

PART E.—EXECUTION OF THE ORDERS OF CRIMINAL APPELLATE COURTS AND COURTS OF REVISION,

The following rules, as to the mode of carrying out the orders passed on appeal or in revision by Criminal Courts, should be observed :—

- (i) The High Court will certify its decision to the Court from whose judgment the petition of appeal or application for revision was preferred

High Court will certify its decision to Lower Court.

Provided that if such judgment was that of a Court subordinate to the Magistrate of the district the decision of the High Court will be certified to the Magistrate of the district.

- (ii) The Court to which the decision is certified will, in cases of rejection of appeal or confirmation of sentence cause the appellant to be informed, and in cases of alteration, reversal or enhancement of sentence will issue a warrant accordingly to the Superintendent of the Jail of the district in which the trial was held, or if the original sentence was one of fine only to the person to whom the original warrant was addressed.

Lower Court will inform prisoner and the Jail Superintendent.

Sessions Judges should not fail to communicate the High Court's orders in Murder References and appeals to the convicts merely on the assumption that the High Court will itself directly communicate the result to the convicts.

When a sentence of death is confirmed or passed by the High Court in appeal or revision, the Sessions Judge to whom the decision of the High Court is certified, shall issue the warrant for the execution of the sentence of death, to the Superintendent of the Jail to which the prisoner was originally committed. If the condemned prisoner has been or should be transferred to another jail, and the Superintendent to whom the original warrant of commitment was addressed returns the warrant, for the execution of the sentence of death

to the Sessions Judge with an intimation that the prisoner has been transferred to another jail the Sessions Judge shall issue a revised warrant for the execution of the sentence of death to the Superintendent of the jail in which the condemned prisoner is confined.

¹[NOTE.—When a sentence of death has been suspended or commuted under Chapter XXIX of the Code of Criminal Procedure, the passing of further orders regarding the carrying out of such sentence is a matter for the Government ordering the suspension or commutation and not for the Sessions Judge.]

Appellate court will at once inform jail superintendent direct about all orders of release or alteration or enhancement of sentence passed by it.

(iii) The Sessions Court or any other appellate Court will, in all cases in which its order on appeal requires the immediate release of a prisoner, issue a warrant of release direct to the Superintendent of the Jail in which the prisoner is confined. The Superintendent of jail will, after executing such warrant, forward it with the original warrant of commitment duly filled up, to the Magistrate of the district in which the trial was held. If in any case the warrants have not been received from the Superintendent of the Jail by the time the records in the case are returned by the Appellate Court, it will be the duty of the Magistrate of the district to at once institute inquiries as to whether the prisoner has been released, and if necessary to issue his own warrant for the release of the prisoner.

In cases of alteration or enhancement of sentence also the Sessions Court or any other appellate Court will issue a warrant direct to the Superintendent of the Jail in which the prisoner is confined. In cases of rejection of appeal or confirmation of sentence the Appellate Court will certify its decision on appeal to the Magistrate of the district in which the trial was held, who will cause the appellant to be informed. When an appeal is rejected the Superintendent of the Jail in which the prisoner is confined should also be informed direct, by the Appellate Court.

NOTE—The attention of the Judges of the High Court has been drawn to the great delays which frequently occur between the decision of criminal appeals and the communication of the result to the Superintendent of the Jail in which the convict is confined. In many cases it is apparently necessary for the Superintendent to issue several reminders to the Appellate Court before he can obtain the information desired. As this state of things is contrary to the procedure prescribed in the foregoing instructions a strict compliance therewith is enjoined in to prevent the occurrence of any such delay.

1. Substituted vide Correction Slip No. 19 Rules.XII.A.15 dated 08.02.1974.

- (iv) The Magistrate of the district will in communication with the Superintendent of the from jail, arrange that no prisoner is removed of from the Jail in which he has been confined by order of the Court sentencing him to imprisonment until the period of appeal has expired, or if at that time an appeal is pending until the decision of the Appellate Court is known :

Prisoners not to be transferred from the jail until decision of appeal, Exceptions.

Provided that prisoners committed to the Gurgaon, Hoshiarpur and Dharamsala Jails may be transferred respectively to the Delhi, Jullundur and Gurdaspur jails at the discretion of the jail authorities; but no prisoner so transferred shall be removed from the jail to which the transfer is made until the period of appeal has expired, or, if an appeal has been filed, until the decision of the Appellate Court is known; and that notices issued by any Court for service on such prisoner shall be forwarded without delay to the Superintendent of the Jail in which the prisoner is confined with instructions that it be returned *direct*, after service, to the Court issuing such notice.

