

(2016) 02 GUJ CK 0077
In the Gujarat High Court
Case No : Criminal Appeal No. 268 of 2012

Amarsing Jethiyabhai Vashava

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 135, Section 307, Section 326

Citation : (2016) 02 GUJ CK 0077

Hon'ble Judges : K.M. Thaker, J.

Bench : Single Bench

Advocate : Pratik B. Barot, Advocate, for the Appellant; L.B. Dabhi, A.P.P., for the Respondent

Final Decision : Partly Allowed

Judgement

K.M. Thaker, J.—1. The appellant in this Criminal Appeal has preferred present appeal against the judgment and order dated 11.11.2011 passed by the learned District & Sessions Judge, District: Narmada at Narmada in Sessions Case No. 32 of 2011 whereby the learned Court has convicted the appellant for offence punishable under Section 307 of the Indian Penal Code and Section 135 of the Bombay Police Act and the learned Court has sentenced the appellant to undergo 10 years RI and to pay fine of Rs. 5,000/- for the offence punishable under Section 307 of IPC and 1 year RI in case of default in payment of fine and for the offence punishable under Section 135 of IPC, the learned Court has sentenced the appellant to undergo 1 year RI and to pay fine of Rs. 1,000/- and in default in payment of fine to undergo further 1 month R.I.

2. At the outset, it is relevant and necessary to mention that the learned counsel for the appellant, during his submissions, submitted, declared and stipulated that the appellant does not seek clean acquittal and the appellant restricts the scope of appeal to urge that having regard to special and peculiar facts of the case

either the conviction may be converted under Section 326 or the sentence may be reduced to the extent undergone. In view of the said stipulation, the conclusion recorded by the learned trial Court that the allegations and charge against the accused are proved, is not placed under challenge.

2.1 However, in view of the request which is made for consideration by the Court, it would be appropriate to take into consideration the nature and gravity of the offence, nature of injury and the evidence on strength of which the findings are based.

3. Briefly stated the case of the prosecution was that at about 7.30 on 14.6.2011, the appellant - accused, with intention to cause death of the victim, attacked and assaulted the injured victim with scythe (dharria) and that with the knowledge that the assault and the weapon used for assault and the injuries inflicted with the weapon will cause death the accused - appellant inflicted multiple injuries on the body of the injured victim which could have caused, and resulted into, death of the injured victim if immediate and emergent medical treatment had not been made available.

3.1 The complaint against the appellant - original accused alleged that the injured victim and the appellant are real brothers and the complainant is the son of the victim. The complainant alleged that a dispute with regard to ancestral land was going on between two brothers since past sometime and on 14.6.2011 when the victim was returning to his residence, the appellant attacked and assaulted his brother (i.e. the victim) with a scythe and inflicted multiple injuries at vital parts of body viz. neck, head and upper part of the face near the ears. The victim was immediately rushed to hospital. As it was cognizable offence intimation to police was given and thereafter complaint - FIR was lodged on 15.6.2011. According to the case of prosecution the appellant - accused had run away from the place of incident after causing the assault and he was arrested after two days, i.e. on 17.6.2011. The victim had to be admitted as an indoor patient and was given treatment from 14.6.2011 to 2.7.2011 (as indoor patient). After the complaint was lodged on 15.6.2011, the IO conducted investigation and on completion of investigation, sufficient material - evidence became available and therefore, charge-sheet came to be filed before the learned Magistrate on 25.7.2011 against the accused -present appellant for offence punishable under Section 307 of IPC and Section 135 of Bombay Police Act. The case being exclusively triable by the Court of sessions, it was committed to the Court of sessions and was registered as Sessions Case No. 32 of 2011. Thereafter, the learned Court framed charge at Exh. 6. The statement of the accused - appellant was recorded, who pleaded not guilty and claimed to be tried. So as to bring home the guilt and to prove the charge against the accused - present appellant, the prosecution examined 10 witnesses and placed on record 17 documents.

3.2 After examining the witnesses, further statement of the appellant - accused was recorded under Section 313 of the Criminal Procedure Code, wherein the appellant - accused denied the charge and the case of the prosecution. Upon

being asked whether he wanted to examine any defence witness, the appellant - accused had declined and upon being asked whether he wanted to say anything in his defence he merely maintained that false case was registered against him. With reference to FSL report and serology report also, the appellant - accused maintained that the documents were false.

