

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 390 of 2010

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Raj Kumar Singh @ Munna Singh son of late Ram Ashish Singh resident of
village Ghataina P.S. Kudra District Kaimur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 424 of 2010

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Ramayan Pasi S/O Shiv Murat Chaudhary @ Shiv Murat Pasi R/O Vill.-Tekari
Kala, P.S.-Mohania, Dist.-Kaimur at Bhabua.

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 488 of 2010

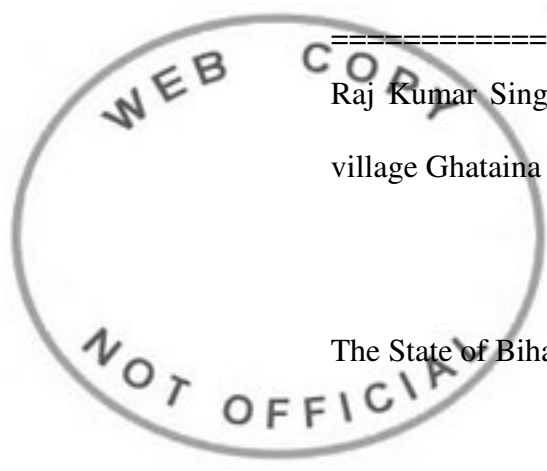
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Ishwar Chand Pandey @ Bablu Pandey S/O Madan Pandey @ Madan Mohan
Pandey R/O Vill.-Jigna P.S.-Mohania, Dist.-Kaimur (Bhabua).

.... Appellant/s

Versus

The State of Bihar



.... Respondent/s

With

Criminal Appeal (DB) No. 521 of 2010

Rajendra Pasi son of Late Chhotu Pasi R/O Village - Lariya, P.S. - Mohania,
Distt. – Kaimur at Bhabhua

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 694 of 2010

Madan Singh son of Sri Rama Shankar Singh resident of Village Lurpurwa, P.S.
Mohania, P.O. Akhori, District Kaimur at Bhabhua

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 1003 of 2010

1. Subash Ram son of late Shiv Lochan Ram, resident of Village Binoba Nagar,
P.S. Bhagwanpur, District Kaimur at Bhabua
2. Murahoo Ram son of Mohan Ram resident of Village Patti P.S. Mohania,

District Kaimur at Bhabua

3. Satendra Ram son of Mahant Ram resident of Village Pusauli, P.S. Mohania,

District Kaimur at Bhabua

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No. 390 of 2010)

For the Appellant/s : Mr. Rajesh Kumar Singh,
Mr. Rana Pratap Singh,
Mr. Ranvijay Narain Singh and
Mr. Jitendra Singh, Advocates

For the State : Mr. Satya Narain Prasad, APP

For the Informant : Mrs. Meena Singh, Advocate

(In CR. APP (DB) No. 424 of 2010)

For the Appellant/s : Mr. Girish Chandra Sharma, Advocate

For the State : Mr. Dilip Kumar Sinha, APP

(In CR. APP (DB) No. 488 of 2010)

For the Appellant/s : Mr. Rajesh Kumar Singh,
Mr. Rana Pratap Singh,
Mr. Ranvijay Narain Singh and
Mr. Jitendra Singh, Advocates

For the State : Mr. Satya Narain Prasad, APP

(In CR. APP (DB) No. 521 of 2010)

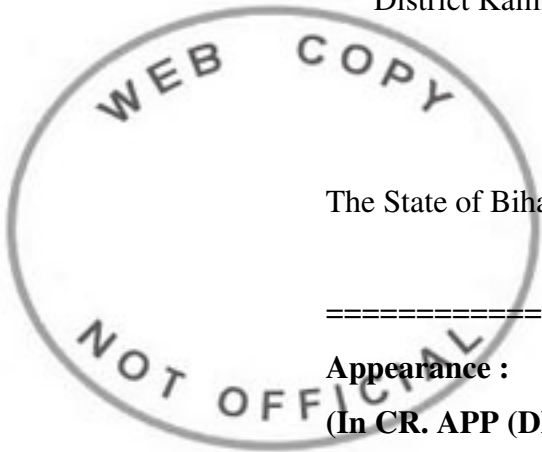
For the Appellant/s : Mr. Tribhuwan Narayan, Advocate

