

APPELLATE CRIMINAL.

*Before Mr. Justice Waller and Mr. Justice
Madhavan Nayar.*

SUBBA CHUKLI, *In re.**

1925,
December 4.

Charge under sec. 302, Indian Penal Code—Conviction under sec. 304 (second part), Indian Penal Code—Revision under sec. 439, Criminal Procedure Code—Notice of enhancement—Effect of sec. 439 (4), Criminal Procedure Code—Finding of acquittal, not complete but partial.

Where a person was charged with murder and the Sessions Court was of opinion on the evidence that the accused had been gravely provoked and did not intend to cause death and convicted him under the second part of section 304 of the Indian Penal Code, and the accused was called upon, in a revision petition filed in the High Court, to show cause why he should not be convicted of murder and the sentence enhanced to one of death.

Held, that the High Court had no power in revision under section 439, Criminal Procedure Code, to do what was tantamount to convert a finding of acquittal into one of conviction, that the accused could not be convicted of an offence either under section 302 or the first part of section 304 of the Indian Penal Code except on an appeal by the local Government.

Held further, that the finding of acquittal referred to in section 439 (4), Criminal Procedure Code, need not be a complete acquittal. *Re Bali Reddi*, (1914) I.L.R., 37 Mad., 119, dissented from. *Emperor v. Sheodarshan Singh*, (1922) I.L.R., 44 All., 332, followed.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of Session of the Coimbatore Division in Sessions Case No. 108 of 1925.

Public Prosecutor for the Crown.

A. V. Narayanaswami Ayyar for the accused.

* Criminal Revision Case No. 654 of 1925.

SUBBA
CHUKLI,
In re.

JUDGMENT.

The respondent in this case was charged with the murder of his sister-in-law. The evidence against him is this : He had quarrelled with his wife, and was beating her. Her sister intervened, saying " You dog, why do you beat her in my sight." At this respondent picked up a sickle, seized the sister by the hand and gave her two cuts on the neck which killed her on the spot. The Sessions Judge accepted the evidence, but, being of opinion that respondent had been gravely provoked, and did not intend to cause death, convicted him under the second part of section 304, Indian Penal Code, and sentenced him to undergo seven years' rigorous imprisonment.

Respondent has been called upon to show cause why he should not be convicted of murder, and why the sentence passed on him should not be enhanced to one of death. We are satisfied that we have no power in revision to do what is tantamount to converting a finding of acquittal into one of conviction. The respondent has been acquitted by the Sessions Judge of murder and also under the first part of section 304, Indian Penal Code, and we cannot convict him of either of these offences except on an appeal by the local Government. No doubt, there is a ruling of the High Court to the contrary effect in *Re Bali Reddi*(1). It lays down that the finding of acquittal referred to in section 439, Criminal Procedure Code, must be a complete acquittal. With great respect, we think that the effect of that decision is to import into section 439 something that is not there. The wording of the section is quite clear. It prohibits the converting of a finding of acquittal into one of conviction and says nothing about the

(1) (1914) I.L.R., 37 Mad., 119.

acquittal being partial or complete. We think that the correct view has been enunciated in *Emperor v. Sheo-darshan Singh*(1). We must, therefore, decline to alter the finding or enhance the sentence. We desire to say as little as possible about the merits of the case, in view of the action we propose to take. There has, we consider, been a miscarriage of justice. We set aside the conviction and order a retrial on the charge of murder by the present Sessions Judge of Coimbatore.

SUBBA
CHUKLI,
In re.

B.G.S.

APPELLATE CIVIL—FULL BENCH.

*Before Sir Murray Coultts Trotter, Kt., Chief Justice,
Mr. Justice Krishnan and Mr. Justice Cargenven.*

R. E. MAHOMED KASSIM & Co. (PLAINTIFF), APPELLANT,

1923,
September 1.

v.

SEENI PAKIR BIN AHMED AND OTHERS (DEFENDANTS),
RESPONDENTS.*

Civil Procedure Code (Act V of 1908), sec. 13 (b)—Foreign judgment—Judgment passed on default of appearance of defendant—Defendant duly served with summons—Judgment passed without trial on evidence—Suit on such judgment in a Court in British India, whether maintainable—Decision on the merits of the case, in sec. 13 (b), Civil Procedure Code, meaning of.

A foreign judgment, passed on default of appearance of the defendant duly served with summons, on the plaint allegations without any trial on evidence, is not one passed on the merits of the case within the meaning of section 13 (b) of the Civil Procedure Code; and a suit cannot be brought on such a judgment in any Court in British India. *Keymer v. Visvanatham*

(1) (1922) I.L.R., 44 All., 332.

* Appeal Suit No. 61 of 1924.