3.3 Thereafter, the learned Court considered the submissions by learned advocates and considered the oral and documentary evidence placed on record. After evaluating and appreciating the evidence, the learned Court reached to the conclusion that the allegations and charge against the appellant - accused are proved and that, therefore, vide judgment and order dated 11.11.2011, which is impugned in present appeal, the learned Court recorded conviction against him for above-mentioned offence and ordered him to undergo sentence mentioned above. Feeling aggrieved by the conclusion holding guilty of offence and by the sentence, the accused has taken out present appeal.

4. Mr. Barot, learned counsel has appeared for the appellant and Mr. Dabhi, learned APP has appeared for the State. I have heard at length the submissions by Mr. Barot, learned advocate and Mr. Dabhi, learned APP.

5. Mr. Barot, learned counsel for the accused initially submitted that the prosecution alleged that the appellant - accused had inflicted 20 blows and the injuries were grave and serious and it could have resulted into and could have cause death and the learned Court has also accepted the said submission for holding that the offence under Section 307 is proved, however, it is ignored by the learned Court that the victim was conscious when he was taken to the hospital and he took about 20 minutes to reach his residence and during that period he was in stable condition which would mean that the injuries were not grave or serious. The learned counsel also submitted that at about 7.30 p.m. it was dark at the place of incident which allegedly occurred in the "Sim" of the Village: Mathamogar and that, therefore, there was no possibility of identifying the person who caused assault and inflicted the injuries and that there is no eyewitness of the incident. Learned counsel also referred to the description of injuries and submitted that the doctor/PW-1 had broadly described 5 different injuries and stated in his deposition that the injuries mentioned at Sr. Nos. 1 and 4 were serious, whereas injury at Sr. No. 5 was simple injury, however, the same witness also said that the injury at Sr. Nos. 1 and 3 were on vital part and would have resulted into death, but for emergent treatment. According to the learned counsel for the accused, even according to the doctor/PW-1, 2 injuries out of 5 injuries were not serious and were not such which would cause death, however, learned Court erred in not appreciating that and held that the charge for offence punishable under Section 307 is proved. According to learned counsel for the accused, Section 307 is not attracted or applicable and learned Court failed to appreciate this aspect and committed error in convicting the appellant for offence under Section 307 of IPC.

5.1 After initially putting forward the said submissions, learned counsel for the

appellant - accused submitted, declared and stipulated that the appellant does not press in service the appeal so far as the conclusion that the allegations with regard to the incident and the charge are proved, however, the appellant requests that having regard to the nature of injury, the conviction may be converted into conviction for offence punishable under Section 326 of IPC or the sentence may be reduced to the extent undergone. Mr. Barot, learned advocate for the appellant, before he made aforesaid stipulation and declaration, referred to certain decisions, however, in view of his above-mentioned stipulation, it is not necessary to deal with the said decisions. However, to put the record straight and complete, the Court should mention the decisions which the learned advocate referred to. Mr. Barot, learned counsel for the accused referred to the decisions in the cases of Gopal Singh vs. State of Uttarakhand [, (2013) 7 SCC 545], Neelam Bahal & Anr. vs. State of Uttarakhand [, (2010) 2 SCC 229], Ramesh Kumar vs. State of Madhya Pradesh [, (2010) 6 SCC 685], State of Gujarat vs. Parmar Naginkumar Prabhudas [, 2013 (1) GLR 706], Mohanbhai Ranchhodbhai vs. State of Gujarat [, 1993 (1) GLH 28], Ram Singh vs. State of Madhya Pradesh [, (2011) 14 SCC 563], Tejaji Babuji Thakor vs. State of Gujarat [Criminal Appeal No. 237/2012, decision dated 30.9.2013], Merambhai Punjabhai Khachar vs. State of Gujarat [, 1997 SCC (Cri) 1078], Pritam Chauhan vs. State (Govt. of NCT Delhi) [, AIR 2014 SC 2553].

6. In view of the said submission and declaration by learned counsel for the appellant - accused, learned APP did not make elaborate submissions with regard to the offence and evidence related to the assault - attack, the dispute between the accused and the victim, gravity of injury, etc. and the learned APP restricted and concentrated his submissions as to the appellant's request to convert the offence into offence under Section 326 or to reduce the sentence to the extent undergone.

