

Chunbidya Vs. Emperor

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Court : Mumbai

Decided On : Dec-06-1934

Reported in : (1935)37BOMLR160

Judge : Atkin,; Wright,; Alness,; John Wallis and ;Shadi Lal, JJ.

Appellant : Chunbidya

Respondent : Emperor

Disposition : Petition dismissed

Judgement :

Atkin, J.

1. This is an application for special leave to appeal from a judgment of the High Court of Judicature at Allahabad. The question arose in this way. The petitioners were tried before the Divisional Sessions Judge at Cawnpore on a charge of murder, and they were in fact convicted of murder. It is unnecessary to go into the facts of the case except to say that the particular act of which they were found guilty was that, with other people, they assaulted the deceased and, after having beaten him severely, laid him down and cut off his foot with an axe and left him there to bleed to death. The Sessions Judge, having convicted the petitioners of murder, sentenced them to transportation for life, and they thereupon appealed to the High Court.

2. On appeal to the High Court, the High Court, purporting to exercise their powers under the revision section (439 of the Code of Criminal Procedure), gave notice to the accused to show cause why the sentence should not be enhanced, and, after hearing them, ordered the sentence to be increased in the case of the four petitioners and ordered them to be sentenced to death instead of transportation for life. What has been urged before their Lordships is that inasmuch as the case came before the High Court on appeal, and inasmuch as under the provisions as to appeal the High Court dealing with appeals has no power to enhance the sentence, the High Court has no power to resort to its further powers of revision which give it power to enhance the sentence. That appears to their Lordships to be a mistake. The distinction seems to be fairly plain. The powers relating to appeal under Section 423 of the Criminal Procedure Code are given to the appellate Court, and the appellate Court may include a Court subordinate to the High Court, and the appellate Court as such has no power to enhance a sentence, differing from the provision which was in the old Criminal Procedure Code of 1872. On the other hand, the powers of revision are given to the High Court alone, and the powers of revision are given to the High Court in the case of any proceeding the record of which has been called for by itself or which has been reported for orders or which otherwise comes to its knowledge.

3. Their Lordships are clearly of opinion that when the High Court has before it on appeal a record of a criminal proceeding, the condition precedent is performed, and the High Court can then, though the record has only come to its knowledge in the appellate proceeding, proceed to exercise its revision powers if it chooses to do so. In this case the High Court did choose to exercise its revision powers. Mr. Sidney Smith points out that the notice which actually was served was headed in the criminal appeal; but it is quite plain that the subsequent proceedings were in fact in revision, and it was made plain that the Court was exercising its revision power. That being so, it appears that the Court had complete jurisdiction to act as they did, and their Lordships, therefore, in the exercise of the ordinary rules which govern criminal appeals, see no reason at all in this particular case why any leave to appeal should be granted. In those circumstances, they will humbly advise His Majesty that the petition be dismissed.

