.

4) One avulsed laceration of size 8 cm X 2.5 cm X 1 cm was present over the left middle finger. Margins of the wound crushed, dark black in colour. Distal metacarpo phalangeal bone was missing.

5) One derma-epidermal hot metallic burn of size 8 cm X 1 cm was present over the left side of the anterior abdominal wall, placed obliquely. The lower margin of the wound was situated 1.5 cm away from the midline.

6) One superficial bullet wound of size 7.5 cm X 1 cm X 2 mm was present over the lower and inner portion of the right thigh, situated obliquely, upwards, placed parallel to track of bullet injury no. 2.

> *7) One derma-epidermal burn of size 12 cm X 8 cm was present over the right side of the anterior abdominal wall, situated 7.5 cm away from the midline.*
>
> *During examination one perforation in the small intestine of size 1.8 cm of diameter was found present. Contusion of size 5 cm X 3 cm was present in the omentum. One outer covering of bullet was recovered from the omental fat.*
>
> *After examination we opined that the cause of death to the best of our knowledge and belief was shock and haemorrhage due to gun shot (rifled bullet) injury. The injuries present over the body were anti mortem in nature and fresh in duration at the time of death. However, viscera was preserved to rule out any associated poisoning. This is the said report prepared by us along with our signatures marked Exhibit P-29/PW 34 in 4 sheets."*

[37] It is already mentioned that there is no denial from the side of the defence in respect to the fact that the accused carried the service rifle up to the place of occurrence and gun shot was made from that service rifle. In other words it was the specific admission of the defence that the accused went to the victims along with his service Insas rifle to discuss about his leave matter and during scuffling between the victims and accused accidental fire has been made from that rifle. So issuance of rifle and mentioning of the name of the accused in the Duty Register are immaterial in this case. Rather such admission casts burden upon the defence to prove that the shooting incident was accidental and not intentional. Further it can be said that if the accused was not on duty and also arms and ammunition were not issued in his favour officially then what was the intention of the accused to carry that arms unofficially without any authorisation while went to talk about his leave matter only with the victims.

[38] From a bare perusal of the record it is very much clear that there is no bar in proceeding to conduct investigation on the basis of GD entry which has been done in the present case also. For arguments sake it can be said that under CBI Act preliminary inquiry can be conducted by the CBI Authority even prior to lodging of FIR and so the referred case is not applicable in the present case in hand. But such argument is not sustainable as because in the referred case no preliminary inquiry was undertaken by the CBI Authority but they straightway

went for investigation which was found genuine. In the present case, the offence took place within the precincts of TSR camp which is a disciplined force. So naturally, after the alleged occurrence, the authority did some formalities of their own before lodging of FIR and the FIR was laid almost after seven hours. Although, in the meantime, some steps were taken on the basis of GD entry. Situated thus, it cannot be said that such delay in lodging the FIR hampered the investigation nor it can be said there was any ulterior motive or deliberation on the part of the investigation agency to manufacture a case against the accused.

[39] Having considered the evidence on record, submissions of both parties, and the circumstances surrounding the incident, this Court finds no merit in the defence version that the firearm discharge occurred accidentally during a scuffle. The accused has failed to establish, either through cogent evidence or credible explanation, that any physical altercation had taken place preceding the firing. On the contrary, the evidence brought forth by the prosecution clearly establishes that the accused had requested leave, which was not granted at that moment due to an official training assignment. The scuffle theory appears to be an afterthought, not supported by any eyewitnesses or medical evidence.

[40] This Court finds no force in the argument placed by the learned counsel for the appellant, which appears to be speculative and not supported by the evidence on record.

[41] It is well settled that mere denial of leave cannot, by any stretch of imagination, constitute a valid or reasonable ground for attacking or shooting a superior officer. The act of the accused was deliberate, intentional, and not provoked by any grave or sudden provocation.

[42] This Court finds that the prosecution has successfully established the case beyond reasonable doubt, supported by consistent and trustworthy eyewitness testimonies, corroborative medical and ballistic evidence, and the

voluntary statement made under Section 164 Cr.P.C. The Judgments as relied by the counsel for the appellant are not relevant to the present context of the case.

[43] Accordingly, this Court holds that the accused-appellant is guilty of the offence as charged. Accordingly the appeal is liable to be dismissed. Accordingly, it is dismissed.

[44] The impugned judgment and order of conviction and sentence dated 11.12.2023 and 12.12.2023 respectively, passed by the learned Additional Sessions Judge, Sepahijala Judicial District, Bishalgarh, in case no. S.T.(Type-1) 07 of 2022 is hereby stands affirmed and confirmed. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

Send down the LCRs forthwith.

B.Palit, J ***Dr. T. Amarnath Goud, J***

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