6.1 Learned APP submitted that as many as 20 blows were inflicted and that the victim himself had identified the accused and the evidence by the doctor - PW-1 has clearly established that the injuries were such which would have resulted into and caused death. He also submitted that it is also established that the assault and injuries were caused with intention to cause death on account of the dispute between the brothers on account of ancestral land and that, therefore, the conviction under Section 307 of IPC is just and proper and there is no justification to convert the same into offence under Section 326 or to treat the incident as an offence under Section 326. Learned APP also submitted that having regard to the number and nature of injuries, as such, there is no need or justification to accept the request for reducing the sentence, however, having regard to the facts of the case, the Court may make appropriate order with regard to sentence, as may be considered appropriate in the facts of the case.

7. So as to support and justify the request by the accused to reduce the sentence, learned counsel for the appellant, in his rejoinder, not only reiterated the submission with regard to the nature of injuries described by the doctor -

PW-1 but he also submitted that one of his three children, i.e. his youngest son is only 4 years old and he also has a daughter who is 7 years old and that his eldest son is only 12 years old and the son younger to him is 10 years old and that, therefore, considering the fact that he is the only earning member in a family where the youngest son is only 4 years old and his family, more particularly his children need his presence for earning and maintaining the income and livelihood, the request to reduce the sentence may be considered sympathetically. He also submitted that the appellant has no antecedents and he is never involved in any offence.

8. The prosecution examined the Medical Officer at Health Centre, Dediapada, who had attended the victim and given treatment on 14.6.2011, as PW-1. In his deposition, PW-1 mentioned that the victim was brought to the hospital in Ambulance. The victim's son had brought his father who has sustained and suffered serious and grave injuries. PW-1 also mentioned in his evidence that when the victim was brought to the hospital he was conscious. PW-1 mentioned that he had asked the victim about the details/history of the incident and the victim said that his brother had attacked him with a scythe at about 7.30 p.m. In his deposition, PW-1 mentioned the injuries found on the body of the victim. The PW-1 mentioned that he had given preliminary and emergent treatment to the victim and considering the nature of injuries he had referred the victim to Rajpipla Civil Hospital at about 11.20 p.m. He also mentioned that he had issued injury certificate. PW-1 mentioned in his deposition that the injuries mentioned at Sr. Nos. 1 to 3 in his deposition were inflicted at vital part of the body and were capable of causing and resulting into death if immediate medical treatment was not provided. He also mentioned in his deposition that the injuries mentioned at Sr. Nos. 1 to 4 in his deposition were of grave and serious nature. In the said injury certificate, PW-1 described the injuries, as mentioned below:

"(1) Fresh IW of about 12.0 c.m. x 1.5 x s/c. 8 muscle deep on lt. side neck lower part, lt. superpredicate region & lt. side of post of neck.

(2) Fresh IW of about 11.0 c.m. x 1.5 c.m. to 2.0 c.m. x muscle deep on point of (illegible) on lt. side and rt. side of it.

(3) Fresh IW of about 11.0 c.m. x 1.5 c.m. x muscle deep on rt. side lower part (illegible) and going anterior, upwards on rt. side (illegible)

(4) Fresh IW on (illegible) of lt. index finger of about 2.5 c.m. x 1.0 c.m. x muscle and bone deep

(5) Fresh IW on (illegible) bone of lt. Thumb of about 1.0 c.m. x 0.5 c.m. x s/c. deep"

8.1 The prosecution examined panch witness of the panchnama of place of incident, as PW-2. In his deposition the witness mentioned that at the place of incident, they had noticed blood stains and the police had collected "control sample". The prosecution examined the panch witness of the panchnama of

clothes of the accused and panchnama for recovery of the weapon, as PW-3. PW-3 mentioned that the accused had led the police and panch witness to his residence and then led the team to the "wada" and from there he took out the scythe used in the incident. The police then recovered the weapon and the panchnama was drawn. In cross-examination of the said witness, any contrary material is not brought out by the defence.

