APPELLATE CRIMINAL.

Before Suhrawardy and Graham JJ.

LEGAL REMEMBRANCER, BENGAL,

v.

SATISH CHANDRA ROY.*

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April 1.

Acquittal—Appeal—Criminal Procedure Code (Act V of 1898), s. 342 not complied with—Acquittal set aside but no retrial ordered.

Where in an appeal against an order of acquittal it transpired that the provisions of section 342 of the Criminal Procedure Code had not been complied with :

Held, that the failure to comply with the provisions of section 342 of the Code vitiated the trial and the acquittal must be set aside, that as under the circumstances of the case, the chance of conviction was very remote, no useful purpose would be served by ordering a retrial.

APPEAL by the Government of Bengal against an order of acquittal passed by the Subdivisional Magistrate of Balurghat.

The accused in this case were charged under section 384 of the Indian Penal Code, some of them in their defence pleaded *alibi* and alleged that the case was a concocted one, the learned Subdivisional Magistrate rejected the plea of *alibi* and the suggestion of concoction and held that the prosecution case had not been disproved; he, however, gave all the accused the benefit of the doubt and acquitted them. Against this order the present appeal was preferred by the Government of Bengal.

The Deputy Legal Remembrancer (Mr N. A. Khundkar), for the appellant. Non-compliance with

* Government Appeal No. 7 of 1923, against the order of B. K Mukherjee, Subdivisional Magistrate of Balurghat, dated Aug. 31, 1923.

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the provisions of section 342 of the Cr. P. Code vitiated the trial and the order of acquittal should be set aside, the Magistrate's findings of fact did not justify him in giving the accused the benefit of the doubt; the case should be sent back for retrial.

Mr. K. N. Choudhuri (with him *Babu Bireswar Bagchi*), for the respondents Nos. 2 to 5. The prosecution story is extremely improbable and unlikely, there is little chance of conviction, under such circumstances it will serve no useful purpose to send back the case for retrial; the order of acquittal should be maintained on the merits of the case.

Mr. N. K. Bose, for the respondent No. 1, also argued on the above lines.

GRAHAM J. This is an appeal by the Government of Bengal under section 417, Criminal Procedure Code, against the order of the Subdivisional Magistrate of Balurghat in the district of Dinajpur acquitting one Satish Chandra Roy, an Assistant Police Sub-Inspector, and four others on a charge of extortion under section 384, Indian Penal Code.

The case for the prosecution was shortly as follows :—

A dacoity had taken place in the neighbouring village of Gangarampur, in which one Asharuddin, a servant of the complainant Alamdi Mahalat, had been sent up by the Police. On the evening of the 16th March 1923, the five accused came to the house, where the complainant lived with his uncle Oli Mahalat and the latter's mother Pathali, for the ostensible purpose of searching the house for stolen property, their real object however being to extort money, and the Assistant Sub-Inspector threatened not only to search the house but to tie up with a rope and *chalian* the complainant and other occupants of the house unless money was paid. At first a sum of Rs. 5,000 was

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demanded but eventually after further negotiations, in which Anath Bandhu Ganguly and Kaharulla participated, the inmates of the house although innocent were induced through fear to pay a sum of Rs. 1,000. Of this amount Rs. 100 was produced from the house, and the balance of Rs. 900 was obtained as a loan from Pathali's nephew Shefatullah, who lives in an adjoining village. The accused then having accomplished their purpose left the house. The prosecution examined ten witnesses in support of their case including the complainant Alamdi, Oli Mahalat, Pathali, Tuku and Shefatulla. In due course a charge was framed against all five accused under section 384, Indian Penal Code. The first four accused pleaded an *alibi*, and the first accused Satish Chandra Roy and second accused Anath Bandhu further alleged that the case had been concocted by Sub-Inspector Kali Kanta Biswas. Judgment was delivered on the 31st August, and the Magistrate, while rejecting the defences of *alibi* which had been set up, and the suggestion of concoction by the Sub-Inspector, and while holding that the prosecution case had not been disproved, gave all the accused the benefit of the doubt and acquitted them. Against that order the Government has preferred this appeal, and the main contention which has been urged before us is that on the findings at which the learned Magistrate arrived, he ought not to have acquitted the accused, and that he was in error in giving them the benefit of the doubt after finding that the prosecution case had not been disproved.

