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STATE OF U.P.

v.

NAWAB SINGH (DEAD) AND ORS.

FEBRUARY 3, 2004

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[Y.K. SABHARWAL AND S.B. SINHA, JJ.]

Penal Code, 1860:

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Section 300—Murder—Acquittal—Appeal against—Accused persons came to the house of deceased and fired shots at him which resulted in his death—Post-mortem report showed that deceased died of gunshot “injuries”—Trial court convicted accused persons—However, High Court set aside the conviction on the mistaken belief that deceased suffered only one gunshot injury—Correctness of—Held: The medical report showed “injuries” meaning thereby more than one injury—The High Court acquitted the accused persons without analysing the evidence on record—Hence, judgment of High Court unsustainable—Acquittal set aside.

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The respondents-accused persons were involved in two murder cases. The deceased was a witness in one of them and was constantly being pressurized not to depose in that case by the respondents. On the fateful night, the respondents came to the house of the deceased and shot at him with a pistol resulting in his death. The post-mortem report indicated that the deceased had died of gunshot injuries.

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The trial court found the respondents guilty of an offence under Section 302/34 of the Penal Code, 1860 and sentenced them to undergo life imprisonment. However, the High Court concluded that it was a case of ‘hit and run’, and that the deceased had suffered only one gunshot injury. Accordingly, it acquitted the respondents. Hence the appeal.

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Allowing the appeal, the Court

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HELD: 1.1. The High Court wrongly laid emphasis that only one fire injury was caused. The medical report shows that the death took place because of ‘injuries’ meaning thereby more than one injury. Keeping in view the nature of the injuries suffered by the deceased, the same could

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not have also been caused by one shot. [61-G, H; 62-A]

1.2. The High Court has not assigned cogent or sufficient reasons for disagreeing with the findings of the trial court. It arrived at certain conclusions without analysing the evidences on record. It is based on surmises and conjectures. [62-D]

1.3. The High Court acquitted the accused persons without analysing the evidence on record and in that view of the matter, the impugned judgment cannot be sustained. [62-F]

Amar Singh v. Balwinder Singh, [2003] 2 Supreme 155, relied on.

2. The Trial Court upon critical examination of the evidence of the eyewitnesses had rightly concluded that they were truthful witnesses and the respondents were present at the time of occurrence. Merely because the witnesses happened to be the relatives of the deceased by itself cannot be a ground to reject their testimonies. In view of the fact that the occurrence took place at the dead of night, they were natural witnesses and were supposed to be present at the place of occurrence. [62-G, H]

3.1. It is not a case where two reasonable views are possible. It is also not a case where the findings recorded by the High Court are fully supported by the evidence on record. The High Court proceeded absolutely on a wrong premise that there had been only one fire injury, which is contrary to the records. [63-F, G]

State of U.P. v. Premi, [2003] 2 SCR 266, relied on.

3.2. The High Court being a court of first appeal was required to consider and re-appreciate the evidence but it failed to do so and proceeded to dispose of the appeal on general observations, which is impermissible. [63-G]

Narendera Nath Khaware v. Parasnath Khaware, [2003] 5 SCC 488, relied on.

4.1. It is well settled that when the reasoning of the High Court is perverse, this Court may set aside the judgment of acquittal and restore the judgment of conviction and sentence upon the accused. [64-A]

Ramanand Yadav v. Prabhu Nath Jha, JT (2003) 8 SC 404, relied on.

A 4.2. It is further well settled that there is no embargo on the appellate court to review the evidence upon which an order of acquittal is based. [64-A, B]

B *Chanakya Dhibar v. State of West Bengal*, (2003) 8 Supreme 884; *Surinder Singh v. State of U.P.*, JT (2003) Supp. 1 SC 226; *Gorle S. Naidu v. State of A.P.*, (2003) 8 Supreme 562 and *Suchand Pal v. Phani Pal*, (2003) 7 Supreme 780, relied on.

C 4.3. The High Court went wrong in passing a judgment of acquittal reversing the well-reasoned judgment of the trial court. It is wholly unsustainable. [64-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 114 of 1997.

