Present:
Mr. Justice Borhanuddin
and
Mr. Justice Md. Ruhul Quddus

Criminal Appeal No.2567 of 2000

Md. Bablu and another

…Appellants

-Versus-

The State

…Respondent

Mr. Probir Neogi with
Mr. Suvra Chokravarty, Advocates
…for the appellants

Mr. Md. Monwar Hossain, A.A.G.
...for the respondent

Judgment on 24-25.7.2011

Md. Ruhul Quddus, J:

This appeal has been heard analogously with Criminal Appeal No.2565 of 2000 in pursuance of order dated 23.2.2006. Since the first information reports, charge sheets, evidences and judgments giving rise to the appeals are separate, it would be expedient to dispose of the same by two separate judgments.

The present Criminal Appeal No.2567 of 2000 is directed against judgment and order dated 10.9.2000 passed by the Special Tribunal No.3, Sirajgonj in Special Tribunal Case No.76 of 1995 convicting the appellants under sections 19A and 19 (f) of the Arms Act and sentencing each of them thereunder to suffer rigorous imprisonment for fourteen years with a fine of Taka five thousand for each in default to suffer rigorous imprisonment for another one year.

Prosecution case, in brief, is that the informant S. M. Jamilur Rahman (P.W.1), an Inspector of the Detective Branch of Police at Sirajgonj had received secret information on 27.7.1995 that appellant No.1, an accused in a case of dacoity with murder was roaming around Bhadraghat Bazar within Kamarkhand police station. On obtaining approval from his Superior Officer, he (informant) along with Sub-Inspector Abdur Rahman (P.W.3), Constable Balai Chandra (P.W.2), Constable Golam Mostofa (P.W.4) and Constable Sarwar instantly raided Bhadraghat Bazar and arrested him (appellant No.1) at 21.00 hours. They brought him to Sirajgonj Police Station and on interrogation he disclosed that he kept illegal arms and explosive with one Rubel (appellant No.2) at village Raghunathpur. The informant along with M. A. Kafhi, Officer-in-charge of Sirajgonj Police Station (P.W.6), Satya Ranjan Bhadra, a Sub-Inspector of Police (P.W.7), Sub-Inspector Asaduzzaman (P.W.8) and some other Police Constables namely, Aynul Haque, Jashim, Abu Musa and Serajul Islam raided the house of appellant No.2 at village Raghunathpur at 2 o'clock in the night following 27.7.1995. The police team arrested appellant No.2, recovered a country-made pipe gun with a cartridge, a long sword and bomb wrapped with black plastic tape from his bed-room and prepared seizure lists in presence of two local witnesses namely, Amir Hossain (P.W.9) and Mazid Sheikh (P.W.10).

The informant along with the forces produced arrested appellant No.2 to Sirajgonj Police Station with the arms and explosive recovered and lodged two separate *ejahars* including the present one against the appellants for keeping illegal arms, which gave raise to Sirajgonj Police Station Case No.15 dated

28.7.1995 under section 19A and 19(f) of the Arms Act. The police, after investigation submitted charge sheet on 26.9.1995 under the said sections of law against them. During investigation, appellant No.2 made a statement under section 164 of the Code of Criminal Procedure before the Magistrate of first class, Sirajgonj (Mr. Jarjesh Miah, P.W.5).

The case after being ready for trial, was sent to the Special Tribunal No.1, Sirajgonj wherein it was registered as Special Tribunal Case No.76 of 1995. Thereafter, it was sent to the Special Tribunal No.3, Sirajgonj for hearing and disposal. The learned Judge of the Tribunal framed charge against the appellants under the said sections of law by his order dated 24.9.1997, to which they pleaded not guilty and claimed for trial.

The prosecution in order to prove its case examined as many as ten witnesses out of thirteen, who were named as such in the charge sheet. The defense case, as it transpires from the trend of cross-examination and suggestion put to the prosecution witnesses, is that the appellants are innocents, and no arms and explosive were recovered from the house of appellant No.2. After closing the prosecution, the trial Judge examined the appellants under section 342 of the Code of Criminal Procedure, to which they reiterated their innocence. In addition appellant No.2 furnished a statement stating that because of physical torture he had to make the statement under section 164 of the Code and that he did not make it voluntarily. He did not know appellant No.1 and that the statement recorded were not read over to him. No arms and explosive were recovered from his possession.