For the State : Ms. Shashi Bala Verma, APP

(In CR. APP (DB) No. 694 of 2010)

For the Appellant/s : Mss Fauzia Shakil and
Mr. Nawal Kishore Prasad, Advocates

For the State : Mr. Dilip Kumar Sinha, APP



(In CR. APP (DB) No. 1003 of 2010)

For the Appellant/s : Mr. Rajani Kant Pandey and
Mr. Tribhuwan Narayan, Advocates

For the State : Mr. Dilip Kumar Sinha, APP

**CORAM: HONOURABLE MR. JUSTICE DHARNIDHAR JHA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DHARNIDHAR JHA)

Date: 22-05-2015

The present batch of six appeals arise out of the judgment of conviction dated 26.03.2010 and the order of sentence dated 31.03.2010 passed by the learned Presiding Officer, Fast Track Court No.V, Kaimur at Bhabua in Sessions Trial No.112 of 2008/14 of 2009 by which the appellants of all the six appeals were held guilty of committing offence punishable under Section 364A of the Indian Penal Code and after being heard on sentence each of them was directed to suffer rigorous imprisonment for life as also to pay a fine of Rs.5,000/- each, else to suffer rigorous imprisonment for six months. In addition to being convicted as above appellants Subhash Ram, Satendra Ram, Murahoo Ram, Ishwarchand Pandey @ Babloo Pandey, Ramayan Pasi and Rajkumar Singh @ Munna Singh were also convicted of committing offences under Sections 302/34 and 201/34 of the Indian Penal Code and each of them were directed to suffer rigorous imprisonment for life and also pay a fine of Rs.

5,000/- each and rigorous imprisonment for three years besides paying the fine of Rs. 1000/- respectively under the two counts of their individual conviction. The learned Trial Judge passed a common order in respect of all the appellants directing that in case they had defaulted in making payment of fine individually imposed as sentence, each of them shall have to suffer rigorous imprisonment for six months without directing the alternative substantive sentence in case of those convicts who were punished for committing offence under Sections 302/34 of the Indian Penal Code and had defaulted in paying fine of Rs. 1000/- each.

2. The six appeals have been heard together by us and are being disposed of by this common judgment.

3. Some of the facts are not disputed. The deceased Rama Shankar Singh was the brother of P.W. 8 Uma Shankar Singh and P.W.-9 Hari Shankar Singh and he had gone to keep a watch on his machine at his boring situated somewhere in the field of village Nadokhar situated within Kudra police station in the district of Kaimur. He left his house after having his dinner at 8:00 P.M. on 16.09.2006 never to return, when his family members after having made hectic search for him thought that he had been kidnapped. P.W.-10 Santosh Kumar Singh who happens to be the nephew of the deceased Rama Shankar Singh presented a written report (Ext-3) before the Officer-in-Charge of Kudra Police Station alleging the above facts and further expressing the suspicion, of the family and

himself, that his uncle had been abducted by the criminals.

4. Filing of Ext-3 led to the institution of Kudra P.S. Case No. 100 of 2006 under Sections 364/34 of the Indian Penal Code. As may appear from the evidence of P.W.-12 S.I. Arbind Kumar who was Officer-in-Charge on the relevant date of the Kudra police station that after instituting the case, he himself took up the investigation and proceeded to the place of occurrence and after inspecting the same jotted down the description of the place in his case diary. It was a field of the informant situated half kilometer away from village Nadokhar and the place had been covered by putting up the canvas over the construction inside which was lying a cot over which a bed had been spread out. P.W. 12 recorded the statement of the witnesses besides recording the further statement of the informant and, thereafter, as may appear from paragraph-6 of his evidence, he went on raiding the houses of some of the suspects in tandem with Mohania police. P.W.-12 states that during such raids which were conducted by him and the Mohania police, three persons were arrested. They were appellants Murahoo Ram, Satendra Ram and Subash Ram and they were found carrying some arms and ammunitions which were seized and in respect of the possession and seizure of the arms Mohania P. S. Case No. 247 of 2006 was registered.

