

**Kutub Ali Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/136916](http://sooperkanoon.com/136916)

**Court :** Guwahati

**Decided On :** Apr-20-1967

**Judge :** C. Sanjeeva Row Nayudu, C.J.

**Appellant :** Kutub Ali

**Respondent :** The State

**Judgement :**

C. Sanjeeva Row Nayudu, C.J.

1. There is no point of law in this criminal revision; nor has my attention been drawn to any error of procedure which has resulted in a miscarriage of justice. The learned Magistrate found the petitioner guilty on a charge under Section 325 of the Indian Penal Code and sentenced him to rigorous imprisonment for six months. On appeal, the learned Sessions Judge contended himself with a brief reference to the case and observed that he found no reason to interfere with the order of conviction passed by the learned Magistrate. This is hardly the way an appeal against conviction should be disposed of by a Sessions Judge.

An appeal like the present one, which was a first appeal, has to be examined on the facts and the evidence. It is the duty of the Sessions Judge hearing and dealing with the appeal to study the evidence for himself, to examine it judicially, to weigh it properly afresh for himself, and if on such examination and on such scrutiny the learned Sessions Judge finds that the evidence is credible and that

the Magistrate was right in accepting the evidence as reliable and in holding that the guilt of the accused had been established beyond reasonable doubt, he should find accordingly and uphold the conviction. This judgment of the learned Sessions Judge hardly satisfies these requirements. The only point in favour of the unusual disposal of the appeal by the learned Sessions Judge seems to be the observation made by him that the only argument advanced by the learned lawyer for the appellant is that the sentence is severe. So it looks as though that the appeal having been Sled on the merits, the learned Counsel for the appellant contented himself with the arguments on the question of sentence. This may perhaps be the reason why the learned Sessions Judge did not address himself to the merits of the case.

But in a criminal appeal, unlike in a civil appeal, it is the duty of the Appellate Court to satisfy for itself, whether the matter was argued or not, that the evidence for the prosecution established the guilt of the accused person. That duty the Sessions Judge is not absolved from performing, by reason of merely a concession made by the Counsel for the appellant, for, in criminal matters a party cannot be pinned down to the mere concessions made by the Counsel. It is the duty of the Appellate Court, as already pointed out, to be satisfied that the conviction is correct. However, there are no indications that the learned Sessions Judge did not apply his mind to the case at all. I do not think that at this distant time it is worthwhile to send the case back to the learned Sessions Judge for a rehearing of the appeal.

2. It is noticed that the learned Sessions Judge treating the appeal as merely one against the severity of the sentence reduced the sentence of six months' rigorous imprisonment to a fine of Rs. 300. But unfortunately, the learned Sessions Judge has given no reason why he had chosen to reduce the sentence. The well-known principle that an Appellate Court should follow in interfering with the judgment of the trial Court is that there must be adequate grounds before the Appellate Court, to justify its interference with the judgment of the trial Court, whether that interference is on the merits of the case or in regard to the sentence, which is also a matter of judgment.

One would have expected the learned Sessions Judge to have given the reasons for interfering with the sentence of imprisonment and altogether removing that sentence and substituting a sentence of fine. As it is, no grounds have been disclosed by the judgment of the learned Sessions Judge. All that he stated is that he considered the circumstance. We do not know what that circumstance is, as it is not stated, This is hardly the correct and proper way of disposing of an appeal. However, in the absence of any appeal or revision by the State, I do not consider it necessary to take further action in regard to the sentence.

3. The revision is accordingly dismissed.

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