

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 400 of 2015

Balahari Ghosh and Ors.

-vs.-

State of West Bengal

For the Appellants : Mr. Sekhar Kr. Basu
Mr. Mayukh Mukherjee

For the State of West Bengal : Mr. Ranabir Roy Chowdhury
Mr. Mainak Gupta

Heard on : 12.03.2020, 13.03.2020 & 09.12.2020

Judgment on : 15th December, 2020.

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 28.05.2015 and 29.05.2015 passed by the learned Additional Sessions Judge, 4th Court, Suri, Birbhum, in connection with Sessions Trial No. 02/April/2010 arising out of Sessions Case no. 18/2010 wherein the appellants were convicted for commission of offence punishable under Section 148/323/149/304(II)/149 of the Indian Penal Code and sentenced to suffer RI for one year and fine of Rs. 1,000/- each, i.d. to suffer further R.I. of three months for the offence under Section 148 of

Indian Penal Code, the appellants were also sentenced to R.I. for seven years and fine of Rs. 5,000/- each i.d. further R.I. of six months for the offence under Section 304(II) of Indian Penal Code. By the same order the learned Sessions Judge did not impose any punishment for the offence under Section 323/149 of Indian Penal Code.

The Prosecution case in brief is that one Bhairab Nath Mondal, a resident of village Palsita, Police Station Suri addressed a complaint to the Inspector-in-charge, Suri Police Station, Suri, Birbhum to the effect that he owned a piece of land measuring three sataks at dag no. 664, Palsita Mouja since 14.08.2006. He alleged that on or about 28.12.2008 while he was stacking straw on the said land the accused persons owing to their grudge attacked his two sons namely, Kajal Mondal and Ujjwal Mondal. When the incident happened three agricultural labours were present and they were assisting him. Radhakanta Ghosh, Balahari Ghosh , Radhamadhab Ghosh, Shibsadhan Ghose and Nemaï Ghosh together being armed with lathi, tangi and other deadly weapons assaulted his sons with the intention of murdering them. Due to the injury suffered by Kajal Mondal on his head his condition was critical and he was struggling for his life while Ujjwal Mondal was also seriously injured and was under the observation of doctors.

On the basis of such complaint addressed to the Inspector-in-charge, Suri Police Station, Suri PS case no. 293/2008 dated 28.12.2008 under Section 147/148/149/323/325/308 of Indian Penal Code was registered for investigation. On completion of investigation the Investigating Officer of the case submitted charge-sheet under Sections

147/148/149/323/325/308/304 of the Indian Penal Code. After compliance of all the provisions relating to supply of copies the case was committed to the Court of Sessions and the learned Trial Court on consideration of the materials so placed by the prosecution was pleased to frame charge under Sections 148/307/149/302/149 of the Indian Penal Code.

The prosecution in order to prove its case relied upon 28 witnesses being PW1, Bhairab Nath Mondal, complainant; PW2 Ujjwal Mondal, brother of deceased (Kajal Mondal); PW3 Namita Mondal, wife of PW1 (complainant); Ranjit Bettar, independent witness; PW5 Dilip Mondal, independent witness; PW6 Chakradhar Mondal, independent witness; PW7 Raghunath Mondal, independent witness; PW8 Raj Kumar Mondal, independent witness; PW9 Goutam Bagdi, independent witness; PW10 Sistidhar Dalui, independent witness; PW11 Ananda Gopal Mondal, independent witness; PW12 Madhab Mondal, independent witness; PW13 Rakhakar Mondal, independent witness; PW14 Santosh Mondal, independent witness; PW15 Dr. Dipak Mukherjee, Medical Officer, Surgeon, posted at Suri Sadar Hospital; PW16 Dr. Anup Kr. Chowdury, Associate Professor posted at Bangur Institute of Neuroscience; PW17 Sukumar Chatterjee, R.M.O. cum Clinical Tutor Medical College and Hospital; PW18 Dr. Kushal Roy, Medical Officer at SSKM; PW19 GC. Arun Dutta, Group Commander of Home Guard at Suri PS; PW20 Dr. Srikrishna Majhi, doctor posted as MCH Trainee at SSKM; PW21 Dr. Partha Pal, Medical Superintendent of Mission Hospital Durgapur; PW22 Dr. Bikash Mukherjee, Autopsy Surgeon at Alipur Police Morgue;

PW23 KP Swapan Kr. Halder, Constable No. T/17 posted at Bhabanipur P.S.; PW24 ASI Harisadhan Saha, ASI of police at Suri P.S.; PW25 ASI Depak Banerjee, ASI of Police at Santiniketan was posted at Suri; PW26 UDC Tara Kumar Chakraborty, posted at office of B.L.L.R.O. Suri –II; PW27 Dr. Snehansu Pan, Associate Professor, at RG Kar Medical College and PW28 Inspector Sanjib Singha Roy, Investigating Officer of the case.

