

based on an acquitting judgment, and we are left without any reasons for conviction which, under the provisions of the Criminal Procedure Code, the Bench is bound to set out. The judgment does not conform to the law and the conviction cannot be upheld. It is hereby set aside. The fines, if paid, should be refunded.

LALAMMA,  
*In re.*

It is not a case for ordering retrial.

B.C.S.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Devadoss.*

BONTU APPALA NAIDU AND SIX OTHERS (ACCUSED),  
PETITIONERS \*

1927,  
October 14.

*Criminal Procedure Code, (V of 1898), sec. 247—Summons case—Complainant dies during pendency of—Dismissal of complaint—Adjournment for son to come on record—Legality of.*

Where the complainant in a summons case dies during the pendency of the case, the Magistrate should, under section 247 of the Code of Criminal Procedure, dismiss the complaint; it would be illegal for the Magistrate under the circumstances to grant an adjournment to enable the deceased complainant's son to come on the record and to proceed further with the enquiry.

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 the Joint Magistrate of Parvatipur Division in Criminal Appeal No. 2 of 1927 preferred against the judgment of the Court of the Taluk Magistrate of Bobbili in Calendar Case No. 40 of 1926.

*K. Kameswara Rao* for petitioner.

*Public Prosecutor* for the Crown.

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\* Criminal Revision Case No. 527 of 1927.

## JUDGMENT.

APPALA  
NAIDU,  
In re.

\* In this revision petition a very interesting question is raised. The complainant died pending the enquiry into the case. The case before the Magistrate was a summons case, and the contention of Mr. Kameswara Rao is, when the Magistrate was told that the complainant was dead he should have dismissed the complaint under section 247 of the Code of Criminal Procedure for the non-appearance of the complainant. The Magistrate adjourned the case in order to enable the complainant's son to come on the record, and the learned Public Prosecutor contends that the Magistrate's action is not *ultra vires* as the section deals with complainants who are alive and not with complainants who are dead. The relevant portion of section 247 is

"If . . . the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day."

The Magistrate adjourned the case in order to enable complainant to appear and not for any other reason. If the complainant is dead he could not appear before the Magistrate and therefore the clause beginning with the words "unless for some reason he thinks, etc." cannot apply to the case of the complainant who is dead. In this case the complainant being dead during the course of the enquiry the Magistrate should have acquitted the accused and should not have proceeded with the enquiry. I may in this connection refer to *Purna Chandra Mouluk v. Dengar Chandra Pal*(1). I therefore set aside the conviction and direct the fine if paid to be refunded to the accused.

B.C.S.