After conclusion of trial, the learned Judge found the appellants guilty of charge under sections 19A and 19(f) of the Arms Act and accordingly pronounced his judgment and order of conviction and sentence on 10.9.2000 as aforesaid. The appellants preferred the instant criminal appeal against the said judgment and order of conviction and sentence and subsequently obtained bail from this Court.

Mr. Probir Neogi, learned Advocate appearing for the appellants has taken us through the evidence on records, statement of appellant No.2 made under section 342 of the Code of Criminal Procedure and the impugned judgment. At the very outset, he submits that the learned Judge of the Special Tribunal appears to be prejudiced and bias against the appellants inasmuch as before arriving at any finding of guilt, he mentioned the name of appellant No.1 with the adjectives ‘wanted terrorist’, ‘accused in a case of dacoity with murder’ etc. The learned Judge considered his previous ‘bad character’ which was not relevant in view of section 54 of the Evidence Act. He further submits that in view of section 25 of the said Act, the statement allegedly made by appellant No.1 at Sirajgonj Police Station immediately after securing his arrest was not admissible in evidence.

Mr. Neogi also submits that the local seizure list witnesses namely, P.Ws.9 and 10 did not support the prosecution case and clearly stated that they had singed on blank paper and did not see recovery of any arms. In such a case the alleged recovery of arms and explosive from the appellants’ control and possession was not proved beyond reasonable doubt. The impugned judgment and order of conviction has been passed only on the basis of the evidence of

police personnel having interest in the result of prosecution case. Moreover, the statement of appellant No.2 made under section 342 of the Code of Criminal Procedure was not considered, which caused miscarriage of justice. The confessional statement having not been corroborated by any other independent witness cannot form the basis of conviction and therefore, the impugned judgment and order is liable to be set aside and the appellants are entitled to be acquitted.

Mr. Neogi refers to the case of Mahidur alias Mahmudul Islam and others Vs. The State reported in (1983) III BLD 164 on his submission whether appellant No.1 can be sentenced on the basis of confessional statement of appellant No.2; Abdul Aziz and others Vs. The State in 33 DLR 402 on relevancy of previous bad character of an accused; Muhammad Bakhsh Vs. The State in 9 DLR (SC) 11 on the point whether the statement of appellant No.1 made before the police men was admissible in evidence; and Manu Miah Vs. The State in 54 DLR (AD) 60 on legal consequence of not examining the statement of an accused made under section 342 of the Code of Criminal Procedure.

On the other hand, Mr. Monwar Hossain, learned Assistant Attorney General appearing for the State submits that following the information provided by appellant No.1, a police team including two responsible police officers raided the house of occurrence within the shortest possible time and recovered the arms and explosive from direct control and possession of appellant No.2. Therefore, in view of section 27 of the Evidence Act, the information given by appellant No.1 so far it relates to recovery of the arms and explosive is admissible in

evidence. The evidence of P.W.1 having been corroborated by those of P.Ws.2-8 and those of P.Ws.9-10 in part, the learned Judge of the Special Tribunal rightly convicted and sentenced the appellants.

In order to appreciate the submissions of the learned Advocates, let us examine the evidence on records and other materials. P.W.1 S. M. Jamilur Rahman, the Informant and Investigating Officer stated that at the relevant time he was posted to the Detective Branch of Police at Sirajgonj as an Inspector. He received secret information on 27.7.1995 that a wanted terrorist named Md. Babul (appellant No.1) was roaming around the Bhadraghat Bazar within Kamarkhand Police Station. On obtaining approval from Superior authority, he along with police forces raided Bhadraghat Bazar, arrested him (appellant No.1) at about 21.00 hours and took him to Sirajgonj Police Station. On interrogation, he disclosed that the arms and explosive used by him were kept with one Rubel (appellant No.2) at village Raghunathpur. He along with the Officer-in-charge, Sirajgonj Police Station and some other police personnel rushed to village Raghunathpur at 2 o'clock in the night, surrounded the house of appellant No.2, arrested him and recovered a country-made pipe gun with a cartridge, sword and bomb wrapped with black plastic tape from his bed-room in presence of the local witnesses. He had seized the said arms and explosive, brought appellant No.2 to the police station and lodged the *ejahar* to that effect. He also proved the *ejahar*, seizure list and his signatures thereon. As an Investigating Officer he further deposed that after assignment of investigation, he had visited the place of occurrence and prepared the sketch map with index. He examined the witnesses under section 161 of the Code of Criminal Procedure. During investigation

appellant No.2 made statement under section 164 of the Code. In cross-examination he stated that in both the cases he was the Informant and Investigating Officer. He denied the defense suggestions that because of inhuman torture, appellant No.2 was compelled to make statement under section 164 of the Code, or that no arms and explosive were recovered from his house.

