

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE SANJIB BANERJEE**
AND
The Hon'ble **JUSTICE SUVRA GHOSH**

CRA 337 of 2006
With
CRAN 3530 of 2018

Patit Paban Halder & Anr.

Vs.

State of West Bengal

For the Appellants: Mr. Amarta Ghose, Adv.,
Mr. Anirban Tarafder, Adv.,
Ms. Somdhuti Parekh, Adv.,
Ms. Rimpa Rajpal, Adv.

For the State: Mr. Nequive Ahmed, Adv.

Heard on: 17.06.2019.

Date: 21.06.2019.

SUVRA GHOSH, J. :-

1. The appeal is directed against a judgment of conviction and order of sentence passed by the Learned Additional District & Sessions Judge, Fast Track Court, Jhargram, Paschim Mednipur on 17-03-2006 in Sessions Trial number 21/October/2005. By the said judgment, the Learned Trial Court convicted the appellants for offences punishable

u/s 121A/122/124A of the Penal Code, Section 25(a)/35 of the Arms Act and Section 4/5 of the Explosive Substances Act.

2. Mahakash Choudhury, S.I of Police, Belpahari Police Station lodged a written complaint before the officer in charge of the Police Station on 23-05-2005 to the effect that on 23-05-2005 at about 13:30 hrs, Pradeep Kumar Dutta, O.C Belpahari P.S received telephonic information through S.I Arijit Das Gupta that Prasanta Kumar Das and Jishu Ray Choudhury who were wanted in a case under Belpahari Police Station were arrested and during interrogation, both the accused persons confessed that on 23-05-2005 at around 22:00 hrs, they were scheduled to attend a meeting to be held at village Tamajuri under P.S. Belpahari with squad members of CPI Maobaadis from various corners. The O.C received further information that the Maobaadis carrying arms, ammunition and explosive material, were loitering at Tamajuri and Simulpal side to prepare for the meeting. The local people were also instructed to attend the meeting at around 21:00 hrs. The O.C recorded such information by a G.D. and on his instruction, the complainant, accompanied by force, reached village Tamajuri at around 21:45 hrs on 23-05-2005. The O.C left for Simulpal with force to work out the information.
3. On arriving at the spot, the complainant noticed an assembly of 30/40 persons in front of Tamajuri Upa Sasthya Kendra which was

about 100 yards west to the metal road stretch from Belpahari to Bashpahari, and heard seditious lectures being delivered. The assembly was sitting on the ground and 5/6 members armed with firearms were guarding the location. The complainant and his force surrounded the area from all sides but, upon their presence being detected, the crowd started fleeing in different directions. Upon chasing the crowd, Sushil Ray and Patit Paban Haldar could be apprehended from the spot and folio bags containing seditious leaflets and articles were recovered from their possession. Local people came forward and named a few persons amongst others who forced the villagers to attend the meeting at gun-point. The two apprehended accused persons also spoke in tune with the local villagers.

4. The complaint was registered as Belpahari P.S. case number 28/05 dated 23-05-2005.
5. The charge-sheet was submitted against the appellants after completion of investigation and charges were framed against them u/s 121A/122/124A of the Penal Code, Section 25(a)/35 of the Arms Act and Section 4/5 of the Explosive Substances Act. The appellants pleaded not guilty to the charges and claimed to be tried. Trial of the case was set in motion and upon examination of 23 witnesses by the prosecution, examination of the appellants u/s 313 of the Code and upon consideration of the entire material on record as well as

arguments canvassed by the prosecution and the appellants, learned Trial Court, by the impugned judgment and order, convicted the appellants of the charges levelled against them and sentenced them accordingly.

6. Being aggrieved by and dissatisfied with the said judgment, the appellants have preferred the present appeal, assailing the impugned judgment and seeking an order of acquittal in their favour.
7. Learned advocate for the appellants, while challenging the impugned judgment, has taken us through the evidence on record and has drawn our attention to the perceived contradictions and discrepancies therein.
8. According to the evidence of PW-1, who is the de facto complaint, Sushil Ray and Patit Paban Haldar were arrested on 23-05-2005 from the place of occurrence. One folio bag containing one torch light, two leaflets and one train ticket was seized from the possession of Sushil Ray and another folio bag containing two leaflets was seized from Patit Paban Haldar. A 'hajak' (lantern) and three folio bags containing leaflets were also seized from the spot and both these appellants appear to have signed the seizure-list prepared at the place of occurrence. No explosive substance was recovered from the place of occurrence and no fire fight was detected.

9. Appellant Santosh Debnath was arrested subsequently but no incriminating article was found in his possession or in his house. Some ornaments, photographs, cash and a pass-book were seized from a house in Hindmotor allegedly rented by Santosh Debnath.

10. According to this witness, Patit Paban Haldar was being addressed by his name at the meeting which is highly improbable. The witness stated that the police personnel divided themselves into three groups, walked some distance on foot after leaving their vehicle at a safe distance and crawled for about thirty minutes. But such averment did not find place in the written complaint. He also stated that he along with his force waited on a heap and tried to hear the conversation in the meeting. He claimed to have split into three groups and surrounded the place of occurrence on three sides. It is strange to note the gathering was clearly visible and the conversation in the meeting clearly audible to the police whereas the alleged Maoists' view of the police was obstructed. Even after noticing the police, they did not attempt to challenge/confront them despite being armed.

