**(2007) 07 CAL CK 0038**

**Calcutta High Court**

**Case No:** C.R.A. No. 162 of 1998

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| Titin Kar alias Tatan alias Sujay and Others | | APPELLANT |
| | Vs | |
| State of West Bengal | | RESPONDENT |

**Date of Decision:** July 19, 2007

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 114, 114(A), 145, 161
- Penal Code, 1860 (IPC) - Section 323, 376(2)(G), 379

**Citation:** (2007) CriLJ 268

**Hon'ble Judges:** Kishore Kumar Prasad, J; Girish Chandra Gupta, J

**Bench:** Division Bench

**Advocate:** Milon Mukherjee, Sandipan Ganguly and Rudradipta Nandy, for the Appellant;A. Goswami, Public Prosecutor, K.J. Ahmed and K. Moitra, for the Respondent

**Judgement**

Girish Chandra Gupta, J.

Titin Kar alias Tatan alias Sujay, Tarak Sarkar, Sreedam alias Sudam Dey, Subir Das, Ashok Das, Hari Ambuli, Nanigopal Das and Sanjib alias Sanjay Sil were charged u/s 376(G) of the Indian Penal Code by the learned Additional Session Judge, Second Court, Nadia. Hari Ambuli was charged in addition u/s 379 of the Indian Penal Code. Similarly Sanjib alias Sanjay Sil was charged, in addition thereto, u/s 323 of the Indian Penal Code. All the accused persons have been convicted by an order dated 29th May 1998 u/s 376(G) of the Indian Penal Code. Sanjib alias Sanjay Sil was also convicted u/s 323. By an order dated 30th May 1998 all the convicts were sentenced to suffer rigorous imprisonment for a period of 10 years. The convict Sanjib alias Sanjay Sil was sentenced in addition to pay fine of Rs. 1,000/-for the offence u/s 323 of the Indian Penal Code and in default to undergo simple imprisonment for further six months. The convicts have come up in appeal.

2. Briefly stated the case of the prosecution is as follows:

On 20th December 1990, in the night, at about 8.45 p.m., the prosecutrix, a married woman got down from a train at Taherpur and was proceeding towards her parent''s house at Birnagar Palit Para. She noticed a group of boys. Subir of Uttarpara was one of them. He called her out. When she proceeded towards Subir another boy covered her face and eyes with a wrapper. She was dragged into a field near Uttar Palit Para. Her face was uncovered. She was laid flatly on the cultivated land. Her blouse was torn. She had Rs. 300/- with her which was snatched. Titin Kar, first of all, raped her in spite of resistance. Rest of the accused persons followed Titin. Besides the accused persons 4/5 others also raped her. All of them were the residents of Uttar Palit Para. Sanjib had also assaulted her with a wooden stick and threatened her with dire consequences. One Bachhu Sarkar, son of Nirmal Sarkar had witnessed the incident. Bachhu escorted the prosecutrix home at about 2/ 2.30 a.m.

3. Many a points have been advanced for our consideration which we shall consider after we have examined as to how far has the prosecution been able to bring home the charges against the accused persons.

4. The prosecutrix, the P.W. 1, in her evidence has deposed that she had got down at Taherpur station at about 8.45 p.m. At abut 9 p.m. the incident happened. She was alone. She was going towards her father''s house at Palit Para. Near the house of her father Subir called out. When she went for him he tied her hands in her back and her mouth with a cloth and then she was dragged towards Uttarpara by Subir, Tatan, Ashok, Hari, Tarak, Nani and three or four others whom she could not identify. They took her in an open field and compelled her to lie down on the ground. Subir had forcibly torn her blouse and saya. Tatan was the first to undress her and then he raped her. Thereafter Ashok, Subir, Tarak and Sreedam raped her. Three other persons also raped her whom she could not identify. Before raping the prosecutrix, Subir had snatched Rs. 300/- which she had with her. On hearing the alarm raised by her, Bachhu and Biswajit had come to the spot. They accompanied her to her father''s house after the incident was over. Her mother was there in the house. She told the incident to her mother and to two other persons of the locality. As per their advice she went to Birnagar police outpost. From there she was sent to Ranaghat Police Station. At the police station she narrated the incident. A person by the name of Nirmal wrote down the complaint as per her narration which was signed by her which was marked exhibit'' 1'', The police thereafter took her to a doctor who examined her. The torn clothes were seized by the Investigating Officer. In her cross-examination on behalf of Nani, Tatan, Ashok and Hari she deposed that she tried to oppose the rape and she also shouted. She. also deposed in her cross-examination that she went to Birnagar Police outpost at about 1/2 a.m. and narrated the incident which was noted down by a police officer but that was not signed by her. She reached at Ranaghat Police Station in the morning at about