P.W.2 Balai Chandra, a Constable of Police and member of raiding party stated that in 1995 he was posted to the Detective Branch of Police at Sirajgonj. He accompanied Inspector Jamilur Rahman in arresting appellant No.1 from Bhadraghat Bazar. In his presence appellant No.1 disclosed that the arms were kept with appellant No.2. Following his information, the police team raided the house of appellant No.2 and recovered the gun with a cartridge, sword and bomb from his house and brought him to the police station with the arms and explosive recovered. In cross-examination he stated that when they had raided the house of appellant No.2, no Chairman or local elite was there, but at the time of recovery, they had called the villagers to the house of occurrence. He denied the defense suggestion that no local seizure list witness was called there.

P.W.3 Abdur Rahman, a Sub-Inspector of Police and member of raiding party stated that at the relevant time he was posted to Sirajgonj. On receipt of secret information, he went to Bhadraghat Bazar with Inspector Jamilur Rahman, arrested appellant No.1 and brought him to Sirajgonj Police Station. According to his (appellant No.1’s) statement, they rushed to village Raghunathpur, raided the house of appellant No.2 and recovered a country-made pipe gun loaded with a cartridge, a live bomb and sword. They seized the said

arms and explosive in presence of the witnesses. He proved the pipe gun and sword as material exhibit Nos.I and II.

P.W.4 Golam Mustafa, a Constable of Police stated that at the relevant time he was posted to the Detective Branch. He accompanied Inspector Jamilur Rahman in arresting appellant No.1 from Bhadraghat Bazar within Kamarkhand Police Station on 27.7.1995. Following his (appellant No.1's) statement they raided the house of appellant No.2 at village Raghunathpur and recovered a country-made gun, sword and bomb. He identified the gun and sword produced before the Court.

P.W.5 Jarjesh Mia, the Magistrate of first class stated that he had recorded the statement of appellant No.2 under section 164 of the Code of Criminal Procedure on 3.8.1995. He proved the confessional statement and his signatures thereon. In cross-examination he stated that appellant No.2 was allowed to think for three hours before recording the statement. He denied the defense suggestion that appellant No.2 did not voluntarily make the statement.

P.W.6 M. A. Kafi, the then Officer-in-charge, Sirajgonj Police Station and a member of raiding party stated that Inspector Jamilur Rahman had arrested appellant No.1 from Bhadraghat Bazar at about 9 o'clock in the night following 27.7.1995 and brought him to the police station. On interrogation he (appellant No.1) disclosed that the arms and bomb used by him were kept with appellant No.2 at village Raghunathpur. Following his (appellant No.1's) statement Inspector Jamilur Rahman accompanied by him and some other police men raided the house of appellant No.2 at 2 a.m. on 28.7.1995. They arrested appellant No.2, recovered a country-made pipe gun with a live cartridge, sword

and bomb wrapped with black plastic tape from his bed-room in presence of the witnesses. On such recovery, Inspector Jamilur Rahman made seizure lists. Later on, the bomb was defused under order of the Magistrate. He identified the pipe gun, cartridge and sword produced before the Court. He further stated that Inspector Jamilur Rahman as informant had lodged the *ejahar*, which he endorsed and filled up the form of first information report. He proved his endorsement on the *ejahar*, the form of first information report and his signature thereon. In cross-examination he stated that out of self same occurrence two cases namely Sirajgonj Police Station Case Nos.15 and 16 were lodged. He himself was present at the time of recovery of the arms and explosive and subsequently made statement under section 161 of the Code of Criminal Procedure to the Investigating Officer. He denied the defense suggestions that appellant No.1 did not make any statement to the police or that the police team did not raid the house of appellant No.2.

