

THE GAUHATI HIGH COURT CRIMINAL RULES AND ORDERS

THE GAUHATI HIGH COURT

[HIGH COURT OF THE ASSAM, ARUNACHAL PRADESH, MANIPUR,
MEGHALAYA, MIZORAM, NAGALAND AND TRIPURA]

VOLUME - 1

PART-A

**(A) RULES FRAMED BY THE HIGH COURT UNDER ARTICLE
227 OF THE CONSTITUTION OF INDIA**

CHAPTER - 1

**(PROVISIONS APPLICABLE TO THE COURTS OF
MAGISTRATES AND SESSIONS JUDGES)**

I. RECORD OF THE ATTENDANCE OF WITNESSES-

1. In police cases the Asstt. Public Prosecutor or Addl. Public Prosecutor attached to the Court and in non-police cases the party concerned, shall deliver to the Bench Clerk, not later than 10 a. m. a list verified, dated and initiated by him, of the witnesses who, upto 10 a. m. are in attendance for examination. The Commission of the name of a witness from the list shall be no bar to his being examined if presented for examination, but no costs shall be allowed to any witness on account of his expenses for the day's attendance if after summons his names is neither entered in the list nor he is actually examined unless he can satisfy the Court that his attendance was delayed by unavoidable circumstances.

2. The Bench Clerk shall enter in the Register of attendance of witnesses (*vide* Form No. (R)11) the names of witnesses entered in the list and also of those who though not so entered are actually examined. Witnesses appearing in denovo trial shall be treated as new witnesses and a notes shall be made in the "Remarks" column of the Register of the Court holding the denovo trial,

showing the number of times each witness appeared in the previous trial.

3. Witnesses examined by Judicial Officers in Court in Preliminary enquiries under Sections 202 and 340 and also under Section 299, Criminal Procedure Code, 1973 shall be entered in this Register.

II. RECORD OF EXAMINATION OF COMPLAINANTS, WITNESSES AND ACCUSED-

4. In the record of the examination of a complaint, deposition of a witness and statement of an accused, shall be included the following particulars of the person examined-

- (1) Name.
- (2) Father's name, or in the case of a married woman the name of her husband.
- (3) Age.
- (4) Religion.
- (5) Profession.
- (6) Address- Village, thana, District.

Note- The age shall not be stated by the person examined, unless the presiding officer considers it to be erroneous, in which case he shall record his own estimate.

III. COURT OF SESSION-

5. (1) In Sessions Cases the following documents, if in the vernacular and admitted in evidence and if so required by the trial Judge shall be translated into English in the Session Court :

- (i) The First Information and other important police papers;
- (ii) Statements or confessions recorded under Section 164, Criminal Procedure Code;
- (iii) Examination of accused persons and written statements filed by them; and
- (iv) All other documents marked as exhibits which the Sessions Judge considers necessary.

(2) The translation of more than one document, deposition or examination shall not be written on one sheet of paper, provided that when a vernacular document, the contents of which are not relevant, is used in evidence for a limited purpose such as to prove a signature or handwriting or the nature of writing materials or the like, it shall not be necessary to make an English translation of the contents of such document.

(3) The process of translation shall commence immediately the record of the committing Magistrate is received in the office of the Sessions Judge and shall be so continued as to ensure completion on the date and at the time of final orders bringing the Sessions trial to a conclusion are recorded by the presiding Judge.

(4) Such translations shall not be included in the records of the case, but shall be placed together in a separate collection with a list showing each paper and the page number in the record of the corresponding original. The separate collection shall invariably be forwarded with the records, Sessions Judges will personally see that this is done and in forwarding the record to the High Court they shall append a certificate in the form below :

CERTIFICATE

Certified that the records of the Case have been examined and that I have satisfied myself that the provisions of Rule 5 of Chapter I of Part I of the High Court's Criminal Rules and Orders have been complied with.

Date..... Session Judge.

6. (1) When there is an interval of more than two months between the apprehension or appearance of the accused/first accused when there are more than one— and the commitment of the case to the Court of Session the Committing Magistrate shall submit to the Session Judge, along with the order of commitment, a clear and full explanation of the delay covering the entire period. A copy of the order sheet shall never be submitted.