8.2 Thereafter, the prosecution examined the complainant, son of the victim, as PW-4. The victim's son was minor at the relevant time (14 years old). Before granting permission to examine the victim's son as witness, the Court had put initial and preliminary questions to the said 14 years old child and upon being satisfied, the Court granted permission, however, his deposition was recorded (without administering oath). In his deposition, PW-4 mentioned that the accused was demanding share in the ancestral land which had come into the share of his father and that since his uncle had been already given his share i.e. share of the accused, his father had refused to part with the ancestral land which had come into his father's share and therefore, his uncle was nurturing grudge and dispute with his father. He also mentioned in his evidence that on 14.6.2011 (i.e. date of the incident), his father had gone for fishing and while he was returning with the catch when he was assaulted by his uncle and his father had reached home in bleeding condition and from there the family members had taken him to the health centre in the Ambulance. The cross-examination, did not yield any contrary evidence.

8.3 Thereafter, the prosecution examined the victim himself as PW-5. In his deposition, the victim described the incident. The victim specifically and expressly mentioned the name of accused as the person who had attacked him. During his cross-examination, the victim denied the suggestion that due to evening time and darkness he could not have identified the accused as the person who attacked him. In response to the suggestion during cross-examination, the victim specifically mentioned that when the first blow was inflicted, he had turned round and seen the person who attacked him and he had identified his brother.

8.4 Thereafter, the prosecution examined the doctor/Medical Officer at S.S.G. Hospital, Vadodara, as PW-6. PW-6 narrated the inspection of injuries of the victim. She also submitted that she had signed and issued injury certificate. The injury described in the certificate dated 15.6.2011 issued by the Medical Officer at S.S.G. Hospital is follows:

- "1) Incised wound Rt cheek (illegible) 8 c.m. x 2 c.m. x 2 c.m.
- 2) Incised wound left side of neck 8 c.m. x 4 c.m. x 2 c.m.
- 3) Incised wound Lt matacarpo phalangeal joint index finger 4 c.m. x 1 c.m. x 1 c.m.
- 4) Incised wound Lt side cheek to left ear-cut at the middle part

- 5) Stab wound left Scapular region 1 c.m. x 1 c.m.
- 6) Incised wound left shoulder 2 c.m. x 1 c.m. x 1 c.m.
- 7) Incised wound left elbow 4 c.m. x 1 c.m. x 1 c.m."

8.5 Even PW-6 also specifically mentioned in her evidence that the injuries on right cheek and the injuries at the left side of serious and the neck were on vital parts of the body and were of grave nature and capable of causing death if immediate medical treatment was not made available.

8.6 The prosecution examined another son of the victim as PW-7. Thereafter, the prosecution examined, as PW-8 the person whom the son of the victim had approached on the date of incident and requested for help to take his father to medical centre. The said PW-8 mentioned in his evidence that when he reached the house of the victim, he saw that the injuries on victim's neck, on his ears, shoulder and hand and when he inquired with the victim about the incident the victim said that on account of the dispute for ancestral land the accused had attacked him with scythe. Thus, the said witness also mentioned in his evidence that the victim had identified the accused as the person who attacked and inflicted the injuries.

8.7 Thereafter, the prosecution examined, as PW-9 Head of Plastic Surgery Department at S.S.G. Hospital, Vadodara. The PW-9 deposed that the victim had mentioned the details/history of the incident to the said PW-9 also and at that time also he mentioned the name of accused as the person who committed the assault and inflicted injuries on 14.6.2011. The said PW-9 also described the injuries from the case paper. She mentioned that the victim sustained multiple injuries over head, neck and hand (upper limb), face (right side of face), etc.

8.8 The prosecution also placed on record serology report, report from Radiology Department and the report from FSL. The report of FSL included the test report of control sample, blood on the shirt and pant, blood on the scythe.

9. After considering the material on record and the submissions by learned advocates for the parties, the learned Court reached to the conclusion that the allegations and charge against the accused are proved. Then, considering the nature and gravity of injuries and other relevant facts, the learned Court passed order of conviction and sentence.

10. I have considered the conclusions recorded by the learned Sessions Court and also the reasons recorded to support and justify the conclusions.

11. This Court is of the view that the conclusions recorded by the learned Sessions Court do not suffer from any error or infirmity and they are based on evidence available on record and they are supported by cogent reasons. Hence, the conclusions and findings recorded by the learned Sessions Court do not warrant any interference.