- (v) If for any reason an exception is made to the above rule and a prisoner is transferred before the order of the Appellate Court is known, the Superintendent of the Jail to which the prisoner was originally committed will forward the information or warrant of the order of the Appellate Court to the Superintendent of the Jail to which the prisoner has been transferred, and the latter officer, having executed the order, will report execution to the Court issuing the information or warrant.
- (vi) The Inspector-General of Prisons has, pointed out that difficulties occasionally arise in carrying out sentences , passed under section 35 of the Code of Criminal Procedure, of which one is to take effect after the expiration of the other, when the first sentence to be executed is subsequently set aside on appeal.

Duty of Jail Superintendent to inform the Superintendent of the jail to which the prisoner has been transferred about orders passed by appellate court.

Execution of sentences passed under Section 35, Criminal Procedure Code.

If the sentence which is to take effect first in set aside on appeal the appellate Court should direct the original court to issue a fresh warrant directing that the second sentence be carried out at once.

Procedure for execution of order of Appellate court when accused has been admitted to bail.

- (vii) When a prisoner on whom separate sentences are passed under section 35 of the Criminal Procedure Code is committed to jail under two separate warrants, the sentence in the one to take effect from the expiry of the sentence in the other, the date of such second sentence shall in the event, of the first sentence being set aside on appeal, be presumed to take effect from the date on which he was committed to jail under the first or original sentence. A direction to this effect should invariably be given and communicated by the Appellate Court to the Court which passed the original sentence, with a view to the issue of a fresh warrant to the Jail authorities in supersession of the original warrant.
- (viii) Where an accused has been admitted to bail pending the hearing of his appeal the original warrant of commitment shall, be forwarded by the jail authorities to the Appellate Court, which will take action as follows on the decision of the appeal :-
- (1) In every case in which a sentence reserved on appeal, the Appellate Court shall return the original warrant with a copy of its order to the Court by which the accused was admitted to bail, with directions to discharge him.
 - (2) In every case in which a sentence is modified on appeal, the Appellate Court shall prepare a fresh warrant (in the form prescribed in the following rule) and shall forward the same, with the original warrant and with a copy of its order, to the Court by which the accused was admitted to bail, with directions to take measures to secure his surrender and commitment to jail on the modified warrant.
 - (3) In every case in which a sentence is confirmed on appeal, the Appellate Court

shall make an endorsement on the original warrant to the effect that the sentence has been confirmed and return it with a copy of its order to the Court by which the accused was admitted to bail, with directions to take measures to secure his surrender and recommitment to jail on the original warrant.

In each of the cases last above-mentioned it shall be the duty of the Court to which the accused surrenders to his bail to endorse on the warrant the dates of his release on bail and of his subsequent surrender.

(ix) Where an accused who has been released on bail presents himself in an Appellate or Revisional Court and his sentence is confirmed or so modified that he has still to serve some term of imprisonment, such Court shall commit, him to Jail on the original or a modified Warrant and shall inform the district Magistrate concerned of the action taken when sending a copy of a judgment.

Procedure when accused surrenders to his bail in Appellate Court.

(x) When, on appeal, re-trial is ordered and accused is not released on bail, but is remanded to the judicial lock-up, the Jail authorities should return the original warrant of commitment to the trial court. If, however, the order for re-trial is subsequently set aside, and the appellate court is directed to re-hear the appeal, the appellate court should take care to re-call the original warrant and re-commit the accused to jail to serve his sentence, pending disposal of the appeal. If it thinks it fit to release the accused on bail the procedure laid down in paragraph (viii) above should be followed.

Procedure when re-trial is ordered.

(xi) The following form of warrant is prescribed for use by appellate Courts when a sentence is modified or altered on appeal :-

Form of warrant when a sentence is modified or altered on appeal.

In the Court _____
at _____ To the Officer-in-charge of the Jail
at _____

Whereas.....son of
of Village.....
 ParganaPolice Station.....
in the district of
Magistrate of
was convicted by
of the offence of
and was
 sentenced on theday of
19 to
which conviction and
 sentence have been modified on appeal by this Court, and
 in lieu thereof the said
has been
 convicted of the offence ofand
 sentenced on theday of
19 to

This is to authorise and require you the said Superin-
 tendent to receive the said into
 your custody in the said jail, together with this warrant,
 and carry the aforesaid sentence into execution
 according to law; and this is further to authorise and
 require you to return to this Court the original
 warrant of commitment, in lieu whereof this warrant is
 issued.

Given under my hand and the seal of the Court
 this..... day of 19

Sessions Judge