6.30./7 a.m. where her statement was written down by Nirmal Babu whom she did not know, she went to the Ranaghat Police Station alone. Ten to twelve persons had raped her.

5. She admitted that she had not mentioned the names of 10/12 persons for she did not know all of them. She also deposed that Subir tied her hands in the backside. There is no other significant cross-examination except that she in the near past had complained to have been raped by one Shri Milon Sarkar, an Advocate of the Ranaghat Court.

6. On behalf of the rest of the accused persons the aforesaid cross-examination was adopted and in further cross-examination she admitted that there was no injury on her body. She deposed that the place where the incident started is about 30 minutes walk from Taherpur Railway Station. Another significant thing which was elicited is that the prosecutrix had two brothers Charan and Ratan. Both of them were murdered.

7. P.W. 11 Shri Krishnapada Biswas, Officer-in-Charge of the Birnagar Police Outpost, under Ranaghat Police Station, was entrusted with the investigation in respect of the present case being P.S. Case No. 445/ 1990. From his evidence it appears that Biswanath Debnath the P.W. 4, B''acchu Sarkar the P.W. 6 were the eye-witnesses of the incident. However, these witnesses turned hostile. Nilima, the P.W. 9, the mother of the victim herself became hostile. The records reveal that in spite of repeated summons she did not come to give evidence and ultimately a warrant of arrest was issued on 8th November 1997. It is pursuant to the warrant of arrest that she came to give evidence and turned hostile. It appears from the evidence of P.W. 11 the Investigation Officer that he had seized saree, saya and blouse of the victim. He deposed that he had noticed that the saya/petticoat was smeared with semen. The seizure list was marked exhibit ''2''. He also deposed that the place of occurrence is the cultivated land of Biswanath Debnath which is about 800 cubits off from the village Uttar Palit Para and there is no dwelling house near the P.O. within 800 cubits. P.W. 5 Dr. D.S. Mishra examined the victim on 22nd December 1990. From his deposition the following important findings appear:
On 22-12-90 I examined one Mina Dey w/o. Sanat Dey and found following information:

Q. Whether she was raped or not.

Ans. Yes.

Q. Whether there is any mark of injury on her private parts?

A. Yes.

Q. Any other points.

Ans. One black mark over vulva and the left side swelling with ecchymosis over the left knee joint uterus normal size mobile inverted L.M.P. three days ago. Physically height 4''10'' weight 53 kg. teeth 16 + 15 breast developed axillary hair present genitals well developed pubic hair present vagina (illegible) admit two finger easily. Ecchymosis present.

8. There is no cross-examination as regards the aforesaid findings of Dr. D.S. Misra. In the cross-examination the following opinion of Dr. Misra was elicited.

There may be severe injury all over the body, breast, and back side and in private parts if the rape upon one woman caused by 7/8 persons. Yes, there should be lacerated injury over the labia majora and minora if forcible rape is committed. There is no external injury over breast, face mentioned which is usually found in case of gang rape. If a woman willfully intercoursed by 7/8 young men then vagina would be swollen.

9. P.W. 5, Dr. Misra examined Subir, Sreedam and Tarak and opined that they were capable of having sexual intercourse. P.W. 8, Dr. Sukumar Nath examined Ashok, Tatan, Hari and Nani and opined that these persons were also capable of having sexual intercourse.