(2) The Sessions Judge shall consider that explanation together with the explanation, if any, obtained by him from the Superintendent of Police, apportion the blame, if any, between the Police and the committing Magistrate and forward the same to the High Court with such remarks as he may think fit to make, with an intimation of any step he may propose to take to remedy the faults indicated therein along with the monthly Sessions statement in Form No. (S)2 after the disposal of the case, with his opinion as to whether the delay was avoidable or justified, leaving it to the High Court to take any action necessary.

7. A Sessions Judge must be acknowledge by an express telegram the receipt of the High Court's order passing, confirming altering of setting aside a sentence of death passed on a prisoner.

In the case of the Sessions Judge at Gauhati the acknowledgement of the order shall be through a special messenger.

8. Sessions Judges shall communicate to the prisoner every order, confirmation, reversal or commutation of sentence of death through the Superintendent of the Jail wherein the prisoner is confined within twenty four hours of receipt of the order in the Sessions Court. They shall immediately on receipt of order of the High Court passing or confirming the sentence of death, issue a warrant for execution in Form No. 42 of Schedule II of the Code of Criminal Procedure and shall appoint therein as the date of execution a day not less than 21 days nor more than 28 days from the date of such receipt.

"**Note**- Instructions contained to the above rule should be followed by District Magistrates, Deputy Commissioner and each other officers, as the case may be, in respect of case tried by them under any special law in force in any specified area immediately on receipt of the High Court's order in the matter."

9. It must be noted that the proper authority to whom intimation of an intention to file an appeal to the Supreme Court by a prisoner under sentence of death should invariably be addressed in the Secretary, Law Department of the respective Govts. of Assam, Nagaland, Meghalaya, Manipur, Tripura, Arunachal Pradesh and Mizoram, as the case may be. Any such intimation which is addressed to the President of India or any officer of the Government of India will be ignored by the Jail authority.

10. All communications from witnesses regarding their attendance in the Court of Sessions shall be addressed to Presiding Judge through the Public Prosecutor of the defence lawyer as the case may be, who should lay them with their comments before the Sessions Judge for orders. The orders, passed thereon shall be communicated to the witnesses through the same channel.

["III A. JUDGMENT-

1. (a) Every judgment in a Criminal case shall contain a cause title containing the names and descriptions of the Complainant, the accused and the names of the Advocates;
- (b) Every judgment shall also contain appendix at the end of the judgment in the following Manner-

(A) PROSECUTION EXHIBITS

Ext.- 1
Ext.- 2
Ext.- 3

(B) DEFENCE EXHIBITS

Ext.- A
Ext.- B
Ext.- C

(C) EXHIBITS PRODUCED BY WITNESSES :

Ext.- X-1
Ext.- X-2
Ext.- X-3

(D) COURT EXHIBITS

Ext.- C-1
Ext.- C-2
Ext.- C-3

(E) PROSECUTION WITNESSES:

P.W.- 1
P.W.- 2
P.W.- 3

(F) DEFENCE WITNESSES:

D.W.- 1
D.W.- 2
D.W.- 3

(G) COURT WITNESSES:

C.W.- 1
C.W.- 2
C.W.- 3

2. Final orders passed in any proceedings under the Code of Criminal Procedure shall have cause title and appendix as indicated in Rule 1.(Supra)]¹

1. Inserted after "Rule 10", CH-I, Part-A, *vide* Notification No. HC. XI-2/84/9088/RC. dated the 13th December, 1993 (with immediate effect), C.S. No. 6.

IV. EXECUTION-

11. A separate warrant shall be issued in the case of each prisoner.

12. In all cases where the accused is a soldier or person holding any rank in the army, navy or air force, as the case may be, the warrant for detention or imprisonment shall set forth accurately the rank of the prisoner and the Regiment or Defence Department to which he belongs.

13. Every Court, other than the High Court, when committing a prisoner to jail shall attach to the warrant of commitment a descriptive roll in Form No. (P)42.

