

(1990) 04 CAL CK 0033

Calcutta High Court

Case No: Criminal Appeal No. 393 of 1981

Indranath Guha

APPELLANT

Vs

State

RESPONDENT

Date of Decision: April 9, 1990**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164, 313
- Evidence Act, 1872 - Section 114, 45
- Penal Code, 1860 (IPC) - Section 109, 120B, 201, 302, 328

Citation: (1993) 2 ILR (Cal) 333**Hon'ble Judges:** Manabendra Nath Roy, J; Ajit K. Sengupta, J**Bench:** Division Bench

Advocate: Dilip Dutta, Dipankar Ghosh, Bhaskar Sen, Ajoy Nath Mukherjee, Sekhar Bose and Ranjit Kumar Dutta, for the Appellant; S.K. Mukherjee and S.K. Ghosh, for the Respondent

Final Decision: Allowed

Judgement

Ajit K. Sengupta, J.

This is an appeal against an order of the learned Additional Sessions Judge, Sixth Court, Alipore, District 24-Parganas, in Sessions Trial No. 2 of January 19, 1978, sentencing the Appellant, Indranath Guha, u/s 201 of the Indian Penal Code to two years' rigorous imprisonment and a fine "of Rs. 1,000 in default of which rigorous imprisonment for another one month.

2. Briefly, the prosecution case is that at about 9 a.m. on May 4, 1976, Surupa Guha, wife of the Appellant, went to the Ballygunge Science College where she was a Research Scholar in Bio-Chemistry. She worked in the laboratory for about 15 minutes and thereafter returned in a rickshaw to her residence at 10, Hindusthan Road, Calcutta. Soon afterwards, Jhantu Charan Dutta, a part-time bearer of the household, served her breakfast consisting of lassi, rasogolla and cucumber, after

taking which she fell ill. News of this was conveyed to the Appellant who had gone in the morning to South Point High School, 82/7A, Ballygunge Place, of which he was the Principal, to conduct the Secondary Examination. He returned home, picking up on the way the family physician, Dr. Bijitendra Gupta (P.W. 17). Dr. Gupta advised her immediate removal to a hospital and, accordingly, Surupa Guha was taken by Indranath Guha and his parents, accompanied by Dr. Gupta and others, to the S.S.K.M. Hospital. There she was examined by the doctors on duty in the Emergency Ward and they diagnosed it as a case of unknown poisoning. Surupa was admitted into a room of the Intensive Care Unit of the C.I. Block. At the hospital, it is alleged, Surupa stated that she had not taken any poison and that she had taken cucumber and lassi and that thereafter she became ill and fell down in the bathroom.

3. At about 2 o'clock, the Appellant went to the Ballygunge Science College and met Professor S.K. Bosc (P.W. 19), under whom Surupa was conducting her research, to know what poisons were available to Surupa in the laboratory. Names of two poisons were written down on a piece of paper and the paper was handed over to the Appellant. The Appellant returned to S.S.K.M. Hospital together with two research scholars (P.W. 26 and P.W. 52) of the Ballygunge Science College. It is alleged by the Prosecution that Indranath did not hand over this piece of paper to any of the doctors treating Surupa. Further, at about 4/4.30 p.m. he removed from inside the C.I. Block a bundle of clothes consisting of bedsheets and wearing apparel of Surupa, the clothes having been removed earlier when Surupa was purging. At about 10/10.30 p.m. Indranath wrote a letter (Ex. 8) to the Ballygunge P.S. stating that his wife might have by mistake taken some deleterious substance. Surupa expired at about 11.30 that night. One Sri Bijoy Kumar Chandra (P.W. 18), a friend of Surupa's uncle, Ranendra Mohan Mukherjee (P.W. 9), informed the Lalbazar Control Room, over telephone at 00.42 hrs. that Indranath and his accomplices had murdered Surupa by administering poison to her and she had been brought dead to the hospital. Early next morning, at about 5.15 a.m., Sri Ramendra Mohan Mukherjee (P.W. 7), father of Surupa, lodged a written complaint (Ex. 133) with the Ballygunge P.S. alleging that Surupa had been murdered by administration of poison. S.I. S. S. Sarkar (P.W. 61) of the Ballygunge P.S. went to 10 Hindusthan Road to investigate the matter. He was later joined by the Officer-in-charge of the Ballygunge P.S. (P.W. 61) and another officer. The Police Officers on entering the bedroom of Surupa found the bundle of clothes under a cot. According to the Prosecution, the Detective Department, Lalbazar, took up investigation on May 5, 1976. Thereafter, on May 15, 1976, Jhantu Charan Dutta was arrested and produced before the learned S.D.J.M., Alipore, and the Police filed a report treating the letter of complaint (Ex. 133) as F.I.R. Indranath and his parents, Sati Kanta Guha and Pritylata Guha, were arrested on May 24, 1976. On June 29, 1976, Ramendra Nath Lahiri, an employee of the South Point School, 10 Hindusthan Road, was arrested.

4. On July 10, 1976, the Police submitted the charge-sheet against Jhantu Charan Dutta, Sati Kanta Guha, Pritylata Guha, Indranath Guha and Ramendra Nath Lahiri,

charging them all under Sections 120B/328/201/302, I.P.C.

5. On June 3, 1977, the Additional Sessions Judge, Eleventh Court, Alipore, discharged Ramendra Nath Lahiri as there was no prima facie case against him. He framed charges against Jhantu Charan Dutta under Sections 302, 120B and 201, I.P.C. and against Sati Kanta Guha, Pritylata Guha and Indranath Guha under Sections 302/109, 120B and 201, I.P.C.

6. All the accused persons filed applications before this Court for quashing of the said charges. A Division Bench consisting of R. Bhattacharya J. and R. Sharma J, quashed the charges against Sati Kanta Guha and Pritylata Guha and directed that charges be reframed against Jhantu and Indranath, charging the former u/s 302, I.P.C, and the latter under Sections 302/109 and 201, I.P.C.

7. Thereafter, Ramendra Mohan Mukherjee, the de facto complainant, filed a petition before the Hon'ble Supreme Court against the quashing of the charges against Sati Kanta Guha and Pritylata Guha. Supreme Court decline, inter alia, to interfere with the order of the High Court.

8. On July 17, 1978, the trial of the Appellant and Jhantu began before the Additional Sessions Judge, Sixth Court, Alipore. In all 69 Prosecution witnesses were examined. The learned trial Judge delivered his judgment on September 25, 1981, acquitting Jhantu of the charge u/s 302 I.P.C. He held that Indranath did not give the Police information (Ex. 8) which he knew or believed to be false in respect of an offence, but the learned trial Judge, however, convicted the Appellant u/s 201 I.P.C. as already mentioned above.

9. Against the said order of the learned trial Judge, three appeals were filed:

(1) Indranath Guha filed an appeal, being Cr. Appeal No. 392 of 1981, against his conviction.

(2) The de facto complainant. Ramndra Mohan Mukherjee, filed a Revisional Appliratron, No. 117 of 1982, against the order of acquittal.

(3) The State of West Bengal filed an appeal, being Cr. Government Appeal No. 5 of 1982 against the order of acquittal.

10. On January 11, 1985, the learned Advocate-General of West Bengal submitted before a Division Bench of this Court consisting of N. G. Chaudhuri J. and G. C. Chatterjee J. that he would not proceed with the appeal. The Division Bench passed orders accordingly.

11. On December 11, 1989, an affidavit affirming that the de facto complainant, Ramendra Mohan Mukherjee had expired on January 29, 1985, enclosing an extract from the Register of Death of the Calcutta Municipal Corporation in support, was filed by Ramendra Nath Lahiri before the Division Bench. The Division Bench held that, in the circumstances, the Rule issued in the Revisional Application No. 117 of

1982 stood abated.

12. Therefore, only the present appeal being Criminal Appeal No. 392 of 1981 now remains to be dealt with and enclosing an extract from the Register of Death of the Calcutta Municipal Corporation in support, was filed by Ramendra Nath Lahiri before the Division Bench. The Division Bench held that, in the circumstances, the Rule issued in the Revisional Application No. 117 of 1982 stood abated.

13. Therefore, only the present appeal being Cr. Appeal No. 392 of 1981 now remains to be dealt with.

14. The evidence adduced in this case is voluminous. Altogether 69 witnesses were examined on behalf of the Prosecution. As the accused have been acquitted of the main charges u/s 302, I.P.C. it is unnecessary to discuss "the entire evidence. The present appeal is only concerned with the propriety of the Appellant's conviction u/s 201, I.P.C. Only the evidence relevant to this limited question need, therefore, be considered.

15. The following broad facts emerge from the evidence. The Appellant was married to Surupa in 1966. In 1970, a daughter was born to Surupa. In 1976, the Appellant was the Principal of South Point High School. Surupa was then a post-graduate student doing research in Bio-Chemistry at the Ballygunge Science College. They were both residing at 10 Hindusthan Road, Calcutta. The Junior Section of South Point School was also located in the same building and in another building in the same premises.

16. On the morning of May 4, 1976, Surupa went to the Ballygunge Science College. She arrived there at about 9 a.m. She worked in the laboratory at the Science College for about 15 minutes and then left the College on foot. At 9.25 a.m./9.30 a.m., she boarded a rickshaw, and returned to her residence at 10 Hindusthan Road, Calcutta, at about 10.15 a.m. It is alleged by the Prosecution that after Surupa returned, Jhantu, who was a bearer in the School and also did part-time work in the Guha household, served Surupa lassi and cucumber, after taking which she fell ill. The Appellant, who was then in South Point High School at 82/7A Ballygunge Place, Calcutta, was immediately informed of Surupa's illness. The Appellant then picked up the family physician, Dr. Bijitendra Gupta (P.W. 17), from his residence, and came with him to 10 Hindusthan Road. Dr. Gupta examined Surupa and advised her immediate removal to a hospital. Surupa was then taken to the S.S.K.M. Hospital by the Appellant and his parents, accompanied by Dr. Gupta. At the S.S.K.M. Hospital, she was first taken to the Emergency Ward, where she was jointly examined by Dr. P. K. Banerjee, Senior Emergency Officer, and Dr. Ballaial, the Resident Medical Officer. She was then sent on a trolley to the Cable Infectious Block of the S.S.K.M. Hospital (hereinafter referred to as the C.I. Block), where she was admitted in a room in the Intensive Care Unit, under the charge of Dr. M. B. Pramanik. The House Surgeon on duty in the C.I. Block was Dr. Rabi Chaudhury. He remained on duty till 8

p.m. when he was relieved by Dr. Sumitra Bose. After being taken to her room, Surupa was examined and treated by Dr. Rabi Chaudhury and Dr. Pramanik. The condition of the patient and the steps taken for her treatment are recorded in the bedhead ticket, Ex. 11, and in Ex. 20, which is also a part of the bedhead ticket. The 12 noon entry in Ex. 20, a contemporaneous hospital record, records that intravenous drip had been started at or before 12 noon. The 12.10 p.m. entry in Ex. 11 of the bedhead ticket records that Dr. Pramanik had seen and managed the case. It also records, inter alia, that the patient had been intubated by Dr. Pramanik with an endotracheal tube.

17. When Surupa was taken to her room in the C.I. Block, she was purging, and her petticoat got soiled. So her clothes were taken off and a hospital gown was put on her person. Surupa's clothes were tied up in a bundle with the bedsheet with which she had been covered when she had been brought to the hospital. This bundle is said to have been kept outside her room on the varandah by Ayah Saraswati.

