

IN THE HIGH COURT OF SIKKIM

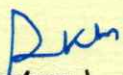
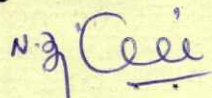




ORDER SHEET

Criminal AppealNo. 2 of 2004

NANDA KISHORE KHANAL & ANOTHER Petitioner / Appellant

Versus

STATE OF SIKKIM Respondent



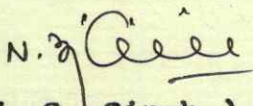

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
	15.6.2004	<p style="text-align: center;"><u>Crl.Misc.Application No.8/2004</u></p> <p>Heard Shri N. Rai, learned Counsel for the appellants.</p> <p>Delay in filing the appeal is condoned.</p> <p>This application is accordingly disposed of.</p> <p style="text-align: right;">  (R. K. Patra) Chief Justice </p> <p style="text-align: right;">  (N. S. Singh) Judge </p>	
2.	15.6.2004	<p style="text-align: center;"><u>Crl.Appeal No.2/2004</u></p> <p>Admit.</p> <p>Issue notice.</p> <p>Shri Karma Thinlay, learned Assistant Govt.Advocate takes notice on behalf of the State.</p> <p>Paper book be prepared within 4 weeks. Call for the lower Court records.</p> <p>Put up on 19.7.2004 for fixing date of hearing.</p> <p style="text-align: right;">  (R. K. Patra) Chief Justice </p> <p style="text-align: right;">  (N. S. Singh) Judge </p>	<p>Just Court needs called for on 16-6-04.  15/6/04</p> <p>Paper Book prepared & forwarded to Adm on 30.6.04. </p>



of ler	of Order	Order with Signature	Office Noted as to action (if any) taken on Order
3.	19.7.2004	As prayed for, put up on 20.8.2004 for hearing.	
		<p style="text-align: center;"><i>R.K.P.</i> (R. K. Patra) Chief Justice</p> <p style="text-align: center;"><i>N.S.S.</i> (N. S. Singh) Judge</p>	
4.	20.8.2004	<p>Heard Shri N. Rai, learned Counsel for the appellants and Shri J. B. Pradhan, learned Public Prosecutor for the State.</p> <p>Issue notice under Section 386(iii) ^{fixing 14.9.2004,} Cr.P.C. to the appellants to show cause as to why the sentence of life imprisonment on them should not be converted to punishment with death, fixing 14.9.2004.</p>	<p>Notice issued on 23-8-04. <i>holog</i></p> <p>Copy of ^{23/8/04} the notice sent to adv. & acc. adv. for information on 23/8/04</p> <p>Notice acknowledged by the accs and adv. <i>holog</i> 24/8/04</p> <p>Show Cause nt-<i>ptd.</i> <i>holog</i> 13/9/04</p>
		<p style="text-align: center;"><i>R.K.P.</i> (R. K. Patra) Chief Justice</p> <p style="text-align: center;"><i>N.S.S.</i> (N. S. Singh) Judge</p>	
5.	14.9.2004	Put up for hearing on 11.10.2004, as requested by Shri N. Rai, counsel for the appellants.	
		<p style="text-align: center;"><i>R.K.P.</i> (R. K. Patra) Chief Justice,</p> <p style="text-align: center;"><i>N.S.S.</i> (N. S. Singh) Judge</p>	



Crl. Appeal No. 2/2004

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
6. 11.	10.2004	<p>As prayed for by Miss Jyoti Kharka, learned counsel for the appellant, put up ^{with appeal} for hearing on 9.11.2004.</p> <p align="center">  (R. K. Patra) Chief Justice </p> <p align="center">  (A. P. Subba) Judge </p>	
7. 9.11.	2004	<p>Heard Shri N. Rai assisted by Miss Jyoti Kharka, learned counsel for the appellant and Shri Karma Thinlay, learned Asstt. Govt. Advocate appearing for the State - respondent.</p> <p>As prayed for by Shri Karma Thinlay, learned Asstt. Govt. Advocate for the State, the matter be listed on 3.12.2004 for hearing.</p> <p align="center">  (N. S. Singh) Judge </p> <p align="center">  (A. P. Subba) Judge </p>	
4.	3.12.2004.	<p>Heard Mr. N. Rai, learned Counsel appearing for the appellants. Also heard Mr. J. B. Pradhan, learned Public Prosecutor for the State.</p> <p>The appellants submitted an application for allowing them to withdraw the appeal by contending inter alia, that the appellants had discussion with their counsel and also took advise from their well wishers and friends and lastly they have come to the conclusion that it would be better for them to</p>	


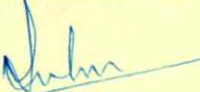


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		<p>withdraw the appeal preferred by them. It may be mentioned that while taking up the case for hearing on 20.8.2004, this Court issued a notice as ^{required} recorded under Section 386 (iii) Cr.P.C. to the appellants to show cause as to why the sentence of life imprisonment on them should not be converted to punishment with death. The appellants submitted their show cause and contended that they are innocent persons and there is no material on record for their conviction and sentence of life imprisonment, and, that being the position, they questioned the validity of the judgment and order of sentence passed by the learned Sessions Judge, Special Division - II, Sikkim in Criminal Case No.6 of 2002, but on advice of their well-wishers as well as the advice of their counsel, they submitted the application for withdrawal of the related appeal.</p> <p>We have perused the judgment and order of sentence passed by the learned Sessions Judge, Special Division - II, Sikkim. After proper application of our mind in the matter, we are of the view that the learned Sessions Judge, Special Division - II, Sikkim had rightly passed the impugned judgment and order of sentence, and, as such, no interference is called for. So far as the enhancement of sentence ^{is} to punishment with death, we find no sufficient materials ^{on record} for converting the sentence of life imprisonment to punishment with death.</p> <p>For the reasons, observations and discussions made above, we allow the application for withdrawal filed by the appellants, thus affirming the impugned judgment and the order of sentence passed by the learned Sessions Judge, Special Division -</p>	
		<p>II, Sikkim.</p>	

N. J. C. C.

N. J. C. C.



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		<p>It is made clear that State did not prefer appeal against the impugned judgment on conviction and order of sentence.</p> <p>In the result, this Criminal Appeal is closed and finally disposed of.</p> <p style="text-align: center;">  (N. Surjamani Singh) <u>Chief Justice (Actg.)</u> </p> <p style="text-align: center;">  (A. P. Subba) <u>Judge</u> </p>	<p><i>Final Court records with a copy of order forwarded on 6/12/04.</i></p> <p><i>Subba</i> <i>6/12/04</i></p>