14. A Court making an order for the detention of an offender either in a Borstal institution under the Assam Borstal Institution Act, 1968 (*Assam Act I of 1969*) or in a Reformatory School under the Reformatory Schools Act, 1897 (*Act VIII of 1897*) or insert under an Act containing similar provisions in any of the other States, as the case may be, shall attach to the warrant of commitment note in Form No. (P)43 in addition to the descriptive roll in Form No.(42).

15. When filling in warrants of commitment under the Criminal Procedure Code, or the descriptive roll attached thereto (see Rule 13) judicial officers shall insert the village district and the police station in which the convict resides.

16. A Court while convicting an accused person shall decide whether he is to be classified as a "habitual" or "casual" criminal and make a note of the decision in the Form No. (P)42 for the information of the Jail authorities.

Note- For rules as to classification of prisoners, see Chapter 3 of Part I (c) of these rules.

V. WARRANT UNDER CLAUSE (2) OF SECTION 122 OF CRIMINAL PROCEDURE CODE-

17. (1) When a Magistrate passes an order to give security under Section 122 Code of Criminal Procedure, for a period exceeding one year, and such security is not given on or before the date on which the period for which such security is to be given commences, he shall issue warrant directing the person against whom the order is made to be detained in prison until the orders of the superior Court are received making the necessary modification in Form 15 and 16, Schedule II, Criminal Procedure Code when he receives the order of the superior Courts, he shall,

if the order is one to detain the person in jail, issue a revised warrant in the terms of that order. The warrant will not in such a case, be issued by the superior Court, but by the Magistrate before whom the proceedings were instituted.

(2) Where however, a superior court on a reference being made to it under Section 122 (2), Criminal Procedure Code, directs the release of the person detained, the warrant for release shall, as in the case of an appeal, be issued by the superior court in Form No. 17, Schedule II of the Code of Criminal Procedure.

VI. ORDER SECTION 356 CRIMINAL PROCEDURE CODE, TO BE ATTACHED TO WARRANT-

18. When an order is passed under Section 356 of the Code of Criminal Procedure a copy of the order shall be attached by the convicting court to the warrant referred to in Section 418 of the Code.

VII. COMMENCEMENT OF THE SECOND OF TWO SENTENCES, THE FIRST HAVING BEEN REMITTED ON APPEAL-

19. When a prisoner has been 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 remitted on appeal, be presumed to take effect from the date on which he was committed to jail under the first or Original sentence.

VIII. REMISSION OR SUSPENSION OF A SENTENCE IN CASES DEALT WITH BY THE HIGH COURT ON APPEAL, CHAPTER XXXII-E, CRIMINAL PROCEDURE CODE-

20. All recommendations for remission or suspension of a sentence made to the State Government under Section 432 of the Code of Criminal Procedure by Presiding Officer of any Subordinate Court in regard to a convict whose case has been before the High Court on appeal shall be made through the High Court.

IX. WARRANTS TO ISSUE WHEN FINE REALISED BY SESSIONS COURT-

21. When a Court of Sessions realise a fine imposed by it on an accused person, it shall prepare the usual warrant for the realisation of the fine and shall forward it to the Magistrate of the District concerned with an endorsement thereon to the effect that the has been realised.

X. DISPOSAL OF PROPERTY-

22. (1) Criminal Courts in making orders under Sections 452, 457 or 458 of the Code of Criminal Procedure for the disposal of counterfeit coins shall forward them together with any dies, moulds, etc. used for coining which may have been produced in the case, to the nearest Treasury or Sub-Treasury officer with a request that they may be transmitted to the Mint for disposal. A copy of the judgment delivered in the case with which they are connected should, at the same time, be forwarded to that officer.

(2) In an appealable case the transmission of such coins to a Treasury or Sub-Treasury Officer shall be deferred until the expiry of the time allowed for preferring an appeal and, in the event of an appeal, until it is disposed of.

23. All arms and ammunition of prohibited bore which are confiscated shall be sent to the nearest arsenal for disposal.

XI. RELEASE OF PRISONERS-

24. Judicial Officers are prohibited from sending by telegraph, orders to officers in-charge of jails for the release of prisoners in their custody.

25. No warrants for release of prisoners shall be despatched by a Court after sunset, or if it is so despatched shall be endorsed with the instruction for release as early as possible next morning.

