

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL APPELLATE JURISDICTION  
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE SAMAPTI CHATTERJEE  
AND  
THE HON'BLE JUSTICE TIRTHANKAR GHOSH**

**CRA 235 of 2017**

C.R.A.N. 3 of 2020 (old no. 3203 of 2019)

C.R.A.N. 4 of 2020 (old no. 2216 of 2020)

C.R.A.N. 5 of 2020 (old no. 2217 of 2020)

C.R.A.N. 6 of 2020 (old no. 3185 of 2020)

C.R.A.N. 7 of 2020 (old no. 3187 of 2020)

C.R.A.N. 8 of 2020 (old no. 3684 of 2020)

***Chhotelal Thakur***

***-vs.-***

***Union of India***

***with***

**CRA 237 of 2017**

***Maya Devi & Anr.***

***-vs.-***

***Union of India***

|                        |   |                                                       |
|------------------------|---|-------------------------------------------------------|
| For the Appellants     | : | Mr. Debasish Roy<br>Mr. Arnab Saha<br>Ms. Jonaki saha |
| For the Union of India | : | Mr. Koushik Dey                                       |
| Heard on               | : | 03/09/2020; 30/09/2020<br>& 08/10/2020                |
| <b>Judgment on</b>     | : | <b>02/12/2020</b>                                     |

**Tirthankar Ghosh, J:-**

The present appeal has been preferred against the judgment and order of conviction and sentence dated 21<sup>st</sup> September, 2016 and 22<sup>nd</sup> September, 2016 passed by the Ld. Additional Sessions Judge, (Essential Commodities Act) at Berhampore, Murshidabad in Sessions Trial No. 01 of June, 2014 arising out of Sessions Serial No. 306 of 2014, wherein the Ld. Trial Court was pleased to convict the appellants under Sections 489B/34 of Indian Penal Code (IPC) and Sections 489C/34 of the IPC and sentenced them to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 50,000/- each, i.d. to suffer simple imprisonment for one year for the offence punishable under Sections 489B/34 of IPC and also sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs. 25,000/- each, i.d. to suffer simple imprisonment for six months for the offence punishable under Sections 489C/34 of IPC.

The prosecution was initiated on the basis of a complaint filed by Prabir Kumar Bhadra, Senior Intelligence Officer, Directorate of Revenue Intelligence, Berhampore, Sub-Regional Unit. According to the prosecution case on the basis of a source information three persons were apprehended at Moregram More at NH 34 on 12-12-2013 at about 18:30 hours and huge quantity of fake Indian currency Notes (FICN) were recovered from two of the accused persons namely, Umesh Sha and Maya Devi. It has been alleged that the value of the FICN so recovered after search was to the tune of Rs. 14,46,500/- which included denomination of Rs. 1000/- and Rs. 500/-. Specific allegations were made against Umesh Sha to the extent about 797

pieces of FICN of Rs. 1000/- denomination and 01 piece of FICN of Rs. 500/- denomination being recovered from a specially designed white coloured vest having concealed pockets and a pair of white colour shoes worn by the accused. The allegation against Maya Devi was recovery of 649 pieces of FICN of Rs. 1000/- denomination. The further allegation was that the above two accused persons namely Umesh Sha and Maya Devi were recruited by the other accused namely, Chhotelal Thakur. The complaint alleged specific role of each of the accused persons and prayed for taking cognizance of the offences alleged.

On receipt of the complaint the Ld. Magistrate was pleased to fix date for supply of copies to the accused persons and after the same being complied, Ld. Magistrate was pleased to assess the allegations and by an order dated 04.04.2014 was pleased to commit the case to the Court of Ld. District & Sessions Judge, Murshidabad, as the offences complained were triable by a Court of Sessions.

The prosecution in order to prove its case relied upon 8 witnesses and number of documents which will be dealt with separately. The Ld. Trial Court framed charges on 04.06.2014 against the 3 accused persons being the appellants herein under Section 489B read with Section 34 of the IPC, under Section 489C of the IPC and Section 135(1)(a)(i)(c) and Section 135(1)(b)(i)(c) of the Customs Act read with Section 34 of the IPC.