11. PW-2 Sastipada Jharia stated that the meeting was being conducted near Upa Sasthya Kendra of Tamajuri. He along with his team members divided themselves into three groups, proceeded towards the place crawling and hid in the lowland of the paddy field about twenty

five-thirty metres away from the place of occurrence. He was not a member of the group which arrested the accused persons.

12. The evidence of many of the witnesses reveals that the date of occurrence was Buddha Purnima and therefore a full moon night. PW-2 referred to the gathering as 'guerilla bahini' and added that the gathering comprised ladies amongst others.
13. PW-3 Robin Kumar Mukherjee said that they were waiting in a jungle and on noticing a ray of light, crawled towards the source. This witness apprehended Sushil Roy and also put signature in the seizure-list prepared on the same date. PW-3 claimed that the seizure-list was prepared at the place of occurrence whereas PW-1 and PW-2 said that it was prepared at the police station.
14. PW-4 Rajen Bauri was informed about a meeting of Maobaadis at Tamajuri and was asked to go there. According to him, the police party left for Tamajuri at about 6:30/6:40 pm, left their vehicle beside the Bholabeda range office and proceeded towards Tamajuri on foot, walking for forty-five minutes with halts in between. They found the meeting to be held at a vacant place by Maobaadi guerillas who were uttering the names of some leaders and urging the crowd to join their group. According to this witness, he along with Jharia Babu and one IRB constable chased the persons for half a kilometre but failed to nab

them. He saw no woman in the group. His version is that the group started running towards the jungle. But PW-3 stated that the police team chased the group from the jungle side.

15. According to PW-5 Hemanta Roy Choudhury, they noticed 30/40 persons loitering whereas the previous witnesses found them sitting. The area was clearly visible due to moon light and one could clearly see an object at a distance of 200-300 metres. Even then, the gathering was not able to spot the police personnel.
16. PW-6 Raju Sheikh and two others were posted near the vehicle while others proceeded towards Tamajuri village. They found 30/35 people assembled near Upa Sasthya Kendra. PW-6 stated the distance between Bholabeda and Tamajuri to be 2/2 ½ kilometres. He for the first time referred to the darkness for not being able to gauge the distance covered on foot. He appears to have crawled for twenty-five minutes while moving towards a higher ground from a lower topography. According to him, they were walking along a “pitch rasta” leading to Tamajuri. After the said path, they walked some distance and then crawled for about thirty five minutes.
17. PW-7 Biplab Chorchori deviated from the version of the complainant by saying that 30/40 persons were in a group (jatla). He stated a new fact that the police vehicle stopped at two/three places before reaching

the destination. He saw one or two female members clad in sarees whereas in the earlier evidence the female members were found to be in uniform. He further averred that the lamp (hajak) was not lit.

18. PW-8 Tapan Patra was declared hostile by the prosecution. He was a resident of Tamajuri.
19. PW-9 Priyabrata Khan found 30/40 persons loitering but his statement in cross-examination is that they were sitting. The group fled in all possible directions at random, being chased by the police.
20. PW-10 Narayan Choudhury who was a resident of a house owned by his mother Bijoli Rani Choudhury at 199, Buttola Bye Lane, Hindmotor, district Hooghly. He claimed that Bijoli let out a room in the said house to Asit Kumar Jana by virtue of a written agreement in the year 2005. The witness saw Asit Kumar Jana's brother Sushil Roy come to the said rented premises of Asit Kumar Jana with the police. The police enquired about Asit, opened the door of the rented premises and entered into the room. PW-10 also accompanied the police into the room but came out immediately. The police seized some material from the said room and this witness and his mother were made to put their signatures on some blank papers. The witness was brought to Midnapore for adducing evidence in court in a police vehicle and remained in Midnapore for a day as arranged by the

police, before adducing evidence in court. He was called to the police station on several dates for signing on various documents and his mother put her signatures thereon in her house. PW-10 did not know Bijoy Banerjee earlier and named several persons who were his neighbours. He put his signatures in the documents as instructed by the police and admittedly deposed in court as tutored by them. He saw Asit's brother in a police car in front of Hindmotor gate only on one occasion. Sushil Roy and Santosh Debnath were not tenants at 199, Buttola Bye Lane.

21. PW-11 Bijoli Choudhury was the mother of PW-10 Narayan Choudhury and resided with him in the same house at Buttola Bye Lane. She stated that one room in the said house was rented out to one Asit Jana by virtue of an agreement in 2005. Strangely enough, the said agreement was executed on 01-02-2004 whereas the stamp paper for the same was purchased on 09-02-2004 as appears from the reverse side of the agreement. The agreement bears the signature of Bijoli Choudhury and none else. This witness continued to say that Asit Babu's elder brother used to visit Asit Babu in the flat off and on and stay there. The police claim to have seized several articles from the said room and took her signatures on various documents over a period of time. The police visited the said rooms on several occasions and seized material therefrom. PW-11 was in the first floor of the house when the search and seizure took place and she was not

present on the spot at the relevant time. She has made out a new story that the police went to the first floor of the house.