18. It appears from the bedhead ticket that later in the afternoon, Dr. M. K. Chettri and Dr. Amal Bose also examined Surupa. Dr. J. B. Kundu and Dr. Ballial have given evidence that they examined Surupa between 2 p.m./ 2.30 p.m. on that day.

19. Although the case had been diagnosed as one of poisoning, the doctors could not find out which particular poison had been ingested by Surupa. At about 2 p.m. the Appellant went to the Ballygunge Science College with a view to ascertain what poisons were available at the laboratory where Surupa used to work, to which she might have had access. There he met Prof. S. K. Bose, Head of the Department of Bio-Chemistry. Prof. Bose, after making enquiries of research scholars who also worked in the same laboratory as Surupa, including one Jyotirmoy Nandi and one Jyotiprakash Chatterjee, made over a slip of paper to the Appellant on which the names of two poisons, mercuric chloride and N.T.G., were written. The Appellant then returned to the S.S.K.M. Hospital along with the said two research scholars at about 3 p.m. Dr. M. B. Pramanik has deposed that between 3 p.m. and 3.30 p.m. Dr. M. K. Chettri came to the C.I. Block for the second time when he advised transfusion of fresh blood and also prescribed BAL and other medicines. BAL is an antidote for heavy metal poisoning. Mercuric chloride is a heavy metal poison. Dr. M. B. Pramanik signed a requisition slip for blood at 3.25 p.m. Thereafter, the Appellant and Ramendra Nath Lahiri, accompanied by Jyotiprakash Chatterjee, went to donate blood at the Blood Bank of the S.S.K.M. Hospital situate within the hospital premises. It will appear from the records of the Blood Bank that the Appellant and Ramendra Nath Lahiri each donated 300 c.c. of blood. It will also appear from the records that two bottles of blood were issued by the Blood Bank at 4 p.m., which were collected by P.W. 7. Shortly afterwards, transfusion of blood was given to Surupa afterwards, transfusion of blood was given to Surupa for the first time. This fact will appear from an entry made at 4.30 p.m. in Ex. 20.

20. Surupa's mother, Mrs. Amiya Mukherjee, P.W. 4, has deposed that Rapiendra Nath Lahiri went to her residence and informed her of Surupa's illness and her removal to the S.S.K.M. Hospital. He escorted her back to the S.S.K.M. Hospital in the Appellant's car. She arrived at the S.S.K.M. Hospital a little before 2 o'clock. She has said that she was mostly standing just outside the room in which Surupa had been kept. She says that Dr. J. B. Kundu and Dr. Bailial had told her, while she was waiting outside Surupa's room, that Surupa had said that she had taken cucumber and lassi. She has further deposed that between 4 p.m./4.30 p.m., she saw the Appellant removing the bundle of Surupa's clothes which was lying on the verandah outside her room in the C.I. Block and putting it in the boot of his car. She went to speak to him, but he did not speak to her. She reported this fact to her husband P.M. 7 when he returned to the hospital after having made a phone call to Alpha Garage at 4 p.m. to cancel the programme of Sri Bhajan which had been arranged at her house for that evening. Jyotirmoy Nandi has said that at 4 p.m. he saw the Appellant carry a packet, getting into a car and driving off. At about 5 p.m., Prof. S.K. Bose and some others from the Ballygunge Science College came to the S.S.K.M. Hospital in the Appellant's car. At about 6 p.m. the Appellant told one Jitendra Tilak, P.W. 14, who had also come to the hospital, that it was a case of food poisoning. Jyotirmoy Nandi, one of the research scholars, who had come to the S.S.K.M. Hospital, has deposed that the Appellant went out of the hospital, from time to time, to get more blood from Belle Vue.

21. Dr. Sumitra Bose, a house surgeon, came on duty in the C.I. Block at 8 p.m. on May 4, 1976. She took over charge from Dr. Rabi Chaudhury. Her evidence is that she was present in the C.I. Block in the morning. She has deposed that Surupa was brought to C.I. Block at 12.10 p.m. As the patient was purging, the male doctors, Dr. Ballial and Dr. Chaudhury, were asked to go out of the room. While Surupa's clothes were being changed, Surupa told her, in the presence of the Sister-in-Charge Mrs. Mukul Mitra, the Staff Nurse Ira Ghosh, and the Ayah Saraswati, that she had not taken poison, but only cucumber and lassi, after which she fell uneasy and went to the bathroom, where she fell down. Sumitra Bose has said that this conversation took place between 12.10 p.m. and 12.30 p.m. At 12.30 p.m. Dr. Sumitra Bose left the C.I. Block to collect her pay. According to her, when she left the C.I. Block at 12.30 p.m., treatment of Surupa had not begun. Dr. Sumitra Bose has said that about 2 or 2 - hours after she resumed duty at 8 p.m., i.e. at 10 p.m./10.30 p.m., she added some lines in the 12.10 p.m. entry of the bedhead ticket, Ex. 11, recording the statement allegedly made to her by Surupa. The bedhead ticket was seized by the Police on May 6, 1976.

22. At about 10 p.m./10.30 p.m. the Appellant caused a letter, Ex. 8, to be sent to the Ballygunge P.S. in which he said that his wife might have taken some deleterious substance.

23. The efforts of the doctors to save Surupa's life did not succeed. She died at 11.30 p.m. on the same day.

24. As already mentioned, at about 5.10 a.m. on May 5, 1976, Surupa's father, P.W. 7, filed a long written complaint with the Ballygunge P.S. in which it was alleged that the Appellant and members of his family were responsible for Surupa's death. The Police took up investigation on May 5, 1976, and at about 8.30 a.m. on the same day the bundle of Surupa's clothes was seized by them from 10, Hindusthan Road.

25. In the decision of the Supreme Court in [Kodali Purnachandra Rao and Another Vs. The Public Prosecutor, Andhra Pradesh](#), it has been laid down that in order to bring home an offence u/s 201, I.P.C., the Prosecution has to prove:

(1) that an offence has been committed;

(2) that the accused knew or had reason to believe the commission of such an offence;

(3) that with such knowledge or belief the accused (a) caused evidence of the commission of that offence to disappear, or (b) gave any information respecting that offence which he then knew or believed to be false;

(4) that he did as aforesaid with the intention of screening the offender from legal punishment.

26. The trial Judge has found that each of these ingredients has been established in this case. With regard to the first ingredient, he has held that although neither Jhantu Charan Dutta nor the Appellant was guilty of the offence of murder, and the Appellant not guilty of abetment of murder by supply of poison or by conspiracy, nevertheless someone did commit the offence of murder of Surupa by putting mercuric chloride in the lassi served to her at her residence at 10 Hindusthan Road on the morning of May 4, 1976, and it was not a case of suicide or self-administration of poison by Surupa herself. Regarding the second ingredient, he has held on the basis of five circumstances mentioned in his judgment, which will be discussed in detail later, that the Appellant had knowledge that an offence had been committed. With regard to the third ingredient, he has held that with such knowledge, the Appellant had removed the bundle containing Surupa's clothes from the S.S.K.M. Hospital, which was later found in his house. Lastly, he has held that the Appellant removed the bundle of clothes with the intent of screening the offender. According to the trial Judge, it was not essential that the Appellant should have known the identity of the offender. On the basis of these findings he convicted the Appellant u/s 201 I.P.C. the allegation in the charge of giving false information to Police was held not to have been established.

27. On behalf of the Appellant, it has been submitted:

(1) The evidence does not show that Indranath had knowledge or reason to believe that someone had put poison in the lassi taken by Surupa.

(2) The evidence that it was Indranath who removed the clothes from the C.I.B. is totally unreliable.

(3) In any event, assuming it was Indranath who removed the clothes, the evidence does not show that he did so with the intention of screening the (unknown) offender from punishment.

(4) The evidence does not sustain the finding of the learned trial Judge that an offence of murder had been committed by someone by putting mercuric chloride in the lassi taken by Surupa.

28. We shall first take up the question as to whether the Appellant knew or had reason to believe that an offence had been committed. The trial Judge, in para. 187 of his judgment, has set out five circumstances for coming to a conclusion that the Appellant had the requisite knowledge. These circumstances are:

(i) That the Appellant went to the Ballygunge Science College at about 2 p.m. on May 4, 1976.

(ii) That a slip containing the names of two poisons, N.T.G. and mercuric chloride, was handed over to the Appellant at the Ballygunge Science College, and that on his return to the S.S.K.M. Hospital, the Appellant did not hand over this slip to any doctor concerned with the treatment of Surupa.

(iii) That the Appellant said to Jitendra Tilak, P.W. 14, at about 6 p.m. that it was a case of food poisoning.

(iv) That the Appellant sent a letter, Ex. 8, to the Ballygunge P.S. at about 10 p.m./10.30 p.m. in which it was stated that Surupa might have taken some deleterious substance.

(v) That the statements of the Appellant made to P.W. 14 and to the Police, at different times, were inconsistent.

29. According to trial Judge these circumstances show that the Appellant knew what poison Surupa had taken, that he deliberately withheld the information about the nature of the poison from the doctors and that he made inconsistent statements at different times. All this showed that the Appellant knew or had reason to believe that an offence had been committed by someone.

30. It is submitted that all these circumstances, taken individually or collectively, are not incriminating circumstances and do not warrant the conclusion that Indranath knew or had reason to believe that an offence had been committed. On the contrary, they are; inconsistent with his innocence. It is, therefore, necessary to examine, each of these circumstances relied on by the learned Sessions Judge to

decide the merits of this contention.

31. Regarding the first circumstances relied upon by the trial Judge, viz. the Appellant's visit to the Ballygunge Science College, P.W. 19, Prof S.K. Bose and P.W. 26, Jyotirmoy Nandi, have deposed that the Appellant went to the Science College at 2 p.m., and after meeting Prof. Bose, he told him that he wanted to ascertain what poisons could have been available to Surupa at the laboratory because, if this was known, it would help her treatment. There is evidence on record that although the doctors treating Surupa knew that it was a case of poisoning, they did not know what particular poison had been ingested by her. In this background, the Appellant's object in going to the Science College, as shown by the evidence of P.W. 19 and P.W. 26, cannot be an incriminating circumstance. The only reasonable inference that can be drawn is that the Appellant suspected that his wife might have had access to some poison in the laboratory in which she worked, particularly as it was a Bio-Chemistry laboratory and he wanted to ascertain the nature of the poison to which she could have had access. The trial Judge has himself observed that this circumstance, taken alone, is not incriminating. Therefore, from the fact of the Appellant's visit to the Ballygunge Science College, no inference can be drawn that the Appellant knew or had reason to believe someone had administered poison to Surupa.

32. There are two aspects of the second circumstance (the slip of paper containing the names of two poisons having been given to Indranath) relied upon by the trial Judge. The first is whether the slip of paper containing the names of two poisons had been made over by Prof. Bose at the Ballygunge Science College to the Appellant. The Appellant in his statement under "Section 313, Code of Criminal Procedure, made more than 4-1/2 years after the event, said that he did not remember whether the slip containing the names of the two poisons was made over to him or to the two research scholars, who accompanied him back to the hospital. We do not think that the fact that the Appellant did not remember to whom the slip was handed over has any sinister significance. After the lapse of more than four years, it was not unnatural not to remember precisely to whom the slip was made over. As a matter of fact, Prof. Bose himself has said that he did not remember whether he had handed over the slip or whether one of his students had handed it over. The important point is that the Appellant did not deny that the slip was made over by Prof. Bose at the Ballygunge Science College. Later in his statement u/s 313, Code of Criminal Procedure, the Appellant went on to say that on his return to the S.S.K.M. Hospital the slip was made over to Dr. Chettri by him.

