

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.374 of 1992

Against the judgment of conviction and order of sentence dated 08.09.1992
passed by the learned 2nd Additional Sessions Judge, Madhubani in Sessions
Trial No.61 of 1987/20 of 1992.

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1. Balram Singh, son of Dhaneshwar Singh.
 2. Ramdeo Singh,
 3. Mahadeo Singh,
 4. Bishundeo Singh,
- All sons of Late Awadh Singh.
5. Shiv Narain Singh alias Tunu Singh.
 6. Janardan Singh alias Sheo Singh,
 7. Hareram Singh, alias Shyam Singh,
- All sons of Dhaneshwar Singh.
8. Dhaneshwar Singh, son of Suba Singh.
 9. Ram Sewak Singh, son of Dhaneshwar Singh.

All residents of village-Chapta, P.S.-Bhairav Asthan, District-Madhubani.

.... Appellants.

Versus

The State of Bihar.

.... Respondent.

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Appearance :

For the Appellants : Mr. Amish Kumar Jha, Adv.
For the State : Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 20-01-2015

The present appeal has been filed by the nine
appellants, being aggrieved and dissatisfied with the judgment of

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conviction and order of sentence dated 08.09.1992 passed by the learned 2nd Additional Sessions Judge, Madhubani in Sessions Trial No.61 of 1987/20 of 1992, whereby all the appellants have been found guilty under Section-149/302 of the Indian Penal Code (hereinafter in short 'IPC') and sentenced to rigorous imprisonment for life. The appellant-Dhaneshwar Singh has been held guilty under Section-302/149 IPC. Appellant-Balram Singh has been found guilty under Sections-302 and 307 IPC. Appellant-Bishundeo Singh has been found guilty for offence under Section-326 IPC and appellant-Mahadeo Singh has been held guilty under Section-324 IPC. Then, some of them have been found guilty under Sections-147 and 148 IPC. Each has been awarded different sentences apart from rigorous imprisonment for life but all sentences are ordered to run concurrently.

At the very outset, it may noticed that so far as appellant-Bishundeo Singh and appellant-Dhaneshwar Singh are concerned, it is unlikely that they would alive today and, if alive, they would be much above 90 years of age. Learned counsel for the appellants has stated that he is not in touch with the clients as this appeal itself has been taken up for final hearing after about 23 years. He has also doubts whether the appellant-Mahadeo Singh would also be alive and, if alive, he would also be above 80 years

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of age. However, in absence of any positive affidavit in this regard we have to proceed with this appeal as it is.

In sum and substance, the appellants have been charged with the murder of one Munideo Singh, a Punch and grievously hurting several others.

The prosecution case is based upon the fardbeyan of one Baikunth Nath Singh (P.W.8), as recorded by Rajendra Sharma (P.W.9), being Sub-Inspector of Bhairav Asthan Police Station who was also the Investigating Officer. The fardbeyan was recorded at the State Dispensary, Koilakh, P.S. Rajnagar, District Madhubani at 11:30 am, inter alia, alleging that on 11.08.1986 the goat of the informant, Baikunth Nath Singh (P.W.8) had allegedly chewed some crop of appellant-Dhaneshwar Singh. Being annoyed, the appellant-Balram Singh, being son of the appellant-Dhaneshwar Singh tied it in his house. When the informant and others went he refused to return the goat and said he would eat it rather than to return it. On the next morning i.e. on 12.08.1986 at about 8 am the informant, Baikunth Nath Singh (P.W.8) called appellants-Dhaneshwar Singh and Balram Singh for a panchayati where apart from other Punches Rajendra Singh (P.W.3) and the deceased Munideo Singh (deceased) were also present. After the panchayati, the Punches directed appellant-Dhaneshwar Singh to