22. According to PW-12 Ajoy Kumar Nand, he along with several police personnel went to Hindmotor with accused Sushil Roy and Patit Paban Haldar, to the house of Narayan and Bijoli Choudhury where both the accused lived as tenants. He opened the rented room as shown by Sushil Roy with the keys previously seized from Sushil Roy and Patit Paban Halder and entered therein, accompanied by both the accused as well as Narayan and his mother who witnessed the search and seizure held in the said room. The witness identified the handwriting of Sushil Roy in a letter (Mat Ex-1) but remained silent as to how he identified the writing. Several articles and documents were said to have been seized by this witness from the room, who stated that some of them were recovered from the possession of Sushil Roy who was admittedly in custody at that time. Even without a bag being opened and shown to the witness, the witness identified the contents of the bag to be ammunition. He also stated that gelatin sticks were recovered from separate boxes belonging to the two accused persons which were kept in the rented house though there is nothing to show that any of the said accused rented the house or resided therein at any point of time. Similarly, other articles including gold ornaments have also been shown to have been recovered from the rented house, claimed to be in possession of the accused. That Patit Paban Haldar was also present with the police at the time of the said search and

seizure was stated by PW-12 for the first time and not by any other earlier witness. Strangely, the contents of the packets were identified by the witness even without opening them during his evidence. No effort appears to have been made to trace the peddler of the gelatin sticks.

23. Both the accused were arrested on 23-05-2005 and the house at 199, Buttola lane was searched on 01-06-2005. During such period, issuance of search warrant was not prayed for before the court. The seized gold ornaments and cash were not sealed after seizure and the number or denominations of the currency notes were not recorded.
24. PW-13 Bijoy Banerjee who was a resident of Hindmotor and a supplier of building material was known to Narayan Choudhury and his mother and stated that the police went to Narayan's house on two occasions accompanied by two persons who lived in the house and identified the house. According to him, the police called Naru and his mother and opened the room with the keys pointed out by the two persons accompanying them. The police entered the room with Naru and his mother and also one Gopal and this witness. The police also took the keys of the trunks kept in the room from the two persons identified as Sushil Roy and Patit Paban Haldar. On a second occasion, the police came to the same house with Santosh Debnath and seized certain articles therefrom in the presence of this witness

who put his signature on the seizure-list prepared by the police. The other witnesses are silent regarding the presence of Gopal and PW-13 during search and seizure at Buttola Bye Lane.

25. PW-13 went to Jhargram on 04-01-2006 to adduce evidence and his evidence was recorded on 06-01-2006. He claims to have had good relation with Narayan Choudhury whereas Narayan Choudhury deposed that he did not know Bijoy Banerjee. This witness also stated that Narayan's mother who was in the first floor came down to the ground floor when the room was opened and was present all throughout with Narayan during the search and seizure. This witness was a van puller who put up in a hotel for two days to adduce evidence in the case. So it can be inferred that his stay was arranged by the police and was not at his own expense.

26. PW-14 Gopal Dhara who is a resident of Uttarpara claims to have put his left thumb impression in the seizure-list prepared by the police. He identified accused Sushil Roy and Patit Paban Halder as tenants in the house of Narayan. He stated that the police found the keys of the room as shown by Narayan and his mother and seized certain articles therefrom. They prepared a seizure-list wherein Narayan and his mother put their signatures. He along with Narayan, his mother, Bijoy and 4/5 police officers entered the room and others remained outside.

27. PW-15 Bharati Ghosh stated that Asit Jana alias Santosh Debnath allowed her to stay in his rented house at Parul village along with her husband Shanti Ghosh and left the house himself. He returned after a few days and left a bag in the custody of this witness and went away. After about fifteen days, Asit returned accompanied by police and asked for the said bag. The police opened the bag and found money and ornaments in it. Cash amounting to Rs. 80,000/- and the passbook of this witness were seized by the police. PW-15 was not named by the earlier witnesses who claimed to have accompanied the police to the rented house of Asit Jana alias Santosh Debnath. Such rented house appears to be in Parul, Arambagh, district Hooghly.
28. PW-16 Arijit Dasgupta went to Malda along with the police personnel on receiving source information that Prasanta Das alias Gora and Jishu Roy Choudhury had been arrested. He learnt from the statement of these arrested persons that other members of the military squad of CPI (Maoists) had come to Malda with gelatin sticks and detonators on their way to Tamajuri under Belpahari police station where one meeting was scheduled to be held and attended by Sushil Roy, Patit Paban Halder, Asit Jana and others. Such information was recorded by this witness and sent to the I.C Belpahari Police station. Therefore, this information can be said to be the first information pertaining to the incident and ought to have been treated as the F.I.R. Curiously enough, the two persons were arrested from

Malda railway station premises but no information of such arrest was given to the GRPS, Malda. It is not understood as to how the police made such arrests within the jurisdiction of GRPS Malda without keeping them informed. The guest house register regarding the entry and exit of the police personnel who claimed to have taken the arrested persons to the guest house was not produced in court. Information of the meeting which was supposed to be extremely confidential was given from a public telephone booth.

29. PW-17 Pradip Kumar Dutta said that the house at Buttola Bye Lane was identified by Sushil Roy and Patit Paban Halder but the record reveals that Patit Paban Halder was not present at that time. This witness said that three keys were seized from the room and one key from the possession of Sushil Roy. But according to the complainant himself, Sushil Roy was arrested on 23-05-2005 from the place where the meeting was held and no key was found in his possession at that time. He was in police custody for eight days and it is impossible that such key was recovered from his possession on 01-06-2005 or at any time after his arrest. This witness found four keys in the possession of Santosh Debnath and the statement of Santosh Debnath led to search of the premises at 199, Buttola Bye Lane for a second time and seizure of some articles in presence of Narayan and his mother. Such statement has not been corroborated by Narayan or his mother. No key was found in the possession of the accused persons after their arrest. The gelatin sticks were not sent for forensic examination.