D From the Judgment and Order dated 23.1.96 of the Allahabad High Court in Crl. A. No. 248 of 1980.

C.D. Singh and Jatinder Kumar Bhatia for the Appellant.

B.S. Jain, Ajay Veer Singh, Vinay Mohan Sharma, Mrs. Vipin Gupta and Goodwill Indeevar for the Respondents

E The Judgment of the court was delivered by

S.B. SINHA, J. A judgment of acquittal rendered by the High Court of Judicature at Allahabad is in question in this appeal at the instance of the State of U.P.

F The three respondents herein were charged for commission of an offence under Section 302/34 of the Indian Penal Code for causing death of one Sri Ram on 10/11.6.1978 at about 2.00 a.m.

BACKGROUND FACT:

G The prosecution case, as appearing from the First Information Report, is that the respondents together with one Ram Prakash (who is absconding) came to the house of deceased about 2.00 a.m. in the night. The house of the deceased was a small one with a very small courtyard. At the time of occurrence, there were five inmates in the house. Amrit Lal then aged about 12 years, son of the deceased and the first informant Ram Ratan aged 20

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years, brother-in-law of the deceased were sleeping on one cot. Km. Kanth Shri, the unmarried sister of the deceased was sleeping on another cot. Renuka Devi, wife of the deceased together with her 15 day's old baby was sleeping on the third cot in the open courtyard of the house. The deceased was sleeping on another cot in the courtyard under a shed (chhappar) near the doors of the room and the kitchen. The house of Sri Ram had no shutter opening on the side of the lane. An opening in the wall existed for coming out of the house in the lane. As Renuka Devi gave birth to a child only a few days back, a lantern was burning. A B

The accused persons at 2.00 a.m. on 10.6.1978 trespassed into the house. Ram Prakash and Natthu were said to have been armed with pistols whereas Nawab and Peshkar were said to have been armed with lathis. The parties were said to be in inimical terms. C

It is contended that the accused persons were history sheeters. They were involved in two murder cases. The deceased Sri Ram was a witness in one of them. He had constantly been pressurized not to depose in that case by the accused persons. Ram Prakash together with the other accused persons upon entering the courtyard of the house gave a threat to the deceased that he would be killed if he deposed in the case of murder of Kedar. The deceased is said to be awoken at that time and allegedly replied that he would make the same statement in the court which he had made before the investigating officer. Hearing the conversation, the other inmates of the house awoke. Ram Prakash is said to have fired his pistol at Sri Ram causing an abrasion on the left side back middle whereafter respondent No. 2 Natthu fired a pistol shot at Sri Ram which hit the deceased on the left side of the abdomen 21 cm. below the left nipple. As a result of the injuries suffered thereby Sri Ram is said to have died. Renuka Devi and Ram Ratan cried out for help whereupon they were also threatened. The entire incident took about 2-3 minutes whereafter the accused persons left the place of occurrence. The accused persons are said to have thereafter gone near the tubewell of the Het Ram Pradhan where he and his brothers Har Nagar and Pati Ram were sleeping on the roof of the kothri of the tubewell where an electric bulb of 250 watt was burning. Hearing the sound of firing, the said persons were also said to have been seen by them. It is alleged that Ram Prakash and Natthu shouted at Pradhan Het Ram stating that they had killed Sri Ram and if he dared to depose in the case of murder of Kedar, he would also be put to death in the same manner. Fearing assault at the hands of the accused and as they, being not armed, did not come down from the rooftop. At about 5.00 a.m., however, H

- A they are said to have gone near the village 'abadi' which is situated at about one and a half furlongs. They came to the place of occurrence and found the dead body of Sri Ram lying on the cot under the Chhapper. Ram Ratan prepared a written report which was written by one Har Nagar Singh whereafter the duo left the village on bicycle at 5.30 a.m. The police station is said to be at a distance of 2 and ½ miles from the village. While Har Nagar Singh awaited outside the police station, Ram Ratan took the written report to the police station and a formal First Information Report was lodged on the basis thereof. Upon completion of investigation, a chargesheet was submitted. Whereas Nawab Singh could be arrested in the evening of 11.6.1978, the other accused persons were not found in the village. As noticed hereinbefore,
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- C Ram Prakash could not be arrested so far.