P.W.7 Satya Ranjan Bhadra stated that at the relevant time he was posted to Sirajgonj Police Station as a Sub-Inspector. In the night following 27.7.1995 Inspector Jamilur Rahman came to police station along with arrested appellant No.1, who disclosed that his arms were kept in the house of appellant No.2. Inspector Jamilur Rahman made requisition for police forces and after observing necessary formalities, they rushed to village Raghunathpur, raided the house of appellant No.2 in presence of two witnesses and recovered a country-made pipe gun with a cartridge, sword and cocktail wrapped with black tape. Inspector Jamilur Rahman prepared two sets of seizure lists, took signatures of the local witnesses thereon and they came back to the police station. He identified the

appellants standing on dock and also identified the arms produced before the Court.

P.W.8 Asaduzzaman, a Sub-Inspector of Police and member of raiding party stated that on 27.7.1995 Inspector Jamilur Rahman came to the police station along with arrested appellant No.1 and made a requisition for police forces to raid the house of appellant No.2. The police team including him and the Officer-in-charge of the Police Station M. A. Kafi, Sub-Inspector Satya Ranjan Bhadra and some other police men rushed to the house of appellant No.2 at village Raghunathpur. They searched the house in presence of two local witnesses and recovered a country-made pipe gun with a cartridge, sword and cocktail wrapped with plastic tape from his bed-room. Inspector Jamilur Rahman prepared the seizure lists in presence of the witnesses. They came back to police station along with the arrested appellants and the arms and explosive recovered. He identified the appellants standing on dock and the arms produced before the Court. He denied the defense suggestion that no arms were recovered from the house of appellant No.2.

P.W.9 Amir Hossain, a local seizure list witness stated that he knew the appellants. One of them was Rubel and another was Babul. Although he proved the seizure list and his signature thereon, stated that in the night of occurrence the police brought the arrested appellants to their village and took his signature on blank paper. He did not see any recovery. At this stage he was declared hostile and cross-examined by the prosecution. In cross-examination he denied the prosecution suggestion that in the night of occurrence the police raided the

house of appellant No.2 in his presence. He, however, stated that appellant No.2 was a son-in-law at their village and was a friend to appellant No.1.

P.W.10 Mazid Sheikh, another seizure list witness stated that he also knew the appellants. He put his thumb impression on the seizure list, while Amir Hossain (P.W.9) gave his signature. It was at about 2 o'clock in the night, when the Police Inspector brought them (appellants) into his room, asked him to sign the seizure list and took his thumb impression on a blank paper. He did not see any arms. In cross-examination by the prosecution, he stated that in the night of occurrence he was in his house. At about 2 o'clock, he waked up as the Inspector of Police had called him. He denied the suggestions that the police along with him went to the house of appellant No.2 and that the arms and explosive were recovered from his house. He further stated that appellant No.2 was a son-in-law at their village and used to call him (P.W.10) as like his elder brother.

We have gone through the decisions cited by the learned Advocate for the appellants. In the case of Mahidur alias Mahmudul Islam and others, the High Court Division allowed an appeal on setting aside a judgment and order of conviction under sections 395 and 397 of the Penal Code. In doing so, their lordships observed that *"the only other evidence of the prosecution side to prove the involvements of the accused in the dacoity were the confessional statements of the accused. But most unfortunately these confessional statements were not legally proved nor marked as Ext. … ."* In the said case the confessional statements were not legally proved, the evidence of the prosecution witnesses were contradictory and there was departure in evidence of the informant from

his statement made in the first information report, the dacoits were not recognized by the witnesses, the articles robbed away were not placed in T.I Parade nor those were identified by any of the witnesses. But in the present case the Magistrate proved the confessional statement and it was marked as Exhibit-2, the evidence of the informant is consistent with the first information report and there is no contradiction between the prosecution witnesses, the members of the raiding party consistently deposed in support of the recovery of arms, those arms were produced before the Court and identified by the witnesses.

In the case of Abdul Aziz and others, five persons were convicted under sections 302/34 of the Penal Code read with section 11(a) of the Presidents Order No.8 of 1972. On appeal they were acquitted by the High Court Division mainly on the ground that the prosecution had failed to prove the case beyond reasonable doubt. In assessing evidence of some hearsay witnesses, who deposed on ‘bad character’ of the appellants in that case, their lordships observed that evidence of bad character was not admissible in evidence in view of section 54 of the Evidence Act. In the present case it does not appear that the appellants were convicted on the basis of their ‘bad character’. The trial Judge used some adjectives against the name of appellant No.1 with reference to the *ejahar* and depositions of some prosecution witnesses. It does mean that he reproduced the relevant portion of the *ejahar* as well as the depositions of the respective witnesses. He himself did not use those adjectives against appellant No.1 in his discussion and concluding portion of the judgment. Therefore, the submissions of the learned Advocate that the learned Judge was prejudiced and

bias against appellant No.1, and while convicting him, considered his 'bad character' are not correct.