The prosecution in order to prove its case relied upon eight witnesses being PW1, Dipankar Chatterjee, Senior Intelligence Officer, DRI; PW2, Siddhartha Sankar Gupta, Senior Intelligence Officer, DRI, Siliguri; PW3,

Vijay J. Manvotkar, Deputy Commissioner of Central Excise (at the relevant period Deputy Director, DRI at Siliguri); PW4, Nibedita Sengupta, Inspector of Central Excise, Berhampore; PW5, Sudeb Sarkar, Intelligence Officer, DRI; PW6, Prabir Kumar Bhadra, the complainant, Superintendant of Customs Preventive Unit (at the relevant time posted as Senior Intelligence Officer, DRI, Berhampur); PW7, Tapan Pal, independent witness; and PW8, Monojit Sen, independent witness.

PW1, Dipankar Chatterjee in his evidence narrated the date of receipt of information and the instructions received for formation of a raiding party and the manner in which the officers of the department reached the spot for working out the information so received. The witness also narrated the manner in which the accused persons were apprehended and they were offered for search. The deposition of the witness also elaborate regarding the specially designed white colour vest which had six pockets and from which six bundles FICN of Rs. 1000/- denomination were found from Umesh Sha, it also stated the special type of shoe which was worn by Umesh Sha. The witness also stated that a lady officer searched the female accused Maya Devi from whom 7 bundles FICN of Rs. 1000/- denomination and Rs. 40,000/- with Rs. 500 denomination were found. Apart from this the witness stated that two mobile phones were recovered from Chhotelal Thakur and one mobile from Umesh Sha. After narrating the description of the seizure the witness stated regarding the recording of the statements of the accused under Section 108 of the Customs Act.

PW2, Siddhartha Sankar Gupta narrated the formation of the raiding party, the manner in which search and seizure took place as also the place of recovery in the same manner as stated by PW1. The witness also similarly gave a detailed description regarding the quantum of the fake currency so seized from two of the accused persons. Additionally this witness referred to the offer letters i.e. the letters addressed to each of the accused persons regarding their requirement to be searched before a Magistrate or a Gazetted Officer. The said three letters were marked as Ext. 1 series. The witness also stated that on the next date i.e. on 13-12-2013 the accused persons were issued summons under Section 108 of the Customs Act which were received by each of them and the same were relied upon by the prosecution and marked as Ext. 2, 3 & 4 respectively. This witness in Court deposed that the statements under Section 108 of the Customs Act were recorded and the same were signed by two of the accused persons and the lady accused namely, Maya Devi put her LTI. The witness further stated that the aforesaid statements were read over to the accused persons and such signature/LTI is of the accused persons and the same as such were marked as Ext. 5, 6 & 7 respectively. It has also been narrated by the witness that the accused persons were arrested pursuant to such statement and the challan was prepared (typed) by him and signed by him which was marked as Ext. 8. The forwarding letter was also marked as Ext. 9 on being proved by the witness.

PW3, Vijay J. Manvotkar was a member of the raiding party and he narrated the incident in the same manner as PWs 1 & 2 in respect of the

search and seizure, place of occurrence, the quantum of seizure, the denomination of the FICN and the persons from whom such seizure was effected. Additionally the witness also identified the bag which was used by the lady accused for carrying the FICN which was marked as MAT Ext. I. The witness also identified the white pair of shoes which according to him were worn by the accused Umesh Sha and the same being identified and marked as MAT Ext. II. The witness also identified the white cotton vest of accused Umesh Sha which was marked as MAT Ext. III. The three mobile phones, which were seized and identified by this witness in Court and the same was marked as MAT Ext. IV. The witness identified the sealed packet in which the seized FICN was packed and sealed and the same was marked as MAT Ext. V.

PW4, Nibedita Sengupta was also member of the raiding team and she narrated the incident in the same manner as PWs 1, 2 & 3 in respect of the search and seizure, place of occurrence, the quantum of seizure, the denomination of the FICN and the persons from whom such seizure was effected. Specifically the witness stated regarding the seizures effected from the lady accused Maya Devi, a bag in which she was carrying the FICN and she reiterated the identification in respect of MAT Ext. I, II, III, IV & V. The witness identified her signature in the panchnama which was marked as Ext. 10/1 and added that the panchnama was prepared by Sudeb Sarkar (PW5) in presence of two public witnesses and other Intelligence Officers.