33. Another point may be noticed at this stage. The trial Judge has held that, after receipt of the slip, the Appellant knew that Surupa had taken mercuric chloride. In our opinion, such an Inference cannot be made. Firstly, the slip contained the names of two poisons, of mercuric chloride and N.T.G., and not of mercuric chloride alone. Secondly, the slip merely gave information of the poisons to which Surupa had

access at the laboratory. It is not possible to infer, from the fact of the receipt of the slip, that the Appellant knew that his wife had in fact taken mercuric chloride.

34. The second aspect is whether the Appellant made over the slip to any doctor on his return to the hospital. The trial Judge has stated in para. 187 of his judgment that the Appellant did not take any plea in his Section 313 statement that the slip was made over to Dr. Chettri. This is incorrect. In answer to Order 693 of his Section 313 statement the Appellant has clearly stated that the slip was handed over by him to Dr. Chettri on his return to the hospital.

35. Obviously, the best person who could have given evidence that this plea of the Appellant was false, was Dr. Chettri, an eminent doctor then attached to the S.S.K.M. Hospital. Dr. Chettri was not called by the Prosecution as a witness at the trial though he was named as a charge-sheet witness. There is no explanation on record for the non-calling of Dr. Chettri, who would certainly have been a most material witness on this point. The non-calling of Dr. Chettri gives rise to an adverse presumption against the prosecution u/s 114(g) of the Evidence Act that, if called, his evidence would have gone against the Prosecution case. There is thus no evidence falsifying the statement of the Appellant that he made over the slip to Dr. Chettri.

36. On the other hand, the evidence on record probabalises the truth of the Appellant's statement that he made over the slip to Dr. Chettri on his return to the S.S.K.M. Hospital. The Appellant returned to the hospital at about 3 p.m. This has been deposed to by Jyotirmoy Nandi and Jyotiprakash Chatterjee who came with him to the hospital from the Ballygunge Science College. P.W. 20, Dr. M. B. Pramanik, has said that during his first visit, which was before 2.30 p.m., Dr. Chettri had not prescribed any medicine. It was during Dr. Chettri's second visit, between 3 p.m. and 3.30 p.m., that he prescribed BAL and also advised transfusion of fresh blood. At 3.25 p.m. Dr. M. B. Pramanik signed the requisition for blood, Ex. 10. P.W. 46 Dr. Amal Bose, the Head of the Department of Anaesthesiology, S.S.K.M. Hospital, has given evidence that BAL is an antidote for heavy metal poisoning. Mercuric chloride is a heavy metal poison.

37. From the time sequence of events narrated above, it is evident that it was after the Appellant's return to the hospital from the Ballygunge Science College that Dr. Chettri prescribed BAL. It appears to us that, in the circumstances, it is most probable that Dr. Chettri prescribed this medicine because he came to know of mercuric chloride from the slip handed over to him by the Appellant. Mercuric chloride, a heavy metal poison, was one of the poisons mentioned in that slip. That explains why the antidote BAL was prescribed by Dr. Chettri.

38. Besides, the Appellant himself brought two research students with him to S.S.K.M. Hospital, both of whom were aware of the contents of the slip. Later, at about 5 p.m., P.W. 19, prof. S.K. Bose of the Ballygunge Science College, who had

made over the slip to the Appellant, and others from" the Ballygunge Science College also came to the hospital in the Appellant's car. If the Appellant had wanted to withhold the information obtained by him from the Science College, which was noted in the slip, he would not have brought these persons to S.S.K.M. Hospital, where they would be in a position to divulge the information contained in the "slip.

39. From the above facts, it is clear that the Appellant made over the slip to Dr. Chettri and he did not withhold the information contained in the slip. The finding of the trial Judge on this point, to the contrary, in para. 189 of his judgment cannot be sustained.

40. The third circumstance relied upon by the trial Judge is a statement by the Appellant said to have been made to P.W. 14 Jitendra Tilak that it was a case of food poisoning. Firstly, the evidence that such a statement was made by the Appellant to P.W. 14 is not at all reliable. When examined u/s 164, Code of Criminal Procedure, P.W. 14 did not say that the Appellant had made such a statement to him. He was confronted with this previous statement in cross-examination. In the circumstances, it is difficult to hold that this fact has been satisfactorily proved by reliable evidence.

41. Secondly, even if it is assumed that such a statement was made by the appellant to P.W. 14, that is not an incriminating circumstance and it does not go to show that the Appellant knew or had reason to believe that someone had administered poison to Surupa with the intent to murder her. When P.W. 17, Dr. B. Gupta, examined Surupa at 10 Hindusthan Road the Appellant was present. At that time, Surupa had said that she had taken cucumber and something else. Dr. Gupta diagnosed the case as one of poisoning. At the S.S.K.M. Hospital also, the case was dealt with as a poisoning case. So it was absolutely natural for the Appellant to say that it was a case of food poisoning. The statement was true, having regard to what the Appellant knew at that time. Besides, if, as his earlier action of going to Ballygunge Science College shows, he suspected that his wife had taken poison herself, it would not have been natural for him to advertise that fact and tell that to P.W. 14. There is no evidence that there was any particular intimacy between the Appellant and P.W. 14. So, assuming that the Appellant had told P.W. 14 that it was a case of food poisoning, it cannot be inferred from that statement that the Appellant knew that someone had administered poison to Surupa. The statement is not an incriminating fact.

42. The fourth circumstance relied upon by the trial Judge is Ex. 8, the letter written by the Appellant to the Ballygunge Police Station at about 10 p.m./10.30 p.m. that Surupa might have taken some deleterious substance. This merely shows that the Appellant suspected that his wife might have taken some poison herself. No inference can be drawn from this letter that the Appellant knew or had reason to believe that someone else had administered poison to her. The letter totally negates such a supposition. The trial Judge has himself found that this did not amount to giving false information to the Police.

43. Lastly, the conclusion or inference of the trial Judge that the Appellant had made inconsistent statements at different times, and that this shows that he knew or had reason to believe that someone had administered poison to Surupa, cannot also be sustained. If the Appellant had earlier told P.W. 14 that it was a case of food poisoning, that meant that there was some poison in the food taken by Surupa. Exhibit 8, the letter to the Police, deals with his apprehension that Surupa herself might have taken some poison or some deleterious substance. The two statements are not inconsistent.

41. The five circumstances relied upon by the trial Judge and discussed above by us do not, in our opinion, justify the inferences made by the trial Judge and they do not warrant the conclusion that the Appellant knew or had reason to believe that someone had administered poison to Surupa. These circumstances, taken individually or collectively, are not incriminating circumstances against the Appellant, but are fully consistent with his innocence. We, therefore, hold that the Prosecution has failed to establish this ingredient of the offence u/s 201, I.P.C., viz., that the Appellant knew or had reason to believe that an offence had been committed.

45. We will now deal with the second main contention on behalf of the Appellant regarding the reliability of the evidence that it was the Appellant who had removed the bundle of Surupa's clothes from the S.S.K.M. Hospital.

46. Evidence on this point was given by three witnesses, viz. P.W. 4 Amiya Mukherjee, P.W. 7 Ramendra Mohan Mukherjee and P.W. 26 Jyotirmoy Nandi.

47. The evidence of P.W. 4, Mrs. Amiya Mukherjee, is that after her arrival at the hospital, she had been mostly standing just in front of Surupa's room inside C.I. Block. After her talk with Dr. Ballial at 2.30 p.m., she remained in the C.I. Block till about 4 p.m./4.30 p.m. when she saw the Appellant taking out a bundle wrapped in a blue chadar or bedcover from the C.I. Block and putting it in the luggage carrier of his car. She went to talk to him, but without talking to her he left by the car. She looked at her watch at that time because she was thinking about cancelling the programme of Sri Bhajan which was to be held at her residence that evening. When her husband returned to the hospital after making a telephone call to Alpha Garage for cancelling that programme, she reported this fact to him.

48. The evidence of P.W. 7 is that he went out of the hospital to make a phone call to Alpha Garage to stop the Sai Bhajan programme previously planned for that evening. This was at 4 p.m. When he came back to the hospital, his wife told him that she had seen the Appellant removing the clothes. She told him further that she had asked the Appellant not to do so, but he did not listen to her. This is an embellishment. This is not what Amiya Mukherjee is stated to have told her husband.

49. The evidence of P.W. 26 is that at 4 p.m. transfusion of blood for Surupa was necessary. At that time Indranath went out for procuring blood. With him there was a "packet". He got into his car with the packet and he went out in his car. In an hour therefrom he returned and transfusion of blood to Surupa was allowed.

50. We have examined the evidence bearing on the question as to whether the Appellant had removed the bundle containing Surupa's clothes, and we are of the opinion that no reliance can be placed on it for more than one reason.

51. From the evidence and other materials on record, it appears that during the alleged time of removal of the clothes, the Appellant was at the Blood Bank of the S.S.K.M. Hospital. Dr. Chettri had advised transfusion of fresh blood during his second visit, which was between 3 p.m./3.30 p.m. according to Dr. Pramanik. Dr. Pramanik then signed a requisition slip. The Appellant had stated in answer to Q. 43 of his statement u/s 313, Code of Criminal Procedure, that at about 3.30 p.m. he along with Ramen Lahiri and one of the research students went to the Blood Bank. As there were other people waiting in the queue he requested that the blood from the Blood Bank should be sent immediately for the patient Surupa in the C.I. Block and that he and Ramen Lahiri would wait in the Blood Bank to donate blood in their turn. Thereafter two cards were issued, one in his name and another in the name of Ramen Lahiri, by presenting which blood could be collected straightaway from the Blood Bank. He himself does not know who collected the blood. Thereafter, he and Ramen Lahiri donated blood at the Blood Bank. The whole operation took some time, as even after donating blood, they had to stay on at the Blood Bank for some time to take rest.

52. This statement of the Appellant u/s 313, Code of Criminal Procedure, is borne out by the evidence. P.W. 52, Jyotiprakash Chatterjee, a research student, has said that he accompanied the Appellant and another person to the Blood Bank on foot to collect blood. He says that this was at about 3 p.m./3.15 p.m., but this is obviously wrong, as a requisition for blood was signed at 3.25 p.m. and they must have gone to the Blood Bank after that.

53. Exhibits P, O, 183, 184 are records of the Blood Bank Register. They show that the Appellant and Ramen Lahiri each donated 300 c.c of blood. The lower portion of the requisition slip for blood, Ex. 10, shows that P.W. 7 collected two bottles of blood from the Blood Bank at 4 p.m. The 4.30 p.m. entry in Ex. 20 shows that transfusion of 600 c.c. of blood was given to Surupa for the first time at or before 4.30 p.m.

54. P.W. 66, D. P. Chatterjee, O.C., Homicide Squad, Lalbazar, has confirmed the statement of the Appellant u/s 313, Code of Criminal Procedure, that after donating blood the donor is required to take rest for some time.

55. It will also appear from the evidence of P.W. 7 that the Blood Bank in the S.S.K.M. Hospital is located at some distance from the C.I. Block in a building to the north of the Emergency Ward.

56. Having regard to all these circumstances, it is difficult to place any reliance on the evidence that the Appellant was seen removing the bundle of Surupa's clothes from the C.I. Block between 4 p.m. and 4.30 p.m.

