

In Re: Rangasami Kanda Pillai

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Court : Chennai

Decided On : Oct-12-1926

Reported in : (1927)53MLJ694

Appellant : In Re: Rangasami Kanda Pillai

Judgement :

ORDER

Curgenven, J.

1. In this case the petitioner was convicted of voluntarily causing hurt with a dangerous weapon, under Section 324, Indian Penal Code, and was sentenced to rigorous imprisonment for two months. In appeal the conviction was altered into one under Section 323, Indian Penal Code, but the sentence was maintained. It is contended that, having altered the finding from a more to a less grave offence, the Appellate Court should have reduced the sentence, and that the omission to do so amounts to having enhanced it.

2. It is well-enough settled [see Paramasiva Pillai, v. Emperor ILR (1906) M 48, Ramanujam Pillai v. Emperor Weir, Vol. II, p. 487, In re Somasundaram Pillai (1908) 3 MLT 312, Prola Narasimham v. Emperor (1911) 2 MWN 97, Emperor v. Varadan (1910) 8 MLT 117] that it is not open to an Appellate Court, when setting aside the conviction of one of two or more offences, to confirm the sentence imposed by the Trial Court. The reason is that, when (to take the simplest case) a

single sentence is awarded for two offences, part of it must be deemed to have been incurred for the one offence and part for the other, so that to maintain the whole sentence for only one of the offences amounts to such an enhancement as is prohibited by Section 423(1)(b), Cr. P. Code. Such cases present no analogy to a case like the present, nor has my attention been drawn to any reported decisions upon the point.

3. Speaking generally, an Appellate Court alters a finding from a graver to a less grave offence for one or other of two reasons either because it rejects certain evidence accepted by the Lower Court or because it applies the law differently to the same facts. An example of the former class of cases would be the reduction of robbery to theft by rejecting evidence of violence. An example of the latter would be the conversion of a finding from theft in a building to simple theft by putting a different construction upon the word 'building' or its qualifying words in Section 380, Indian Penal Code. Now the difference between these two classes is this, that whereas in the one the Appellate Court finds that the act which the accused committed was in substance and in fact less grave than that imputed to him by the Trial Court; in the other class, the Courts are at one as to the act committed and only differ as to the application of the law. The former class of cases, I refrain from discussing, because the case now in point clearly belongs to the latter. The accused caused the injuries with a stick and although nothing was known of the dimensions or other qualities of the stick (except perhaps what could be gathered from the nature of the injuries) the Stationary Sub-Magistrate assumed without any discussion that it was a dangerous weapon. The Joint Magistrate very properly held that a stick is not *prima facie* a dangerous weapon, and altered the finding. The two Courts were at one as to the facts.

4. It appears to me that in applying that portion of Section 423(1)(b), Cr. P. Code, which allows an Appellate Court to alter the finding maintaining the sentence but not so as to enhance the same, the test of enhancement must be found not among the technicalities of penal definition but by answering the broad question:

For this man's offence has the Appellate Court inflicted punishment more severe than that originally awarded

5. It may be open to argument whether in regard to my first class of cases, this question could be answered in the negative if the sentence were maintained. Using the same illustration it is to be supposed that, if the Trial Court itself had found not robbery but only theft proved it would have imposed a lighter sentence, so that the effect of its error, assuming that the Appellate Court maintains the sentence, will be that the accused receives a heavier punishment than he would otherwise have received. But where, as in the present instance the Appellate Court adopts the view taken by the Original Court as to the act committed by the accused and only differs from it in its application of the law neither the letter nor the spirit of Section 423, Criminal Procedure Code, seems to me to be broken by maintaining the sentence. There has been no enhancement.

6. The Criminal Revision Petition is therefore dismissed.

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