5. As per the evidence of P.W.12 Arbind Kumar, appellants Satendra Ram and Subash Ram made disclosure statements

by way of confession to the police and those statements were recorded which are available to us in the form of Exts-7 and 7/A. During their discloser statements appellants Satendra Ram and Subash Ram pointed out to P.W.-12 that they had kidnapped the deceased Rama Shankar Singh and had killed him and after that had buried the dead body in the riverbed of river Kudra. Getting the information as to the place and the manner where the dead body of Rama Shankar Singh had been buried P.W.-12 went to the place pointed out by the two appellants with the father of the informant and the informant himself at their pointing recovered skeletal remains of a person over which was found a short and two '*chappals*' which were still there on the feet of the skeleton. The short, the two plastic '*chappals*' along with skeletal remains of the person were seized by preparing seizure memo Ext-8. The place was dig up by a spade for making the recovery aforesaid. P.W.12 stated that he retained the skull part of the skeleton along with the two '*chappals*' and the short so as to producing them at the trial in the Court and handed over the other parts of the skeleton to the family members of the deceased for the purposes of its cremation. P.W.12 did not conclude the investigation rather he handed over the charge to P.W.11 S.I. Sanjay Kumar Sinha who submitted chargesheet for trial of the accused persons which ultimately ended in the impugned judgment and order of sentence.

6. The defence of the appellants was various. Appellant Raj Kumar Singh @ Munna Singh pleaded that there was



enmity existing between the family of the informant and himself on account of contesting an election for the membership of the Block Development Committee and that was the reason for his false implication. The other defence of the same appellant was that he had participated as a '*panch*' in a land dispute between the two families including the family of the informant and that was the one reason that the informant had identified the appellant as his enemy. So far as the other appellants were concerned, they had pleaded false implication by the police by fabricating false evidence.

7. Thirteen witnesses were examined by the prosecution in support of its case but the defence had not produced any witness or document in support of its pleas. Considering the evidence, the impugned judgment and order of sentence were passed.

8. We have heard learned counsel appearing on behalf of the appellants and Shri Dilip Kumar Sinha, learned counsel appearing on behalf of the State and also Smt. Meena Singh, learned counsel appearing on behalf of the informant.

9. We were taken through the evidence of witnesses by the learned counsel for the defence especially Shri Rajesh Kumar Singh. It was contended by Shri Singh, learned counsel appearing on behalf of the appellants, namely, Raj Kumar Singh @ Munna Singh and Ishwar Chand Pandey @ Bablu Pandey that the evidence of P.Ws. 8, 9 and 10 on certain aspects of the case defies reasoning and appear not acceptable. It was submitted by Shri Singh that the



prosecution story which was placed before the trial Court through the evidence of P.Ws. 8, 9 and 10 that the appellant Raj Kumar Singh @ Munna Singh had come to their house on a particular day to tell them that if had paid Rs. 1.5 lakhs, their brother could be released immediately and on mere asking of the said appellant P.W.-8 had paid the demanded amount and had never made any report to the police station. Not only that the prosecution has claimed that they had received two letters which were found lying at the place from where the deceased had been taken away, which required the family members of the deceased to make payment of Rs.12-13 Lakhs and ultimately a telephonic call was received by P.W.-10 on his cellular phone asking him to make payment of Rs. Two Lakhs by coming to a particular place upon which they rushed to a public call booth situated in bus stand Mohania and after enquiry from the proprietor of that public call booth, they could find a man standing outside the booth who could tell them that he was Madan Singh and he asked them to make payment of Rs. Two Lakhs when they stated to him to come to the police station to receive the money whereupon the said Madan Singh ran away, was as absurd and improbable a statement as could simply be rejected as logically not acceptable. As regards the confessional statement of the two appellants Satendra Ram and Subash Ram, it was not definite as to where the two statements were recorded as the documents Ext-7 and 7/A were quite in conflict with the evidence of P.Ws.9 and 10 who stated that the accused persons



were questioned at the police station Kudra whereas the evidence of P.W.12 and the document points out that the statements could have been recorded at any other place than police station Kudra. Submission also was that Ext-8, the seizure memo did not point out that anyone had led the police to place from where the articles seized were recovered and above all there was a serious breach of conditions of Section 100 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') when no copy of the seizure memo was made over to any of the two appellants in spite of the police having them with it at the site of the seizure in their custody. On this submission, it was contended that the prosecution evidence suffers from serious doubt and the accused persons deserve to be acquitted.