57. In para. 138 of the judgment the trial Judge has said that Mrs. Mukherjee has said that she did not have a watch. This is incorrect. The evidence is to the contrary. Amiya Mukherjee has not only said that she had a watch and looked at it, but he also gave a good reason for looking at her watch, MU. she was thinking about the Sai Bhajan programme v/h"ch had been arranged for the evening at her residence.

58. Secondly, it the Appellant had removed the clothes from the J.I. Block between 4 p.m. and 4.30 p.m., as allegedly reported by Mrs. Amiya Mukherjee to her husband and if the Appellant had done so in spite of being asked not to do so by Mrs. Amiya Mukherjee, Ramen Mukherjee would certainly have mentioned these facts in the written complaint, Ex. 133, lodged by him at the Police Station in the early hours of May 5, 1976. Exhibit 133 is a long document, containing detailed information on many matters. It was dictated by Ramen Mukherjee for 1-1/2 hours, and taken down by his brother Ranen Mukherjee. Their uncle Paresh Chatterjee, who was an Assistant Commissioner of Police, was also present at that time. But, there is no mention or whisper of Indranath's having removed any clothes in the written complaint. This fact also goes to show the falsity of the evidence that the Appellant removed the clothes from the C.I. Block.

59. Thirdly, we find it difficult to place any reliance on the evidence of P.W. 26, Jyotirmoy Nandi, on this point. Jyotirmoy Nandi has said that at 4 p.m. he saw the Appellant with a "packet" getting into and driving off in his car. On the first day of examination-in-chief, this witness recounted all that had happened on May 4, 1976, up to the time he left the S.S.K.M. Hospital at night, but he did not say anything on the first day about the Appellant's carrying a packet and getting into the car with it. The evidence about the Appellant getting into a car at 4 p.m. with a packet came out in answer to the first question put to him on the second day of his examination-in-chief. This suggests that the witness was tutored to give this evidence. Secondly, the evidence of this witness that the Appellant drove away in his car is contradicted by the evidence of P.W. 52, Jyotiprakash Chatterjee, who accompanied the Appellant to the Blood Bank, Jyotiprakash Chatterjee has said that they went on foot. Thirdly, the evidence of Jyotirmoy Nandi that he saw the Appellant with a packet at 4 p.m. stands contradicted by the evidence relating to donation of blood discussed by us earlier. That evidence shows that before, at and after 4 p.m. the Appellant was at the Blood Bank. This evidence is based on the hospital records. Therefore, it is difficult to accept the evidence of Jyotirmoy Nandi that at 4 p.m. the Appellant was coming out of the C.I. Block. Fourthly, the evidence of this witness that blood was given to Surupa about an hour after 4 p.m. also stands falsified by the hospital records. The 4.30 p.m. entry in Ex. 20 shows that transfusion of blood had started by that time. Lastly, if P.W. 26, Jyotirmoy Nandi,

who is an educated person and a research fellow of Ballygunge Science College, had actually seen the Appellant carrying a bundle of clothes wrapped in a blue bedcover, one would not expect him to describe such a bundle as a "packet". Considering the above, we find it difficult to place any reliance on the evidence of this witness regarding the alleged removal of clothes from the C.I. Block by the Appellant.

60. Although one cannot but have sympathy for Mrs. Amiya Mukherjee and Ramendra Mohan Mukherjee, the parents of the deceased, their evidence, implicating the Appellant, is far from being disinterested and does not inspire confidence. Mrs. Amiya Mukherjee's statements as to where she was standing, when she saw the Appellant carrying the bundle of clothes, are inconsistent and contradictory. First, she says she was waiting in front of the door of the room in which Surupa lay. If this was true, it must have been inside the C.I. Block. Then she says it was outside the C.I. Block. A little later, she says that the place was inside the building. She has also said that from that spot she could look into the room and see Surupa inside the room," and she could see with her own eyes Surupa being treated inside the room by Dr. Kundu and Dr. Ballial. She says she talked to Dr. Kundu, and later to Dr. Ballial, inside the C.I. Block. After her talk with Dr. Ballial at about 2.30 p.m., she says that she continued to wait there, i.e. inside the C.I. Block, till the time the Appellant removed the clothes.

61. This evidence of Mrs. Mukherjee is contradicted by her earlier statements to the Police, u/s 161, Code of Criminal Procedure, with which she was confronted in cross-examination.

62. In her statements u/s 161, Code of Criminal Procedure, P.W. 4, Amiya Mukherjee, did not mention that she was standing outside Surupa's room. In her first Section 161 statement she had also not mentioned any conversation with either Dr. Ballial or Dr. Kundu.

63. Further, the evidence of Dr. Ballial and that of Dr. Kundu contradict the evidence of Mrs. Mukherjee. Dr. S. K. Ballial has said that when he spoke to Mrs. Amiya Mukherjee after coming out of Surupa's room, the conversation took place outside the C.I. Block. Dr. Kundu makes no mention of Mrs. Mukherjee's presence in the C.I. Block at all, and he has not given any evidence that he talked to her.

64. It may also be noted that neither "the Staff Nurse, Ira Ghosh, nor the Sister-in-Charge, Mukul Mitra, who were on duty in the C.I. Block till 3 p.m. and 4 p.m. respectively, has spoken of the presence of Mrs. Mbkhherjec just outside the door of Surupa's room, or even inside tru C.I. Block. If Mrs. Mukherjee was there, almost continuously outside Surupa's room from the time of her arrival a little before 2 p.m. and until 4 p.m./4.30 p.m., when she says that the Appellant removed the clothes, as deposed by her, one would expect them to have noticed this fact, particularly as Mrs. Mukherjee says she was constantly asking them about her daughter's condition.

65. Again, there is substance in the criticism that it was improbable that P.W. 4 was waiting outside Surupa's room. That room was a specially protected room in the Intensive Care Unit, and outsiders are generally not allowed to be in that Unit, outside visiting hours, which were between 4 p.m. and 6 p.m. It was an air-conditioned room or the room had air-cooling. The door of the room must have been kept closed, particularly in the month of May, and it was outside visiting hours (2 p.m. to 4 p.m.). It is, therefore, difficult to accept Mrs. Mukherjee's evidence that she could see Surupa being treated with her own eyes.

66. If Amiya Mukherjee had actually seen the Appellant taking away the bundle of Surupa's clothes, one would have expected that she would have immediately reported this fact to a doctor or nurse in the C.I. Block. There is no evidence that she did so.

67. The evidence of P.W. 4, Mrs. Amiya Mukherjee, reveals an animus against the Appellant, whom she held responsible for her daughter's death. She seemed to be bent on implicating the Appellant in whatever way she could, by suppressing any fact that may be favourable to him, and by trying to lead evidence which would show up the Appellant in a bad light. For example, she feigned total ignorance of the fact that the Appellant donated blood. Again, she spoke of the Appellant having gone to Guwahati with a "woman". It ultimately transpired from her own evidence that the Appellant had gone to Guwahati in connection with a bridge tournament, that he was accompanied by his wife and child and the child's ayah, and that the "woman" was none other than the ayah who had gone to look after the child.

68. In view of what has been stated above, it is difficult for us to implicitly accept the evidence of Mrs. Mukherjee that she was standing just outside Surupa's room, from where she says she saw the Appellant r. moving the bundle of Surupa's clothes.

69. The evidence of Ramendra Mohan Mukherjee also does not inspire confidence. He has tried to give a false picture about the fact of donation of blood by the Appellant. At first he feigned ignorance about it. Then he said that the Appellant might have donated blood. Then he said that as it was getting late he went to the Blood Bank --from the sequence of events narrated by him, this was after 5.30 p.m. --to collect the blood, which he did by imploring the authorities and taking the names of the Appellant and Ramen Lahiri. This evidence stands falsified by the hospital records, which show that Ramen Mukherjee collected blood at 4 p.m. Further, the 4.30 p.m. entry in Ex. 20 shows that by 4.30 p.m. the first blood transfusion was given to Surupa. It is also difficult to accept the evidence of Ramendra Mohan Mukherjee that he implored the authorities to give blood. It appears to us that the system of issuing blood on presentation of a card bearing the name of the donor, as stated by the Appellant in his statement u/s 313, Code of Criminal Procedure, gives the correct picture. Further, Ex. 10_ shows that Ramen Mukherjee collected two bottles of blood from the Blood Bank at 4 p.m. Therefore, he could not possibly have phoned Alpha Garage at 4 p.m. to stop the Sai Bhajan as

stated by him in his evidence. This fact again casts doubt on the evidence of both Mrs. Amiya Mukherjee and Ramendra Mohan Mukherjee that Mrs. Amiya Mukherjee had reported the alleged removal of clothes by the Appellant to Ramen Mukherjee when he returned to the hospital after making a phone call to Alpha Garage at 4 p.m.

70. Apart from the evidence of Mrs. Amiya Mukherjee, there are other features in the evidence which cast doubt on the Prosecution case. It appears to us to be doubtful whether Surupa's clothes had been left outside on the verandah. P.W. 31, Ayah Saraswati, who is supposed to have kept the bundle there, has herself said that no patient's clothes are kept on the verandah. Mukul Mitra, the Sister-in-Charge has said that the clothes were kept near the oxygen cylinders, but she had not said so in her Section 161 statement. Ira Ghosh, the Staff Nurse, has said that the clothes were removed before Dr. Pramanik came, but Dr. Pramanik has said he was in the room when Surupa's clothes were being changed. Besides, if the clothes had been lying on the verandah for hours together, it is strange that none of the doctors who saw Surupa --and there were several such doctors --has said anything about the presence of the bundle of clothes said to be openly lying on the verandah.

71. There is another fact which militates against the Prosecution case that the Appellant removed the bundle of clothes from the C.I. Block between 4 p.m. and 4.30 p.m. Ayah Saraswati went off duty at 2 p.m. The Staff Nurse Ira Ghosh went off duty at 3 p.m. The Sister-in-Charge Mukul Mitra went off duty at 4 p.m. The ayah and the nurses who came on duty at the C.I. Block after 2 p.m., 3 p.m. and 4 p.m. respectively would have been the best persons to say what happened to the bundle of clothes --whether the Appellant had taken away the bundle from the verandah, or whether the bundle had been made over by the hospital staff to the patient's relations. The Prosecution deliberately chose not to call these persons as witnesses. In this connection, it is significant that when questioned by the Police, Dr. Rabi Chaudhury had stated that he did not know why the clothes had been "made over" to the patient's party. He was confronted with his earlier statement u/s 161, Code of Criminal Procedure, during his cross-examination. The truth is revealed by Dr. Rabi Chaudhury (P.W. 29) who has stated that he does not know what was the procedure for preserving a patient's clothes, and when confronted with his Section 161 statement, admitted that he told the Police that he did not know why the clothes were "made over" to the patient's party".

72. It also appears from the evidence that to come out of the C.I. Block from the room where Surupa lay, one would have to go through the nurses' room. If the Appellant had removed the clothes from the verandah outside Surupa's room, it is strange that he was not stopped or questioned by any nurse or doctor.

73. It appears from the evidence of Mukul Mitra that the visiting hours at the C.I. Block are between 4 p.m. and 6 p.m., during which time the collapsible gate is

closed, keeping only a part of it open to ensure that no more than two visitors enter. A durwan is posted at the gate to control the entry of the visitors. If the Appellant had taken out a large bundle of clothes between 4 p.m. and 4.30 p.m., one would have expected the durwan to question him about it. The durwan was not called as a witness.

74. We will now take up the third contention advanced on behalf of the Appellant, viz. assuming that the Appellant removed the bundle of Surupa's clothes from the S.S.K.M. Hospital, can it be said that he did so with the intention of screening the offender ?