10. Nirmal Kanti Biswas, P.W. 7 deposed that he had scribed the written complaint. In cross-examination he however stated that he had scribed the written complaint at 10 a.m. whereas the formal FIR appears to have been drawn in the police station at 7.45 a.m. But the P.W. 7 was not confronted with the formal FIR.

11. We therefore have evidence to show that-

a) on 20th December 1990 Tatan, Ashok, Subir, Tarak and Sreedarn forcibly raped the prosecutrix. Hari and Nani appear to have only assisted Subir, Tatan and Ashok in dragging the victim.

b) Semen smeared saya/petticoat was seized.

c) Dr. D.S. Misra, P.W. 5 found injury on the private parts of the prosecutrix.

d) The place of occurrence was 800 cubit from the village Uttar Palit Para. It was a cultivated land of Biswanath, P.W. 4 who turned hostile.

There was no dwelling house near the place of occurrence within 800 cubits.

e) Each of the accused persons was capable of having sexual intercourse.

12. We shall now notice the submissions made by Mr. Mukherjee, learned Advocate appearing for the appellants.

I) The charge is defective because a) the time has not been mentioned; b) it is in variance with the FIR and c) there is no such Section as 376(G) in the Indian Penal Code.

He submitted that there has been clear violation of law in framing the charge.

We have not been impressed by this submission for the simple reason that the accused persons had no difficulty in following that the charge was one u/s 376(2)(G). It is an error which has not prejudiced the accused persons in the least. The time of the incident has been stated in the FIR a copy of which was duly furnished to the accused persons. No significant variation was drawn to our attention between the charge and the FIR. We therefore are of the view that this point of Mr. Mukherjee is without any substance. We are fortified in our view based on the judgment of the Apex Court in the case of K. Sainarayan v. Sivram reported in 2005 (10) SCC 457.

II) Except for the FIR there is nothing against Sanjib, Nani and Hari. The prosecutrix in her deposition did not allege that these accused persons or any of them played any part.

This submission of Mr. Mukherjee is not wholly correct. Nani and Hari participated in dragging the victim to the lace of occurrence. It is true that there is no evidence connecting Sanjib with the crime except for his presence at the scene.

III) There was no light and there is nothing to establish that in the darkness there was any other means open to the prosecutrix to identify the accused persons.

It was not suggested to the prosecutrix that it was a pitch dark night nor is there any suggestion on the record to show that there was no light. The prosecutrix in her FIR has disclosed the names of the accused persons and she has repeated the names of the persons who raped her, during her evidence before the trial Court. She knew them well by their names. They were the persons of the same locality where her father''s house was situate.

We therefore are unable to accept this submission of Mr. Mukherjee.

IV) In the FIR the prosecutrix did not name the person who snatched her money. While in Court she alleged that Subir had done so. He further submitted that the evidence of P.W. 9, the mother of the victim is that the prosecutrix came home at 6.30 p.m. and made over the money to her. Therefore, the deposition about snatching of the money is wholly unfounded and goes to show that the entire case is a piece of concoction.

We are unable to give any credence to the evidence of P.W. 9 because from the very beginning she was reluctant to come to depose before the Court. She came after a warrant of arrest had been issued. She turned hostile. Therefore, her evidence cannot be taken into consideration for the purpose of discrediting the prosecutrix.

V) In the FIR it is alleged that the victim shouted whereupon Bachhu came but the mother of the victim who according to the FIR was made acquainted with the facts of the case did not talk about Bacchu.

Both Bacchu and the mother of the victim turned hostile.

Therefore we are unable to accept this submission.

VI) In the cross-examination the prosecutrix deposed that five of the accused persons and three unknown persons raped her whereas in the FIR she had alleged that 10/ 12 persons had raped and she had given 7 specific names in the FIR.

In her deposition the prosecutrix has stated that 5 of the accused persons raped her. Names of these 5 persons also appear in the FIR. Both in the FIR and in her deposition at the trial she has stated that some of the rapists she could not identify. Therefore, we are not prepared to disbelieve the prosecutrix.

VII) Absence of injury on the body of the victim according to Mr. Mukherjee would go to show that no such incident happened.

