

**Aslu Vs. the Queen-empress**

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**SooperKanoon Citation :** [sooperkanoon.com/860561](http://sooperkanoon.com/860561)

**Court :** Kolkata

**Decided On :** Jul-23-1889

**Reported in :** (1889)ILR16Cal779

**Judge :** Trevelyan and ;Banerjee, JJ.

**Appellant :** Aslu

**Respondent :** The Queen-empress

**Judgement :**

**Trevelyan and Banerjee, JJ.**

This rule must be made absolute. The question raised in this case is whether an Appellate Court affirming a conviction and sentence has power, under Section 106 of the Criminal Procedure Code, to order the appellant to execute a bond for keeping the peace. In the Court below the learned Magistrate seems to have thought that he had power to pass such an order under that section, upon the authority of a Full Bench ruling in the case of Empress v. Kanta, Prosad I.L.R. 4 All. 212. But that was a case under the Criminal Procedure Code (Act X of 1872), Section 489, and that section provided that if ' the Court or Magistrate by which, or by whom, a person is convicted, or the Court or Magistrate by which or by hom, the final sentence or order in the case is passed is of opinion that it is just and necessary to require such person to give a personal recognizance for keeping the peace, such Court or Magistrate may direct the taking of a bond to keep the

peace.' Now, the words 'or the Court or Magistrate by which, or by whom, the final sentence or order in the case is passed' have been left out in Section 106 of the present Criminal Procedure Code; and it is further provided by the last-mentioned section that such Court may, at the time of passing the sentence, order the person convicted to execute a bond. Section 423\* of the present Criminal Procedure Code expressly lays down what the powers of an Appellate Court are, and the power to take security for keeping the peace is not mentioned there and there is no other provision of the law which enacts that the Appellate Court shall have the same powers as the Court of original jurisdiction has ; and that being so, we do not think that, under the provisions of the Criminal Procedure Code (Act X of 1882), the Appellate Court has the power to order a security-bond to be taken ; and we accordingly direct that the order of the District Magistrate, so far as it directs that each of the, appellants, except Abdul, do give one surety of one hundred rupees to keep the peace for one year, be set aside.

\*Powers of Appellate Court in disposing of appeal.

Section 423: The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under

section 417, the accused, if he appears, the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal or may:

(a) in an appeal from an order of acquittal reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law ;  
(6) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial; or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (3) with or without such reduction, and with or without altering the finding, alter the nature of the sentence, but not so as to enhance the same ;

(c) in an appeal from any other order, alter or reverse such order :

(d) Nothing herein contained shall authorize the Court to alter or reverse the verdict

of a Jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the Jury of the law as laid down by him. ]

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