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return the goat. He insisted that he would eat the goat than to return it. Being annoyed with the verdict of the Panches, appellant-Dhaneshwar Singh ordered his son, appellant-Balram Singh to set everybody right. Appellant-Balram Singh went to his house and came with the rest of the appellants variously armed with 'Bhala', 'Garasa', 'Farsa' and 'Lathi' and indiscriminately started assaulting the Panches and others present there. When these appellants assembled, appellant-Dhaneshwar Singh is alleged to have said to liquidate the persons once and for all and we would face the consequences. Upon this, appellants who were variously armed attacked indiscriminately on the persons present there. Appellant-Balram Singh struck Raghvendra Singh (P.W.1) he fell down, then appellant-Bishundeo Singh struck Surendra Singh (P.W.2) with the 'Bhala', appellant-Mahadeo Singh struck Rajendra Singh (P.W.3) one of the Panches with 'Bhala' then appellant-Mahadeo Singh struck another Punch Mundeoo Singh (deceased) in the scrotum and he fell down. There was serious assault by the appellants. Then, Raghvendra Singh (P.W.1) the informant's nephew got up and ran in the house to save himself. He was chased by appellants-Balram Singh, Dhaneshwar Singh and Ramdeo Singh in the house and when lady members tried to intervene they were also beaten up. By then, the villagers had

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come and the appellants escaped. The injured prosecution party then came to the State Dispensary and police being informed the fardebayan was recorded. The formal F.I.R. was then lodged and investigation started. After completing investigation, the police submitted the charge-sheet against the appellants and cognizance having been taken the case was committed to the Court of Sessions where charges were framed, to which, the appellants pleaded not guilty, they were tried and convicted and sentenced as aforesaid. Hence, this appeal.

In order to establish the guilt of the appellants the prosecution has examined 11 witnesses. Raghvendra Singh (P.W.1) is the nephew of the informant Baikunth Nath Singh (P.W.8) and one of the injured. P.W.2 is Surendra Singh who is also injured and is a close agnate of the informant. P.W.3- Rajendra Singh is also the injured and he was one of the Panches. P.W.4-Mahakant Yadav, P.W.6-Uchit Yadav and P.W.7-Jagdish Yadav are co-villagers. P.W.5-Lalita Devi is the wife of the informant Baikunth Nath Singh (P.W.8) who has also been injured. P.W.8-Baikunth Nath Singh is the informant who had managed to save himself and had not got injured. P.W.9 is Rajendra Sharma, the Investigating Officer. P.W.10 is Dr. B.N. Brahamchari who, on police request, had examined the injured persons and given the

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injury reports. He had also examined the deceased Munideo Singh, who was also a Punch, who was in critical condition and referred him to Sadar Hospital, Madhubani for treatment but he soon died thereafter. P.W.11 is Dr. Y. Jha who conducted the postmortem of the deceased Munideo Singh on 13.08.1986 in the Sadar Hospital, Madhubani and submitted the postmortem report.

On behalf of the appellants/defence, it appears that the plea was of false implication and that of appellants-Balram Singh and Bishundeo Singh had received injuries which had not been mentioned by the prosecution and which remained unexplained creates doubt on the prosecution story. In support thereof, they have examined D.W.1-Dr. Surendra Singh who had examined these two appellants on police request. There was a counter case lodged by them as well, which has been proved by D.W.2-Subhash Singh. In the counter case, the fardbeyan of which is Ext. A, it is alleged that on 11.08.1986, the buffalo calf of the informant in the first case, P.W.8-Baikunth Nath Singh had grazed the crop of appellant-Dhaneshwar Singh. Appellant-Balram Singh, son of the appellant-Dhaneshwar Singh, had been abusing the family of Baikunth Nath Singh (P.W.8). On the next day, when Balram Singh and Dhaneshwar Singh were protesting, they were attacked by some of the prosecution parties in which they got

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injured. Let it be noted that in this F.I.R. also which is Ext. 8, there is no mention of any injury much less grievous injury or death of any person from the side of the prosecution in the first case.