We are unable to accept this submission. It has been held in the case of Rafiq Vs. State of U.P., that presence or absence of injury is not decisive in a matter of sexual offence. The view expressed by their Lordship is as follows:

Counsel contended that there was absence of corroboration of the testimony of the prosecutrix, that there was absence of injuries on the person of the woman and so the conviction was unsustainable, tested on the touchstone of case-law. None of these submissions has any substance and we should, in the ordinary course, have desisted from making even a speaking order but counsel cited a decision of this Court in Pratap Misra v. State of Orissa and urged that absence of injuries on the person of the victim was fatal to the prosecution and that corroborative evidence was an imperative component of judicial credence in rape cases.

We do not agree. For one thing, Pratap Misra case laid down no inflexible axiom of law on either point. The facts and circumstances often vary from case to case, the crime situation and the myriad psychic factors, social conditions and people''s life-styles may fluctuate, and so, rules of prudence relevant in one fact situation may be inept in another. We cannot accept the argument that regardless of the specific circumstances of a crime and criminal milieu, some strands of probative reasoning which appealed to a Bench on one reported decision must mechanically be extended to other cases. Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not a matter of law, but a guidance of prudence under given circumstances. Indeed, from place to place, from age to age, from varying life-styles and behavioural complexes, inferences from a given set of facts, oral and circumstantial, may have to be drawn not with dead uniformity but realistic diversity lest rigidity in the shape of rule of law in this area be introduced through a new type of precedential tyranny. The same observation holds good regarding the presence or absence of injuries on the person of aggressor or the aggressed.

Reference can also be made to the judgment in the case Santosh Kumar Vs. State of M.P., .

VIII) According to Mr. Mukherjee the doctor by his own evidence demolished the case of a gang rape.

The doctor has not deposed any such thing which may demolish the case of gang rape. He has expressed his opinion that extensive injury may happen in the case of a forcible gang rape. But it is not his opinion that it is bound to happen. In the cross-examination the accused persons elicited the following view of the doctor "If a woman is wilfully intercoursed by 7/8 young men then Vagina would be swollen". This opinion of the doctor is a pointer to show that severe injury talked by him in the earlier sentences is not a must. The prosecutrix in her evidence has stated that she was forcibly raped. Section 114(A) of the Evidence Act provides that lack of consent shall be presumed in the following cases.

Presumption as to absence of consent in certain prosecutions for rape.--In a prosecution for rape under Clause(a) or Clause(b) or Clause(c) or Clause(d) or Clause(e) or Clause(g) of Sub-section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

IX) Mr. Mukherjee contended that the prosecutrix claims to have first gone to Birnagar Police Outpost. Her statement according to her was also recorded. He submitted why was then she required to go to Ranaghat Police Station has not been explained.

In our view this submission is without any merit altogether because this point was not raised in the cross-examination while the prosecutrix was in the box. Moreover her evidence is that she was sent to the P.S. by the officer present in the outpost. That is why she went there.

X) Mr. Mukherjee submitted that P.W. 7 Nirmal in cross-examination deposed that he scribed the complaint at 10 a.m. whereas the formal complaint shows that it was received at 7.45 a.m. He submitted that it goes to show that the entire case is false.

We are unable to accept this submission for the simple reason that attention of Nirmal was deliberately not drawn to the formal FIR appearing to have been received at 7.45 a.m. There is on the top of that a presumption u/s 114 of the Evidence Act that all official acts have been regularly performed. Reference in this regard can be made to the judgment in the case of State, Govt. of NCT of Delhi Vs. Sunil and Another, wherein the following view was expressed.

We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing

at least initial trust on the actions and the documents made by the police. At any rate, the Court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in Court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the Court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the Court has any good reason to suspect the trustfulness of such records of the police the Court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, not to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.

X) Hari was charged for snatching whereas the deposition is that Subir snatched the money. Therefore the prosecutrix cannot be believed. We are unable to draw the conclusion which Mr. Mukherjee wants us to conclude. Hari was charged with the offences whereas Subir is found to have perpetrated the same. The conclusion is that Hari has to be acquitted of that charge and the trial Court advisedly did that....