75. In the charge u/s 201, I.P.C. framed against the Appellant, it was alleged that he had removed the bedsheets and the wearing apparel of Surupa with the intention of screening the offenders, including himself, from legal punishment.

76. The first question for consideration is: who are the offenders whom the Appellant intended to screen from punishment ?

77. One can be found guilty of removing the clothes with the intent of screening the offender only if one knows who the offender is. In this case, the charges against Jhantu u/s 302, I.P.C. was that he had administered poison to Surupa. He was acquitted. The charges against Indranath were u/s 302 read with Section 109 I.P.C. and the allegation was that he supplied the poison. He has been acquitted on these charges and the learned trial Judge has also found that there was no abetment by conspiracy. The original charges framed against Indranath's parents were quashed by the High Court as there was no evidence to show that they were implicated. No charge was framed against Ramen Lahiri who had been named as an accused in the charge-sheet on the completion of the investigation, and there is no evidence whatsoever of Ramen Lahiri being implicated in any way.

78. While discussing the charge u/s 201 I.P.C. the learned trial Judge observes in para. 186 of his judgment:

Again, the stated requirement of the charge is that an offence must have been committed, but the necessarily implied, though unstated, requirement of the charge is that there must be an offender, though the accused Indranath need not be necessarily aware of his identity.

Again, in para. 207 of his judgment, the learned trial Judge observes:

It needs to be remembered that with regard to the allegations of the causing of the evidence of the commission of an offence to disappear, the Prosecution did not allege any motive on his (Indranath's) part at all.

78. The Prosecution having failed to establish the positive case made by it that the specific persons charged were guilty of the main offence, we are of the opinion that it was not open to the learned trial Judge to himself make out a totally new case that

the main offence was committed by an unknown and unidentified person. In coming to this conclusion we find support in the decision of the Supreme Court in [Bhagirath Vs. State of Madhya Pradesh](#), where it was held that it was not permissible for the Court, on its own, to make out a new case for the Prosecution and convict the accused on that basis.

79. Moreover, it is difficult for us to accept the thesis that the Appellant, in removing the bundle of Surupa's clothes from the S.S.K.M. Hospital, had the intention of screening the offender, even though he was not aware of his identity, and although according to the Prosecution he had no motive for causing evidence of the commission of his offence to disappear. If the five persons referred to earlier are eliminated, there is absolutely nothing on record to show who was or could be the offender. The judgment under appeal also does not reveal any clue or hint as to the identity of the alleged offender. There is no evidence whatsoever as to what other person was or could be the alleged offender. Unless the identity of the offender is established and it is shown further that by reason of his or her relationship with the Appellant or for some other reason, the Appellant had a motive for trying to screen or protect that person, in our opinion it cannot be said to have been established that in removing the clothes the Appellant had an intent of screening the offender from legal punishment.

80. That apart, we are of opinion that the circumstances of the case do not, far less inevitably, lead to the inference that in removing the bundle of clothes from the S.S.K.M. Hospital the Appellant had the intention of screening any offender.

81. The Appellant is said to have put the bundle of clothes in the boot of his car at 4 p.m./4.30 p.m. The bundle of clothes was seized in the same condition at 8.30 a.m. the next morning from his house, as will appear from the seizure list Ex. 149. If the Appellant intended to conceal or destroy the evidence, he could have easily got rid of the clothes between 4.30 p.m. on May 4, 1976, and 8.30 a.m. of May 5, 1976, or, at least he would have had the clothes washed, so that the stains of mercuric chloride found later on some of these clothes, could have been obliterated. He did not do either of these things. Again, if the Appellant had a criminal intent, he could have concealed the clothes somewhere. There were two buildings in the premises of 10 Hindusthan Road, in which the Junior School was also housed. He would not have kept the bundle in Surupa's bedroom, which was the first place where the Police were likely to look. Anil Kumar Ghosh Dastidar, O.C., Ballygunge P.S., who was present at the time of seizure, has said that immediately he entered the room he saw it and asked Jhantu to bring it out. This shows that there was no attempt to conceal the bundle.

82. According to the Appellant's statement u/s 313, Code of Criminal Procedure, the bundle was openly lying in the verandah outside the bedroom and not in the bedroom itself. This plea appears to be reasonable. It was unlikely that the soiled clothes would be kept inside the bedroom. The Prosecution evidence, however, is

that the bundle of clothes was kept under a cot in the bedroom. In the seizure list the precise location of the seized bundle is not mentioned, as it should have been, according to the relevant Police Regulations. It is not stated in the seizure list that the clothes were lying under the cot and none of the seizure list witnesses was called to give evidence regarding the spot from where the bundle of clothes was seized. In any event, even if we accept the Prosecution evidence that the bundle was kept under the cot in the bedroom, that fact is not an incriminating fact against the Appellant. Therefore, merely from the fact that the bundle of clothes was kept under the cot, an intention of the part of the Appellant to screen the offender from punishment cannot be inferred. On the contrary, the fact that there was no attempt at concealment negates such as inference.

83. Finally, the entire conduct of the Appellant on May 4, 1976, militates against the existence of any criminal intent on his part. When first informed of his wife's illness, he immediately brought a doctor with him. When the doctor advised Surupa's removal to hospital, the Appellant also went to the hospital. When the doctors at the hospital were at a loss as to what poison Surupa could have taken, the Appellant went to the Ballygunge Science College to try and find out what poison could have been available to her at the laboratory in which she used to work, and thereafter, he made over the slip of paper, containing the names of two poisons, given to him by Prof. Bose to Dr. Chettri. Later, when blood transfusion was required to be given to Surupa, the Appellant himself donated 300 c.c. of blood. When more blood was required later, he went out to Belle Vue Clinic and Medical College for that purpose. He also tried to get the medicines required, which were not available at the hospital. He did everything he could to save the life of Surupa. The totality of these circumstances relating to his conduct on that day is inconsistent with and negatives a criminal intent on the part of the Appellant to screen any offender from punishment.

84. We, therefore, hold that the Prosecution has failed to prove that the Appellant removed the clothes of Surupa with the intention of screening the offender which is one of the essential ingredients of an offence u/s 201, I.P.C.

85. The neat contention is that the evidence on record does not establish that an offence was committed.

86. It is undoubtedly a pre-requisite of Section 201, I.P.C, that an offence must have been proved to have been committed. If this is established, then only further questions arise, viz. whether the accused removed the evidence of the commission of the offence, whether he had knowledge or reason to believe that an offence had been committed and whether he had the intention of screening the offender from punishment.

87. As stated earlier, the trial Judge has held that Jhantu Charan Dutta was not guilty of the offence of the murder of Surupa. He has also held that the Appellant was not

guilty of abetment of the murder. But it will appear from para. 183 of the judgment under appeal that the definite finding of the trial Judge is that the offence of murder was committed by someone by putting mercuric chloride in the lassi taken by Surupa on May 4, 1976, at 10 Hindusthan Road.

88. It has been contended on behalf of the Appellant that this finding of the trial Judge cannot be sustained for two reasons. Firstly, it has been argued that the evidence that Surupa had taken lassi is totally unreliable. Secondly, the Prosecution has failed to rule out the possibility of suicide, i.e. that Surupa herself - and not someone else - had put the poison in the lassi said to have been taken by her.

89. It must, therefore, be examined whether (i) it has been proved beyond reasonable doubt that Surupa had taken lassi and (ii) that Surupa herself had not put the poison in the lassi i.e. the possibility of suicide has been ruled out.

90. There is no direct evidence that Surupa was served lassi upon her return to her residence from the Ballygunge Science College in the morning of May 4, 1976. None of the doctors, who treated Surupa at the hospital after she was taken there and who have given evidence, i.e. Dr. P. K. Banerjee, Dr. S. K. Ballial, Dr. Rabi Chaudhury, Dr. M. B. Pramanik, Dr. J.B. Kundu and Dr. Amal Bose, has said that Surupa made a statement that she had taken lassi.

91. The only persons who have given evidence that Surupa had said that she had taken "lassi" are Mrs. Amiya Mukherjee, Dr. Sumitra Bose, Sister-in-Charge Mukul Mitra and Ayah Saraswati.

92. Mrs. Amiya Mukherjee's evidence on the point is, briefly, that she arrived at the C.I. Block of the S.S.K.M. Hospital 10 or 12 minutes before 2 p.m. and she was repeatedly told by doctors and nurses that Surupa had said that she had taken cucumber and lassi. In cross-examination she stated that the doctors who told her this were Dr. J. B. Kundu and Dr. Ballial. She spoke to Dr. Kundu a little before 2 p.m. inside the C.I. Block. She spoke to Dr. Ballial inside the C.I. Block at 2.30 p.m., when Indranath was also present.

93. The evidence of Mrs. Mukherjee is not corroborated by Dr. Kundu, rather it is contradicted by his evidence. He does not say that he met Mrs. Mukherjee or that he had any conversation with her. Moreover, Dr. Kundu, who saw, examined and treated Surupa only once, between 2 p.m. and 2.30 p.m., has not said that Surupa had told him that she had taken cucumber and lassi. Therefore, he could not possibly have told Mrs. Amiya Mukherjee that Surupa had stated that she had taken lassi.

94. Dr. Ballial's evidence is that at about 2.20 p.m. he went to see Surupa in her room, and after coming out of the C.I. Block at about 2.30 p.m. he met Mrs. Mukherjee outside the C.I. Block, when he told her that the patient was not willing to say anything. Therefore, he too did not tell Mrs. Mukherjee that Surupa had said

that she had taken lassi. He could not possibly have said so as it is not his evidence that Surupa made that statement to him.

95. The falsity of Mrs. Mukherjee's evidence is proved by another fact. She says that when she talked to Dr. Ballial at 2.30 p.m. the Appellant was present. Dr. Ballial does not say so, and, as a matter of fact, there is ample evidence on record, e.g. of Prof. S.K. Bose, Jyotirmoy Nandi and Jyotiprakash Chatterjee, that at that time the Appellant was at the Ballygunge Science College.

96. Further, although the Sister-in-Charge and the Staff Nurse have given evidence, none of them nor any other member of the hospital staff has said that any such information was given by them to Mrs. Amiya Mukherjee.

97. In view of what has been stated above, no reliance can be placed on the evidence of Mrs. Mukherjee that Surupa had stated that she had taken cucumber and lassi. In other words the Prosecution has reasonably failed to prove beyond any reasonable doubt that Surupa had taken lassi.

98. The only doctor who has given evidence that Surupa told her that she had taken lassi is Dr. Sumitra Bose (P.W. 10). The evidence of Dr. Sumitra Bose is that she happened to be present in the C.I. Block in the morning of May 4, 1976, although she was not on duty then. When Surupa arrived at the C.I. Block at 12.10 p.m. she was purging. She was taken to her room and her clothes had to be changed. The two male doctors present, Dr. Ballial and the House Surgeon Dr. Rabi Chaudhury, were asked to go out of her room. The changing of clothes took 15/20 minutes. During this time, i.e. between 10.10 p.m. and 12.30 p.m. Sumitra Bose questioned Surupa as to what she had taken, as this information would facilitate her treatment. In answer to such questioning, Surupa first denied having taken anything. Then she said that she had taken cucumber and lassi after which she fell ill and went to the bathroom where she fell down. Then, again, she denied having taken anything. Sumitra Bose left the C.I. Block at 12.30 p.m. and went to collect her salary. Upto 12.30 p.m., the time of her departure, Surupa's treatment had not started. She did not see Dr. Pramanik in the morning as long as she was at the C.I. Block, but she saw him only when she came back in the evening at 8 p.m. She looked over charge from Dr. Rabi Chaudhury when senior doctors like Dr. A. K. Basu and Dr. M. B. Pramanik were pressed. She had a conversation with Dr. Rubi Chaudhury. About 2 or 2-1/2 hours later (10/10.30 p.m.). He inserted the lines starting with the words "the patient admitted of not taking poison herself. In between the entries made by Dr. Rabi Chaudhury in the bed-head ticket against the time 12.10.

