

the Subordinate Judge. The order as to costs in the Court of First Instance made by the Subordinate Judge will stand. Both in the lower Appellate Court and in this Court the plaintiff's case has been that he was entitled to the whole of the property in question. This being so, the parties will bear their own costs in this Court and in the lower Appellate Court.

TOTTEMPUDI  
VENKATA-  
RATNAM  
v.  
TOTTEMPUDI  
SENHAMMA.

## APPELLATE CRIMINAL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice  
Subrahmania Ayyar.*

BANDANU ATOHAYYA AND OTHERS (ACCUSED), APPELLANTS,

v.

EMPEROR, RESPONDENT.\*

1903.  
September  
15.

*Criminal Procedure Code—Act V of 1898, ss. 366, 367—Mode of delivering judgment and its contents—Judgment written and delivered after conviction of prisoners—Defect vitiating conviction.*

Where a judgment, in a criminal trial, was written and delivered some days after the prisoners were convicted and sentenced:

*Held*, that this was a violation of sections 366 and 367 of the Code of Criminal Procedure and was more than an irregularity. It was a defect which vitiated the convictions and sentences.

*Queen-Empress v. Hargobind Singh*, (I.L.R., 14 All., 242), approved.

**CHARGE** of murder. Three persons were charged with murder before a Sessions Judge and assessors. The assessors expressed the opinion that the accused were not guilty. The Sessions Judge found the first accused guilty of murder and passed the extreme sentence on him. He found the other two accused guilty of abetment of murder and sentenced them to transportation for life. The judgment was (as is found in the judgment of the High Court), written and delivered some days after the prisoners were convicted and sentenced.

The accused appealed.

*V. Krishnaswami Ayyar* and *V. Ramesam* for accused.

The Public Prosecutor in support of the conviction.

\* Referred Trial No. 36 of 1903 referred by J. J. Cotton, Sessions Judge of Vizagapatam Division, for confirmation of the sentence of death passed upon the first prisoner in case No. 11 of the calendar for 1903. The second and the third accused preferred Criminal Appeal Nos. 436 and 437 of 1903.

BANDANU  
ATCHARYA  
v.  
EMPEROR.

JUDGMENT.—In this case the judgment was written and delivered some days after the prisoners were convicted and sentenced. This is a violation of the provisions of sections 366 and 367 of the Code of Criminal Procedure. In our opinion it is more than an irregularity. It is a defect which vitiates the convictions and sentences. As to this we take the same view as that adopted by the Allahabad High Court in the case of *Queen-Empress v. Hargobind Singh*(1). In all the circumstances we think the proper course is to set aside the convictions and sentences and to direct that the accused be retried. The retrial will be held at the November Sessions of the Vizagapatam Court.

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## APPELLATE CRIMINAL.

*Before Sir Arnold White, Chief Justice.*

1903.  
August 25.

MOHIDEEN ABDUL KADIR AND OTHERS (ACCUSED), PETITIONERS,

v.

EMPEROR, RESPONDENTS.\*

*Criminal Procedure Code—Act V of 1898, s. 342—Examination of accused—Filling gap in prosecution evidence by questioning accused—Charge of defamation—Failure to prove making and publication—Irregularity.*

Eight persons were charged with defamation by making and publishing a certain petition regarding the conduct of the complainant. Though other evidence was adduced by the prosecution, it was not proved that the accused made and published the matter which was alleged to be defamatory. The Magistrate, however, asked the accused if they had signed the petition, and accepted their answers as proving that they had and as relieving the prosecution from proving the making and publication of the alleged defamatory matter by the accused. He convicted the accused:

*Held*, that the convictions must be set aside. A gap in the evidence for the prosecution cannot be filled up by any statement made by the accused in his examination under section 342 of the Code of Criminal Procedure. The omission to prove the making and publication of defamatory matter is more than an irregularity; it is a defect which vitiates the conviction.

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(1) I.L.R., 14 All., 242.

\* Criminal Revision Case No. 141 of 1903 presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of H. Moberly, Sessions Judge of Madura, in Criminal Appeal No. 80 of 1902 confirming the conviction and sentence passed by J. R. Higgins, First-class Sub-Divisional Magistrate of Ramnad, in Calendar Case No. 29 of 1902.