10. Shri Dilip Kumar Sinha, learned Additional Public Prosecutor with Smt. Meena Singh who appear for the informant was contending that other evidences may not be as firm as to lead to any particular conclusion, especially to the support of the charges, but the two confessional statements of appellants Satendra Ram and Subash Ram had definitely led the police to discover the skeletal remains of the deceased and that has been identified duly by the short which was found very well on the skeleton. The other article which had aided the witnesses in identification of the dead body was the two plastic '*chappals*' which were still on the feet of the skeleton. Thus, the two appellants Satendra Ram and Subash Ram could not get away from the judgment of conviction and order of sentence.

11. We are not going to consider as to whether the skeleton was to that of deceased Rama Shankar Singh or it was of any other person. We begin with the presumption that it was of Rama Shankar Singh and it might have been identified on account of the short or the '*chappals*'. But that by itself could not be fastening the liability of committing the criminal act of abducting him and thereafter killing him. Besides the solitary evidence of recovery of the skeleton of the deceased, in our opinion, could not be sufficient to fasten liability by virtue of Section 34 of the Indian Evidence Act (hereinafter referred to as the 'Act') upon any of the appellants as in a case of abduction for the purpose of extortion specific overt-acts of many ingredients of that particular offence have to be established. While perusing the evidence of the witnesses, we did not have any evidence directly coming from any of them that deceased Rama Shankar Singh had been kidnapped by any particular accused. P.W.8 Uma Shankar Singh stated to the court that he could learn after some days of the incident from his brother P.W.9 Hari Shankar Singh that appellant Rajendra Pasi had come to his house and had told him to pay Rs.1,50,000/- and get his brother released immediately and, accordingly, P.W.8 had paid Rs.1,50,000/- to appellant Rajendra Pasi. The evidence got support from P.W.9 Hari Shankar Singh and his son P.W.10 Santosh Kumar Singh the informant, who also stated that he was present there when the appellant had come. The curious aspect of the evidence was that in spite of the appellant Rajendra Pasi having



realized the money, continued sitting at the house of the witnesses for about two hours or so, as appears stated by P.W.10, the informant of the case in his cross-examination but the informant or his father who appeared affluent persons from their evidence did not even think of informing the police or whispering into ears of the family members as to who was there at their doors and for what purpose. One may argue, as was argued by the counsel for the State and the informant, that the impending chance of the deceased being murdered could be one factor which could have influenced the decision of the family members of the deceased not to report to anyone especially to the police. We may assume it, but then how was it that the two letters were found lying at the place from where the deceased had been taken away and the matter was again not put into the knowledge of the police nor the two letters were indeed handed over to them. It was for the first time in Court when P.W.-10, the informant of the case had come to depose that he was producing the two letters in court which were marked X and X/A for identification. But it is still a riddle as to what was the reality or truth behind the two letters where the letters which had been dispatched by the real culprits who were the captors of the deceased Rama Shankar Singh. In addition to that the informant himself had received a call of coming to a particular place with Rs. Two Lakhs for paying up the amount to the abductors. The informant and his father rushed to the bus stand Mohania where the public call booth was located to enquire from the proprietor of the public call



booth as to indeed the call had emanated from his number and as per their evidence the proprietor was indicating a particular person standing outside his booth as the man who had really given the ring. We scratched our head as to how he could know a public booth of a particular person situated at Mohania that he should rush to that place to find Madan Singh standing there and if at all Madan Singh was indeed there P.Ws. 9 and 10 could not identify him because the admission of the two witnesses is that Madan Singh was known from before to each of them on account of some reason or the other as appears very clearly from the evidence of the witnesses and then the most curious aspect of the evidence was that as soon as the man standing by the side of the booth disclosed his name, the witnesses asked them to walk up to the police for receiving the sum. The informant and his father and a third person were there but they did not make any attempt to raise a hue and cry or to arrest the man and to take him to the police station and they silently deliberated with him as if it was as simple a matter as to be ignored silently.