99. The circumstances in which Surupa made a statement to Sumitra Bose about having taken lassi as deposed to by Sumitra Bose, are contradicted by the hospital records.

100. According to Dr. Pramanik, the bedhead ticket is maintained to keep a contemporaneous record of various particulars of the patient including the

patient's condition, provisional diagnosis, treatments given, advice of the consultants, etc. He also says that if his evidence based on money was inconsistent with the times recorded contemporaneously in the bedhead ticket, he would certainly rely on the bedhead ticket. Further, the times noted in the bedhead ticket, of which Ex. 20 is a part, are the times of noting, and they record events which had taken place before the time noted. Dr. R. Chaudhury (P.W. 29) and Dr. Amal Bose (P.W. 46) have given evidence in this regard.

101. The correctness of the bedhead ticket has not been questioned by any of the doctors or hospital staff. The Admission M.C. (Ex. 12), Ex.11 and Ex.20 are a part of the bedhead ticket. According to the Admission M.C. (Ex. 12), the time of Surupa's admission as an in-patient is 11.50 a.m., Ex. 20 shows that the administration of 5 % dextrose solution drip had started by 12 noon. Exhibit 11 shows that various steps for treatment had been taken before 12.10 p.m. including intubation by an endotracheal tube. Sumitra Bose's statement that Surupa arrived at the C.I.B. at 12.10 p.m. is thus false. From these records, it is clear that Surupa arrived at the C.I. Block before 12 noon. Sumitra Bose's statement that Surupa arrived at C.I.B. at 12.10 p.m. is thus palpably false.

102. Sumitra Bose's statement that Surupa arrived at the C.I. Block at 12.10 p.m. and her evidence that Dr. Prama-nik had not arrived at the C.I. Block before her departure cannot, therefore, be accepted.

103. It will also appear from the evidence of the Sister-in-Charge Mukul Mitra and the Staff Nurse Ira Ghosh that the latter assisted the doctor in treatment, e.g. administration of drip. The 12 noon entry in Ex. 20 regarding administration of 5 % dextrose solution drip was made by Ira Ghosh. Mukul Mitra has said that after insertion of an endotracheal tube a person is not in a position to speak. So, Surupa could not have possibly made any statement after 12.10 p.m. as alleged by Dr. Sumitra Bose.

104. In view of the above, it is not possible to accept or place any reliance on the evidence that no treatment of Surupa had started before 12.30 p.m. when Sumitra Bose left the C.I. Block to collect her pay.

105. Exhibit 20 and the bedhead ticket, Ex. 11, show the various steps for Surupa's treatment which had been taken before 12.10 p.m. At first, a Ryle's tube was inserted. This was done by Dr. Rabi Chaudhury. Then Dr. Pramanik intubated the patient with an endotracheal tube. The 12.10 entry in Ex. 11 records these facts and also the fact that Dr. Pramanik had seen and managed the case.

106. Dr. Rabi Chaudhury, who made the 12.10 p.m. entry in Ex. 11, and also Dr. Amal Bose, Head of the Department of Anaesthesiology, have deposed that the time of an entry in the bedhead ticket is the time of making the entry which is after the occurrence of the events recorded in the entry. The correctness of the bedhead ticket has not been challenged by any doctor or nurse. On the contrary, Dr.

Pramanik has said that if there is any discrepancy between any time deposed to by him and the time noted in the entry in the bedhead ticket, he would certain rely on the bedhead ticket.

107. According to Dr. Sumitra Bose, Surupa was purging when she came to the C.I. Block. So, her clothes had to be changed. It was during this time that Surupa allegedly made a statement to her about having taken lassi. The t-evidence of Saraswati Ayah is that Surupa's petticoat got soiled, and had to be washed. The evidence also shows that Surupa's clothes were changed only once after her arrival at the C.I. Block. Thereafter, a hospital gown was put on her person. The gown was open at the back. The hospital gown was not cleaned. Subsequently,- Surupa passed stool on the mackintosh spread on the bedsheet, which was cleaned with cotton wool. Mukul Mitra has said that the hospital gown was not preserved as there was nothing on it. Thus there was no occasion for changing Surupa's. clothes again. None of the witnesses has said that her clothes were changed except on one occasion after her arrival at the C.I. Block.

108. Sumitra Bose has said that no male doctor was present at the time Surupa's clothes were changed, and Dr. Pramanik was not on the scene at that time. This evidence stands wholly falsified by the evidence of Dr. Pramanik. He has said that Surupa was purging while he was presenting the C.I. Block. Her clothes had to be removed by the Sister-in-Charge because they were soiled with stool. During his first examination of Surupa he did not notice any bleeding from her private parts. On that occasion, he thought the patient was conscious and would answer his question. He asked her if she could tell what she had taken because she was admitted as a case of unknown poisoning, but he could not get any answer from her. Later on, when the Sister changed her soiled clothes, he noticed that she was bleeding from her private parts. Therefore, his positive evidence is that he was present at the time of the changing of Surupa's clothes. Dr. Pramanik does not say that Surupa made any statement about having taken lassi or any statement whatsoever while her clothes were being changed. This is a clinching piece of evidence, which completely falsifies the evidence of Dr. Sumitra Bose, Mukul Mitra and Saraswati Ayah that Surupa had made a statement, while her clothes were being changed, that she had taken lassi and cucumber.

109. Further, according to Dr. Sumitra Bose, when Surupa's clothes were being changed between 12.10 p.m. and 12.30 p.m. the patient was conscious, not intubated and no Ryle's tube was inserted. She was not bleeding profusely and only slight vaginal bleeding was there, and at that time Dr. Pramanik had not reached the ward. On all these matters stated by her, her evidence stands contradicted by the evidence of Dr. Pramanik and the contemporaneous hospital records, as discussed earlier. In the circumstances, it is difficult, if not impossible, to place any reliance on her evidence.

110. The conduct of Sumitra Bose, after Surupa had allegedly told her about having taken lassi, casts doubt on the veracity of her evidence. According to Sumitra Bose, she was repeatedly questioning Surupa because any information given by her would facilitate her treatment. If Surupa had really told her about having taken cucumber and lassi, one would have expected Sumitra Bose to immediately communicate this information to the doctors treating Surupa, because according to her own evidence, information given by Surupa would facilitate her treatment and that is why she was persistently questioning Surupa. Yet, after she got some information from the patient at 12.30 p.m. she simply left the C.I. Block to collect her salary, and did not tell any doctor in the C.I. Block who was treating Surupa, e.g. Dr. Rabi Chaudhury, the House Surgeon on duty, or any other doctor that Surupa had told her anything about having taken cucumber and lassi. This conduct on her part, for which there is no explanation, goes to show that her evidence is untrue.

111. The Prosecution tried to corroborate the evidence of Dr. Sumitra Bose that Surupa had made a statement to her earlier that she had not taken poison, but only cucumber and lassi, by a portion of the entry in the bedhead ticket against the time 12.10 p.m. In the middle of the entry there are some lines starting with the words "the patient admitted of not taking poison herself...."

112. Dr. Sumitra Bose came on duty at 8 p.m. in the evening of May 4, 1976. Her evidence is that about 2 to 2-1/2 hours later, i.e. 10.30 p.m., she interpolated those lines in the 12.10 p.m. entry in the bedhead ticket, when no doctor was present. It appears from the bedhead ticket that between 8 p.m. and 10.30 p.m. she made as many as four entries in the bedhead ticket. The times of these entries are noted in the bedhead ticket, and each of these entries is signed by her.

113. The interpolated part of the 12.10 p.m. entry, on the face of it, raises grave suspicion and doubt about its genuineness. A mere glance at the interpolated part will show that it has been attempted to squeeze it in into the pre-existing entry made by Dr. Rabi Chaudhury. It is not signed or initialled by Dr. Sumitra Bose. On her own admission, it was not a contemporaneous entry. It was obviously attempted to be passed off by her as a part of the contemporaneous entry made by Dr. Rabi Chaudhury at 12.10 p.m. Only if one scrutinises the interpolated part can one detect that those lines are written in a totally different hand. She admits that what she has written is an interpolation. Had her story about Surupa's having made a statement to her been true and she felt that it was important enough to be recorded, she could have recorded it at 8 p.m. and signed and dated it. She had already made four entries in the bedhead ticket between 8 p.m. and 10.30 p.m. and each of these entries is signed and dated whereas the interpolation is neither signed nor dated. When she made it, according to her, no other doctor was present. The reasons given by her for making the entry in that manner and at that time are flimsy. She cannot cite another instance of her having made such an interpolation before. It is clear that the interpolation was made with a mischievous intent.

114. We have already discussed Sumitra Bose's evidence regarding a statement having allegedly been made to her by Surupa after the latter's arrival in the C.I. Block and found that it is not safe to place reliance on it. The purported corroboration of that evidence by the interpolation made by her in the bedhead ticket, does not add to, but further detracts from the credibility of that evidence. We have already noticed that if such a statement had been made by Surupa to her earlier, the natural thing for her to have done would have been to report this fact to Dr. Rabi Chaudhury or any of the other doctors present there in the C.I. Block. She did not do so. Even after she came on duty at 8 p.m. she did not mention this matter to anyone. -She took over charge from Dr. Rabi Chaudhury, and she has said she had conversation with him. She also said that other doctors, e.g. Dr. Pramanik and Dr. Amal Bose, were also present in the C.I. Block at that time. There is no explanation why she did not divulge this information to them. Also, there is no explanation as to why, after coming on duty, she did not immediately make an entry in the bedhead ticket at 8 p.m. with her signature thereon, after seeing that this information was not in the bedhead ticket. There is no explanation why, after making four different entries between 8 p.m. and 10 p.m./10.30 p.m. she should suddenly think it important to add the interpolated lines in the 12.10 p.m. entry made by Dr. Rabi Chaudhury, and that too without putting her signature or initials against the lines added by her.

115. The bedhead ticket was seized by the Investigating Officer, S. R. Das, two days later on May 6, 1976. Having regard to all these circumstances, we think it to be highly probable that the interpolation was, in fact, made on May 5 or 6, 1976 to suit the Police case, and not on the evening of May 4, 1976, as deposed by Dr. Sumitra Bose.

116. The Prosecution has sought to corroborate, the evidence of Dr. Sumitra Bose. The evidence of the Sister-in-Charge Mukul Mitra (P.W. 15) and of Saraswati Ayah (P.S. 31) who, along with Staff Nurse Ira Ghosh (P.W. 41) were alleged to have been present at the time when Surupa's clothes were changed and when she is said to have made that statement. Against from the fact that if a witness is found to be unreliable, the question of corroboration does not arise. Their evidence in any event does not add to the credibility of the Prosecution case that Surupa had stated in the hospital that she had taken lassi. Ira Ghosh has-not given evidence that Surupa made any statement about having taken lassi while her clothes were being changed. The evidence of Mukul Mitra, who was called as a witness the day after Sumitra Bose, regarding the circumstances in which Surupa made a statement about having taken lassi are similar to what had been deposed earlier by Sumitra Bose, and is open to the same criticism already discussed. Mukul Mitra said that she did not see Dr. Pramanik at all before she left the C.I. Block at 12.45 p.m./12.50 p.m. and that she saw Dr. Pramanik for the first time after coming back at about 1.20 p.m. According to her Dr. Pramanik was not present at the time of the changing of Surupa's clothes, when Surupa is alleged to have made the statement about having

taken lassi. Saraswati Ayah says that no male doctor was present when the clothes of Surupa were changed.