The prosecution also relied upon documents relating to the case being Exbt.1, Signature of PW1 on the FIR; Exbt.1/1, the written complaint; Exbt.2, signature of PW1 on seizure list dated 29/12/2008; Exbt.2/1, signature of PW3 on the seizure list dated 29/12/2008; Exbt.2/2, seizure list dated 29/12/2008; Exbt.3, signature of PW1 on the jimmanama; Exbt.4 LR. Parcha, Kaithan No. 165(collectively) (04 sheets); Exbt.5, original deed, being no. 6500 of the year 2006 (5 sheets); Exbt.6, signature of PW6 on the seizure list dated 29/12/2008; Exbt.6/1, signature of PW7 on the seizure list dated 29/12/2008; Exbt.6/2, seizure list dated 29/12/2008; Exbt.7, signature of PW13 on the O.P. Case record of Mission Hospital; Exbt.8, signature of PW13 on cases of serious injury of SSKM Hospital; Exbt.8/1, the Report in cases of serious injury of SSKM Hospital; Exbt.9, Signature of PW13 on the application of admission of SSKM Hospital; Exbt.10, Carbon impression signature of PW13 on the Inquest Report (Carbon copy); Exbt.11, Record of in-patient and treatment (collectively) sheet of Kajal Mondal; Exbt.12 First page of BHT, treatment sheet, X-ray requisition slip and emergency patient ticket (attested photocopy); Exbt. 13, signature of PW19 on the seizure list dated 29/12/2008; Exbt.13/1, Seizure list dated

17/02/2009; Exbt.14, Death Certificate of Kajal Mondal; Exbt.15, P.M. Examination Report; Exbt.16, Signature of PW24 on the seizure list dated 17/02/2009; Exbt.16/1, signature of PW25 on the Seizure list dated 17/02/2009; Exbt.16/2, Seizure list dated 17.02/2009; Exbt.17, Signature of PW24 on the seizure list dated 17/02/2009; Exbt.17/1, Carbon impression signature of PW25 on seizure list dated 17/02/2009; Exbt.17/2, seizure list (carbon copy); Exbt.18, information; Exbt.19, Rough Sketch Map with index.

PW1 in his evidence before the Court stated that on 28.12.2008 at about 2.30 pm when he along with his two sons (Kajal Mondal and Ujjwal Mondal) were involved in agricultural work at plot no. 664, the accused persons namely, Nemai Ghosh, Balahari Ghosh, Shibsadhan Ghosh, Radhakanta Ghosh and Radhamadhab Ghosh came to the place of occurrence and started assaulting Ujjwal with lathi, as a result of which Ujjwal fell down on the ground and his other son Kajal went to rescue him. At that time the accused persons assaulted Kajal with lathi, tangi, when Kajal fell down on the hay stack. As a result of continuous assault upon Kajal he received bleeding injury on his head and as such both Kajal and Ujjwal were admitted to Suri Sadar Hospital from where Kajal was referred to Burdwan Medical College and Hospital but he was taken to Mission Hospital, Durgapur. From Mission Hospital, Durgapur, Kajal was referred to Burdwan Medical College and Hospital and from there to PG Hospital, Kolkata. The witness also stated that plot no. 664 which is three cents of land were purchased by Ujjwal Mondal from Sabitri Mondal and they were

using only that portion of property and were never involved with the rest 9 cents of land belonging to the said plot. The witness deposed that the complaint was written by his nephew namely one Santosh Mondal (PW14) and the same was written as per his instructions. The witness identified his signature in the written complaint which was marked as Exbt.1. The witness also identified the materials seized by the police authorities on 29.12.2008 and his signature in the seizure list was marked as Exbt.2. The witness also identified the two bamboo pieces which were seized by the police authorities and the same was marked as Material Exbt.I. The witness identified the 'jimmanama' of the seized deed and parcha of plot no. 664 which was marked as Exbt.3, further the L.R. parcha of Khatian no. 165 was identified and marked as Exbt.4 and the deed by which Ujjwal Mondal purchased plot no. 664 (3 cents) was identified and marked as Exbt.5.