PW5, Sudeb Sarkar was also the member of raiding team and he also narrated the incident in the same manner as PWs 1, 2, 3 & 4 in respect of

the search and seizure, place of occurrence, the quantum of seizure, the denomination of the FICN and the persons from whom such seizure was effected. The witness also gave a description regarding the manner in which the panchnama was prepared in presence of two public witnesses and also identified MAT Ext. II, III & IV. The witness identified the inventory list which was prepared in presence of the two public witnesses and the same were marked as Ext. 11 series. The witness also identified his signature on the sealed envelopes of MAT Ext. I & II which were marked as Ext. 12 & 13. The witness also identified his signature on Arrest Memo which was marked as Ext. 14. The witness also identified his signature on the panchnama which was marked as Ext. 10/2. The copy of the order authorizing the witness to take seized FICN was marked as Ext.15. The witness identified the expert opinion report which was signed at Salbani, Midnapur (Bharatiya Reserve Bank Note Mudran (P) Ltd.) and the same was marked as Ext. 16.

PW6, Prabir Kumar Bhadra is the complainant of the case who identified the forwarding letter to the Assistant Commissioner dated 14-02-2014 which was marked as Ext. 17 and also identified the sanction letter dated 07-03-2014 which was marked as Ext. 18. The witnesses also identified the petition of complaint, marked as Ext. 19 and his signature on the petition of complaint which was marked as Ext. 19/1.

PW7, Tapan Pal is one of the public witness who narrated the incident inside the Customs Office and stated regarding the recovery of the currency notes, mobile phones from the possession of the three accused persons. This witness also identified his signature on MAT Ext. III & IV which were

marked as Ext. 20. The witness also identified his signature on MAT Ext. II which was marked as Ext. 13/1. The witness also identified his signature on the envelope of MAT Ext. VI which was marked as Ext. 21. The witness also identified his signature on the label of black bag which was marked as Ext. 22.

PW8, Monojit Sen @ Basab is also a public witness who also narrated the incident in the Customs Office and identified his signature on the seizure list which was marked as Ext. 11/3 series. The witness also identified his signature on the label of the black bag which was marked as Ext. 22/1. The witness also identified his signature on the MAT Ext. III & IV which were marked as Ext. 20/1. The witness also identified his signature on the envelope which contained the shoes which was marked as Ext. 13/2. The witness also identified his signature on MAT Ext. VI which was marked as Ext. 21/1.

Mr. Roy, Ld. Advocate appearing for the appellants submits that the quantum of seizure of FICN do not match with the allegation so far as the quantum represented in the petition of complaint. Ld. Counsel further raised doubts regarding the seizure and the presence of the independent witnesses, he also points out the discrepancies in the version of the witnesses at the time of the accused persons being apprehended, the time at which the search and seizure were carried out and the presence of the witnesses referred to as independent witnesses. It is further contention of the appellants that even if the prosecution evidence is accepted to be true in its entirety the same fails to make out any case or bring home the charges

under Section 489B of the IPC. Lastly, the appellants submit that the prosecution having failed to prove its case beyond reasonable doubt entitles the appellants to be acquitted from the charges.

Mr. Dey, Ld. Counsel appearing for the Union of India at the inception challenged the issues raised by the appellants and submitted that the charges have been proved beyond all reasonable doubt and the appellants as such are to be convicted. In order to support his contention he submitted that the prosecution witnesses consistently narrated regarding the fact of search and seizure, place of seizure and the manner in which the accused persons have been apprehended by the raiding party. It was further contended that the investigation was carried out by the customs authorities and as such the statements which were recorded under Section 108 of the Customs Act can be relied in evidence which are admissible and must be read into the evidence of the case. Ld. Counsel further adds that a perusal of the statement so narrated clearly set out the mode and manner of the involvement of the accused persons which would automatically lead to the conclusion of guilt and there would be no room for doubt regarding the offence being committed by the accused persons, to that extent the Ld. Counsel relied upon number of judgments which are as follows:-