117. The evidence of Mukul Mitra is completely contradicted and falsified by that of Dr. M. B. Pramanik and Dr. Rabi Chaudhury. Dr. Pramanik has said that when he first came to the C.I. Block, the Sister-in-Charge and the Staff Nurse were present. He has described in detail the various steps for treatment taken by him upon his arrival. He has said that Dr. Rabi Chaudhury was making arrangements for giving intravenous transfusion. He, himself, applied the oxygen mask to the patient and after that he intubated Surupa with an endotracheal tube. In the meantime, Dr. Rabi Chaudhury gave intravenous transfusion, which may have been 5 % glucose with normal saline or lactate ringer solution. Dr. Rabi Chaudhury has said in his evidence that the Sister-in-Charge was present when drip was started. The time of the relevant entry in Ex.20 is 12 noon. Mukul Mitra herself says that she was there when the oxygen mask was being given to. Surupa and Staff Nurse Ira Ghosh was also present. As noted earlier, Dr. Pramanik's evidence is that he applied the oxygen mask. When this proved ineffective, he intubated the patient with an endotracheal tube to ventilate her with 100 % oxygen. This fact is recorded in the 12.10 p.m. entry in the bedhead ticket, Ex. 20.

118. Therefore, reading the evidence of Dr. Pramanik and Dr. Chaudhury along with the contemporaneous hospital records, Ex.20 and Ex.11, it is clear that Dr. Pramanik arrived at the C.I. Block before 12 noon, that the treatment of the patient had started by that time, and that both Mukul Mitra (Sister-in- Charge) and Ira Ghosh (Staff Nurse) were present at that time. No reliance can, therefore, be placed on the evidence of Mukul Mitra and of Saraswati Avah who have said that while her clothes were being changed, Surupa had made a statement about having taken lassi.

119. The purported corroboration of the evidence of Sumitra Bose by Mukul Mitra and the Ayah is equally unreliable and false.

120. There are other circumstances which make it doubtful whether Surupa could speak by the time she arrived at the S.S.K.M. Hospital. There is the evidence of Dr. B. Gupta that though Surupa uttered a word "sasha", the rest of what she said was inaudible. She was muttering. The further evidence of Dr. Gupta was that the patient's condition was progressive, i.e. gradually deteriorating. The evidence of Dr. P. K. Banerjee, the doctor on duty at the Emergency Ward, is that she was muttering. Dr. Kundu, who examined Surupa around 2 p.m., says that he could get no reply from Surupa. When he questioned her with some "force", she only shook her head. Dr. Amal Bose, who examined Surupa before 2.30 p.m. says that there was no question of interrogating her for she was comatose. Dr. Rabi Chaudhury (P.W. 29) has said that Surupa had a cardiac arrest at 4 p.m.

121. The next and most important question to be considered is even if it is held that Surupa had taken lassi whether the Prosecution has ruled out the possibility of

suicide in other words the possibility of Surupa herself having mixed mercuric chloride in the lassi said to be taken by her.

122. Before dealing with this question, it must be borne in mind that if there are circumstances appearing in the evidence which suggest a suicidal death, it is not for the defence to conclusively prove that it was so. The onus rests on the Prosecution to totally rule out or exclude the possibility of suicide. If it fails to do so, it must be held that the Prosecution has failed to prove beyond reasonable doubt that an offence of homicide has been committed.

123. The finding of the learned trial Judge, on the basis of expert opinion, is:

Surupa took the lassi containing mercuric chloride in a chilled form with sensory nerves consequently numbed and without any immediate awareness of the contents of that drink....

The further finding of the learned trial Judge is that Surupa took the lassi in one gulp.

124. Dr. R. K. Bose (P.W. 58) and Dr. J. B. Mukherjee (P.W. 62) were examined as expert witnesses. None of them disputed that the parties involved in mercuric chloride and the quantity ingested was much above in lethal dose.

125. It is therefore necessary to consider the nature and the quantity of the poison, ingestion of which resulted in Surupa's death. According to the Chemical Examiner's Report, Ex. 139, and the medical evidence, Surupa's death was caused by ingestion of mercuric chloride, also known as "corrosive sublimate".

126. The poison involved is mercuric chloride. According to all the authoritative books on medical jurisprudence, including Taylor's "Principles and Practice of Medical Jurisprudence", Vol. 2, 12th ed., p. 280 ; Modi's "Medical Jurisprudence and Toxicology", 17th ed., p. 555; Lyon's "Medical Jurisprudence", 10th ed., p. 598, which had been shown to P.W. 58 Dr. R. Basu and P.W. 62 Dr. J. B. Mukherjee examined by expert witnesses by the prosecution.

127. The following facts emerge:

(a) Mercuric chloride is a poison with a strikingly astringement, metallic and styptic taste.

(b) This taste is immediately perceived by the person taking this poison, and he or she experiences a hot stinging pain in the mouth, down the throat and in the stomach.

(c) The ingestion of the poison is followed at once by burning pain, vomiting, bleeding and diarrhoea.

128. Having regard to the nature and taste of the poison, it is improbable, if not impossible, that it can be administered to anybody without his immediately

becoming aware of it. The onset of symptoms, which includes severe burning sensation, pain in the stomach, suffocation in throat, nausea and vomiting, violent purging, etc. is almost immediate.

129. Dr. Bose cited a case from Modi where the symptoms were delayed by half an hour. He stated:

when the poisoning effect of a particular poison is discussed, symptom complex includes smell, taste and other effects too.

The learned trial Judge has commented on this evidence:

Dr. Bose saw through the fallacy of the notion.... A careful scrutiny will reveal that the witness did not, in effect, contradict the defence suggestion. His contention is that the "effect" of the poison may be such that the perception of smell, taste, etc. of the victim may be affected, and" so, they are included in the symptom complex. It is in that sense that the onset of symptom is delayed by half an hour. The sensation of taste as an effect of the poison may be affected, but it is inconceivable that a normal healthy person taking the poison the poison will not perceive the taste of the poison when taking it, but half an hour later. The initial "taste" of the poison itself has to be instant. Any other interpretation of Dr. R. K. Bose's evidence is absurd.

130. It is accordingly mentioned in books on toxicology and medical jurisprudence that this poison is usually taken with a suicidal intent or by accident, e.g. Taylor, p. 280 ; Goodman and Gilman's "The Pharmacological Basis of Therapeutics", p. 975 ("acute poisoning is commonly caused by mercuric chloride or mercuric cyanide taken either with suicidal intent or by accident"). The relevant passages were shown to Dr. J. B. Mukherjee (P.W. 62).

131. To overcome these difficulties the Prosecution tried to show that (a) if mixed in lassi, the taste would be masked, (b) chilling would cause further masking and (c) if the poisoned lassi is taken in "algotcha" fashion, by throwing back the head, so that the liquid hits the back of the throat, some portion will involuntarily be gulped.

132. According to Dr. Bose, mercuric chloride cannot be administered through, i.e. masked in, food. If it is mixed with lassi, it will be somewhat masked and if the lassi is chilled, the taste would be further masked due to the numbing effect of the chilling. He stated:

It is impossible to administer it (the poison) to a victim without his/her knowledge if it is mixed with food, and regarding mixing with a liquid, it all depends on how much the victim took in a single gulp before coming to know that he/she has taken something noxious.

It is to be noted that Dr. Bose's evidence merely is that the combined effect of lassi and its chilling will somewhat mask the taste, not that it will totally mask the taste of the poison.

133. It is because of the distinctive taste of mercuric chloride that Taylor has observed:

No poisonous quantity of it could be easily swallowed without a person becoming immediately aware of it. Taylor mentions that many cases of suicide or accidental poisoning by mercuric chloride have occurred, but he does not mention this poison being used for homicide. In Goodman & Gilman's "The Pharmacological Basis of Therapeutics", p. 975, it is stated that acute poisoning is commonly caused by mercuric chloride or mercuric cyanide taken either with suicidal intent or by accident.

134. It thus appears that death caused by mercuric chloride is generally a case of suicide. Because of the strikingly peculiar taste of the poison, and the immediate perception of its taste by the person taking it, it is rarely used for homicidal purposes.

135. The next question to be considered is the quantity of poison actually ingested by Surupa. According to Taylor, the normal lethal dose is 15 grains. The evidence of P.W. 58, Dr. R. Bose, is that even 3 grains or 180 milligrams of mercuric chloride can cause death. On the basis of the Chemical Examiner's report regarding the quantity of mercuric chloride detected in the blood and liver of Surupa, P.W. 58 Dr. R. Bose calculated that she had ingested 1230 milligrams of mercuric chloride. He has agreed that if the quantity of poison eliminated from the body through urine, stool, vomit, bleeding, etc. is taken into account, the quantity ingested must have been much higher. On the basis of the quantity of the poison detected in the blood and liver and, taking into account the total weight of the deceased, the total, quantity of poison ingested, according to him, would be 319.5 grains. There can be no doubt, therefore, that a massive quantity of mercuric chloride had entered Surupa's system. The trial Judge himself has observed more than once that a "superlethal" dose of mercuric chloride had been ingested by Surupa.

136. P.W. 58 Dr. R. Bose and P.W. 62 Dr. J. B. Mukherjee have stated that the taste of mercuric chloride would get masked to some extent if it was mixed in a glass of lassi. Dr. Bose says that he is not sure to what extent the masking would take place. These witnesses have also said that if the lassi was chilled, further masking of the taste would take place because of the numbing of the sensory nerves of the tongue. Therefore, according to them, it was possible for Surupa to have unknowingly taken a single gulp of lassi before becoming aware that she had taken something noxious.

137. The finding of the trial Judge, in paras. 120 and 121 of his judgment, is that Surupa took the lassi containing mercuric chloride in a chilled condition with the sensory nerves consequently numbed and without any immediate awareness of the taste of the drink. He has further accepted the one gulp theory propounded by the Prosecution.

138. There is absolutely no evidence that the lassi said to have been served to Surupa was chilled. There is also no evidence as to how much the lassi would have to be chilled to numb the sensory nerves to the extent that the person taking it cannot perceive the taste of the poison in it. None of the doctors, P.W. 58 and P.W. 62, has said that if the lassi was chilled, the taste of the poison would be totally masked and the tongue and mouth would be totally insensitive to its taste. None of them has given evidence that the taste of mercuric chloride would be totally masked if mixed with lassi. Therefore, none of these witnesses has given evidence that even under the conditions mentioned by them, the person taking the poison would not immediately become aware of its taste. We cannot, therefore, uphold the finding of the trial Judge that Surupa could have taken the "lassi without becoming immediately aware of the taste of the drink.

139. The following questions therefore arise:

- (a) What quantity of a liquid can an average healthy adult swallow in one gulp ?
- (b) Admitting that mercuric chloride is soluble in water, to what extent is it soluble in lassi ?
- (c) What effect will chilling (temperature) of the lassi have on the solubility of mercuric chloride ?
- (d) Will there be any chemical reaction between mercuric chloride and lassi ?
- (e) If there is a chemical reaction, to what extent will mercuric chloride, reacting with lassi, precipitate, i.e. go out of solution, in the form of other compounds of mercury?
- (f) How far will chilling numb the sensory nerves ?