- In support of the prosecution case, nine witnesses were examined out of whom PW 1 Renuka Devi, PW 3 Ram Ratan and PW 5 Amril Lal were eye witnesses. The prosecution also examined Har Nagar Singh (PW 4) to show that the accused persons Natthu, his father Nawab Singh and Peshkar belonged to the party of the accused Ram Prakash who was charged for alleged commission of murder of Kedar.
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JUDGMENT OF THE SESSIONS JUDGE:

- The learned Sessions Judge having regard to the statements of the respondents under Section 313 of the Code of Criminal Procedure came to the conclusion that it stands accepted that there had been 'party feelings' in the village. The learned Sessions Judge, placing reliance upon the eye witnesses, the medical evidence as also existence of motive on the part of the respondents to commit the crime, came to the conclusion that they along with Ram Prakash had a common intention to cause the murder of Sri Ram. Having regard to the fact that the death of the deceased was caused by Natthu, he was found guilty of commission of the offence punishable under Section 302 of the Indian Penal Code, whereas the others were found guilty of the offence under Section 302/34 of the Indian Penal Code. Upon hearing the accused persons on the question of sentence in terms of Section 235(2) of the Code of Criminal Procedure, the respondents were awarded sentence of life imprisonment.
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- In arriving at the aforementioned findings, the learned Sessions Judge relied upon the evidence of the eye witnesses. The learned Sessions Judge rejected the submissions of the respondents to the effect that Ram Ratan was not an eye witness *inter alia* on the ground that had he not been present it
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would not have been possible to come to the area police station at 6.00 a.m. A
having regard to the fact that his house is situated about 20 miles away. The
learned Sessions Judge also rejected the contention of the respondents that as
the crime number was not mentioned in the Fard Ex. K-2, the prosecution
case should not be believed, on the ground that the same was an inadvertent
act on the part of the investigating officer. He also relied upon the evidence B
of Shambu Dayal PW 2 who was a witness to the Fards. So far the contention
of the respondents, that the deceased might have been murdered elsewhere
and his dead body has been brought to the house is concerned, the same was
rejected on the ground that admittedly at the time of his death the deceased
was wearing only an underwear and had kept his baniyan separately on the
cot by his side which was sufficient to prove that he had been lying on the C
cot inside the house when he was murdered.

HIGH COURT JUDGMENT:

The appeal against the aforementioned judgment and conviction was
heard by a Division Bench of the Allahabad High Court. The Division Bench D
surprisingly without finding fault with the reasoning of the learned Sessions
Judge came to the conclusion that it was a case of 'hit and run' during night
hours and actual incidence was not witnessed by any one mainly on a mistaken
belief that the deceased suffered only one gun-shot injury.

The findings of the Division Bench of the High Court which are as E
under:

"After hearing the learned counsel for the appellants Sri S.S. Tewari
and learned Addl. Government Advocate and perusing the record, we
do not feel inclined to accept the prosecution version, as stated. The
manner in which the shooting is said to have been done by the accused F
persons, do not inspire confidence in view of the contradictory and
varying statements of the eye witnesses. The medical report and the
nature of injury on the person of the deceased do not find corroboration
from the ocular evidence. The explanation of the witnesses about the
injury on the back of the deceased is not at all convincing and G
believable. The injury over the abdominal region with scorching around
the area and the direction of the bullet travelling upward from the
abdomen indicates that the person was hit, while he was sleeping in
lying posture. It is also not acceptable that the accused persons before
actually hitting the deceased, would raise such alarm, so that witnesses
may become available by awaking them. If the intention of the accused H

A persons was to kill the victim, so that he may not appear as a witness, in the other case pending against them, there was no necessity of accosting and challenging the deceased at the mid of the night. They could have easily fired and escaped. It appears that it was a case of hit and run during night hours and actually incident was not witnessed by any one. The accused persons were implicated in the case on account of enmity and suspicion, and are thus entitled for the benefit of doubt.”