*Kashmira Singh vs. State of Madhya Pradesh, MANU/SC/0031/1952;*

*Girish Raghunath Mehta vs. Inspector of Customs & Anr., AIR 2016 SC 4317;*

*Naresh J Sukhawani vs. Union of India, (1995) Sup 4 SCC 663;*

*Kanhaiyalal vs Union of India, (2008) 4 SCC 668;*

*Union of India vs. Satrohan, (2008) 8 SCC 313.*

We have taken into account the submissions advanced by both the parties and intend to deal with the same in the background of the evidence so adduced before the Ld. Trial Court. The prosecution evidence which were brought on record by way of adducing eight witnesses consistently narrates regarding the version that pursuant to a source information so received a raiding party was constituted by the customs authorities and on 12-12-2013 the members of the raiding party arrived at Moregram More and after arrival of the present appellants intercepted them and expressed their intention to search on the person of each of them. It is also consistently stated by the prosecution witnesses that the accused persons\appellants herein refused to get them searched in the public place and requested for taking them to safe zone where there would be no threat to their lives .It is also seen from the evidence of the prosecution witnesses that there is no dispute regarding the special vest from which seizure of fake currency was effected from Umesh Sha, the bundle of notes which were recovered from the shoes of the same accused, the black bag which belonged to Maya Devi from where also fake currencies were seized and also in respect of the mobile phones which were seized from Umesh Sha and the accused Chhotelal Thakur. On this point the accused persons also could not in cross examination elicit any answer from the witnesses which would raise a doubt in the mind of the court. Further the opinion of the expert which were brought into evidence by the prosecution corroborates regarding the number of the fake currencies received by the concerned department and those that were enclosed along with the seizure list. It is opined by the expert of the Bharatiya Reserve

Bank Note Mudran (P) Ltd. that the sample currencies which were tested were found to be counterfeit, as such there cannot be any doubt regarding the issue of seizure being effected from the three appellants and their intentions. Thus there cannot be any doubt regarding the possession of the fake Indian currency notes which were recovered from the accused persons.

The next issue which assumes importance in this case is regarding trafficking so as to attract the provisions of Section 489B of the IPC.

The provisions of Section 489B of the IPC states that: –

***“489B. Using as genuine, forged or counterfeit currency-notes or bank-notes.***

*Whoever sells to, or buys or receives from any other persons, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

In course of argument the main point which was canvassed by the rival parties related to the applicability of Section 489B of the IPC. According to the Ld. Counsel for the appellants there are no iota of evidence in order to support the charges under Section 489B of the IPC while the Ld. Advocate for the Union of India heavily relied upon the statement under Section 108 of the Customs Act and tried to impress the court that the said evidence is sufficient for convicting the accused appellants under Section 489B of the IPC.

The judgments so relied upon by the Ld. Advocate for the Union of India may be assessed for the purpose of applicability in this particular case.

In *Kashmira Singh* (supra) relied upon by the Respondent, which reads as follows:-

*“9. They stated in addition that such a confession cannot be made the foundation of a conviction and can only be used in “support of other evidence.” In view of these remarks it would be pointless to cover the same ground, but we feel it is necessary to expound this further as misapprehension still exists. The question is, in what way can it be used in support of other evidence? Can it be used to fill in missing gaps? Can it be used to corroborate an accomplice or, as in the present case, a witness who, though not an accomplice, is placed in the same category regarding credibility because the judge refuses to believe him except in so far as he is corroborated?*

*10. In our opinion, the matter was put succinctly by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbutty I.L.R. [1931] Mad. 75, where he said that such a confession can only be used to “lend assurance to other evidence against a co-accused” or, to put it in another way, as Reilly, J. did in In re Periyaswami Moopan [1911] I.L.R. 38 Cal. 559 – “the provision goes no further than this-where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in section 30 may be thrown into the scale as an additional reason for believing that evidence.”*

*11. Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and*

*thus fortify himself in believing what without the aid of the confession he would not be prepared to accept.”*

In *Girish Raghunath Mehta* (supra) relied upon by the Respondent states as follows:-

*“11. .... It is not necessary to go into this aspect in the present case as there is adequate evidence to prove the sale of the contraband by the appellant for which co-accused has been convicted and sentenced. The prosecution version is based not only on the statement under Section 67 but also on the evidence of recovery of the contraband immediately after sale and the circumstances showing that the contraband was sold by the appellant to the co-accused, without any authorization. Thus, we do not find any ground to interfere with the conviction and sentence awarded to the appellant.”*

In *Naresh J Sukhawani* (supra) the Hon’ble Apex Court was dealing with confiscation proceeding and not an appeal arising out of a conviction in a criminal trial as such the said case is not applicable to the present appeal.