12. The first demand for paying up a particular sum of money for getting his brother released from the captivity of his captors having been met by paying Rs.1,50,000/- to appellant Rajendra Pasi, the second we have just discussed was by way of a rebuff to appellant Madan Singh who was pointed out by the proprietor of the public call booth, the third in the series of demand for ransom was through the two letters which had been left at the

place from where the deceased was taken away. The contents of the letter required the family members to pay up Rs.12-13 lakhs by coming to a particular place and as appears stated by P.Ws.9 and 10 both the father and son went to that particular place by a two wheeler and found three persons had come by another two wheeler and they were talking between themselves by calling each other's names. Immediately after the arrival of the three persons, more persons walked on foot and thus increasing the number of accused to five and then the informant and his father could know that they were the persons who had sent the letters requiring them to pay up 12 - 13 lakhs of money in lieu of getting his brother released. An amount of Rs.50,000/- was paid as per the advise of other accused persons to appellant Satendra Ram and they all went away and the informant and his father came back to their house. It was after 6-7 months of the occurrence that the third demand was made and the same was met and again no report or information was given to any authority or person in respect of that demand and payment of Rs.50,000/-. We could not persuade ourselves as to how the family members of the deceased could be as naïve as to be yielding to such illegal demands after having failed at two earlier occasions to get back the deceased in lieu of payments they had earlier made. The same argument that the family members could be fearing for the life of the deceased could be acceptable to us if it would have been a single occasion of demanding and paying up the money. But time and again the accused were

extorting money and the family members were paying them some part or the other of the demanded amount and in spite of failing to get back the deceased and ultimately what happened was that they got an information from P.W.12 that two accused persons who had been apprehended by the police were blurring out some of the information regarding the incident and details thereof.

13. This is how the informant stated that he and his father reached Kudra police station to find that the police had two accused, namely, Satendra Ram and Subash Ram in their custody and the father and son found that the police was questioning them during which course the two appellants, namely, Satendra Ram and Subash Ram divulged the entire details of kidnapping and murder of deceased Rama Shankar Singh and the burial of the dead body by the side of river Kudra. The police was, thereafter, taken by the two appellants to the burial site which was dug out by spade and the skeletal remains of deceased Rama Shankar Singh were recovered from the pit.

When we were contrasting the above evidence of P.Ws.9 and 10 with that of P.W.12, the investigating officer what we could find was that the investigating officer stated that after making raids for arrest of different persons (-) and we do not know on what basis the raids were made (-) they had arrested three accused persons, namely, Satendra Ram, Subash Ram and Murahoo Ram and some arms and ammunitions were found on their respective persons which were seized and because the recoveries had been made within the



territorial jurisdiction of Mohania police station a substantive offence under the Arms Act was registered. The evidence of P.W.12 further informs that the two accused persons arrested by him and the Mohania police were questioned during which course they confessed their guilt and narrated the entire story and in order to verifying the truthfulness of the information P.W.12 took the two appellants, namely, Satendra Ram and Subash Ram to the place pointed out by them and recovered the skeleton remains allegedly on pointing of the accused and after they had recovered them they had informed the informant about the arrest and other things of the two appellants. Now this evidence of P.W. 12 is completely contrary to the claim of P.Ws.9 and 10 that they had been informed quite ahead of recording of the statements of appellants Satendra Ram and Subash Ram by the police. Besides what we could find was that as per P.Ws.9 and 10, the statements could have been recorded at Kudra police station as they could have been called by P.W.12 to that police station. It is nowhere found in the evidence of P.W.12 that after recording the confession of appellants Satendra Ram and Subash Ram there was any necessity to question them further and indeed they had been questioned again. Thus, we laboured under an impression that there was a solitary questioning of appellants Satendra Ram and Subash Ram and that statement was recorded in the form of their confessions Ext-7 and 7/A. Now on perusing the evidence of P.W.12 in cross-examination of para-21, what we found is that there was a strong probability