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C Mr. C.D. Singh, learned counsel appearing on behalf of the appellant would submit that the High Court committed a serious error in passing the impugned judgment having failed to take into consideration that:

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- (i) There had been a motive of commission of crime.
 - (ii) There had been no delay in lodging the First Information Report.
 - (iii) The medical report fully supported the prosecution case and no contradiction in material particulars have been pointed out in the deposition of the prosecution witnesses.
 - (iv) There had been no reason for false implication of the accused persons.
 - (v) There was no reason for the eye witnesses to depose falsely.

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F Mr. Jain, learned counsel appearing on behalf of the respondents, on the other hand, would submit that the medical evidence does not support the prosecution story inasmuch as the deceased died out of only one gun-shot injury. The learned counsel would contend that Ram Prakash having been absconding and Nawab Singh having since died and no overt act on the part of the other respondents as regard the commission of the murder having been alleged, the judgment of acquittal should not be interfered with.

G The learned counsel would submit that admittedly the night was dark and the deceased was sleeping on a cot in the courtyard and as such it was improbable for the eye witnesses to identify the two respondents.

H It was pointed out that the story of chasing the accused by Renuka Devi had been contradicted by Ram Ratan. The learned counsel furthermore pointed out that whereas Renuka Devi stated that the accused persons were chased upto 1 furlong, Ram Ratan categorically stated that he had not chased the accused but they ran away towards the West after going out of the deceased's house.

Mr. Jain would further draw our attention to the post mortem report and submit that that the medical evidence does not corroborate the ocular evidence. The learned counsel would further submit that the deceased having been sleeping in the courtyard, it is not possible to see the accused persons from inside the room. A

It was pointed out that the Fard Ex. K-2 did not mention the crime number which also throws a suspicion as regard the time when the Fard was recorded. B

ANALYSIS OF THE EVIDENCE:

Having regard to the unsatisfactory nature of the judgment passed by the High Court, we have gone through the record of the case. C

Renuka Devi, wife of the deceased in her deposition supported the prosecution case fully. She categorically disclosed the reason as to why the lantern used to burn regularly at the same place. She further deposed that both Nawab and Peshkar who had lathis in their hands were standing just outside the house and were visible from the courtyard. In cross-examination she had also disclosed that Natthu was an accused in the case of Kedar in which case her husband was a witness. She further stated that her husband was threatened not to depose in the said case earlier also. Her statement that Ram Prakash was standing only 4-5 hands away from the cot where her husband was lying when he had been fired; whereas Natthu was only 2-3 hands therefrom, when he fired his shot, is categorical. She further stated that she ran upto the accused when the shots were fired. Her statement to the effect that she had gone out of the house chasing the accused upto one furlong may be incorrect as no such statement appears to have been made before the investigating officer but that, in our opinion, is of no moment. Such an omission does not disprove the prosecution case. No other infirmity in her deposition has been pointed out nor do we find any. D E F

PW 3 Ram Ratan also fully supported the case of the prosecution. The only discrepancy which has been pointed out by Mr. Jain is that whereas he had spoken about the giving a slap on the cheek of the deceased by one of the accused, no other witness stated so. Again such minor discrepancy is of not much significance when his presence in the house at the time when the occurrence took place is beyond any doubt. The contention of Mr. Jain to the effect that there is no reason as to why he should have been present in the house of the deceased on the date has rightly been rejected by the learned H

A Sessions Judge inasmuch as it was impossible for a person to be present in the police station in the early morning of the following day, as he could not have been communicated of the incident during night nor any such case has been made out. It is not even alleged that there existed even a facility of telecommunication in the village.

B The fact that he had not chased the accused persons cannot be said to be an unreasonable conduct on his part in view of the fact that the accused persons were armed. The evidence of PW 4 Har Nagar Singh also corroborates the prosecution case. Nothing has been pointed out either before the High Court or before us to show that he is untrustworthy. PW 5 was the son of the deceased. He at the time of incident was aged about 12 years. The learned Sessions Judge satisfied himself that he possessed normal intellect and, was, thus, found fit to depose in the case.