The case of *Kanhaiyalal vs. Union of India* (supra) and *Union of India vs. Satrohan*, which mainly dealt with the issue of Section 67 of the NDPS Act and wherein it has been held that an accused can be convicted solely on the basis of the confessional statement under Section 67 of the NDPS Act was very recently dealt with by the Hon’ble Apex Court in *Toofan Singh vs. State of Tamil Nadu* 2020 SCC Online SC 882. The majority view of the Hon’ble Apex Court in the said reference has been expressed in the following paragraphs:-

*“156. The judgment in Kanhaiyalal (supra) then goes on to follow Raj Kumar Karwal (supra) in paragraphs 44 and 45. For the reasons stated by us hereinabove, both these judgments do not*

*state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.*

*157. On the other hand, for the reasons given by us in this judgment, the judgments of Noor Aga (supra) and Nirmal Singh Pehlwan v. Inspector, Customs (2011) 12 SCC 298 are correct in law.*

*158. We answer the reference by stating:*

*(i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.*

*(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”*

The last of the two judgments so relied upon by the Ld. Counsel for the Union of India having been overruled thus cannot be considered for arriving at a conclusion.

On the other hand as the view expressed in the case of *Noor Aga* (2008) 16 SCC 417, has been approved by the larger bench it would be apposite to take into account the following paragraphs:-

*“83. There is another aspect of the matter which cannot also be lost sight of. A search and seizure or an arrest made for the purpose of proceeding against a person under the Act cannot be different only because in one case the authority was appointed under the Customs Act and in the other under another Act. What is relevant is the purpose for which such arrest or search and seizure is made and investigation is carried out. The law applicable in this behalf must be certain and uniform.*

84. *Even otherwise Section 138B of the 1962 Act must be read as a provision containing certain important features, namely:*

*(a) There should be in the first instance statement made and signed by a person before a competent customs official.*

*(b) It must have been made during the course of enquiry and proceedings under the Customs Act.*

*Only when these things are established, would a statement made by an accused become relevant in a prosecution under the Act. Only then, it can be used for the purpose of proving the truth of the facts contained therein. It deals with another category of case which provides for a further clarification. Clause (a) of sub-section (1) of Section 138B deals with one type of persons and clause (b) deals with another. The Legislature might have in mind its experience that sometimes witnesses do not support the prosecution case, as for example panch witnesses, and only in such an event an additional opportunity is afforded to the prosecution to criticize the said witness and to invite a finding from the court not to rely on the assurance of the court on the basis of the statement recorded by the Customs Department and for that purpose it is envisaged that a person may be such whose statement was recorded, but while he was examined before the court, it arrived at an opinion that his statement should be admitted in evidence in the interest of justice which was evidently to make that situation and to confirm the witness who is the author of such statement, but does not support the prosecution although he made a statement in terms of Section 108 of the Customs Act. We are not concerned with such category of witnesses. The confessional statement of an accused, therefore, cannot be made use of in any manner under Section 138B of the Customs Act. Even otherwise such an evidence is considered to be of weak nature.”*

On an appreciation of the settled position of law, keeping in mind the background of the present case which is presently an appeal against conviction for commission of offence under Section 489B and 489C of the IPC, the following issue emerge that whether the confessional statement of the accused persons can be made foundation of their guilt. Needless to state

that it is only in the statements under Section 108 of the Customs Act of the three appellants it is found that one Rahul @ Ikram @Ikramul of village-Mojumpur, P.O.- Harchi, P.S.- Kaliachak, District- Malda was the person who obtained the notes from Bangladesh and handed over the same in presence of Chhotelal to Umesh Sha and Maya Devi.