appearing from that evidence that the two accused persons were questioned at Mohania police station and after verification of their confessional statement and also after the recovery of the skeletal remains of the deceased, they were formally arrested and were again put into the lock up of Mohania police station. Now when we look to the documents Ext-7 and 7/A which are the confessional statements of appellants Satendra Ram and Subash Ram, what we find is that the same were neither recorded at Kudra police station nor at the Mohania police station rather the records were made at village-Patti within Mohania police station at the house of appellant Murahoo Ram. These three contradictory evidence as regards the place where the two confessions were recorded, in itself appears to us sufficient to disbelieve the claim of the police that the two appellants had confessed their guilt and had put certain informations to them leading to which the discoveries of the skeletal remains of the deceased were made. We believe that these are all forged and wrong fabrication probably to cover up the failure of the police to unearth such a serious crime as was committed on 16.09.2006 at 8:00 P.M. or around that time when the deceased was abducted from the tube-well house of his.

14. Our observation that the documents were forged fabrication appears getting support from one more important aspect of discovery of the dead body. We could simply refer to Section 100 of the Code which mandates that if a search is made of any place after



suspecting that any article connected with an offence was stored therein, then it has always to be made in presence of responsible persons of the locality who have to be associated with the search and seizure which has to be made in their presence. Seizure list has also to be prepared in token of the search and finding of any article or property and a copy of the seizure list has to be made to the accused, if he is present there. We have ourselves looked to the seizure memo Ext-8 and we find two things which are absent from that document. If at all the two appellants Satendra Ram and Subash Ram had led the police to the place for making the discovery of the dead body, then we had a simple and ordinary expectation that that particular fact of being led to that place for discovery of the dead body should have been mentioned on the seizure memo and the second that if anything was recovered as was claimed by the police and the same was seized as appears from the seizure memo, then in compliance with the mandate of law as per provision of Section 100 of the Code, a copy thereof ought to have been made over to the two accused persons with their signatures obtained thereon in token of the receipt of the copy. In spite of our anxiety to find out that the copy of the document was made over to the appellants, we could not find any answer which could be in conformity with Section 100 of the Code. We requested Shri D.K.Sinha, learned Additional Public Prosecutor also to examine the document and we must record that Shri Sinha fairly conceded that there was a complete non-compliance and no copy of the



document had been made over to any of the two appellants, namely, Satendra Ram and Subash Ram. This aspect of the prosecution story regarding the discovery of the dead body further creates a serious doubt in our mind, as regards the claim of the prosecution. It was one of the most important evidence which was placed by the prosecution before the trial Court and the same evidence was admitted by Smt. Singh was placed before us in order to convincing us that indeed by virtue of Section 114 of the Evidence Act that a special knowledge could be there at least of the two appellants, namely, Satendra Ram and Subash Ram regarding the kidnapping and abduction of deceased Rama Shankar Singh and his ultimate murder and burial of the dead body. It would have been satisfactory and acceptable evidence in that behalf, but we have already pointed out by analyzing the evidence that the inference leads us to believe that the documents were forged, the claim fictitious and the evidence unacceptable.

15. Having analyzed the evidence to raise the conclusions we have just recorded, we find that the prosecution had miserably failed in establishing the culpability of the appellants in six appeals. The evidence required that the appellants ought to have been acquitted and, accordingly, we allow the six appeals by setting aside the judgment of conviction and order of sentence. We acquit all the appellants of the charges they had been held guilty of. All the appellants are on bail, except appellant Rajendra Pasi (Cr. Appeal (DB) No.521 of 2010). He shall be released forthwith, if not wanted

in any other case. The other appellants who are on bail shall stand discharged from the liabilities of their respective bail bonds.

(Dharnidhar Jha, J.)

(Ahsanuddin Amanullah, J.)

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