XII. APPLICATION BY COURT UNDER SECTION 40 OF THE PRISONERS ACT (ACT III OF 1900)-

26. When an under trial prisoner, confined in a prison beyond the local limits of the jurisdiction of the High Court, is required to be produced in any subordinate court thereto for the purpose of answering a charge of an offence or of giving evidence, the subordinate court shall in the first instance issue processes under Chapter VI of the Code of Criminal Procedure which shall be duly served or executed on him in case he is released from custody but if, instead of being released, he is convicted and imprisoned, the subordinate court shall make an application to the High Court under Section 40 of the Prisoners Act (Act III of 1900) furnishing the following particulars about the prisoner-

- (1) the court by which he was convicted;
- (2) the date of conviction;

- (3) offence for which he was convicted;
- (4) term of imprisonment;
- (5) the jail in which he is confined, and
- (6) the date on which he is required to be produced before the requisitioning court.

XIII. COMMUNICATION OF ORDERS TO CERTAIN AUTHORITIES-

27. When any Advocate or Pleader is convicted of any criminal offence, the court concerned, shall, whether an appeal has or has not been filed, without delay, report the fact to the High Court and to the Bar Council along with a copy of the judgment delivered in the case. These two copies shall be prepared by the salaried staff of the court concerned. If an appeal is filed, the fact shall be reported to the High Court and to the Bar Council immediately, and when the judgment in an appeal is delivered copies of the appellate judgment shall be forwarded by the appellate court to the High Court and the Bar Council. These copies also shall be prepared in the appellate Court's office by the salaried staff.

28. When a person serving the Government of India in Defence Department, is convicted in a Criminal Court, the trying Judge or Magistrate, as the case may be shall forward a copy of the conviction and sentence to the High Court for forwarding to the said department.

29. In the case of a reservist of the Indian Army, Navy and Air Force as the case may be, who may be sentenced by a criminal court to imprisonment for any term exceeding three months a report shall be made to the High Court for communication to the officer commanding the appropriate Reserve Centre.

30. Whenever a military pensioner is convicted and sentenced to imprisonment for a criminal offence, a copy of the judgment, and final order, shall be sent to the High Court for forwarding to the Controller of Defence Accounts and Pensions. The place where the pensioner last draw his pension shall be stated in the covering letter. The copy shall be prepared free of charge in the office of the court, not by the copying department.

[31. In all cases where the opinion of any of the following authorities has been received in evidence a copy of the judgment shall be forwarded to-

1. The Chemical Examiner to the Govt. of Assam, Dispur;

2. The Director of State Forensic Science Laboratories; and
3. The Serologist and Chemical Examiner to the Govt. of India, Calcutta."]¹

CHAPTER 2

COURT OF APPEAL, REFERENCE AND REVISION

1. APPEAL (SUBORDINATE COURTS)-

1. Petitions of appeal against the sentences or orders of Sessions Judge, presented to the officers-in-charge of Jails, shall be forwarded by them direct to the Registrar of the High Court, intimation of the fact being at once given in each instance to the Judge whose sentence or order is appealed against by sending him a copy of the letter in Form No. (M)19 addressed to the Registrar with a forwarding Memo.

Note 1. For forms of heading of petition of appeal see Form (M)12.

Note 2. Sessions Judges need not send the records of such cases to the High Court until they are requested to do so upon the admission of the appeal.

2. Petitions of appeal from prisoners shall not be forwarded to the High Court in cases in which sentences or orders have already been passed by an Appellate Court on appeal (as, for example, by a Court of Session on an appeal from a conviction before the Chief Judicial Magistrate of the District or other officer exercising the powers of a Magistrate of the first class, such sentences or orders being final under the Code of Criminal Procedure).

3. Sessions Judges shall send letter in Form No. (M)14 to the Chief Judicial Magistrate intimating the date fixed for the hearing of any appeal against an order of conviction by him or by any Magistrate Subordinate to him, and calling for the record of the case. Where the order of conviction has been passed by a Magistrate at an outlying station a copy of the letter shall also be sent to the Sub-divisional Judicial Magistrate concerned.