30. This witness had no authority to make such seizure within the jurisdiction of Hooghly district as he was posted at Belpahari police station within district Paschim Medinipur at the relevant time. Rules 179 and 2(3) of the Explosives Rules, 1983 were not complied with during such seizure. The contents of the seized C.D were not known to this witness.
31. PW-18 Rajashri Banerjee claimed to have seized certain articles including three keys from Sushil Roy and Patit Paban Halder on 01-06-2005. But both the accused were arrested on 23-05-2005.
32. PW-19 Alok Banerjee is a journalist by profession and, on some of the allegedly seized books being tendered to him, he said that such books were available in the open market.
33. PW-23 Subhankar Chatterjee, who was the DSP, CID, Bhawani Bhawan at the relevant time, took over the investigation of the case on 14-07-2005. He was silent regarding the recovery of any key from any of the accused. He referred to the antecedents of the accused persons and complaints registered against them relating to other incidents. This witness claims to have seized the tenancy agreement from Bijoli and Narayan Choudhury on 18-06-2005. But the evidence on record reveals that such agreement was already seized earlier. The statement

of this witness vis-a-vis the statements of other witnesses recorded by him u/s 161 of the Code is contradictory.

34. The place of occurrence, that is, the place where the meeting was allegedly held, has been referred to as an open stretch on the left side of a metal road, in front of Tamajuri Upa Sashthya Kendra. The sketch map shows the said place to be on the right side of the metal road. The Upa Sashthya Kendra was not found in the sketch map. Thus, there are serious doubts as to the place of occurrence.
35. In their statements recorded u/s 313 of the Code, the appellants/accused gave a detailed account regarding their arrest, detention, search and seizure which sharply contradicts the case made out by the prosecution.
36. In conclusion, ld. advocate submits that the appellants are entitled to an order of acquittal.
37. The State has supported the judgment and order impugned and has canvassed its argument in support of the same.
38. The case was initiated upon receipt of a phone call by the O.C Belpahari police station on 23-03-2005 from Sub-Inspector Arijit Dasgupta to the effect that two accused persons (Prasanta Kumar Das

and Jishu Ray Chowdhury) who were arrested at Malda in connection with Belpahari police station case number 44/04 and such persons revealed during their interrogation that they were on their way to attend a meeting to be held at village Tamajuri on 23-05-2005 at around 22:00 hrs which would be attended by squad members of the CPI (Maobaadi). Such information was recorded in a general diary which was referred to by PW-18 Rajarshi Banerjee, C.I.D. Police, Bhawani Bhawan, in his evidence.

39. According to the State, the evidence corroborates the facts as stated in the complaint. The *de facto* complainant who was examined as PW-1 stated that he requested for deployment of force and proceeded towards Tamajuri with force. As he was not aware of the exact spot, he halted at Bholabeda and contacted his source who identified the spot to be near Upa Shasthya Kendra. So the alleged raid was not pre-planned and seven other witnesses also supported the version of PW-1 to the extent that such meeting was held near Upa Shasthya Kendra.
40. The prosecution continued to state that the key to the rented room at Buttola Bye Lane was deposited as personal property of accused Sushil Roy at the time of his arrest and such key was discovered in the said property/bag on 01-06-2005. The memo of arrest and the inspection memo were signed by the accused persons and such

signatures have not been challenged. Bijoli Choudhury (PW-11), the land-lady of the Buttola premises, confirmed that the relevant room was in possession of the accused persons and the door to the said premises was opened with the key recovered from Sushil's possession. The State has candidly submitted that it is evident from the record that accused Sushil Roy was in the car at Hindmotor gate and there is no conclusive evidence of the fact that he was anywhere within the vicinity of the Buttola house.

41. Returning to the scene of the meeting at Tamajuri, the prosecution submitted that though there is some inconsistency regarding the identity of the place of occurrence, but the entire incident cannot be ignored. PW-2, PW-3, PW-4, PW-5, PW-6, and PW-7, who were members of the raiding team, confirmed that they saw the meeting at the Upa Shasthya Kendra. PW-7 claimed that the team arrested a blind person from the spot. Though the blind person was not named, it can be inferred that the person arrested was Sushil Roy as admittedly he lost one of his eyes about 10 years earlier. The prosecution has again admitted that there are large gaps between the versions of the witnesses in describing the movement of the raiding team, the topography of the land where they waited and where the meeting was held, the time of the meeting and the distance between Bholabeda and Tamajuri.

42. PW-11 stated that Asit Jana was a tenant in respect of one of her rooms and Asit's brother was a frequent visitor to the rented room. Asit Jana was also known as Santosh Debnath and Sushil Roy was perceived to be his brother. The witnesses saw Sushil in a police car which indicates that Sushil was brought to Buttola by the police.
43. Besides Narayan Chowdhury and Bijoli Chowdhury, even Gopal Dhara and Bijoy Banerjee claimed to have been present at the time of search and seizure by the police at the Buttola house. Gopal Dhara and Bijoy Banerjee also identified the documents and articles seized on the said date.
44. Some of the witnesses were admittedly brought to Court by the police to adduce evidence and they waited for their evidence to be recorded in Court under police arrangement. The prosecution has explained that in order to avoid delay in the trial of the case due to absence of witnesses, the police took it upon themselves to bring the witnesses to Court and arrange for their stay. There is no suggestion to the fact that the police influenced or coerced the witnesses to adduce evidence as tutored by them.
45. The criminal antecedents of the accused persons have been elaborately stated by the investigating officer in his evidence. The

sanctions obtained by the investigating officer to prosecute the accused persons have not been challenged.