PW2 narrated the incident in the same manner as PW1. However, this witness being an injured witness gave a more detailed description and added that at the relevant point of time when all the other accused persons/appellants were assaulting Kajal Mondal, appellant Nemai Mondal was moving violently and was brandishing 'phasuni'. The witness also stated that after the incident they were shifted to their house and from there they were taken to Suri Sadar Hospital and Kajal was thereafter, shifted to different hospital.

PW3 also narrated the incident in the same manner as PW1 and PW2. Her signature in the seizure list was marked as Exbt.2/1. She also identified material Exbt.I and all the accused persons in Court. The witness also

corroborated the fact that her son Kajal died at SSKM Hospital because of the assault of the accused persons.

PW4 narrated the incident of assault in the same manner as PW1 and PW3. The witness also stated that the accused person received no injury at the relevant point of time and the injured persons had no weapons in their hands. This witness also identified all the accused persons in Court.

PW5 in his evidence stated that on hearing hue and cry on 28.12.2008 at about 2.30/3.00 pm he went to the spot and found that the accused persons were assaulting Ujjwal Mondal with a Bamboo stick, at that time accused Nemai Ghosh was holding a 'phasuni' in his hand. He further narrated that as a result of such assault Ujjwal Mondal fell down on the ground and Kajal Mondal came to rescue Ujjwal when the accused persons assaulted Kajal Mondal with bamboo sticks, as a result of which he received depressed wound on the head and there were bleeding from his ear, nose and mouth and he was groaning. The witness also identified all the accused persons in Court and further deposed that the accused persons intended to take possession of the plot of land and also narrated that Kajal Mondal and Ujjwal Mondal were taken to Suri Sadar Hospital.

PW6 narrated the incident in the same manner as PW5. The witness identified the accused persons and added that he along with PW13 went to Suri Sadar Hospital. The witness also identified his signature in the seizure list dated 29.12.2008 which was marked as Exbt.6.

PW7 deposed in the same manner as PW5 and PW6. The witness identified the accused persons in Court and added that no villagers had the courage to interfere when accused persons were assaulting the victim as they were in a violent mood. The witness also identified his signature in seizure list dated 29.12.2008 which was marked as Exbt.6/1.

PW8 narrated the incident in the same manner as PWs 5, 6 and 7. The witness also stated that there were depression on the vault of Kajal and he was bleeding, as a result of which he became unconscious and he along with his brother had to be shifted to Suri Sadar Hospital.

PW9 is a post-occurrence witness. He narrated that after hearing hue and cry when he had been to the place of occurrence he found that Kajal was lying on the hay stack and Ujjwal was lying on the side of the hay stack. Both the victim sustained bleeding injury and the accused persons were moving violently with pieces of bamboo and Nemaï had a 'phasuni' in his hand. He also deposed that the accused persons were using filthy languages.

PW10 narrated the incident in the same manner as PW9 and only added that after the incident the victims were shifted to their residence and from there they were shifted to Suri Sadar Hospital.

PW11 is the husband of Sabitri Mondal, who sold the 3 cents of land in plot no. 664 under Mouja Palsita. The witness acknowledged the plot being sold to Ujjwal Mondal and further narrated that PW2 was using the portion of the land which were used by them prior to the land being sold.

The witness also acknowledged that the plot of land was sold in the year 2006 and from then onwards PW2 used to stack their straw in the said portion of plot.

PW12 narrated the incident in the same manner as PW10 and also identified the accused persons in Court.

PW13 narrated the incident in the same manner as PW12. The witness also identified the accused persons in Court and stated that he accompanied Ujjwal and Kajal when they were shifted to hospital from their house. The witness also stated that he had been with the deceased Kajal to Durgapur Mission College and Hospital, Burdwan Medical College and Hospital and also at SSKM Hospital, Kolkata. The witness stated that he narrated to the doctors of SSKM Hospital regarding the history of assault. The witness identified his signature on the outpatient case record of Mission Hospital which was marked as Exbt.7. The witness also identified his signature on the report on cases of serious injury of SSKM Hospital dated 29.12.2008 which was marked as Exbt.8. The witness identified his signature in the application form for admission at SSKM Hospital which was marked as Exbt.9. The witness also identified his signature on the inquest report which was marked as Exbt.10.