We may note at this stage that the defence has not even given any suggestion to prove the prosecution witnesses with regard to false implication or the manner of occurrence being different than what is projected by the prosecution nor is there any suggestion of any aggression and then exercised their private defence.

Learned counsel for the appellants would submit that in the fardbeyan, which is Ext.2, there is no mention as to who gave the fatal blow to the deceased Munideo Singh, the Punch. All that is alleged is that appellant-Mahadeo Singh hit Munideo Singh on the scortum and he fell down. In Court, this is further developed by the prosecution to allege that appellant-Balram Singh then came and struck the fallen Munideo Singh on the head with the wooden portion of the 'Farsa' as a consequence whereof he died. This, according to the learned counsel, clearly shows that the appellant-Balram Singh has been wrongly targeted by the prosecution. He could thus being guilty of the offence under Section-302 IPC. Learned counsel for the appellants would further submit that the injuries on the two appellants i.e. Balram Singh and

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Bishundeo Singh have neither been mentioned nor explained by the prosecution. The prosecution version must be doubted for they have not stated or come out on the truthful story of the manner of occurrence. It is further submitted that in view of evidence which specifically attributes the different assaults in different manner through different appellants. The appellants as a whole cannot be convicted under Section-302 IPC. They have to be punished if at all to the extent of their individual acts.

On the other hand, Mr. Ajay Mishra, learned A.P.P. would submit that F.I.R. (fardbeyan) is not a complete anthology of all events that takes place, especially when 6 to 7 people are named simultaneously assaulted by 9 people variously armed. It is not possible for anyone to give any graphic details of the entire incident. Thus, non-mentioning of the role of appellant-Balram Singh in giving the fatal blow to the deceased Munideo Singh cannot be said to be an improvement in the prosecution case at this stage. Learned A.P.P. would further submit that the facts narrated and proved consistent with the evidence would show that at the instigation of appellant-Dhaneshwar Singh his son appellant-Balram Singh went home, assembled the group of variously armed people, they came and then repeated orders were given by the appellant-Dhaneshwar Singh to kill irrespective of the

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consequences. They managed to kill one and grievously injured one including beating up of the ladies in the house. This establishes the common object with which the unlawful assembly carrying differently weapon conducted itself resulting in death of one and injuries to several others. Thus, it is submitted on behalf of the learned A.P.P. that the Trial Court had rightly convicted everybody under Section-149 read with Section-302 IPC. Whether they would then be again individually guilty matters little because once life sentence had been awarded and the sentences are to run concurrently all the appellants would suffer rigorous imprisonment for life. He submits that if otherwise the convictions and the sentences have been individually awarded ought not to be interfered with.

We have already seen that the nature of allegation, as made in the fardbeyan, which was duly proved by P.W.8-Baikunth Nath Singh in the Court. We may now look to the evidences of the witnesses one by one. We may note at this stage that the appellants - Balram Singh, Shiv Narain Singh alias Tunu Singh, Janardan Singh alias Sheo Singh, Hareram Singh, alias Shyam Singh and Ram Sewak Singh are all sons of appellant-Dhaneshwar Singh, whereas the appellants-Ramdeo Singh, Mahadeo Singh and Bishundeo Singh are the three brothers who are close cousins of

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appellant-Dhaneshwar Singh.

P.W.1-Raghvendra Singh is the nephew of the informant, P.W.8-Baikunth Nath Singh. He states that because of the dispute as per the fardbeyan the panchayati was called and was held at his door. He states that being enraged with the view of the Punches, appellant-Dhaneshwar Singh ordered his son appellant-Balram Singh to set things right. Balram Singh went to home, called the others variously armed and they indiscriminately started assaulting. Raghvendra Singh (P.W.1) was first injured by the assault of appellant-Balram Singh on his head. Medical report shows that it is a grievous injury on the skull using a 'Farsa'. He then narrates how different people assaulted different persons. In the cross-examination, he clearly admits that a counter case had been filed. He admits that the appellant-Mahadeo Singh had got initiated a proceeding under Section-107 Cr.P.C. earlier between two parties. He accepted making statement to the police. This witness specifically states that first it was appellant-Mahadeo Singh who assaulted Munideo Singh (deceased) and then Balram Singh used the wooden portion of 'Farsa' to strike him on the head. This witness ran in the house to save himself where he was chased by ladies, who tried to intervene and they were also beaten up. There is nothing in the defence cross-examination which would

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impeach upon the credibility of this witness.