46. The witnesses have been cross-examined on behalf all of the accused persons as a whole which indicates that all the accused had a common defence to take, were known to each other previously and were involved in the same incident. According to the prosecution, only accused Santosh Debnath was arrested subsequently and cannot be linked to any incident of Tamajuri.
47. According to the prosecution, the guilt of the accused/appellants has been proved to the hilt and the judgment and order of conviction needs to be affirmed.
48. In reply to the prosecution argument, ld. advocate for the appellants takes this Court through the entire material on record and adds that in view of the provision laid down u/s 87 of the Code, the Court has ample power to ensure attendance of witnesses and the question of the prosecution taking the task upon itself does not arise. In consonance with his earlier submission, ld. advocate emphasizes on acquittal of the appellants.

49. Now it is to be considered as to whether despite the discrepancies and loopholes pointed out by Id. defence advocate in the present case, the order of conviction of the appellants can still be sustained.
50. At the very outset, it should be stated that charges have been framed against the appellants u/s 121A/122/124A of the Penal Code, sections 25(a)/35 of the Arms Act and sections 4/5 of the Explosive Substances Act. No charge has been levelled against the appellants u/s 120B or 121 of the Penal Code. In other words, the appellants have not been charged with the offence of being a party to any criminal conspiracy or waging or attempting to or abetting the waging of war against the Government of India. They have been charged with the offences for conspiring to wage war against the Government of India or conspiring to overawe, by means of criminal force, the Central Government or the State Government, collecting men, arms or ammunition for the preparation to wage war or with such intention and attempting to bring or bringing into hatred or contempt, or exciting or attempting to excite disaffection towards the Government by using seditious words, signs or other visible representations. They have also been charged for possessing fire-arms and explosive substances.
51. The story was set rolling, according to the State, on the receipt of a telephonic message from Sub-Inspector Arijit Dasgupta by the O.C,

Belpahari police station to the fact that two persons, namely, Prasanta Kumar Das and Jishu Roy Chowdhury, who were arrested in Malda in connection with some other case, revealed during their interrogation that a meeting would be held on 23-05-2005 at village Tamajuri. It would be attended by squad members of the CPI (Maobaadi). Pursuant to the said information, the *de facto* complainant Sub-Inspector Mahakash Chowdhury left for Tamajuri, accompanied by other police personnel and IRB force. The prosecution witnesses are at variance in describing the journey to Tamajuri through a place called Bholabeda. PW-2, PW-3, PW-4, PW-5, PW-6, PW-7 and Pw-9 were members of the raiding team. The witnesses have unanimously stated that it was Buddha Purnima and was therefore a full moon night. According to PW-1, he alongwith his team halted at Bholabeda before proceeding towards Tamajuri. They left their vehicles at a distance and walked towards the spot, dividing themselves into three groups. They noticed about 30/40 people assembled near the Upa Sashthya Kendra, among whom 5/6 persons were roaming with arms. They crawled the remaining distance and waited on a heap. This witness gave a detailed account of the lecture allegedly given by Sushil Roy and Patit Paban Halder at the gathering. He claimed to have crawled for about thirty minutes but was unable to state the direction in which they were moving. The distance between Bholabeda and Tamajuri was, according to him, one kilometre.

52. Learned defence advocate pointed out that such detailed version was not recorded in the written complaint by the *de facto* complainant (PW-1). But it should be borne in mind that the written complaint is not an encyclopaedia of facts and need not contain every minute detail of the alleged incident. It only sets the criminal process into motion and it is sufficient if the framework of the incident alleged is stated therein.
53. The witnesses have spoken in conformity with each other to the extent that the alleged meeting was held near the Upa Sashthya Kendra at Tamajuri on a full moon night and was attended by about 30-40 people. Also, the raiding team left their vehicle at Bholabeda and proceeded to the spot, sometimes on foot and sometimes crawling. According to PW-2, they hid beneath the lowland of a paddy field, about 25-30 metres away from the spot. He claims to have crawled for forty five minutes and walked for an hour. PW-3 has introduced a jungle scene into the story and stated to have patrolled through the jungle. He apprehended Sushil Roy after a chase and joined the raiding team in taking the accused persons to the police station. He added that the team halted at Bholabeda for one and a half hour before entering the jungle.
54. The version of PW-4 is that they walked for forty five minutes towards Tamajuri after leaving the vehicle beside Bholabeda range office and

noticed the meeting being held on the left side of the road in a vacant place. He found some people belonging to "Maobaadi guerrilla" but it is not clear as to how he labelled them as such. He found no woman in the group. He stated that the group started running towards the jungle whereas PW-3 stated that the group was chased from the jungle side.

55. PW-5 found the inmates of the meeting loitering whereas the other witnesses found them sitting. According to him, objects at a distance of 200-300 metres were visible and it is strange that though the meeting was clearly seen and heard by the police personnel, the members present therein were not in a position to see or hear the raiding team and merely sensed their presence when the police personnel were virtually on them. This witness claimed to have crawled for half an hour.