PW14 is the scribe of the written complaint who narrated that the written complaint was drafted as per version of PW1, Bhairab Mondal.

PW15 is the medical Officer at Suri Sadar Hospital, who initially examined the deceased Kajal Mondal on 28.12.2008. According to this

witness Kajal was admitted with the history of assault at 3.00 pm on the same day. The witness narrated that the patient was unconscious and not responding even to painful stimuli, pulse was 78 per minute, blood pressure 112/70, cardio vascular system and respiratory system was normal, pupils were dilated equal reacting sluggishly to light, a sutured lacerated injury on the frontal region was found, about 3 cm. in length. Witness stated that the patient was referred to Neurosurgery department of any State Medical College, Kolkata. The witness identified the patient treatment-sheet of Kajal Mondal which was marked as Exbt.11 (collectively).

PW16 is a doctor associated with Bangur Institute of Neuro-Science and SSKM Hospital, Kolkata. The witness stated that on 29.12.2008 at about 21.55 hours, Kajal Mondal was admitted at SSKM Hospital with severe head injury and treatment of the patient was done as per the advice given by him and Dr. S.P. Garain. The witness stated that the condition of the patient was very serious and at the time of admission his brain was full of blood, he further narrated that the patient ultimately expired on 30.12.2008 at 9.00 pm for such grave head injury.

PW17 was posted as Medical Officer at Suri Sadar Hospital on 28.12.2008. The witness examined Ujjwal Mondal who was admitted at about 5.25 pm on that day. The witness stated that the patient was admitted with history of physical assault of trauma, nape of neck and right wrist joint. The patient was advised for X-ray of right hand and was discharged on 31.12.2008. The witness identified the bed head ticket,

treatment-sheet and the emergency patient ticket which were marked Exbt.12 (collectively).

PW18 is a Medical Officer attached to SSKM Hospital. The witness stated that as per the history of physical assault which was narrated by PW13 the patient was assaulted by Radhakanta Ghosh, Radhamadhab Ghosh, Balahari Ghosh, Shibsadhan Ghosh and Nemai Ghosh by some blunt object. The witness also identified the report prepared by him and his signature which was marked as Exbt.8/1.

PW19 is the Group Commander of Home Guard, who was a witness to the seizure list prepared on 29.12.2008 and signature was identified by the witness which was marked as Exbt.13.

PW20 was MCH Trainee at SSKM Hospital, Kolkata on 29.12.2008. The witness issued Death Certificate of Kajal Mondal. The witness identified his hand writing and signature in the Death Certificate which was marked as Exbt.14.

PW21 is the Medical Superintendent of Mission Hospital Durgapur who tendered the C.T. Scan Report of the deceased, Kajal Mondal, however, the witness could not identify the signature of Dr. K.P. Singh and as such the same could not be tendered in evidence.

PW22 is the Autopsy Surgeon, who held post-mortem on the dead body of Kajal Mondal and on examination he found the following injuries:

1. Haematoma on the left eye.

2. Evidence of bruise whole of the vault of the skull.
3. 7" bone crack over right frontal, parietal, occipital skull region.
4. 6" crack over coronal suture both sides of the skull.
5. Evidence of sub dural haemorrhage both the hemisphere of brain with collection of blood and fluid under surface.
6. 2" X 2" area inter cerebral haemorrhage inside the left occipital lobe of brain.

The witness identified his hand writing and signature on the post-mortem report which was marked as Exbt.15 and also deposed that the injuries noted in the post-mortem report are sufficient to cause death of a person.

PW23 is the Constable who identified the dead body of Kajal Mondal before the doctors of Mominpur Morgue.

PW24 is A.S.I. of Police attached to Suri P.S., who signed the seizure list as a witness in respect of some medical papers which were seized by the Investigating Officer. The witness identified his carbon impression of the signature in the seizure list which was marked as Exbt.17.

PW25 is the A.S.I. of Police attached to Suri Police Station at the relevant point of time. The said witness also is a seizure list witness to the medical papers which were seized by the Investigating Officer of the case. The witness also identified his carbon impression signature in the seizure list which was marked as Exbt.17/1.

PW26 is the Upper Division Clerk posted at the Officer of B.L.L.R.O., Suri-II, Birbhum. The witness produced the CLR record of rights in respect of plot no. 664 comprising area of 0.9 acre under Mouja Palsita, JL no. 65 under Bolck Suri-II. The certified copy of the land record was marked as Exbt.18.