We then have P.W.2-Surendra Singh who was also present at the time of panchayati. He deposed being assaulted by appellant-Bishundeo Singh with 'Bhala'. He is agnates of the informant. He names the appellants stating how they were armed. In the cross-examination, he admits of a proceeding under Section-107 Cr.P.C. as also the counter case. For this incident a case was also lodged by the defence in which he was an accused and had been charge-sheeted. He also having received injuries, ran into the house and then chased and beaten up also. He has also stated about the appellant-Bishundeo Singh assaulting P.W.1-Raghvendra Singh on his head. Appellant-Mahadeo Singh hit the Munideo Singh (deceased) on his scrotum and then appellant-Balram Singh hit the fallen Munideo Singh (deceased) on the head with the wooden portion of 'Farsa'. He states that appellant-Bishundeo Singh had assaulted with 'Bhala' injuring him near the eye and ear. He narrates how P.W.1-Raghvendra Singh ran into the house and was chased by appellants-Dhaneshwar Singh, Balram Singh and Ramdeo Singh and they assaulted the ladies therein as well. Again, we do not find anything tangible to discredit the fardbeyan.

We then have P.W.3-Rajendra Singh, who was one of the Punches. He states the reason of panchayati. The decision of

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the panchayati was for returning the goat which enraged the appellant-Dhaneshwar Singh who ordered his son, appellant-Balram Singh who assaulted the Panches. Thereafter, appellant-Balram Singh came with the others variously armed. He clearly states that who was armed in what manner and who assaulted whom. He has clearly stated that first appellant-Balram Singh assaulted P.W.1-Raghvendra Singh with 'Farsa' then others were also assaulted including this witness who was assaulted by 'Bhala' and 'Lathi'. He then states that Munideo Singh (deceased) having fallen by the assault on his scrotum by the appellant-Mahadeo Singh then the appellant-Balram Singh struck him on the head by the wooden portion of 'Farsa'. He doubts about the case under Section-107 Cr.P.C. and the counter case. He states that the counter case is of small 'Marpit' only. He denies the suggestion that he has given false evidence only to create the defence against the counter case.

We then have P.W.4-Mahakant Yadav alias Lakhan Yadav. He states that while he was returning to the village, after taking his buffalo after grazing, he heard shouts at the doorstep of P.W.1-Raghvendra Singh. He rushed there and found lot of people present there. He describes how variously armed the defence party was and then how on an order of appellant-Dhaneshwar Singh

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everyone started attacking. He also narrates that first appellant-Mahadeo Singh assaulted Munideo Singh on his scrotum and when he fell down appellant-Balram Singh used the wooden portion of 'Farsa' to strike on him. P.W.1-Raghvendra Singh ran into the house to save himself and he came to know that they were chased and even ladies in the house were beaten up. He denies suggestion of false implication. His testimony remains unshaken in the cross-examination.

We then have P.W.5-Lalita Devi, the wife of the informant P.W.8-Baikunth Nath Singh. She has been tendered. She was also one of the persons who was beaten in the house when in order to save himself P.W.1-Raghvendra Singh ran into the house.

We then have P.W.6-Uchit Yadav who had come there upon hearing the shouts and commotion. He had also the witness of how Munideo Singh (deceased) was assaulted. How others were brutally assaulted. His evidence is also consistent and remains unshaken in cross-examination. Similarly is the case of the P.W.7-Jagdish Yadav who has also seen the entire incident and his testimony also remains unshaken.