56. PW-6 said that he alongwith the team walked along the metal road leading to Tamajuri for about thirty five minutes and crawled for another thirty five minutes. The distance between Bholabeda and Tamajuri was 2-2 ½ kilometres as stated by him. This witness found the path to be dark and was unable to gauge the distance covered by him on foot.

57. PW-7 found the members of the meeting in a group and added that the police vehicle stopped at 2-3 places before reaching the spot. He found two women clad in sarees in the meeting and 4/5 persons with arms. He walked for 1³/₄ hours from Bholabeda to Tamajuri and crawled for thirty minutes.
58. PW-8 referred to a paddy land near the Upa Sashtya Kendra and PW-9 said that the members of the meeting fled in all possible directions after seeing the police. The said members were sitting on the ground. According to the witnesses, the raiding team divided themselves into three groups and approached the place of occurrence from three sides. So no clear picture is drawn as to in which direction the group fled after being cordoned by the police on three sides and also as to how they fled towards the jungle or in all directions.
59. The State has also candidly submitted that there are several inconsistencies in the version of the witnesses with regard to the movement of the raiding team, topography of the land where they waited and the place of the meeting, time of the meeting and distance between Bholabeda and Tamajuri.
60. Therefore, the journey to Tamajuri as described by all these witnesses suffers from gross divergence which raises a serious doubt regarding the occurrence itself. The version of the witnesses is that the meeting

was held near the Upa Sashthya Kendra to the left of the metal road. But the sketch map prepared by the investigating officer indicates that the place of occurrence was to the right of the metal road. The Upa Sashthya Kendra has not been indicated in the sketch map. The written complaint also says that the place of occurrence was to the left of the metal road. So there has been a shift in the stance as to the place of occurrence which strikes at the root of the prosecution case.

61. Admittedly Santosh Debnath was not arrested from Tamajuri and had no nexus with the arrest and seizure made therein. Santosh Debnath was arrested on 01-06-2005 at about 15:45 hours at Janda, Rajbalhat, P.S. Jangipur, district: - Hooghly. Column No. 10 of the memo of arrest which requires the signature of a member of the family of the arrestee or of a respectable person of the locality is found blank.
62. It is the case of the prosecution that Santosh Debnath was a tenant in respect of two houses – one at 199, Buttola Bye Lane and the other at village Parul, P.S. Arambagh, in district Hooghly. There is no evidence on record which speaks about the tenancy of Santosh Debnath in respect of the house at Parul besides the oral evidence of PW- 15 Bharati Ghosh. This witness stated that Santosh Debnath alias Asit Jana allowed her to reside in his rented house at Parul with her husband and went away. He returned after some days and left a bag in her custody before leaving the house again. The witness further

stated that Asit returned to the house accompanied by police and asked her to hand over the bag to him. The police found money and ornaments in the said bag. The record reveals that the said money and ornaments were seized by the police vide seizure list dated 11-06-2005. The seizure-list bears the signatures of PW-15 Bharati Ghosh and her husband Shanti Ghosh. There being no document to suggest that Santosh Debnath was a tenant in respect of the said room at Parul, the seizure made therefrom cannot be attributed to him in any manner. Though the seizure-list bears the signature of Santosh, he has categorically stated that he was made to put his signatures on various blank sheets of paper by the police while in custody.

63. Two other seizure lists prepared on 07-06-2005 suggest that Santosh was taken to the premises at 199, Buttola Bye Lane by the police on the said date while he was in police custody and several incriminating articles and documents were seized from the said premises. The two seizure lists also bear the signatures of Santosh Debnath. The house at Buttola Bye Lane is admittedly owned by PW-11 Bijoli Chowdhury and occupied by her son PW-10 Narayan and herself, both of whom stay on the first floor of the house. These witnesses stated that Asit Kumar Jana rented a room on the ground floor by a written agreement executed in 2005. The said agreement was seized during investigation and was tendered in evidence and marked as Exhibit – 12. It appears that the agreement was executed on 01-02-2004 whereas the stamp of the agreement was purchased on 09-02-2004 as appears from the

reverse of the document. The agreement bears the signature of only PW-11 and not of the alleged tenant. The signature of PW-11 also differs from that of her evidence. She signed as Bijoli Rani Chowdhury in her evidence and as Bijoli Chowdhury in the agreement. It is needless to state that an agreement is executed by and between two parties and cannot be a unilateral document. It ought to bear the signatures of the landlord as well as the tenant in order to render it valid and acceptable. In the instant case, the unilateral agreement bearing the signature of only the landlady and none else cannot be said to be a valid agreement and it can be inferred that no tenancy was granted to Santosh Debnath by virtue of the said document. In fact, there is not a scrap of paper on record to show that the room at Buttola Bye Lane was either rented by Santosh Debnath or occupied by him. As a consequence, it also cannot be said that his brother Sushil Roy was a frequent visitor to the said room, as alleged. Moreover, PW-10 and PW-11 have referred to an alleged tenancy of Asit Jana and have identified accused Santosh Debnath in Court as Asit. But there is nothing on record to show that Asit Jana and Santosh Debnath are identical persons or that Asit was also known as Santosh.