PW27 was the Associate Professor, of General Surgery attached to Burdwan Medical College & Hospital on or about 29.12.2008. The witness identified the discharge certificate which was issued by Burdwan Medical College & Hospital on 29.12.2008, however the discharge certificate could not be admitted into evidence.

PW28 is the Investigating officer of the case.

Mr. Basu, learned Senior Advocate appearing for the appellants contended that there are glaring contradictions in the deposition of the prosecution's witnesses regarding the mode and manner in which the alleged assault took place and resulted in the death of the deceased Kajal Mondal. It is his further submission that the witnesses were not confident regarding the weapon of assault being whether 'lathi', 'tangi' or 'bamboo sticks'. Additionally the appellants contended that the prosecution witness no.1 being the complainant has deviated from the narration of facts made in the complaint to the deposition made before the Court. According to him the story of rescue has been improved at the instance of the prosecution through this witness. Learned advocate also drew attention of the Court to the deposition of PW2 and the Medical evidence of PW17 and emphasized

that the oral version of the witnesses are contradicted by the medical evidence on record. It is further submission of the appellant that also PW1 and PW13 accompanied the injured/deceased Kajal Mondal to different hospitals, yet at the initial stage at hospital they did not divulge the name of any of the appellants and as such the subsequent incorporation of the name of appellants are improved version which cannot be relied to arrive at a conclusion of guilt. According to the appellants the evidence adduced by PW1, PW2, PW5, PW8 and PW12 are contradictory to the evidence of the Autopsy Surgeon, i.e., PW22. The learned advocate for the appellant stressed on the deposition of the witnesses and submitted that the majority of the witnesses tried to express themselves as eye-witnesses, although, they arrived at the spot later being post-occurrence witnesses. To sum up his argument the learned senior advocate submitted that prosecution did not spell out the exact place of occurrence in its evidence, in fact according to him the written complaint is also silent regarding the place of occurrence while the charges framed by the trial Court is vague stating Palsita to be the place of occurrence; two witnesses namely, PW1 and PW2 describes the place of occurrence in a very vague manner and the same assumes importance in view of the fact that the Investigating officer of the case seized the blood stained earth but did not rely upon the same in course of examination of the prosecution witnesses. Having regard to such conduct of the prosecution the learned advocate for the appellants relied upon the **Lakshmi Singh and Ors. -Vs. - State of Bihar reported in (1976) 4 SCC 394.**

The appellant also contended that the evidence of the Autopsy Surgeon cannot improbablize the version brought forward by the prosecution witnesses and the same casts a grave shadow of doubt on the prosecution version. The issue of counter case although had been addressed at the initial stage by the learned Trial Court yet an earlier judgment was relied upon that is **Nathilal –Vs.- State of Uttar Pradesh, reported in 1990 SCC (Cri) 638** instead of **Sudhir and Ors. –Vs. – State of Madhya Pradesh, reported in 2001 SCC (Cri) 387**.

Mr. Ranabir Roychowdhury, learned advocate appearing for the State submitted that there is no denial of the fact that Kajal Mondal succumbed pursuant to the assault inflicted by the appellants. The learned advocate relied upon the evidence of PW2 and stated that PW2 is an injured witness and his version is very hard to be disbelieved. The learned advocate had also drawn attention of the Court to the narration of the core incident of assault and the weapon used for assaulting the witnesses as well as the deceased. It is also the submission on behalf of the State that prosecution witnesses nos. 2, 4, 5, and 13 are consistent in their version and the subject of inconsistencies which have been pointed out by the appellants can by no stretch of imagination vitiate the entire evidence on record. The learned advocate also drew the attention of the Court to the Medical evidence so adduced by the prosecution and submitted that the injury suffered by one of the accused namely, Balahari Ghosh has been explained by prosecution witnesses nos. 5 and 8. Lastly, the learned advocate submitted that in view of the consistent version of the prosecution witnesses which are

corroborated by medical evidence there is no scope for interference in the judgment of conviction and order of sentence so imposed by the learned trial Court.