4. When a Court of appeal or revision directs the release of a prisoner on bail pending the hearing of an appeal or an application for revision, such Court shall ordinarily send the warrant for his release on bail to the Court which passed the order under appeal

1. Added new "Rule 31" in PART-A, CH.I vide Notification No. HC.XI-2/84/9088/RC., dated the 13th December, 1993, (with immediate effect) C. S. No.1.

or revision or to the Chief Judicial Magistrate. As soon as the prisoner is released on bail, the fact of his release and the date of his release shall be reported to the Court of appeal or revision. If such person is unable to furnish the bail required of him, the Court receiving the warrant for the release of the prisoner on bail shall forthwith return the same to the Court of appeal or revision which issued it, with an endorsement thereon to the effect that the prisoner is unable to furnish the bail.

5. When an appeal has been disposed of, a copy of the judgment in appeal and of the order passed shall be attached to the record of the original court and returned to it therewith.

6. (1) When a sentence is reversed, the Appellate Court shall prepare a warrant of release in Form No. (P)55 and shall send the same direct to the officer-in-charge of the jail in which the Appellant is confined.
- (2) When a sentence is modified on appellate Court shall prepare a fresh warrant in Form No. (P)56 in accordance with the terms of the order passed and shall send the same direct to the officer-in-charge of the Jail in which the Appellant is confined.
- (3) The Appellate Court shall at the same time when the release warrant or fresh warrant is issued, recall and cancel the original warrant of commitment which shall be attached to the record of the original court and returned to it therewith.
- (4) When the release warrant or the fresh warrant is returned with an endorsement of execution the Appellate Court shall forward it to the Court from the decision of which the appeal was preferred, to be attached to the original record.

7. When a sentence is confirmed on appeal, the appellate Court shall send an intimation to that effect to the officer-in-charge of the jail in Form No. (M)18.

8. When the conviction and sentence are set aside and a retrial is ordered, the Court directing the retrial shall communicate its order to the Jail authorities with a view to the necessary action being taken under Rule 250(1) of Assam Jail Manual, Vol.I or other relevant rules obtaining in the State concerned.

9. Irrespective of the procedure prescribed above, the Appellate Court shall, for the information of the appellant, notify to the

officer-in-charge of the jail in which such appellant is confined, the result of his appeal. The notice shall be made in Form No. (M)18 referred to in Rule 7.

10. The notice referred to in the next preceding rule is intended solely for the communication of the result of the appeal to the appellant and in no way relieves the Appellate Court from the duty of issuing revised warrants, when such are necessary.

Proviso 1.— Provided that, where an appellant has been admitted to bail pending the hearing of his appeal, the original warrant of commitment shall, after its return by the Jail authorities to the Court which issued it, be forwarded to the Appellate Court, which can take action as follows on the decision of the appeal—

- (1) When a sentence is reverse 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) If the conviction and sentence are set aside and a retrial of the accused is ordered by Appellate Court, that Court shall return the original warrant, together with its order on the appeal either to the Chief Judicial Magistrate or to the Court which trial the case, with direction to retry the prisoner for the offence charged.
- (3) When a sentence is modified on appeal, the Appellate Court shall prepare a fresh warrant in Form No. (P)56 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.
- (4) When a sentence is confirmed 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 take measures to secure his surrender and re-commitment to jail on the original warrant.
- (5) In the cases mentioned in clauses (3) and (4) above the Court by which the accused was admitted to bail shall forthwith call upon the accused to surrender and issue a notice to the surety in Form No. (P)65 to produce the accused within three days after the receipt of the notice. If no surrender is made within the period a warrant of

arrest shall issue, and at the same time, the surety shall be called upon to show cause why his bail bond shall not be forfeited. No extension of the time to surrender or to produce the accused shall be allowed in any case.

- (6) 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.

Proviso 2.— Provided also that where an accused surrenders to his bail in the Appellate Court, such Court when the sentence is reversed on appeal, shall discharge him and when the sentence is modified shall forward the accused in the charge of a police officer, with the modified or the original warrant, to the Chief Judicial Magistrate with directions to commit him to Jail as in cases (3) and (4) of Proviso I.

Note— Whenever a Sessions Division consists of more districts than one, the Chief Judicial Magistrate in this rule shall be held to be such Magistrate of the District in which the Sessions Court is sitting for the hearing of appeals.