We then have P.W.8-Baikunth Nath Singh, the informant. He reaffirms the facts stated in his fardbeyan that he

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had also seen the appellant-Balram Singh striking Munideo Singh (deceased), one of the Punches. He admits that there was a proceeding under Section-144 Cr.P.C. as well between the parties. His cross-examination is very short and the defence is not able to save his deposition in any manner.

The next witness is P.W.9-Rajendra Sharma, the Investigating Officer, who has also recorded the fardbeyan. He clearly states that the informant, P.W.8-Baikunth Nath Singh and others had come to the State Dispensary carrying Munideo Singh (deceased) in grievously injured condition. The police having been informed, he came and requested the doctor for giving the injury reports of all the persons. The doctor, seeing Munideo Singh (deceased) grievously hurt, referred him immediately to Sadar Hospital, Madhubani for further treatment but he died. The injury reports proved which clearly shows the grievous injury with hard and blunt substance consistent with the prosecution version given by the various persons as earlier. He admits that there was a counter case. He investigated the matter and submitted the charge-sheet. Various contradictions have been sought to be raised but, to us, it does not appear to the material. He admits in his cross-examination that P.W.7-Jagdish Yadav had clearly stated before him in course of investigation that in course of altercation both

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sides were injured. He has given his objective finding as to the place of occurrence, as investigated by him, which again is consistent with the prosecution story.

We then come to P.W.10-Dr. B.N. Barhamchari who prepared the injury reports in respect of P.Ws.1, 2, 3 and 5 and one other who has not been examined as a witness. The injuries are consistent with the prosecution evidence.

We then have P.W.11-Dr. Y. Jha who conducted the postmortem upon the body of Munideo Singh, one of the Panches, who had died. In his report, he has categorically stated that death was due to the skull injury. The skull had been fractured by use of hard and blunt substance. This is in consonance with the prosecution version of appellant-Balram Singh hitting the fallen and injured Munideo Singh on the head with the wooden portion of 'Farsa'. The doctor, thus, finds injuries on the scrotum. There are other injuries as well.

Thus, from the prosecution evidence, what comes out clear is that the goat of the informant, P.W.8-Baikunth Nath Singh grazed the part of appellant-Dhaneshwar Singh's land. The appellant-Balram Singh, son of the appellant-Dhaneshwar Singh, took possession of the goat and refused to return the same. On the next day, panchayati was held and the Panches told the appellant-

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Dhaneshwar Singh to return the goat. He refused. He was enraged by the decision of the Panches and ordered his son, appellant-Balram Singh to set things right. His son, Balram Singh went home, collected his brothers and his uncles, all variously armed with 'Bhala' 'Garasa' 'Farsa' and 'Lathi' came and started indiscriminately assaulting the Panches and the other persons. Appellant-Dhaneshwar Singh repeatedly told them to kill them once and for all and they were ready to face consequences. Various people, as noted above, were assaulted in various manners leading to the death of one, grievous injuries on several. When some people tried to rush into the house they were chased. The ladies present in the house who tried to intervene in the matter were also assaulted. In nut shell, the nine appellants variously armed came and assaulted the Panches and the prosecution party who are about 5 to 6 in number.

The defence has a different version. It very meekly accepts from Ext. A that the buffalo calf of the informant, P.W.8-Baikunth Nath Singh has grazed the part of appellant-Dhaneshwar Singh's land and as such on the next day appellant-Balram Singh was abusing the family of the informant, Baikunth Nath Singh (P.W.8). The prosecution party of the first case came and assaulted them. They filed the case. A counter case was also filed. They

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were examined. The injury reports of appellants-Balram Singh and Bishundeo Singh have been exhibited which shows mere simple injuries in the first information report. In the counter case, there is absolutely no mention of grievous injuries. There is no mention of any panchayati or the Panches being assaulted and one of them being killed.