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Yet again no discrepancy in the statement worth noticing has been brought to our notice.

D Dr. S.P. Agarwal who conducted autopsy on the dead body has proved the post mortem report. The post mortem was conducted on 12.6.1978 at 4.00 p.m, the material portion of the report reads thus:

E "Probable Age - About 36 years Probable time since death - About 1½ day.

External Examination

1. Condition of body R.M. alongwith upper lower limb, blister present, skin peeled off at places.

F Eyes - Open

Incised wounds - Ante Mortem injuries.

G 1. One G.S. wound of entry 4 cm x 2 cm x abd. cavity into left side abdomen 21 cm below the left nipple (sic)lacerated. sic coming out surrounding by scorching area in an area of 10 cm x 4 cm directed inward upward and medially.

2. Abrasion 7 cm x 0.5 cm on the left side back auxilary line base, middle.

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II - Thorax.

a. walls, ribs, cartridges see injury noted

b. Pleura Rt. Punctured.

c. xxx

d. Right lung Punctured 3 cm x 1 cm

e. xxx

f. Pericardium contains clotted blood

g. Heart with wt. Rt. Side punctured 1.5 cm 1 cm (sic) 8 Oz.

III - Abdomen

1. xxx

2. xxx

3. Cavity contains clotted blood

4. Buccal cavity, teeth 16/16

5. xxx

6. Stomach and its contents - Empty punctured 3 cm x 1 cm (sic)

7. xxx

8. Large intestines and its contents - Full of faeces, NAD

9. Liver with wt. Left side punctured 2 cm x 1 cm x 2 lb.

Addl. remarks One caroted bullet recovered from Rt. Shoulder, one under the ribs.

Cause of death - The cause of death due to shock and haemorrhage as a result of gun-shot injuries."

The post mortem report as well as the statements of Dr. S.P. Agarwal in Court fully support the prosecution case. He categorically stated that the death occurred owing to 'the injuries', i.e., there were more than one injury. It further appears from 'Additional Remarks' of the post mortem report that two bullets were recovered from the body.

The High Court unfortunately, as noticed hereinbefore, in recording the judgment of acquittal, wrongly laid emphasis that only one fire injury was

A caused. The medical report shows that death took place because of 'injuries' meaning thereby more than one injury. The post mortem report further shows that whereas one injury was caused on the left side of the abdomen the other one was caused on the right side of the body. Keeping in view the nature of the injuries suffered by the deceased, the same could not have also been caused by one shot. Furthermore, evidently the shot fired by Natthu was fatal and not the one fired by Ram Prakash.

We have also seen the site plan, from a perusal whereof it appears that the courtyard was a very small one. The width of the courtyard was 3 paces and its length was only 7 paces. As disclosed by the eye witnesses, they were standing only two hands away from the room. All the accused persons were residents of the same village and, thus, it cannot be said that, even if the light was dim, it was impossible for the eye witnesses, PW 1, PW 3 and PW 5 to identify them. So far as non-mentioning of the crime number on the Fard Ex. K-2 is concerned, PW 9 in his deposition was forthright in admitting that he had not thought necessary to write crime number on Fard Ex. K-2. Such laxity on the part of the investigating officer, in our opinion, would not disprove the prosecution case.

SHOULD WE INTERFERE WITH A JUDGMENT OF ACQUITTAL?

The High Court has not assigned any cogent or sufficient reasons for disagreeing with the findings of the learned Sessions Judge. It arrived at certain conclusions without analyzing the evidences on record. It is based on surmises and conjectures. Despite finding that there had been an injury over the abdominal region with scorching around the area apart travelling upward from the abdomen which indicated that the deceased was hit, no explanation has been given why the same was not found to be in consonance with the prosecution story.

The High Court acquitted the accused persons without analysing the evidence on record and in that view of the matter, the impugned judgment cannot be sustained. (See *Amar Singh v. Balwinder Singh*, (2003) 2 Supreme 155 : JT (2003) 2 SC 1).