11.1 The incident, the attack and the assault on the victim are established in

light of the evidence of PW-1, PW-6 and PW-9 as well as the injuries certificates issued by the said witnesses (medical officers - doctors).

11.2 The place of the incident is established in view of the evidence of panch witnesses and panchnama of the place of incident.

11.3 The intention and the motive and the reason behind and for the assault are also established, more particularly in view of the evidence by the son of the victim.

11.4 On this count, it is also relevant to note that even in his further statement under section 313, the accused did not offer any explanation with reference to the evidence by the victim with regard to the reason for the dispute and that the assault was committed on account of the dispute between the accused and the victim, except claiming that false case is instituted against him.

11.5 The victim's evidence - deposition is recorded, the victim himself identified the accused. The accused is real brother of the victim and the accused had inflicted multiple injuries to the victim and that, therefore, it was possible for the victim to identify his brother. Under the circumstances, the plea raised on the ground that the alleged incident is said to have occurred at late evening when there would be darkness and therefore, the learned Court ought not have believed the case and the prosecution is not acceptable and sustainable. The accused happens to be real brother of the victim, and not a stranger. It is pertinent that when multiple blows are inflicted and the perpetrator is real brother, then there would not be any reason or justification to raise any doubt with regard to identity more so when the victim, immediately after the incident mentioned the appellant's name to the PW-7 and to his son and thereafter he mentioned the appellant's name before the doctor PW-1 while mentioning the details/history of the incident and then in his deposition in the Court also he mentioned appellant's name and identified the appellant. Thus, there is no ground to accept appellant's contention against identity.

11.6 Besides this, in view of the panchnama of recovery of weapon which gives out that the accused had led the police to the place where the weapon/scythe was kept and the accused had taken out the weapon and handed it over to the police, it becomes clear that the learned Court has not committed any error in accepting the identification and holding against the appellant and convicting him.

11.7 The gravity and seriousness of the multiple injuries are established and highlighted in view of the evidence by PW-1, PW-6 and PW-9 and the injury certificates issued by them. Not one, not two but multiple injuries/blows were inflicted. The fact that the blows were inflicted on vital parts of the body i.e. on the neck and head and face (cheek near the ear) established that blows were inflicted with intention to cause death and with the knowledge that the injuries at such vital part would result into and cause death.

11.8 The multiple blows/injuries and the fact that the multiple injuries were

inflicted at vital part of the body, establish the ingredients of section 307. In view of the use of weapon (Dhariya) and recovery of the weapon and in light of the notification the charge of offence under section 135 of Bombay Police Act is, as rightly held by learned Court, also proved. The said conclusion is not incorrect and does not warrant interference.

12. The learned Court has not committed any error in holding that in present case the provision under section 307 of IPC and section 135 of Bombay Police Act is attracted and applicable and the prosecution has proved commission of offence punishable under section 307 of IPC and section 135 of Bombay Police Act. The findings - conclusions recorded by the Court and the final order - judgment do not suffer from any error and infirmity. The learned trial Court has recorded sufficient and satisfactory reasons after having considered the scope of section 307 of IPC and section 135 of Bombay Police Act. The learned trial Court has considered the evidence on record and analyzed the evidence at length and in detail. After due and proper analysis and appreciation of evidence, documentary as well as oral, learned trial Court has reached to the conclusion that the charge and allegations are proved. In this view of the matter, the findings by the learned trial Court do not warrant interference. Upon appreciation of evidence available on record and upon consideration and examination of the judgment impugned in present petition, any material error is not found. This Court is in agreement with the conclusions reached and recorded by the learned trial Court.

13. For the foregoing reasons, this court agrees with the decision by learned trial Court and confirms the conviction of the appellant recorded by the learned trial Court by impugned judgment. There is no reason to interfere with the impugned judgment qua conviction and this Court does not find any substance in the appeal qua conviction. The judgment and order passed by the learned trial Court to that extent is hereby confirmed.

14. From totality of the facts of the case and in light of the evidence on record and on overall consideration of entire matter it has emerged that the findings and conclusions by the learned trial Court holding the appellant guilty for commission of offence he is charged with are correct and justified and do not warrant any interference. This Court is in agreement with the said conclusions and that, therefore, the said conclusion is confirmed. Consequently, the conviction for the commission of offence punishable under sections 307 and 135 of IPC is confirmed. Upon appreciation of evidence available on record and upon consideration and examination of the judgment impugned in present petition, any material or substantial error is not found. In the circumstances, present appeal qua the conviction deserves to be dismissed and accordingly stands dismissed. Even otherwise the appellant has declared that the appeal is not pressed qua conviction.