In the case of Muhammad Bakhsh the Supreme Court altered the appellant's conviction from section 302 to 304 (part II) of the Penal Code and reduced his sentence from death to seven years imprisonment on the reason:

> *" 8. … The question, however, is whether the appellant should have been convicted of murder or only of culpable homicide. It is admitted by the prosecution that the deceased attempted to carry away one of the appellant's sheep and that there was a scuffle between him and the appellant after the sheep had been dropped by the deceased. There is no direct evidence of what happened except the appellant's own oral statement made to Muhammad Hayat to the effect that the deceased had taken a sheep and that he had rescued it from him and given him hatchet blows by which he died. Thus on his statement the appellant had clearly (invoked) not only the right of private defense of property but also of defending his person against a possible attack by the thief. He undoubtedly caused a large number of injuries but several of them were on the arms and hands which show that the man must have engaged in a fight and none of the injuries with the possible exception of one, was grievous. It cannot, therefore, be held either that the killing was pre-meditated or that the injuries were caused with the primary intention of causing the death irrespective of any attempt to defend property or person."*

In the present case the conviction is based on direct evidence of P.Ws.1-8 and the confessional statement made by appellant No.2 has been proved by the Magistrate (P.W.5). Therefore, the above cited cases are distinguishable.

In the case of State Vs. Manu Miah and others, the Appellate Division dismissed a Criminal Petition for Leave to Appeal filed against a judgment of the High Court Division allowing an appeal on setting aside a judgment and order of conviction and sentence under sections 302/201/34 of the Penal Code. In affirming the impugned judgment, their lordships of the Appellate Division observed:

> "*10. The Court below also found that the examination of the accused under section 342 CrPC have been perfunctory which has seriously prejudiced the accused as incriminating evidence or circumstances sought to be proved against the accused was not put to the accused during examination under section 342 CrPC causing gross miscarriage of justice....*"

In the present case the statement of appellant No.2 made under section 342 of the Code of Criminal Procedure has not been considered. There is no reason to disagree with Mr. Neogi that non-consideration of statement under section 342 of the Code causes miscarriage of justice. Since the entire records are available before us, this Court sitting in appellate jurisdiction is competent to consider the statement of appellant No.2. It appears from the record that his (appellant No.2's) confessional statement was recorded on 3.8.1995 and his statement under section 342 of the Code was furnished on 27.8.2000. He was completely silent for nearly five years after recording of the confessional statement. During this long period he did not retract his confessional statement or take any objection thereto in any manner. It further appears that in the confessional statement, appellant No.2 put thumb impression, but in the statement under section 342 of the Code he put signature. The manner of his

signature indicates him to be a half-literate person. Although his signature is identified by his learned Advocate Kalyanee Majumder, there is no endorsement or explanation whether the statement was typed at his dictation, or was read over to him. In such a position, question arises whether this statement can be treated to have been furnished by appellant No.2. Even if, it was furnished by him, cannot be believed in view of his long silence over the confessional statement for near about five years.

From close reading of the evidence of P.Ws.1-4 it appears that on 27.7.1995 at about 9 p.m. appellant No.1 was arrested from Bhadraghat Bazar within Kamarkhand Police Station. He was brought to Sirajgonj Police Station, wherein he disclosed that he kept his used arms and explosive with appellant No.2 at village Raghunathpur. The evidence of P.Ws.1-4 and 6-8 proved that following the statement of appellant No.1, they raided the house of appellant No.2 at village Raghunathpur and recovered a country-made pipe gun loaded with a live cartridge, a thirty-one inches long sword and bomb wrapped with black plastic tape from his bed-room at about 2 o’clock in the night following 27.7.1995. P.W.5, the Magistrate of first class proved the confessional statement made before him by appellant No.2. In cross-examination P.W.5 asserted that the statement was made voluntarily. Although P.Ws.9 and 10 proved their respective signature and thump impression on the seizure list, stated they did not see recovery of any arms and put their respective signature and thumb impression on a blank paper. P.W.9 also proved the seizure list. If he had signed on a blank paper, how he proved the seizure list. It is not believable that P.Ws.9 and 10 without seeing any arms would sign on blank paper. This is not their case