The Trial Court upon critical examination of the evidence of the eye witnesses had rightly concluded that they were truthful witnesses and the respondents together with Ram Prakash (absconding) and Nawab (since deceased) were present at the time of occurrence. Merely because the witnesses happened to be the relatives of deceased by itself cannot be a ground to reject

their testimonies. In view of the fact that the occurrence took place at the dead of night they were natural witnesses and were supposed to be present at the place of occurrence. A

The reasoning of the High Court to the effect that there was no reason for the accused to raise an alarm to say the least, is incomprehensible inasmuch as had the deceased, upon being threatened, stated that he would not depose against Ram Prakash and Natthu in the case of murder of Kedar, he might have been spared. The High Court failed to notice that even similar threat was given to Het Ram which should have been considered as a part of the same transaction. Furthermore, if the eye witnesses are trustworthy, the motive attributed for commission of crime may not be of much relevance. In this case, however, the motive for commission of the crime stands proved. We are satisfied that by reason of the judgment of the High Court, a great miscarriage of justice has taken place. We, therefore, are of the opinion that the impugned judgment of the High Court cannot be sustained. B C

In *State of U.P. v. Premi and Ors.*, [2003] 2 SCR 266 wherein one of us (Sabharwal, J.) was a member observed: D

“A well reasoned judgment of the Sessions Court on critical analysis of the evidence was reversed by the High Court on consideration of improvements and contradictions which are minor and natural and rather go to show the truthfulness of the evidence.” E

It was further observed:

“We are conscious of limitations while dealing with an appeal against a judgment of acquittal. Having, however, found that miscarriage of justice has resulted by an entirely faulty and erroneous appreciation of evidence by the High Court, it becomes our duty to interfere in the matter. From the evidence, the only view possible is one taken by the Sessions Court.” F

It is not a case where two reasonable views are possible. It is also not a case where findings recorded by the High Court are fully supported by the evidences on record. The High Court, as noticed hereinbefore, proceeded absolutely on a wrong premise that there had been only one fire injury which is contrary to records. G

The High Court being a court of first appeal was required to consider H

A and reappreciate the evidences but it failed to do and proceeded to dispose of the appeal on general observations which is impermissible. (See *Narendera Nath Khaware v. Parasnath Khaware and Ors.*, [2003] 5 SCC 488).

B It is well-settled that when reasoning of the High Court is perverse, this Court may set aside the judgment of acquittal and restore the judgment of conviction and sentence upon the accused. (See *Ramanand Yadav v. Prabhu Nath Jha and Ors.*, JT (2003) 8 SC 404 : (2003) 7 Supreme 576.) It is further well-settled that there is no embargo on appellate court to review evidence upon which an order of acquittal is based. [See *Chanakya Dhibar (Dead) v. State of West Bengal and Ors.*, (2003) 8 Supreme 884, *Surinder Singh and Anr. v. State of U.P.*, JT (2003) Supp 1 SC 226 : (2003) 7 Supreme 562, *Gorle S. Naidu v. State of A.P. and Ors.*, (2003) 8 Supreme 893 and *Suchand Pal v. Phani Pal and Anr.*, (2003) 7 Supreme 780 : JT (2003) 9 SC 17].

C We, therefore, have no other alternative but to hold that the High Court went wrong in passing a judgment of acquittal reversing the well-reasoned judgment of the learned Sessions Judge. It is wholly unsustainable.

D CONCLUSION:

E In view of aforementioned, the judgment of acquittal passed by the High Court is set aside and that of the learned Sessions Judge is restored.

As respondent No. 1 Nawab Singh is said to have expired, the appeal stands abated against him.

F This appeal is, therefore, allowed so far as respondent Nos. 2 and 3 are concerned. They shall serve out their remaining sentences imposed upon them by the learned Sessions Judge wherefor requisite steps shall be taken in accordance with law.

This appeal is allowed with the aforementioned directions.

G V.S.S.

Appeal allowed.