64. The prosecution tried to impress upon the court that articles were seized from the said room as shown by Santosh Debnath. But as there is nothing to show that Santosh Debnath had any nexus with the said room, the articles allegedly recovered therefrom can also have

nothing to do with the said accused. There are also certain other anomalies with respect to the alleged seizure. Bijoli Chowdhury, Narayan Chowdhury, Bijoy Banerjee and Gopal Dhara appear to have signed on the seizure lists. Narayan said that he accompanied the police into the room and came out immediately which indicates that he was not present in the room during the seizure. He submitted that he and his mother were made to put their signatures on blank papers. He was called to the police station on several dates for signing on various documents and his mother put her signatures thereon in her house. He signed on the documents as instructed by the police and admitted to have adduced evidence in court as tutored by the police. PW-11 Bijoli Chowdhury stated that she was in the first floor of the house during the search and seizure in the ground floor and was therefore not a witness to the seizure. But Ajay Nand who led the team to Buttola Bye Lane stated that Narayan and Bijoli were present during the search and seizure. PW-13 Bijoy Banerjee who is also a seizure witness said that Narayan, his mother, Gopal and himself were present in the room during the seizure. He has made out a new case that police offered them to be searched by Narayan which was declined by the latter who told the police to enter into the room. He claims to have good relations with Narayan whereas Narayan said that he did not know Bijoy Banerjee. The other seizure witness Gopal Dhara (PW-14) stated that the keys to the room were shown to the police by Narayan and Bijoli and both of them put their signatures on the seizure-list in the room itself. Strangely enough, this witness

identified his left thumb impression on the seizure list which is only the job of a handwriting expert. He also recorded the presence of Narayan and his mother during seizure which is not the case made out by Narayan or his mother. He subsequently stated that he put his signature in the seizure list. Though several neighbours of Narayan were named in the evidence, none of them was a witness to the alleged seizure. Both Bijoy and Gopal claimed to have been working beside Narayan's house when the alleged seizure took place on both the occasions which is not very acceptable. All the seizure witnesses were admittedly brought to the court by the police to adduce evidence and their stay was arranged by the police. This casts a doubt regarding the truth and credibility of the evidence adduced by them and, in all probability, these witnesses were tutored by the police as has been admitted by Narayan himself. Also, the serious contradictions regarding the alleged seizure and the varying versions of the witnesses in such regard cannot be ignored and much reliance cannot be placed on the truth or genuineness of the alleged articles being found in the room at Buttola Bye Lane.

65. Turning to Patit Paban Halder, he was shown to have been arrested on 23-05-2005 at Tamajuri. In his memo of arrest also, column No. 10 has been left blank. One folio bag containing two leaflets was seized from Patit Paban Halder at the spot. One folio bag containing leaflets was seized from accused Sushil Roy and other folio bags and one burning hajack light were seized from the place of occurrence. The

seizure-list pertaining to the said seizure (Exhibit - 1) bears the signatures of police personnel and three other witnesses out of whom the police personnel and one of the other witnesses Tapan Patra have been examined by the prosecution. The only independent witness Tapan Patra (Pw-8) did not support the prosecution case and has been declared hostile by the prosecution. Nevertheless, he stated that the officer in charge of the police station obtained his signature on a blank paper in his shop, the said paper signed by him being the seizure-list (Exhibit-1). It is highly probable that the police personnel whose signatures appear in the seizure list may have deposed in tune with the version of the *de facto* complainant. Their evidence could have been given credence had it been supported by the evidence of the independent witness. But, unfortunately, PW-8 who was the only independent witness to the said seizure who adduced evidence, turned hostile and the little evidence that he gave demolished the acceptability of the document. Also, though two local villagers Biren Mandi and Santosh Kumar Pal were stated to be present at the time of arrest of the accused persons and preparation of the seizure-list, the said persons have neither put their signatures in the seizure-list, nor were they examined by the prosecution.

66. Pausing at this juncture for a moment, it is pertinent to refer to the judgment of the Hon'ble Supreme Court referred to by learned advocate for the appellants, in *D.K Basu v. State of West Bengal* reported at (1997) 1 SCC 416 . In the said judgment, the Hon'ble

Supreme Court has issued certain requirements to be valid in all cases of arrest or detention, the said requirements being set out :

“(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

67. The memos of arrest of the appellants reveal that such dictum of the Hon'ble Court was not complied with by the arresting officers while arresting the appellants.
68. The further case of the prosecution is that Patit Paban Halder was taken to the house at 199, Buttola Bye Lane along with co-accused Sushil Roy by the police led by PW-12 Ajay Kumar Nand and incriminating articles were recovered from the said house. Several seizure-lists were found to have been prepared at the said house on 01-06-2005 to that effect. Some of the seizure-lists do not bear the signature of Patit Paban Halder and Sushil Roy and there is an endorsement of the fact that they refused to put their signatures therein. But the person making such endorsement cannot be identified. Admittedly, Patit Paban Halder was neither a tenant of the premises at Buttola Bye Lane, nor did he occupy or visit the room at any point of time. Thus, any seizure made therefrom cannot be attributed to him. Even at the cost of reiteration, it is necessary to place on record that Narayan and Bijoli were not present at the time of the alleged seizure and their signatures were obtained on blank papers subsequently. The other two witnesses Bijoy and Gopal were not named by the other witnesses and Narayan had no acquaintance with them. These seizure witnesses were brought to the court for

adducing evidence under police arrangement and their contention varies from that of the other witnesses.

