CRIMINAL REVISION.

1914

June 18.

Before Sharfuddin and Teunon JJ.

KANCHAN MALLIK

v.

EMPEROR.*

Appeal—Criminal case—Practice—Duty of Appellate Court in dealing with the evidence on appeal—Proper standpoint—Conviction not to be upheld unless guilt beyond reasonable doubt affirmatively established—Criminal Procedure Code (Act V of 1898) s. 423.

In an appeal from a conviction it is for the Appellate Court, as it is for the first Court, to be satisfied affirmatively that the prosecution case is substantially true, and that the guilt of the appellant has been established beyond all reasonable doubt. To hold that, unless reasonable ground is given to the Appellate Court for differing from the lower Court, the Appellate Court must accept its findings of fact, is to approach the case from a wrong standpoint.

The facts of the case are as follows On the 1st January 1914, a Civil Court peon went with the decree-holders to the petitioners' village to attach certain crops in execution of the decree, whereupon they were alleged to have assembled in an armed body and obstructed the peon, and later on, to have reaped and removed the crops. The petitioners were accordingly put on trial before Babu N. C. Roy Chowdhry, Deputy Magistrate of Khulna, under sections 144 and 186 of the Penal Code, convicted, on the 13th March and sentenced, the first and third, to three months' rigorous imprisonment under each section, concurrently, and a

* Criminal Revision No 808 of 1914 against the order of H. A. Street, Sessions Judge of Khulna, dated March 25, 1914.

fine of Rs. 50 under each, and the second to a fine of Rs. 25, on each of the two charges. They appealed to the Sessions Judge of Khulna who upheld the conviction but reduced the sentences. The material portions of the learned Judge's judgment are as follows :—

"The prosecution have examined nine, and the defence two ; (out of five in all) to prove the rival occurrences. The lower Court with the witnesses before it has believed the former, and unless reasonable ground is given me for differing I must accept that finding of fact. The following criticisms of the prosecution evidence are offered :—

(*i.*) The witnesses are D. H's. tenants.

(*ii.*) The witnesses, except No. 2, and the peon prove only the obstruction and not the subsequent reaping of the paddy that day.

(*iii.*) The police have not been called to corroborate the peon's statement.

(*iv.*) Admittedly over 20 persons were present on the side of the decree-holder, and accused about 12 in number as alleged, could not have driven them away.

(*v.*) Harmuz, accused, is not named in the peon's report of January 2nd, he is only 13 or 14 years old and could not have been there.

(*vi.*) On 23rd December last the brother filed a claim before the Munsif and had nothing to gain by this action . . . . .

None of these contentions leads me to discredit the prosecution story."

[The Court then dealt with the above points and continued.]

"It is to be noted that the allegation that the peon cut the paddy was never suggested in cross examination nor made by the accused when examined on 5th Feby. It first appears in an affidavit on the 7th before the Civil Court, and is clearly an after thought. I find, therefore, that accused with others obstructed the peon on the 1st January last and formed an unlawful assembly with the common object charged."

[The Court then upheld the convictions but reduced the sentences.]

The petitioners thereupon moved the High Court and obtained the present Rule.

Maulvi A. K. Fazlul Huq, for the petitioners. The Appellate Court has dealt with the case from a wrong point of view. The learned Judge should have

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considered whether the evidence established the guilt of the accused beyond reasonable doubt.

SHARFUDDIN AND TEUNON JJ. In this case the petitioners were convicted under sections 186 and 141 of the Indian Penal Code, and sentenced, petitioners Nos. 1 and 3, to three months' rigorous imprisonment and to pay a fine of Rs. 50 under each section, and petitioner No. 2, Harmuz Ali, who is said to be a boy of 13 or 14 years of age, to pay a fine of Rs. 25 under each section. The sentences of imprisonment on the petitioners Nos. 1 and 3 were to run concurrently. They obtained a Rule from this Court calling upon the District Magistrate of Khulna to show cause why the order complained of should not be set aside and such other or further order made as to this Court might seem fit and proper on the ground that, at the hearing of the appeal by the learned Sessions Judge, the learned Sessions Judge approached the consideration of the case from a wrong standpoint. On turning to his judgment we find that he opens his judgment as follows: "The prosecution has examined nine witnesses and the defence two (out of five in all) to prove the rival occurrences. The lower Court with the witnesses before it has believed the former, and unless reasonable ground is given me for differing I must accept that finding of fact." That is to say he has practically called upon the appellants before him to establish to his satisfaction that the first Court has come to a wrong finding. This is not the standpoint from which an appeal in a criminal case is to be approached. In an appeal from a conviction and sentence, it is for the Appellate Court, as for the first Court, to be satisfied affirmatively that the prosecution case is substantially true, and that the guilt of the appellants has been established beyond all reasonable doubt. We are

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therefore, of opinion that the order of the Appellate Court must be set aside, and we accordingly set it aside and direct that the appeal be re-heard. At the re-hearing of the appeal, it will be for the consideration of the Sessions Judge whether the cumulative sentences in the case of Harmuz Ali ought or ought not to be affirmed. In these terms we make the Rule absolute.

E. H. M. *Rule absolute.*

CIVIL RULE.

Before Holmwood and Chapman JJ.

ABDUL QUADIR

v.

SHAHBAZPUR CO-OPERATIVE BANK.*

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June 19.

Co-operative Society—Charge—Priority—Co-operative Societies Act (II of 1912) ss. 19, 20—Attachment—Civil Procedure Code (Act V of 1908) s. 73.

Under s. 73 of the Code of Civil Procedure the claim of a co-operative society cannot be enforced unless they have a decree or charge under s. 20 of the Co-operative Societies Act (II of 1912), though under s. 19 of that Act the society might have raised an objection to the attachment by reason of other sections of the Code of Civil Procedure.

RULE obtained by Abdul Quadir, the decree-holder, objector, against the Co-operative Bank of Shahbazpur and others, applicants under s. 19 of Act II of 1908 read with s. 73 of Act V of 1908.

The facts are briefly as follows. Abdul Quadir, the decree-holder, had attached certain property of his judgment-debtor one Samiruddin against whom he had obtained a decree for money, in the Court of the

* Civil Rule No. 587 of 1914 made against the order of K. B. Sen, Munsif of Nabinagar, dated Feb. 26, 1914.