11. When a Sessions record is called for by the High Court under the provisions of Section 384(2) or 385, Code of Criminal Procedure, the records shall be despatched not later than a week from the time of receipt of the requisition by the Sessions Judge.

12. Certified copies of judgments or orders of the lower Courts filed with appeals or applications for revision in the Court of appeal or revision shall be retained with the appellate or revisional records.

2. REFERENCE AND REVISION (SUBORDINATE COURTS)–

13. Chief Judicial Magistrate shall comply with all requisitions for records, returns and informations made by the Sessions Judges with regard to any case appealable to them or referable by them to the High Court. They shall also render any explanation which Sessions Judges may require from them and obtain and submit any explanation which Sessions Judges may require from Subordinate Magistrate in such cases.

14. When the record of a proceeding in the Court of any Subordinate Magistrate is required by the Sessions Judge under Section 397 and 384(2) of the Code of Criminal Procedure it shall be called through the Chief Judicial Magistrate.

Note— For the form calling for the record *vide* Form No. (M)13.

16. In all references under Section 366 of the Code of Criminal

Procedure the Sessions Judge shall forward with the record of the case—

- (a) all police Diaries;
- (b) articles connected with the offence which have been proved and exhibited but which cannot be attached to the record, e.g. weapons, counterfeit coins if he thinks that they would be useful to the High Court or such of the Article as the State or the accused may desire to have forwarded; and
- (c) a copy of the entry of the case in the Sessions Register (R)1(i);

In other cases, articles mentioned in clause;

- (d) above shall not be sent unless desired by the State or the accused or specially called for by the High Court.

17. In reference under Section 366 of the Code of Criminal Procedure, the records of the case together with the letter of reference and the documents and articles prescribed the above rule shall be despatched from the Station at which the trial was held within a week of the time of the order sentencing the accused to death for the orders of the High Court.

3. APPEAL : REFERENCE AND REVISION (HIGH COURT)-

(i) Communication of orders passed by High Court.

18. Rules 4-10 of this Chapter do not apply to the High Court. The procedure applicable to the High Court in appeal and revision cases is laid down in Sections 388 and 405 of the Code of Criminal Procedure. Whenever the High Court certifies its judgment or order to a lower court under either of these sections, the letters, shall unless otherwise directed issue a warrant of release or modification of sentence or order for the refund of a fine and in doing so it shall be guided as far as possible by the provisions of Rules 4-10 of this Chapter.

Note— When an appeal is preferred to the High Court against the conviction and sentence passed by the Sessions Judge and the prisoner is admitted to bail the original warrant in case of reversal or modification of the sentence shall be returned by the Magistrate to the Sessions Judges to be filed with the Sessions record.

(ii) Information to the High Court as to release of prisoners.

19. When the High Court, pending the hearing of an appeal or an application for revision, directs the release of a prisoner on

bail to the satisfaction of the Chief Judicial Magistrate, the Chief Judicial Magistrate shall forthwith fix the amount of bail and communicate the order to the Court which passed the order under appeal or revision. The Court to which the order of the High Court directing the release of a prisoner on bail is communicated, shall report to the High Court the fact of his release on bail immediately on his release and also the date of his release. If such prisoner is unable to furnish the bail required of him, the fact shall be reported forthwith to the High Court. If after submission of this report the prisoner is able to furnish the bail and is released on bail, the fact shall likewise be reported to the High Court forthwith. The report in each case shall be submitted through the Chief Judicial Magistrate.

20. Where, during the pendency of an appeal or an application for revision, a prisoner is released from jail on the expiration of the term of his sentence the Court receiving the warrant under Section 430 of the Code of Criminal Procedure shall immediately report the fact of his release from jail to the High Court or order Appellate Court or Court of Revision as the case may be.

4. PROVISION IN RESPECT OF APPEAL, REVISION AND REFERENCE : TO THE HIGH COURT UNDER ANY OTHER LAW-

21. The provisions of this Chapter shall apply *mutatis mutandis* to appeals, revision and reference that might come before the High Court in accordance with the provisions of any other law for confirmation of the sentence.