XI) The prosecutrix in her deposition talked about Biswajit but there is no reference of Biswajit in the FIR.

It is well settled that FIR need not contain minute details of the case. Reference in this regard can be made to the judgment in the case of Ravi Kumar Vs. State of Punjab, . In paragraph 15 the following view was expressed:

The first information report is a report giving information of the commission of a cognizable crime which may be made by the complainant or by any other person knowing about the commission of such an offence. It is intended to set the criminal law in motion. Any information relating to the commission of a cognizable offence is required to be reduced to writing by the officer in charge of the police station which has to be signed by the person giving it and the substance thereof is required to be entered in a book to be kept by such officer in such form as the State Government may prescribe in that behalf. The registration of the FIR empowers the officer-in-charge of the police station to commence investigation with respect to the crime reported to him. A copy of the FIR is required to be sent forthwith to the Magistrate empowered to take cognizance of such offence. After recording the FIR, the officer-in-charge of the police station is obliged to proceed in person or depute one of his subordinate officers not below such rank as the State Government may, by general or special order, prescribe in that behalf to proceed to the spot to

investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. It has been held time and again that the FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker u/s 161 of the Evidence Act, 1872 (in short "the Evidence Act") or to contradict him u/s 145 of that Act. It can neither be used as evidence against the maker at the trial if he himself becomes an accused nor to corroborate or contradict other witnesses. It is not the requirement of law that the minute details be recorded in the FIR lodged immediately after the occurrence. The fact of the state of mental agony of the person making the FIR who generally is the victim himself, if not dead, or the relations or associates of the deceased victim apparently under the shock of the occurrence reported has always to be kept in mind. The object of insisting upon lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed.

Moreover Biswajit was called as a witness but he turned hostile.

XI) Lastly Mr. Mukherjee submitted that the examination of the accused persons u/s 313 of the Code of Criminal Procedure is perfunctory and is in the form of a decision of the Court.

We are unable to accept this submission because the learned Judge has in the introductory question made it clear that these questions were raised on the basis of evidence of the witness examined.

13. We therefore do not think that there is any serious lapse in the examination u/s 313 of Cr. P.C. Nor is any prejudice shown to have been suffered. Reference in this regard can be made to the judgment in the case of Parsuram Pandey and Others Vs. The State of Bihar, wherein the following view was expressed.

It is imperative on the Court to record the statement u/s 313, Cr. P.C. of the accused persons so as to give opportunity to the accused persons to explain any incriminating circumstance proved by the prosecution. The duty cast on the Court cannot be taken lightly. However, we find that no argument has been advanced by the counsel for the appellants in the trial Court or before the High Court on the basis of improper recording of the statement u/s 313 of the Cr. P.C. In the present case, the counsel for the accused/appellant could not point out to us any prejudice being caused to the accused/appellants on account of the irregular, imperfect statement recorded u/s 313 of the Cr. P.C. That being the case, the accused are not entitled for any benefit for the lacuna in recording the statement of the accused u/s 313 of the Cr. P.C.

14. Mr. Mukherjee relied on a judgment in the case of Dilip and Another Vs. State of M.P., wherein it was held that the evidence of the prosecutrix could not be relied upon where the veracity of her evidence was doubtful and the narration of incident was contradicted by the statement of her aunt to whom she had narrated the incident as also by the medical evidence. We fail to see as to how has this judgment

any relevance so far as the case in hand is concerned. The conclusions arrived at by us on the basis of the evidence led by the prosecution has already been tabulated above and we are not doubting for a moment the veracity of the evidence of the prosecutrix in the main.

15. Mr. Mukherjee also relied on the judgment of AIR 2003 SC 2136 . Their Lordships in that case were of the view that there were many loose ends in the prosecution case and therefore the accused persons were entitled to benefit of doubt. Here in the present case there are no loose ends. We have already discussed the evidence and our conclusion on the basis thereof. We also have discussed the submissions made by Mr. Mukherjee. We are of the firm opinion that this judgment lends no assistance to the appellants.

