
(2015) 07 AHC CK 0059
In the Allahabad High Court
Case No : Criminal Appeal No. 5610 of 2007

Bablu Pasi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34, 394

Citation : (2015) 3 ACR 3301 : (2015) 8 ADJ 751 : (2015) 90 ALLCC 904

Hon'ble Judges : Surendra Vikram Singh Rathore, J;Raghvendra Kumar, J

Bench : Division Bench

Advocate : Atul Kumar Shahi, G.R. Rawat, Rajesh Kumar Gupta and Ram Rawat, for the Appellant

Final Decision : Allowed

Judgement

Raghvendra Kumar, J—Heard learned Sri Atul Kumar Sahi, Amicus Curiae and learned AGA for the State of U.P. and perused the material available on record. This Jail Appeal has been preferred on behalf of accused Bablu Pasi against judgment and order dated 11.12.2006 passed in S.T. Case No. 382 of 1999, under sections 394, 302 IPC in Case Crime No. 879 of 1998, P.S. Naini, District Allahabad whereby accused Bablu has been convicted for the offence under section 302 IPC and has been sentenced to imprisonment for life and, a fine of Rs. 10,000/-, in default of payment of fine, he shall undergo rigorous imprisonment (R.I.) for six months and for the offence under section 394 IPC, he has been awarded R.I. for 10 years and a fine of Rs. 5,000/-, in default of payment of fine, he has been awarded R.I. for three months.

2. Accused Chhotey Lal has died during the course of trial and the case was abated against him vide order dated 10.9.2002 passed by learned Trial Court. Thus, the trial of accused Bablu proceeded in accordance with law.

3. As per the prosecution version, on 2.9.1998 the dead body of the deceased Munnu Lal was recovered from the land of the Naini Central Jail towards east of

the Naini Gate; for which the information was lodged with the police by one Sri Tirasi Lal. The deceased was identified as Munnu Lal whose brother Roshan Lal is posted at Central Jail Naini. Munnu Lal used to reside in the quarter allotted to his brother Roshan Lal. Inquest report (Ex. Ka-1) was executed. F.I.R. was lodged under sections 394, 302, 201 IPC at the P.S. Naini whereupon the investigation proceeded in accordance with law and after compliance of the legal requirements the post-mortem examination of the dead body was conducted.

4. Roshan Lal has given an application disclosing strong suspicion about the murder of his brother. A recovery of bicycle has been alleged from the possession of accused Babalu Pasi and a recovery of a watch has been alleged from the possession of Chhotey Lal. The doctor in his post mortem examination report conducted on 3.9.1998 at about 3.30 p.m., has noted following ante-mortem injuries:--

(i) On the head scalp absent. Skull bone is exposed. On top there is fracture of bone. Parietal left and right in middle with irregular surface.

(ii) Incised wound 1" x 1/2" muscle deep on left forearm.

(iii) In front entire abdomen upto chest was found to be decomposed and internal parts were visible.

5. The cause of death has been assigned as ante mortem injuries. In the post-mortem report the death has been assessed as about four days old. The investigation of the case culminated into filing of the police report in the shape of charge-sheet. The accused was charged for the offence under sections 394, 302, 201 IPC read with section 34 IPC, who denied the charge and claimed the trial.

6. The defence case is that the murder of Munnu Lal was committed by some unknown person in night. No one has seen the occurrence. The accused persons have been falsely implicated. The period of death as assessed by the doctor in post-mortem examination report is not consistent with oral testimony with respect to the date of incident so as to substantiate the guilt of accused-appellant.

7. The prosecution has examined Tirasi Lal (P.W.-1) who has simply stated about giving of the oral information to police station Naini, District-Allahabad, about the recovery of dead body on 2.9.1998 while he was on duty in the morning hours. Roshan Lal (P.W.-2) is the brother of the deceased who has stated that the dead body of the deceased Munnu Lal was recovered on 1.9.1998 near culvert of Jail Mandir of Jail at Naini. He went to the spot and identified the body of his brother of Munnu Lal. He has verified execution of inquest report (Ex. Ka-1) He has categorically admitted that he had not seen anyone committing murder of his brother. Subsequently, he came to learn that Chhotey Lal and Bablu Pasi have murdered by Gadasa and pistol.