that the police compelled them to sign on blank paper on threat or pressure, or that the appellants had any sort of enmity with police. In such a position, the depositions of P.Ws.9 and 10 are not believable to the effect that they did not see any arms or signed on blank paper.It is our common experience in most of the cases of illegal arms that the local seizure list witnesses do not support the prosecution case and say that they did not see any recovery and put signature on blank paper. In the social context of deteriorated law and order situation, the innocent citizens do not dare to speak against the arms-holders because of fear of life and honour. We must consider this social reality in assessment of evidence in criminal cases.

The evidence of police personnel cannot be discarded and disbelieved only because they are police men or members of raiding party. Their depositions on oath are also evidence within the scope of section 3 of the Evidence Act and can form the basis of conviction if they appear to be disinterested and their evidence are reliable and consistent. This view lends support from the cases of Mohinuddin Vs. State reported in 61 DLR 35, Kashem Vs. State in 54 DLR 212, Billal Miah Vs. State in 9 MLR 429, Rana Madbar and others Vs. The State in 51 DLR 499 and Abdul Razzak Talukder Vs. State in 51 DLR 83.

In view of section 27 of the Evidence Act, information received from an accused in police custody, so far it relates to the fact thereby discovered, may be proved. We find the cases of Bashir Ali Vs. State reported in 45 DLR 63; Babulal Vs. Neharilal AIR (33) Nagpur 120 (DB), Muhammad Siddiqur Rahman Vs. State in BLD 1987 (AD) 93, wherein statements of accused leading to recovery of incriminating articles have been held admissible in evidence.

Therefore we do not accept the submission of Mr. Neogi that the statement made by appellant No.1 at Sirajganj Police Station was not admissible in evidence.

In the present case there are some small discrepancies in the evidence of P.Ws.1-4 and 6-8 such as some of them stated in cross-examination that while they raided the house of appellant No.2, his wife and child were present there, but some of them stated they were not. Some of the witnesses told that there were 2/3 rooms in the house of occurrence, while some of them could not make any reply on that particular point. It is to be kept in mind that the depositions of the prosecution witnesses were recorded nearly about five years after the alleged occurrence. Therefore, with the passage of time some of the side-events may be erased from human memory. But all the said prosecution witnesses corroborated each other in material particulars that appellant No.1 was arrested at about 9 p.m on 27.7.1995 and was produced to Sirajganj Police Station, where he gave statement regarding keeping of his arms and explosive with appellant No.2, following his statement a police team raided his (appellant No.2's) house at village Raghunathpur at about 2 o'clock in the following night and they recovered a country-made pipe gun loaded with a live cartridge, a long sword and bomb wrapped with black plastic tape from his bed-room. All of the prosecution witnesses were exhaustively cross-examined but the credibility of their evidence could not be shaken and there is nothing on records to disbelieve them.

The evidence of P.W.5 read with exhibit-2 series show that appellant No.2 was given sufficient time to think before recording of the statement under section 164 of the Code of Criminal Procedure and that the statement was

recorded in accordance with law. In his cross-examination P.W.5 asserted that appellant No.2 had voluntarily made his confessional statement. In such a case we cannot disbelieve the confessional statement only because it was recorded after keeping appellant No.2 in five days remand. Moreover, the possession of illegal arms as confessed by appellant No.2 has been corroborated by six police witnesses including two officers. We find no reason to disbelieve them either.

Under the above facts and circumstances, we can conclude that on the date and time of occurrence, the arms and explosive were recovered from the house of appellant No.2 following the statement made by appellant No.1. The learned Judge of the Special Tribunal rightly convicted the appellants under sections 19 A and 19 (f) of the Arms Act. We are, however, inclined to commute the sentence imposed upon the appellants considering the facts and circumstances of the case.

In the result, the appeal is dismissed with modification. The sentence imposed upon the appellants is commuted from fourteen to ten years and the period of their imprisonment in custody during trial will be deducted from their sentence. The appellants are directed to surrender to their bail bonds and serve out the remaining sentence.

Send down the lower Court records.

Borhanuddin, J:

I agree.