A precise quantitative answer to each of the above is required if the findings of the learned trial Judge are to be sustained. It must be remembered that Dr. R. Bose has quantified that a minimum of about 1230 milligrams of the poison was ingested.

140. On item (a) there is no precise evidence from either P.W. 58 or P.W. 62.

141. On item No. (b), a passage from Modi's Medical Jurisprudence, 18th ed., p. 454, was put forward before Dr. J. B. Mukherjee (P.W. 62):

A heavy poisonous powder when mixed with water, will settle down at the bottom of a vessel and the victim fails to take it ; while it would have been swallowed, had it been taken with a fluid of nearly the same specific gravity.

142. When asked about the density of lassi, Dr. Mukherjee refused to hazard a guess, for when he had been earlier asked about the specific gravity of mercuric chloride it transpired from the replies given that Dr. Mukherjee, though called as a witness to give expert opinion, had no idea of the density of mercuric chloride. When he tried to make a guess about the density of mercuric chloride, he was widely off the mark, saying that it was 1.2 to 1.4 and accepted the fact that it was

really 5.33 to 5.55. In fact, he was not able to distinguish between density and relative density also called specific gravity when the density of a substance is compared with the density of water. Ultimately, he took the plea that not being a physicist, he was unable to answer and accepted the fact that lassi had a much lower specific gravity than mercuric chloride, its specific gravity being 1.0276. Therefore, if a large quantity of mercuric chloride was mixed in a glass of lassi, much of it would settle down at the bottom of the glass.

143. On item (c), there is -no evidence regarding what effect chilling will have on the solubility of mercuric chloride in lassi.

144. On items (d) & (e), Dr. Mukherjee would not give any precise answer saying that the questions belonged to the domain of Chemistry and he, not being a chemist, was unable to give any precise answer.

145. It should be remarked here that Dr. J. B. Mukherjee on his own admission was not competent to give expert evidence within the meaning of Section 45 of the Evidence Act. He has said that he was a toxicologist in a sense, but not an analytical toxicologist, not a physicist, not a chemist, not a botanist, not a bio-chemist, not a food chemist, and not a veterinary surgeon. His only plea was that he was a medicologist. The defence was unable to understand whether as a medicologist he was competent to give expert opinion on the matter under scrutiny.

146. On item (f), here is no evidence from either P.W. 58 or P.W. 62.

146A. As there is no evidence as to the extent of numbness of the sensory nerves that can be caused by chilling, the learned trial Judge has observed: The extent of the masking makes no substantial difference to the numbing of the local sensory nerves, for there is no evidence that when the extent of masking is less, the local sensory nerves do not get numbed at all or if they do at all get numbed, the numbing is so negligible that it does not bring about any masking of the taste of mercuric chloride at all.

147. The Prosecution has failed to produce any scientific evidence which can answer the basic question whether it is at all possible to dissolve at least 1230 milligrams of mercuric chloride in a quantity of lassi that can be swallowed in a single gulp.

148. The final question that remains to be considered is whether the large quantity of mercuric chloride ingested by Surupa could have been taken in a single gulp. P.W. 58 Dr. Bose has said:

It is impossible to administer it (mercuric chloride) to a victim without his or her knowledge, if it is mixed with food, and regarding mixing with a liquid, it all depends on how much the victim took in a single gulp before coming to know that he or she has taken something noxious.

He has not said whether a single gulp could contain the quantity of poison ingested by Surupa.

149. The answer to the question as to how much poison could have been taken in a single gulp depends on the solubility of mercuric chloride in lassi. Mercuric chloride is a heavy metal poison. In Modi's book on Medical Jurisprudence, 18th ed., p. 454, it is stated:

A heavy poisonous powder, when mixed with water, will settle down at the bottom of the vessel and the victim fails to take it, while it would have been swallowed had it been mixed with a fluid of nearly the same specific gravity as that of the power.

It transpires from the evidence that the specific gravity of mercuric chloride varies from 5.3 to 5.55, i.e. the mean value of the specific gravity of mercuric chloride is 5.44, whereas the specific gravity of lassi is 1.0276 at 31 C. Thus, the specific gravity of mercuric chloride is nearly five times that of lassi. It follows, therefore, that if a large quantity of mercuric chloride is put in a glass of lassi, it would settle down at the bottom of the glass, and only a minimal part of it would remain in solution. The massive quantity of poison which entered Surupa's system could not possibly have been taken in a single gulp.

150. In the circumstances, it seems to us probable that most of the mercuric chloride would have settled down at the bottom of the glass, and the massive quantity found in Surupa's system could not have been taken in a single gulp. We reject the one gulp theory, which found favour with the trial Judge.

151. It has been argued on behalf of the Appellant that there are other circumstances, appearing from the evidence, the cumulative effect of which suggest that this was a case of suicide.

152. Surupa had access to mercuric chloride. This was one of the poisons available at the laboratory where she worked. That is why it was one of the two poisons mentioned in the slip made over to the Appellant by Prof. S.K. Bose at the Ballygunge Science College. The trial Judge has observed in para. 101 of his judgment that if Surupa had wanted to commit suicide, she could have taken potassium cyanide. In our opinion, a person who wants to take poison does not necessarily have to choose one particular poison, and not another. Secondly, this observation overlooks the evidence of Prof. S.K. Bose who has said that he was told by two of his research students that potassium cyanide was also there in the laboratory, but Surupa did not know where it was kept.

153. Secondly, there is evidence that "Surupa locked herself in her bedroom, and that the door of the adjoining" bathroom was forced open by Jhantu by kicking it, which enabled entry into Surupa's room. P.W. 14 Kaloo Nayak, a sweeper of the Guha household, has deposed to this fact. There is no reference to his evidence at all in the judgment of the trial Court. The durwan Dil Bahadur and the maidservant

Bhagabati, who were present when this happened, though examined earlier u/s 161, Code of Criminal Procedure, were not called as witnesses. The fact of breaking open of the door was reported by Jhantu to Jitendra Tilak, when the latter called at the Guha residence TO the evening of May 4, 1976, as will appear from Tilak's evidence. Jhantu has spoken of this incident in detail in his statement u/s 313, Code of Criminal Procedure. Mr. N. Basak, a physicist, has given evidence that the bathroom door was opened by the application of force, either from inside or outside. The trial Judge has accepted the expert evidence that the door was forced open. He concluded that force was applied from inside. He has rejected the defence case that force was applied from outside. This conclusion is not only not based on evidence, but is quite meaningless. The defence case was that the door was locked from inside and necessarily it had to be forced open from the outside to enable entry into Surupa's room in the morning of May 4, 1976. If this event did not actually occur in the morning of May 4, and subsequently, to make out a case of suicide, evidence was sought to be created that the door had been forced open, then again, logically it would have been forced open from the outside. Forcing the door open from the inside would be destructive of the case that the room was locked from the inside.

154. In rejecting the Defence case on this point, the trial Judge has relied heavily on the evidence of the cook, Anama Das, who has said that he did not hear the door being broken open. He brushed aside the evidence that the kitchen in which Anama J Das worked, was in a separate wing of the house, and was some distance away from the bathroom door, and that the event occurred during the morning school break, when there was a lot of hubbub, which would explain why Anama might not have heard anything. Also, if the door had been kicked open by Jhantu with his own feet, as said by him in his Section 313 statement, it would not cause a great deal of sound.

155. The trial Judge has also held that if, the door had been forced open from outside, the mirror on the inside of the door would have broken. This was pure speculation on his part. The mirror was at a higher level than the bolt, and so it would not necessarily break if the door was kicked open.

156. The trial Judge has also relied on the fact that the Appellant did not tell anyone about this incident and that he did not mention it in his letter to the Police. The Appellant was not there at 10 Hindusthan Road when the door was forced open. He came there later with the doctor. He was not personally concerned in the forcing open of the bathroom door, and did not have personal knowledge of that fact. Therefore, the fact that there is no evidence that the Appellant mentioned this fact to anyone does not go to show that the bathroom door was not forced open. Besides, if the Judge intended to rely on this fact, as a circumstance against the accused, he should have put this fact to him in his examination u/s 313, Code of Criminal Procedure. Not having done so, he could not rely on this fact as a

circumstance against the Appellant.

157. It appears from a perusal of the part of the judgment dealing with this event that the trial Judge wrongly thought that it was for the defence to establish the fact of breaking open of the bathroom door beyond reasonable doubt. This approach was wrong. In our opinion, the evidence relating to Surupa having locked herself in, in her bedroom, cannot be brushed aside. There are sufficient materials on record which suggest that this event did occur.

158. If poison had been mixed in the drink by someone, and Surupa had unknowingly taken some of it, she would immediately become aware that something was seriously wrong with the drink, and if we assume she had not locked herself in, her natural reaction would have been to come out of the room and cry for help. There is no evidence that she did so. The trial Judge has said in para. 125 of his judgment that there is no evidence that Surupa did not shout or cry out and this was one of the reasons given by him for repelling the Defence contention that Surupa had taken the poison with suicidal intent. This, again, is a totally wrong approach. It was not for the Defence to prove that Surupa did or did not cry out. The fact is that there is no evidence that Surupa cried out. This is consistent with the case that she took the poison with suicidal intent. It cannot be said to be a fact militating against that case.

159. Next, it is significant that all the doctors who treated Surupa have said that she was unwilling to disclose anything. This conduct is consistent with suicide. In Poulson and Tattersall, 2nd ed., p. 220, it is said that

a patient who commits suicide by self-ingestion of mercuric chloride appears only too anxious to hide his act.

160. It is also significant that Surupa did not name anyone as being responsible for her illness. This is a fact which militates against the case of homicide and is consistent with the case of suicide. The conclusion of the trial Judge at para. 106 of his judgment is that

the non-mention of any particular name by her, even when she was conscious, contributes in a great measure to the theory that suicide can be excluded.

This conclusion is perverse.

161. Lastly, it is significant that when Surupa's mother, Mrs. Amiya Mukherjee, came to the S.S.K.M. Hospital, the very first question she asked was whether Surupa had herself taken poison. This shows that the possibility of Surupa having tried to commit suicide flashed into her mother's mind the moment she heard of Surupa's illness.,

162. Having regard to the facts and circumstances and evidence on record we are of the view that the possibility of Surupa having herself mixed mercuric chloride in her

drink has not been excluded. The Prosecution has failed to establish beyond reasonable doubt that offence of homicide was committed. The finding of the learned trial Judge that someone must have murdered Surupa cannot, therefore, be sustained. The Supreme Court in Kodali Puranchandra Rao v. The Public Prosecutor, Andhra Pradesh (Supra) observed that in order to establish an offence of homicide has been committed, the possibility of suicide must be totally ruled out.

163. The learned Public Prosecutor made the following submissions:

(1) In view of the charges, as framed, it must be admitted in all fairness that the Prosecution has not been able to prove its case beyond reasonable doubt.

(ii) In all probability, the Appellant himself did remove the clothes of Surupa from the S.S.K.M. Hospital to 10 Hindusthan Road from where they were seized by the Police in the morning of May 5, 1976.

However, it is also true that the clothes had not been tampered with. In the circumstances, it is not clear with what intent the Appellant removed the clothes. In other words, the learned Public Prosecutor has supported the case made out by the Appellant.

164. In the result, this appeal is allowed. The order of conviction and sentence is set aside. The Appellant is discharged from his bail bond.

Manabendra Nath Roy, J.: I agree.