8. One P.W.-3 Kamla Kant Shukla and P.W.-4-Pappu are witnesses of recovery of bicycle.

9. Constable Sunder Lal (P.W.-5) has stated about the murder of brother of Roshan Lal and recovery of dead body on 2.9.1998 from the place of occurrence i.e. 100 metres away from the temple situated in the Jail. He has also proved execution of the panchanama. He is not a witness of fact. He is a formal witness. Net Ram (P.W.-6) and Kedar Nath (P.W.-7) are alleged to be the eye-witnesses of the murder. H.C.P. Yashwant Singh (P.W.-8) has proved the execution and the G.D. entry (Ex. Ka-3) and the chik F.I.R. (Ex. Ka-4), Jai Vijay Singh (P.W.-9) is the Investigating Officer. Dr. S.P. Singh (P.W.-10) is the doctor who has conducted post-mortem examination. Dinesh (P.W.-11) who has proved execution of recovery memo, site plan, charge-sheet and written report given by P.W.-2 Roshan Lal.

10. It has been submitted on behalf of learned Counsel for the defence/Amicus Curiae that the murder was committed by some unknown persons and the body was thrown within jail campus. No one had seen the incident. The dead body of the deceased is alleged to have been recovered on 2.9.1998 whereas as per the doctor, death of the deceased took place about four days back. No gun shot injuries have been mentioned by the doctor in his post mortem examination report. The witnesses of recovery of bicycle have not supported the prosecution version. The alleged eye-witnesses are the chance witnesses and there is complete lack of coherence between their examination in chief and their cross-examination and inter se testimony of eye witnesses.

11. Learned AGA for the State of U.P. has submitted that it is a case of direct evidence. The eye-witnesses Net Ram (P.W.-6) and Kedar Nath (P.W.-7) have seen the evidence in the torch light and have supported the prosecution version and have proved the commission of murder by the accused persons. The hostility of witnesses of recovery of cycle would not belie the prosecution version in toto and would not materially prejudice the prosecution case.

12. While deciding the appeal by the High Court, it is to be guided by the principle laid down by Hon"ble Apex Court from time to time. The Hon"ble Apex Court has propounded the following principles in Padam Singh Vs. State of U.P., AIR 2000 SC 361 : (2000) CriLJ 489 : (1999) 9 JT 351 : (1999) 7 SCALE 268 : (2000) 1 SCC 621 : (1999) 5 SCR 59 Supp : (1999) AIRSCW 4492 : (1999) 9 Supreme 545 which is quoted here:

"it is the duty of an Appellate Court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution can be said to have been proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the Appellate Court in drawing inference from proved and admitted facts. It must be remembered that the Appellate Court, like the Trial Court, has to be satisfied affirmatively that the prosecution case is substantially true and the guilt of the accused has been proved beyond all reasonable doubt as the presumption of innocence with which the accused starts, continues right through until he is held guilty by the final

Court of appeal and that presumption is neither strengthened by an acquittal nor weakened by a conviction in the Trial Court."

13. Further guidelines have been issued by the Hon"ble Apex Court in case of Rama and others v. State of Rajasthan 2000 (4) SCC 571, which is as under:

"It is well settled that in a criminal appeal, a duty is enjoined upon the Appellate Court to reappraise the evidence itself and it cannot proceed to dispose of the appeal upon appraisal of evidence by the Trial Court alone especially when the appeal has been already admitted and placed for final hearing. Upholding such a procedure would amount to negation of valuable right of appeal of an accused, which cannot be permitted under law."

14. The guidelines have been issued by three Judges Bench of the Hon"ble Apex Court in case of Majjal Vs. State of Haryana, (2013) CriLJ 3999 : (2013) 4 JCC 2796 : (2013) 4 RCR(Criminal) 474 : (2013) 8 SCALE 129 : (2013) 6 SCC 798 : (2013) AIRSCW 4961 : (2013) AIRSCW 4583 , which is as under:

"It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's concurrence with the Trial Court's view would be acceptable only if it is supported by reasons. In such appeals it is a Court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which to the root of the matter."