16. Mr. Mukherjee also cited a judgment in the case Devinder Singh and Others Vs. State of Himachal Pradesh, for the proposition that where no injury was found on the body of the prosecutrix that would go to show that she did not put any resistance. In this judgment considering the facts and circumstances of the case Their Lordships held that it was not safe, to base conviction on the testimony of the prosecutrix. This judgment in our view has no manner of application for a) the FIR was lodged in that case after a longtime; b) thelabourers to whom the incident was narrated by the prosecutrix were not called as witnesses and c) the medical evidence adduced went to show that there was no injury on any part of the body. Each of these three factors, in the present case, is against the accused persons. In the present case FIR was lodged instantaneously. The eye-witnesses including the mother of the victim in whom the victim had confided were called as witnesses but they chose to turn hostile and the medical evidence adduced in the present case goes to show that there as injury in the private parts of the victim. Therefore this judgment in our view has no manner of application.

17. Next judgment cited by Mr. Mukherjee was in the case of State of Karnataka v. MPP Soopi reported in AIR 2004 SC 85 : 2004 Cri LJ 44. It was an appeal against an acquittal. Their Lordships in this case refused to interfere because there was gross delay in filing the FIR. There was no injury on the body of the victim and the evidence suggested that the victim raised alarm only after the accused has gone away. What weighed most with their Lordship was that no medical report as regards the examination of the victim was tendered. None of these factors is present in the case in hand. Therefore this judgment in our view has no manner of application.

18. Lastly Mr. Mukherjee cited a judgment in the case of Yltchaiah v. State of A.P. reported in 2006 (9) SCC 713. This was a case wherein the prosecutrix was aged about 8 years and after; the alleged rape she was medically examined and no sign of any rape. was found. We fail to understand what relevance does this case have to the one in the hand.

19. Mr. Goswami, the learned Public Prosecutor referred to the first explanation to Sub-section (2) of Section 376 which reads as follows:

Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

20. He submitted that whether 5 of the accused persons raped the victim or one of them raped is not material. All the accused persons shall be deemed to have committed the rape.

21. We however are not prepared to accept this submission so broadly laid. The section itself makes it clear that in order to attract the explaination there has to be a group of persons acting in furtherance of their common intention. There is evidence before us to show that the persons who wanted to rape the victim accomplished their desire. The victim had already been overpowered. Three of the accused persons namely Hari Ambuli, Nanigopal and Sanjib alias Sanjay who were present but did not participate in the crime only goes to show that they did not have a common design nor were they present in furtherance of the common intention. In the case of Ashok Kumar Vs. State of Haryana, it was held that "it is not enough to have the same intention independently of each of the offenders". In the case of Pardeep Kumar Vs. Union Administration, Chandigarh, the appellant who according to the prosecutrix had not defiled her and there was nothing to show common intention shared by him their Lordship set aside the conviction.

22. In the result the appeal partly succeeds. The conviction as well as sentences imposed upon the appellants namely Hari Ambuli, Nanigopal Das and Sanjib alias Sanjay Sil are set aside and they are acquitted of the charges levelled against them, They are discharged from liability of the bail bonds. The rest of the appellants who are on bail are directed to surrender before the learned trial Court within two weeks in order to serve out the rest of the sentences.

23. The conviction and sentence passed by the learned trial Court against the rest five appellants namely Titin Kar alias Tatan alias Sujoy, Tarak Sarkar, Sridam alias Dudam Dey, Subir Das, Ashoke Dey u/s 376(2)(G) of I.P.C. are maintained. Their bail bonds stand cancelled. Through their counsel, they are directed to surrender before the learned trial Court within two weeks in order to serve out the rest of their sentence.

24. On failure to comply with the direction as aforesaid, the learned trial Court shall take appropriate legal action against these appellants and their sureties under intimation to this Court.

25. Lower Court Records with a copy of this judgment be transmitted forthwith to the learned trial Court for information and necessary action. Urgent xerox certified copy of this judgment, if applied for, be supplied to the learned Counsel for the

parties on compliance of all formalities.

Kishore Kumar Prasad, J.

26. I agree.