15. In this background of evidence and material on record and after evaluating and assessing diverse aspects of the case, the learned counsel for the appellant, as mentioned earlier, submitted that the appellant does not challenge the

conviction and the appeal is not pressed on the count of conviction recorded by the learned trial Court and this appeal is pressed only qua the quantum of sentence.

15.1 Besides this, since the learned advocate for the appellant - accused has declared that the appeal is pressed qua the sentence and not with regard to conviction, detail or further discussion with regard to the conviction is not required in present case. For the same reason and more particularly in view of the declaration by learned advocate for the appellant, it is not required to deal with the decisions which were referred to by the learned advocate for the appellant before he stipulated that the appeal is pressed qua the sentence.

16. In this background, now the issue which survives for consideration is about sentence.

17. On this count it is relevant to note that in the present case, the victim PW-5 and his sons PW-4 and PW-7 alleged that the accused had inflicted 20 blows. The evidence by doctor - medical officer and MLC case papers or the injury certificate do not specifically mention the number of blows inflicted by the accused, however, the evidence by the medical officer and the case papers and injury certificate specifically mention the type and nature of the injuries. The said evidence describe at least 5 injuries. The type and nature of injuries suffered by the victim which are described in the above-mentioned evidence, are quoted hereinabove earlier.

18. Having regard to the above discussed aspects and more particularly the type and nature and number of injuries and the intention as well as the reason for which the appellant committed the offence, this Court is of the view that the appellant's request to consider or convert the offence under section 326 of IPC does not deserve to be entertained and accepted in the facts of present case. Similarly, upon considering all facts and circumstances of present case this Court is of the view that the appellant's request, in light of the fact that the appellant has undergone RI for 6 years, to reduce the sentence to the extent already undergone, also cannot be entertained and accepted. The Court is also of the view that at the same time, the facts urged by learned advocate for the appellant in support of his request viz. that the youngest of the appellant is only 4 years old and the child elder to the youngest son is 7 years old and that the responsibility of four children and his family is on the appellant and that the appellant is sole earning member and the appellant has no antecedents and the appellant's request for modifying the sentence also deserve to be taken into account while determining the sentence. On overall consideration of facts and circumstances, it appears that ends of the justice will be met if the sentence is reduced to rigorous imprisonment for 8 years, instead of 10 years as awarded by the impugned judgment. Therefore, taking overall view of the facts and circumstances of the case and the aspects urged by learned advocate for the appellant, the sentence is modified and reduced to 8 years instead of 10 years.

19. Consequently, the learned trial Court's conclusion recorded in the impugned judgment dated 11.11.2011 in Sessions Case No. 32 of 2011 passed by the learned Sessions Court at Narmada holding the appellant guilty for offence under section 307 of IPC and section 135 of Bombay Police Act is confirmed and so far as the sentence is concerned, having regard to the facts of the case, the sentence for offence punishable under section 307 is modified and it is reduced to rigorous imprisonment for 8 years instead of 10 years as awarded by the learned trial Court. Accordingly, this Appeal No. 268 of 2012 is partly allowed by modifying the sentence for offence under section 307 of IPC. The rest of the judgment and directions including the sentence with regard to offence under section 135 of Bombay Police Act and the directions issued by the learned trial Court with regard to the benefit of set off/remission as passed by the learned trial Court at Narmada under the judgment dated 11.11.2011 is confirmed as it is and the same shall operate as per the directions by the learned trial Court.

This Court is informed that the appellant, i.e. original accused - convict is in Jail/ Custody, therefore, any other order or directions are not required to be passed. However, it is clarified that if the appellant is granted bail and if the appellant has not completed the sentence, then the bail and bail bond shall stand cancelled and the appellant shall immediately surrender to the Jail Authority and complete the sentence as directed by present judgment. If the appellant is on bail and he fails to surrender, the concerned learned trial Court shall issue non-bailable warrant to effect arrest of the appellant - convict. The Record & Proceedings to be sent to the concerned learned trial Court forthwith.