15. The aforesaid observations have been quoted by the Hon"ble Apex Court in a very recent judgment in the case of Kamlesh Prabhudas Tanna and Another Vs. State of Gujarat, (2013) 9 AD 188 : (2014) CriLJ 443 : (2013) 3 DMC 358 : (2013) 10 SCALE 676 .

16. Keeping in view the propositions cited above, the Court is to scrutinize the evidence available before it and to draw the inference accordingly, bearing in mind the presumption of innocence of accused unless otherwise is established from evidence available on record without being influenced by the findings recorded by learned Trial Court.

17. Learned Amicus Curiae Counsel for the accused appellant has submitted that the case of the prosecution has been build up on the basis of the recovery of bicycle from the possession of the accused Bablu Pasi, that evidence is of no avail for the prosecution because the witnesses of the recovery P.W.-3 and P.W.-4 namely Kamla Kant and Pappu have already been declared hostile at the request of the prosecution.

18. It appears appropriate to consider evidence of the hostile witnesses in the

light of law laid down by the Apex Court from time to time.

19. Hon"ble Apex Court has been pleased from time to time to enunciate the guidelines for appreciation of evidence of a hostile witness which has been reiterated in the case of Ramesh Harijan Vs. State of U.P., AIR 2012 SC 1979 : (2012) CriLJ 2914 : (2012) 5 SCALE 561 : (2012) 5 SCC 777 : (2012) AIRSCW 2990 : (2012) 4 Supreme 121 :

Para 18 "It is a settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution choose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (Vide: Bhagwan Singh Rana Vs. The State of Haryana, AIR 1976 SC 1797 : (1976) CriLJ 1379 : (1976) 3 SCC 101 : (1976) SCC(Cri) 373 : (1976) 8 UJ 644 , Shri Rabindra Kumar Dey Vs. State of Orissa, AIR 1977 SC 170 : (1977) 43 CLT 1 : (1977) CriLJ 173 : (1976) 78 PLR 928 : (1976) 4 SCC 233 : (1976) SCC(Cri) 566 : (1977) 1 SCR 439 , Syad Akbar Vs. State of Karnataka, AIR 1979 SC 1848 : (1979) CriLJ 1374 : (1980) 1 SCC 30 : (1980) 1 SCR 95 , and Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh, AIR 1991 SC 1853 : (1991) CriLJ 2653 : (1991) 3 Crimes 82 : (1991) 3 JT 151 : (1991) 2 SCALE 80 : (1991) 3 SCC 627 : (1991) 3 SCR 1 .

Para 19. In State of U.P. Vs. Ramesh Prasad Misra and another, (1996) 6 AD 209 : AIR 1996 SC 2766 : (1996) CriLJ 4002 : (1996) 3 Crimes 181 : (1996) 2 DMC 368 : (1996) 9 JT 566 : (1996) 6 SCALE 90 : (1996) 10 SCC 360 : (1996) 4 SCR 631 Supp , this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu Sonba Shinde Vs. State of Maharashtra, AIR 2002 SC 3137 : (2002) CriLJ 4650 : (2002) 4 Crimes 200 : (2002) 6 JT 611 : (2002) 6 SCALE 281 : (2002) 7 SCC 543 : (2002) 2 SCR 135 Supp : (2002) 2 UJ 1353 : (2002) AIRSCW 3619 : (2002) 6 Supreme 194 , Gagan Kanojia and Another Vs. State of Punjab, (2006) 12 SCALE 479 : (2006) 9 SCR 413 Supp , Radha Mohan Singh @ Lal Saheb and Others Vs. State of U.P., AIR 2006 SC 951 : (2006) CriLJ 1121 : (2006) 2 CTC 762 : (2006) 1 JT 428 : (2006) 1 SCALE 369 : (2006) 2 SCC 450 : (2006) 1 SCR 519 : (2006) 1 UJ 370 : (2006) AIRSCW 421 : (2006) 1 Supreme 371 Sarvesh Narain Shukla Vs. Daroga Singh and Others, AIR 2008 SC 320 : (2007) 13 SCC 360 : (2007) 11 SCR 300 : (2007) AIRSCW 6843 , and Subbu Singh Vs. State by Public Prosecutor, (2009) CriLJ 3433 : (2009) 7 JT 217 : (2009) 6 SCC 462 : (2009) 8 SCR 383 .

Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence (see also : C. Muniappan and Others Vs. State of Tamil Nadu, AIR 2010 SC 3718 : (2010) 9 JT

95 : (2010) 9 SCC 567 : (2010) 10 SCR 262 , and Himanshu @ Chintu Vs. State of NCT of Delhi, (2011) 1 Crimes 157 : (2011) 1 JT 123 : (2011) 1 RCR(Criminal) 405 : (2011) 1 SCALE 30 : (2011) 2 SCC 36 : (2011) 1 SCC(Cri) 593 : (2011) 1 SCR 48 ."

20. Thus, in the light of above proposition of law, a heavy duty is cast upon the Court to select the portion of the evidence of the hostile witnesses which inspires confidence and appear to be credible and reliable. Such portion of evidence either in favour of the prosecution or defence can be legally relied upon. Inference on basis of such evidence can be drawn.

21. In this case nothing could be extracted by the prosecution P.W.-3 and P.W.-4 by way of their cross-examination. The witnesses in spite of cross examination have not made any admission which can be taken to be a credible and reliable evidence and which is helpful to the prosecution. The evidence thus led by the prosecution in the shape of P.W.-3 and P.W.-4 appears to be of no avail for prosecution.

22. It is noteworthy that the charge has been framed in very vague language by the Trial Court for the offence under sections 394, 302/34 and 201 IPC.

23. From the perusal of testimony of P.W.-2, it is revealed that the dead body of the deceased Munnu Lal was recovered on 1.9.1998 from the jail premises adjacent to the Culvert near the temple in jail whereupon P.W.-2-Roshan Lal went to the dead body and identified it. He has given no description about the persons, who have committed offence. From the perusal of his testimony, it is evident that the deceased's brother did not come back from duty on 30th August, 1998. He made search on 31st August, 1998 and tried to locate him. He has not given any information to the police in the night of 30th or 31st August, 1998. The information about the recovery of the dead body was firstly given to the police by the Tirasi Lal on 2.9.1998. This conduct appears to be unusual in the factual perspective that the deceased was his brother and residing with him. It was expected of him to lodge report about the missing of his brother with the police at the earliest which he has not done. There is a discrepancy about the recovery of the dead body in the inter se statement of P.W.-1 and P.W.-2. (P.W.-1) has stated about the recovery of dead body on 2.9.1998 whereas Roshan Lal (P.W.-2) has categorically stated about the recovery of dead body on 1.9.1998 in his examination in-chief as well as in his cross-examination. If the statement of P.W.-2 is taken to be true for argument sake then no reason has been disclosed by him for not giving the information about the recovery of dead body to the police on 1.9.1998. This is an important aspect which cannot altogether be ignored. Thus appears anomaly in the testimony of P.W.-1 and P.W.-2 about the recovery of dead body, which will have the adverse bearing on the prosecution version.

24. Net Ram (P.W.-6) and Kedar Nath (P.W. 7) are the most important witnesses of the fact who are alleged to have seen the incident in the light of torch. P.W.-6