Having assessed the evidence of the prosecution, all we can say is that the counter case is nothing but a device of self-defence. The prosecution witnesses have admitted that there was assault and scuffle. Obviously, many people are assaulting a group of other people. Someone on both sides is liable to get hurt. In such circumstances, to say that the prosecution did not mention about injuries on the persons of the appellants that should suggest that the prosecution was not speaking the truth is not correct. Where so many people are assaulting so many, everyone sees and perceives things differently. They all cannot verbatim witnesses of the entire episode. There may be minor variations in telling the incident. Some facts may be mutated by some witnesses but that does not impinge upon the credibility of the prosecution story which had to be seen as a whole.

Now, we may consider the statements of the appellants. First let us see whether appellant-Balram Singh could

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be convicted under Section-302 IPC. We have no doubt about that because as per consistent evidence Munideo Singh (deceased), the Punch, having been assaulted by appellant-Mahadeo Singh on the scortum and after falling down appellant-Balram Singh stuck on his head by the wooden portion of 'Farsa'. The skull was fractured and lastly Munideo Singh died. These actions clearly evince the intention to kill. It cannot be said that their intention was only to cause grievous injury. We are, therefore, unable to interfere with the conviction and sentence of appellant-Balram Singh.

We then come to the question of applicability of Section-149 IPC. We do not see any reason for doubting the correctness of the Trial Court in that regards. As we have also noticed earlier that from the evidence it is clear that upon being told by appellant-Dhaneshwar Singh his son, appellant-Balram Singh went to home, collected people variously armed with differently weapons, they came and started assaulting mercilessly the persons present there. If this is not an unlawful assembly armed with differently weapons what else is. The question is whether they share the common object or not. Obviously, when on being told to liquidate everybody and they were ready to face consequences, the person armed used their arms. Can there be any other finding? They had come with clear intent and they succeeded

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in killing one of the Punches grievously injuring various other Punches before the other villagers arrived. Therefore, the common object of circumstance established and they all have rightly been held guilty under Section-149/302 IPC.

Learned counsel for the appellants with reference to the decision in the case of **Ram Swarup and others Vs. State of Haryana** since reported in **1993 Suppl. (4) Supreme Court Cases 344** submits that except for appellant-Balram Singh the rest of the appellants ought not to be convicted under Section-302 IPC as it cannot be said that they shared the common intention. I am afraid that the judgment relied upon is clearly distinguishable. In that case the Court has noticed that itching for a conflict it was freed for both the parties who all fought which started continuously. People were exercising their right of private defence as well. It is in those perspective the Court held that a common object to kill would be extended to all body even one was killed. Here, in this case, appellant-Dhaneshwar Singh had ordered his son, appellant-Balram Singh to set things right and teach everyone a lesson. Thereafter, appellant-Balram Singh went to home, collected people variously armed with differently weapons came and started assaulting mercilessly the persons present. During this scuffle one Munideo Singh was grievously injured and thereafter he died. On the

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provocation of appellant-Dhaneshwar Singh, they ensured killing of one Munideo Singh, what else is it if not the clear common object. This case is entirely different on facts as relied upon by the learned counsel for the appellants.

We then may consider the case of appellant-Dhaneshwar Singh. Apart from being convicted under Section-149/302 IPC he is clearly liable and is rightly been convicted under Section-109/302 IPC. The other sentences also of causing grievous injury and attempt to murder are clearly established from the evidence as discussed by us hereinabove.

We, therefore, see no reason to interfere with the judgment of conviction and order of sentence as awarded by the Trial Court. This appeal is, accordingly, dismissed. Let the records of this case be returned to the Trial Court forthwith and the Trial Court would take appropriate steps for securing the presence of the appellants to serve out their sentences.

(Navaniti Prasad Singh, J.)

(Anjana Mishra, J.)

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