It transpired in the course of hearing the appeal that there had been a failure to comply with the provisions of section 342 of the Criminal Procedure Code and it was contended that on this ground alone the case ought to be sent back for retrial. It was

urged, however, on behalf of the respondents that having regard to the improbabilities and grave defects in the case for the prosecution, as well as to the long period of suspense undergone by the accused, no useful purpose would be served by sending the case back for retrial.

We have given the case our careful consideration and the conclusion at which we have arrived is that no useful purpose would be served by recommending a retrial. There are so many serious defects in the prosecution case that the chance of conviction seems to us to be remote. In the first place the story is in itself full of improbabilities. It is on record that at the very time when this case was instituted, the Assistant Sub-Inspector Satish Chandra Roy had another charge of a similar nature hanging over his head, and the inquiry in connection therewith was then pending. That inquiry was concluded some months afterwards and he was found to be not guilty. In view of this fact it certainly does seem *primâ facie* rather improbable that the Sub-Inspector would have conducted himself in the manner alleged, seeing that a charge of extortion which had been made against him was at that very time being inquired into.

Nor does it impress us as a very probable story that so large a sum as Rs. 5,000 would be demanded from an ordinary cultivator who was capable of producing Rs. 100 only. Of the sum of Rs. 1,000 eventually agreed upon, Rs. 900 is said to have been borrowed from Shefatulla, but the evidence establishes that Shefatulla is himself in debt to the extent of Rs. 500 to 600. It does not seem likely therefore that he would find so large a sum, and still less that he would part with it without any document of any kind. Five hundred of the amount in question is said to have been obtained from his brother Faraztulla, who was not

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examined by the prosecution as a witness, and this is another defect in the case.

Another weak feature is the delay which occurred in lodging the first information. Three different explanations have been given to account for this :

(*i*) That the complainant went to the thana and did not find the Inspector :

(*ii*) That the complainant had gone to Balurghat on the Tuesday before he lodged his complaint, but was dissuaded by one Khair Molla ; and

(*iii*) Third and lastly, a different explanation was given in Court that about four days after the occurrence, the accused Lal Chand, and Dakhua Choukidar told the complainant not to complain, as the money would be refunded.

These conflicting explanations cannot, we think, be reconciled, nor can it be said that the delay in lodging the first information, which is an unsatisfactory feature of the case, has been explained. As regards the second point, even if the explanation be accepted, the "Tuesday before last" would be the 27th March, and there would still be a delay of 11 days, which can hardly be accounted for, seeing that the thana is only three miles distant from the place of occurrence. Finally adverting to the evidence in the case we find that witnesses of respectability and education, who have been so spoken of by the Court below, have deposed to facts which are inconsistent with the truth of the prosecution story. The Magistrate remarks that their evidence is worth nothing, but the reasons he has given are insufficient to support the conclusion arrived at.

Having regard therefore to the above facts and considerations, we set aside the order of acquittal on

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the ground that the trial has been vitiated by a failure to comply with the mandatory provisions of section 342 of the Criminal Procedure Code. Whether the accused are to be retried is not within our province to determine, but for the reasons we have stated we doubt whether any useful purpose would be served by again placing them on their trial.

We direct that the accused be discharged forthwith from their bail bonds.

GRAHAM J.

SUHRAWARDY J. concurred.

A. S. M. A. *Acquittal set aside.*

ORIGINAL CIVIL.

Before Page J.

NARENDRA NATH SEN

v.

EAST INDIAN RAILWAY CO., LTD.*

1924.

April 8

Damages—Railway Company—Medicine—Gold and silver—Railways Act (IX of 1890), s. 75.

The gold and silver *bonâ fide* contained in medicine are not "gold, and silver coined or uncoined, manufactured or unmanufactured" within the meaning of s. 75 of the Railways Act and need not be declared as such in order to recover damages for the loss of the article.

The words "gold, and silver coined or uncoined, manufactured or unmanufactured" should not be technically construed, but a broad and common sense meaning should be attributed to them.

THIS was a suit for the recovery of Rs. 4,602-12 as damages for the loss of two cases of medicine which were entrusted with the East Indian Railway Company for carriage from Calcutta to Benares.

* Original Civil Suit No. 660 of 1920.