has specifically stated that the murder was committed by Dharmendra, Babalu and Chhotey about 5 1/2 to 6 years ago at about 10 hours in the night. He has specifically named the weapons of assault as katta, tamancha (country made pistol) and gadasa. He has also stated that he has tried to save the deceased, then the threats were extended to them. P.W.-6 has stated that he was coming from his maternal home i.e. village Chaka. He left Chaka in between 8 to 9 p.m. He has also mentioned that the distance from Chaka to Manauri is 25 to 26 kms. On the date of incident, he reached his house at about 1 a.m. The distance from place of occurrence to Chaka has been stated to be 3 kms. Kedar was also accompanied with Net Ram to his maternal relative home. In his cross examination, he has assigned gadasa to Bablu and knife to accused Chhotey but, he has not mentioned who was equipped with country made pistol. He has stated that he and Kedar both remained saw the incident from the road and made no effort to inter in the field i.e. the place of occurrence nor tried to rescue and the victim. He has further stated that after watching for 10 to 15 minutes, he came back to his mama's place. At one place he stated that he reached the house at 1 in the night whereas at another place he has stated that he came to his mama's place. It was the complete darkness at the place of occurrence. He has further stated that the place of occurrence is a big field. On the North of the place of occurrence is also a field. On Southern side is the road. He has admitted that he had not seen any accused committing murder. He has admitted that he met Roshan Lal after 2 to 3 days of the incident and he told him about the incident. He has stated that he had seen the incident from a distance of 100 feet.

25. Kedar Nath (P.W.-7) stated that he had seen three persons committing murder near Culvart. He has also stated that he had seen the incident in the light of torch. He tried to intervene, then he was extended threat to life. He has made specific allegations of the discharge of shot. Munnu Lal sustained injury from fire arm. He has also stated that he did not get any assignment on the date of incident, so he returned and reached at 11.30 in the night. He has also stated that he had seen the incident from a distance of about 100 paces and subsequently, he has stated that he had seen the incident from the distance of 300 paces. In the night it is not possible to recognize the assailants from such a long distance that too in the light of torch.

26. Eye-witnesses have not behaved like a responsible or prudent man. It was incumbent upon them to lodge the F.I.R. of the incident with the police promptly and also to inform Roshan Lal.

27. Both the witnesses have conceded that there was a complete darkness. Both were moving together as is evident from their testimony. From the perusal of their testimony, it reveals that one had seen the incident from a distance of 100 paces and other has seen the incident from a distance of 300 paces in the torch light. During the course of examination they have not even provided torch to the I.O. so as to establish the capacity of visibility from the torch to a particular distance as has been deposed by these witnesses for seeing the incident.

Nowhere the witnesses have categorically stated that description of the torch as to what was its range and how much was the coverage area of its visibility. The evidence in this regard is lacking. Unless a clear and cogent evidence is led before the Court about the visibility, it cannot be established beyond reasonable doubt that the alleged accused persons have committed the offence at the alleged time, place and the manner.

28. There is a contradiction in the testimony of the eye-witnesses. P.W.-6 and P.W.-7 at one place, have stated about the seeing the incident from the road and at the same time they have stated that they did not enter into the field i.e. the place of occurrence. At one place they have stated that they tried to intervene but they did not intervene as the life threats were extended to them by the accused persons. There is a lack of coherence between the testimony of eye witnesses P.W.-6 and P.W.-7 about their presence. It cannot said with certainty whether the eye-witnesses had come from village Chaka or they did not get the routine labour work at Naini or after seeing the incident they went to their places or went back to Chaka. The said contradictions appearing in evidence have material impact on the credibility of the witnesses. Non-reporting of the incident to the brother of the deceased is also a factor which raises a question mark on the veracity of the testimony of the eye-witnesses. Likewise, non reporting of the incident with the police by the eye-witnesses is also a factor which goes against the prosecution and raises finger towards the credibility of their deposition. At one place, P.W.-6 has stated that he has not seen the incident. If it is taken to be true, it would be treated as material contradiction which has not been explained by the prosecution. All these factors discussed above indicate towards two situations, one the eye-witnesses appear to be the chance witnesses or the eye witnesses have not seen the incident. There is a complete lack of coherence between the examination in-chief and the cross examination of the each of the eye-witnesses and there is a lack of consistency and coherence inter-se between the testimony of P.W.-6 and P.W.-7. Even for argument sake, the eye witnesses are taken to be chance witnesses or the natural witnesses it cannot be authentically deciphered from their evidence that from a distance as shown by them they were able to see the incident with sufficient clarity in the torch light. In this regard there is a complete absence of evidence about the efficacy of the torch or the capacity of the visibility of the torch. P.W.-6 and P.W.-7 have stated that different numbers of assailants, one as P.W.-6 has mentioned two assailants, P.W.-7 has referred three assailants through his oral testimony. Both together are alleged to have been watching the incident, simultaneously giving different narration about the numbers of assailants and the manner of occurrence and with respect to the use of weapon of assault. This appears to be material contradiction. P.W.-7 has categorically stated about the use of the tamancha. P.W.-6 and P.W.-7 have categorically stated about the use of fire arm in their testimony but no evidence of use of fire arm in the commission of the offence has been collected by the I.O. From the spot neither any empty cartridge nor pellets etc. have been recovered. The use of fire arm weapon in the commission