69. Though the prosecution witnesses claimed that several keys pertaining to the premises at Buttola Bye Lane were recovered from the accused persons on 01-06-2005, the record speaks otherwise. Patit Paban Halder was allegedly arrested from the place of occurrence on 23-05-2005 and no key was found in his possession on the said date. Same is the case with Santosh Debnath and both the accused being taken in police remand and thereafter taken to the Buttola premises as claimed by the prosecution, it is inconceivable that any key was found or recovered from the persons of the two accused on that date.
70. No firearm or ammunition was seized from the possession of the accused persons or any of them and such arms or ammunitions were also not found in any premises occupied by them. Therefore, no responsibility can be thrust upon them for commission of any offence under the Arms Act, 1959.
71. No explosive substance was recovered from the alleged place of occurrence and it is not the case of the prosecution that explosive substance of any nature or any firearm was used thereat.

72. The general diary book discloses an entry recorded on 23-05-2005 to the effect that on receipt of the telephonic information, the raiding team left Belpahari police station for Tamajuri and Bholabeda area to pursue the secret information that some members of the Maobaadi military guerrilla squad were arranging a meeting at Tamajuri which the local villagers were directed to attend. The detail of the raid as well as arrest of Sushil Roy and Patit Paban Halder were recorded in the general diary book and rupees fifty five was shown to have been found from the wallet of Patit Paban Halder. But as discussed earlier, the said arrest allegedly made on 23-05-2005 or the incident pertaining to Tamajuri have not been supported by the evidence on record. The entries in the G.D. book being recorded by the police at the police station, chances of concoction and manipulation therein cannot be ruled out.
73. PW-19 Alok Banerjee who is a journalist and the author of the book "Mcc-r Deshe" stated that the books allegedly seized in connection with the case were available in the market and were not prohibited by the Government. The ammunition and explosive substances were sent for forensic examination and the forensic experts have deposed as PW-20, PW-21 and PW-22.
74. Investigating officer Subhankar Chatterjee (PW-23) was entrusted with the later part of the investigation of the case on 14-07-2005.

75. To sum up, the prosecution has miserably failed to establish the charges levelled against the appellants. There is no evidence on record that links accused Patit Paban Halder to the Tamajuri incident or the seizure of incriminating articles. Admittedly, Santosh Debnath had no nexus with the Tamajuri incident and it has not been proved that he had any association/connection whatsoever with the houses at Parul and Buttola Lane. So it can be inferred that the search and seizure made at Tamajuri and both the residential premises had nothing to do with the appellants.
76. In their statements U/S 313 of the Code, both the appellants have given a detailed account of their arrest and how they were framed and brutally tortured by the police. Patit Paban Halder claims to have been arrested on 21-05-2005 and produced in court on 24-05-2005. Santosh Debnath claims to have been arrested on 29-05-2005 from Burrabazar, Kolkata. Both the appellants pleaded that they were falsely implicated and their signatures were taken on several blank papers and the police also took their photographs. Santosh Debnath even tried to put an end to his life by hanging but was rescued by the police.
77. It is a fact that much reliance cannot be placed on the statements of the appellants U/S 313 of the Code as the statements have not been supported by any evidence led by them, or subjected to cross-

examination by the prosecution. Nevertheless, as the prosecution has not succeeded in substantiating the charges brought against the appellants, the version of the appellants in their statements U/S 313 of the Code may be placed beside the prosecution evidence in order to strike a balance between the two. Such exercise leads to the conclusion that the prosecution case suffers from severe contradictions which weigh against the version of the prosecution and is sufficient to grant the benefit of doubt to the appellants.

78. Much has been spoken in the judgment impugned regarding the propositions laid down in sections 121A/122/124A of the Penal Code, sections 25(a)/35 of the Arms Act and sections 4/5 of the Explosive Substances Act. The learned Trial Court has also taken great pain in enunciating the purport of the speeches allegedly delivered and material/literature allegedly seized. But the learned Court has unfortunately failed to appreciate the law vis-a-vis the evidence in the proper perspective, resultantly missing the salient point that the link between the appellants and the incriminating material produced by the prosecution was non-existent.

79. Law enjoins that suspicion, however strong, cannot take the place of proof beyond reasonable doubt. In the instant case, no such strong suspicion regarding the involvement of the appellants emanates from the evidence on record, far less, the allegations being proved beyond

reasonable doubt. The motive of commission of the offence attributed to the appellants stands on a shaky premise. It is trite law that the burden of proving a charge against an accused lies solely upon the prosecution and the prosecution is required to bring evidence which should be so cogent, compact, believable and trustworthy as to become incompatible with the innocence of the accused. Any position short of this would entitle the accused to earn his acquittal. In the case in hand, the evidence on record is far from sufficient to substantiate the guilt of the accused/appellants beyond the shadow of reasonable doubt and there can be no other alternative but to hold that the prosecution has failed to fulfil the duty cast upon it.

80. Upon consideration of the entire material on record as well as submission made by Id. advocates for the appellants as well as the State and also keeping in view the law on the point, there is no impediment to hold that the prosecution has miserably failed to prove its case and as a consequence, the present appeal succeeds.
81. Accordingly, the present appeal being CRA 337 of 2006 is allowed. The judgment of conviction and order of sentence passed by the Id. Additional District and Sessions Judge, Fast Track Court, Jhargram, Paschim Medinipur in Sessions Trial No. 21/October/2005 is hereby set aside.

82. The accused/appellants are found not guilty of the offences punishable u/s 121A/122/124A of the Penal Code, sections 25(a)/35 of the Arms Act and sections 4/5 of Explosive Substances Act and are acquitted of the said charges.
83. The appellants be released at once.
84. Urgent certified photocopies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)

I agree

(Sanjib Banerjee, J.)