Throughout the evidence there is no corroboration by any prosecution witness in respect of such evidence and there is neither any other documentary evidence to substantiate the same. Further no materials relating to such fact was brought in evidence by the prosecution and surprisingly the petition of complaint also did not implicate the said Rahul @ Ikram @Ikramul as an accused. The prosecution case is silent whether in course of investigation any process was issued or any attempt was made to apprehend the said Rahul. Additionally the seizures were effected at the office of the revenue authorities and thereafter the statements under Section 108 of the Customs Act were recorded. Relying upon the judgment of the Hon'ble Supreme Court in the case of *Noor Aga* (supra) this court is of the opinion that the confessional statements so recorded under Section 108 of the Customs Act solely cannot be a foundation for arriving at the conclusion of guilt of the accused appellants.

In *Hoda Sk vs. State of West Bengal* 2020 SCC Online Cal 1478, relying upon the Hon'ble Supreme Court, it has been held:-

*“14. Analysis of the aforesaid section shows whoever sells, buys or receives from any other person or otherwise traffics in or uses as genuine any forged or counterfeit currency notes or bank notes with the knowledge or reasonable belief that the said notes are*

*forged or counterfeit is said to have committed the offence. Hence, sale, purchase or receipt from any person, or otherwise trafficking in counterfeit currency notes as genuine is a sine qua non of such offence. There is no evidence that the appellants had sold, received or used any counterfeit notes. However, it has been argued on behalf of the prosecution that the appellant was "otherwise trafficking in" counterfeit notes by knowingly transporting a large volume of forged currency notes in a bag through a public road and had reached the ferry ghat when they were apprehended. Hence, he had committed the offence under section 489B of the Penal Code, 1860.*

*15. What would the expression "otherwise traffics in" mean in the context of aforesaid offence?*

*16. In K. Hasim Vs. State of Tamil Nadu, AIR 2005 SC 128, the Apex Court interpreted the object of section 489B of the Penal Code, 1860 as follows:-*

*"42. Similarly Section 489B relates to using as genuine forged or counterfeited currency notes or bank notes. The object of Legislature in enacting this section is to stop the circulation of forged notes by punishing all persons who knowing or having reason to believe the same to be forged do any act which could lead to their circulation."*

*17. Expression "otherwise traffics in" when interpreted in the light of the aforesaid object would include any act undertaken by the accused which would lead to circulation of notes.*

*18. In Black's Law Dictionary, 10th edition, p. 1725, the word 'traffic' is defined as follows:-*

*"traffic- 1. Commerce; trade; the sale or exchange of such things as merchandise, bills, and money. 2. The passing or exchange of goods of commodities from one person to another for an equivalent in goods or money. 3. People or things being transported along a route. 4. The passing to and fro of people, animals, vehicles, and vesels along a transportation route."*

Having regard to the aforesaid proposition of law as also the evidence brought on record it can safely be concluded that the prosecution has failed

to prove the charges under Section 489B of the IPC. However, the accused appellants have failed to dislodge the prosecution evidence so far as the seizure of the fake currency notes from their possession are concerned.

In view of the aforesaid the accused appellants are acquitted of the charge under Sections 489B/34 of the IPC consequently their conviction and sentence so imposed by the Ld. Trial Court is set aside.

However, the accused appellants are convicted under Sections 489C/34 of the IPC and their sentence so imposed by the trial court are accordingly affirmed. The records reflect that accused appellants were sentenced for rigorous imprisonment for a period of five years with fine of Rs. 25,000 each i.d. to suffer simple imprisonment for six months. In case the authorities find that the sentence imposed by the Ld. Trial Court for offence punishable under Sections 489C/34 of IPC has been undergone by each one of them, it would be appropriate to release the appellants, if they are not wanted in any other case.

Accordingly CRA 235 of 2017 and CRA 237 of 2017 are partly allowed, as such the connected applications are also disposed of.

Department is directed to communicate this order to the Ld. Trial Court and send the LCR forthwith to the Lower Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**(Tirthankar Ghosh, J.)**

**(Samapti Chatterjee, J.)**