of the offence also does not find support from the medical evidence. None of injuries on the person of deceased correspond to fire arm. This aspect also raises a question mark to the credibility of the prosecution version.

29. There is a inconsistency or incoherence between the depositions of P.W.-6 and P.W.-7 inter se as well as in their examination in-chief and cross examination. Their statements even if presumed to be an eye witnesses account of incident for argument sake, P.W.-6 and P.W.-7 cannot be placed in the category of wholly reliable witnesses because of the discrepancies appearing in their oral testimony. Contradictions between oral testimony of P.Ws.-6, 7 and the medical evidence cannot be ignored and would have adverse bearing of the credibility on both. As such solely on the basis of their testimony an inference cannot be drawn about the guilt of the accused persons in a situation where the witnesses of recovery of bicycle have been declared hostile.

30. The testimony of the doctor and I.O. is a formal nature. The testimony of doctor is material for appreciating evidence of eye-witnesses with respect to use of weapon of assault and corresponding injuries on the person of deceased so as to establish the guilt of the accused persons.

31. Moreover, in view of inconsistency, lack of coherence in the inter se testimony of P.W.-6 and P.W.-7 about the numbers of assailants, manner of occurrence, use of weapon of assault, and the nature of injuries sustained by deceased their testimony comes within the shadow of doubt. Their conduct of non-reporting the incident promptly to Roshan Lal or the police appear to be unusual. Thus their evidence does not appear to be wholly reliable.

32. The testimony of the doctor is material. He has conducted the postmortem examination who has noted the three injuries on the persons of the deceased. None of the injuries correspond to the fire arm. There is only one incised wound. The injury No. 3 corresponds to decomposition of body in the front side, i.e. abdomen where internal parts were visible. The testimony of P.W.-6 discloses about the cause of death of the deceased as fire arm injury, does not find support from the medical evidence. Neither any pellets nor the empty cartridges were recovered from the person of the deceased not from the place of occurrence which adversely affect the theory of use of fire arm and prosecution case. The lack of coherence between the eye witnesses and medical offence would have the adverse bearing on the prosecution version and would raise fingers on its veracity. There is a material contradiction with respect to the recovery of dead body.

33. The evidence of the I.O. is to be confined to the papers which have been executed by him during the course of investigation. I.O. has not recovered any evidence regarding the use of fire arm. In view of the medical evidence and the evidence of the I.O. the theory of use of fire arm in the commission of the offence does not inspire confidence.

34. After considering the material available on record and scrutinizing the

evidence available on record and in view of the aforesaid discussion. We are of the opinion that the finding recorded by learned Court below are not supported by justifiable and cogent reason. The conviction recorded by the learned Court below deserves to be interfered with and the accused Bablu Pasi deserves to be acquitted. The appeal deserves to be allowed. Thus the appeal is allowed.

35. The jail appeal instituted on behalf of Bablu Pasi in S.T. No. 382 of 1999, under sections 394, 302 IPC in Case Crime No. 879 of 1998, P.S. Naini, District Allahabad is allowed and accordingly the accused Bablu Pasi is acquitted.

36. Accused Bablu Pasi is in jail. If he is not wanted in any other case, he may be released forthwith. Office is directed to transmit the copy of judgment along with record to learned Court below for compliance.