

**Basirulla Vs. Asadulla and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/880620](http://sooperkanoon.com/880620)

**Court :** Kolkata

**Decided On :** Feb-27-1929

**Reported in :** AIR1929Cal639

**Appellant :** Basirulla

**Respondent :** Asadulla and anr.

**Judgement :**

**Suhrawardy, J.**

1. In this case the accused were convicted by the trying Magistrate under Sections 426 and 323, I.P.C. and sentenced to pay fines. On appeal the learned District Magistrate held that the mischief was committed with reference to a hut which had not belonged to the complainant but to his father from whom he was living separately. In this view he acquitted the accused. About the end of his judgment the learned District Magistrate commented upon the evidence of two of the witnesses for the prosecution which he thought was not true. He concludes his judgment with these words:

As already stated the case fails because the person interested, complainant's father, has taken no interest in the matter.

2. The real ground upon which the learned District Magistrate acquitted the accused was that the complainant was not entitled in law to make the complaint.

Against the order of acquittal this rule has been obtained on the ground that the view of law taken by the Magistrate is erroneous. There can be no question that a complaint may be made by any person who knows about the commission of an offence and not necessarily by the injured party. The definition of 'complaint' in Section 4, Criminal P.C. supports the view accepted on several occasions. It has not been seriously contended on behalf of the opposite party before us that the view which the Magistrate has taken that the complainant in this case is not entitled to maintain the complaint is correct.

3. The next question is whether we should interfere in this matter when the accused has been acquitted by the lower appellate Court. There is no doubt that the principle which we generally keep in view is that in private prosecutions where the Crown does not think it proper to move against the order of acquittal we should not ordinarily interfere and we do so only when we are satisfied that there has been an error of law committed by the acquitting Court or where there has been a gross miscarriage of justice or in public interest. The present case, it seems, is one of these cases. The view of the law taken by the appellate Court is wrong and the case has not been disposed of by that Court upon an examination of the entire evidence in the record. The complainant had several injuries on his person which the medical evidence shows were severe. The defence admitted the occurrence but they accounted for the injuries on the complainant by saying that they were caused by a tin shed falling upon him. This theory, the medical evidence, does not support. Other witnesses were examined for the prosecution some of whom seem to be disinterested and were relied upon by the trying Magistrate. We do not think that there has been a proper enquiry into the facts of this case and the order of acquittal should accordingly be set aside.

4. I should note here that with regard to the capacity of the complainant to make the complaint he had undoubtedly such a right for the injuries inflicted on him. There can be no doubt that so far as that charge was concerned the complainant was the proper person to make the complaint. We, therefore, make the rule absolute, set aside the order of acquittal passed by the appellate Court and direct that the appeal be reheard.

**Graham, J.**

5. I agree that the rule should be made absolute. It is the long established practice of this Court not to interfere with orders of acquittal in revision on the ground that the Local Government can be moved to file an appeal against the acquittal. In this instance the Local Government has been moved and has declined to take action. Speaking for myself I do not think we should in such cases allow our discretion to be fettered in any way, and, where there has been an error of law as opposed to fact I would be prepared to interfere in order to prevent a miscarriage of justice. The learned District Magistrate seems to have formed the opinion that the complainant had no locus standi in the case, and that he could not institute it on behalf of his father. This is not correct as a proposition of law. The general rule is that any one, who is aware of the commission of an offence, may complain. Moreover in this instance the complainant was obviously fully justified in protecting his father's house against aggression and he received several injuries, which, as the learned District Magistrate has himself observed, were proved by the medical evidence, and by some of the defence witnesses. That being so he clearly had every right to complain, and the order of acquittal which is based mainly, if not entirely, upon this erroneous ground, must be set aside.

6. It is true the District Magistrate has remarked that the prosecution witnesses are practically all interested but he has not dealt with that evidence and has based his decision, as I have said, mainly on the view which he has taken on the point of law. For these reasons I agree with my learned brother and to the order which he has made.

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