The argument advanced by the Learned Advocate appearing for the appellants that there is a difference between the facts narrated in the F.I.R by the P.W1 and the deposition of the said witness in Court is to be appreciated in the background of the time at which the PW1 being the informant lodged the said complaint with the concerned police station. The time reflects a stage when both his sons being Ujjwal Mondal and Kajal Mondal were admitted at hospital and the deceased Kajal at the relevant point of time was struggling for his life. It is a settled position of law that F.I.R need not be encyclopaedia of facts, having regard to the same I have no hesitation to hold that the detailed description of events which were missing at the stage of informing the police are not fatal to the prosecution case and the events narrated in Court being corroborated by majority of the witnesses assume significance. On this score I am unable to agree with the issue canvassed by the appellants.

The next issue canvassed by the appellants were regarding the difference of version of PW2 Ujjwal Mondal and PW17 Dr. Priyojit Chatterjee. PW2 in his evidence stated that he suffered injury all over his body while PW17 Dr Priyojit Chatterjee deposed in Court that the patient, Ujjwal Mondal was admitted with history of physical assault with trauma at nape of neck and right wrist joint. The further evidence of PW17 reflects that some more tests were advised. Thus, there is no contradiction in the

evidence which touches the foundation of the case or makes the evidence of PW2 disbelievable.

The contention of the Learned Advocate for the appellants that the evidence of PW1, PW2, PW5, PW8 and PW12 are contradictory to the evidence of PW22, who is the autopsy surgeon in essence is not correct. As the said witnesses referred to the deceased Kajal being hit at the head with bamboo and there was depression in the vault of Kajal (deceased) as a result of assault, as such this evidence is consistent in the version of each of the witnesses. The autopsy surgeon PW22 as referred above solely refers to the injuries at skull and an injury at the left eye. Thus, there is no scope of disbelieving the witnesses.

In this case non-examination of blood stained earth does not assume any significance in view of the fact that there is a ring of truth attached to the prosecution version more particularly, PW1 and PW2 (who happens to be injured witness), further the labourers who worked as assistant to PW1 also corroborated the version and the motive behind the act of assault could not also be shaken by the accused / appellants in their cross-examination, nor is there any suggestion which could dislodge the principle of proof behind reasonable doubt. Therefore, the authority relied upon by the appellants do not have any application in the facts of the present case.

Consequently the finding of guilt and the judgment and order of conviction so passed by the Learned Additional District and Sessions Judge, 4th Court, Fast Track Court, Suri, Birbhum in Sessions Trial No. 02/April/2010 do not call for any interference and is hereby affirmed.

However, having regard to the sentence which has been imposed, I am of the opinion that in view of the settled propositions of law in **State of Madhya Pradesh -Vs. - Udham and Ors.** reported in **(2019) 10 SCC 300;** **Accused 'X' -Vs. - State of Maharashtra** reported in **(2019) 7 SCC 1;** **Sunil Dutt Sharma -Vs. - State (Govt. of NCT of Delhi)** reported in **(2014) 4 SCC 375;** the same is required to be interfered with. The evidence on record reflects that the appellant no. 1 namely, Balahari Ghosh also suffered injury and there is a counter case, as such there should be some consideration while imposing the sentence.

The appellants namely, Balahari Ghosh (appellant no.1), Radhakanta Ghosh (appellant no.2), Radhamadhab Ghosh (appellant no.4) and Shibsadhan Ghosh (appellant no.5) are in custody on and from 29.05.2015 i.e. for a period of more than five years six months. In view of the period for which the aforesaid appellants are in custody, their sentences are reduced to that which has already been undergone by them.

The records reflect that the appellant No.3 namely, Nemai Ghosh was released on bail pursuant to the order dated 29 .09. 2015, however, having regard to his role in the alleged incident his sentence is also reduced to that which has already been undergone by him, subject to the provisions of Section 106 of the Code of Criminal Procedure. The appellant No.3 namely, Nemai Ghosh would execute a bond of Rs. 25,000/- (Rupees Twenty Five Thousand) only, with two sureties of like amount each, one of whom must be local to the satisfaction of the Learned Executive Magistrate, Suri for a period of two years. The Inspector-in-charge, Suri P.S. would monitor and

see that the said order is complied within a period of four weeks from the date of communication of this order. The appellant No.3 would meet with the Officer-in-charge, Suri Police Station once in a month for a period of two years.

The appellant Nos. 1, 2, 4 and 5 shall be released from custody if they are not wanted in any other case.

Accordingly, C.R.A. 400 of 2015 is disposed of with the sentence being modified as above.

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.)