

APPELLATE CRIMINAL.

*Before Sir Owen Beasley, Kt., Chief Justice,
and Mr. Justice Pakenham Walsh.*

KONDA REDDI AND ANOTHER, PETITIONERS IN CRL.
R.C. No. 968 OF 1929 (ACCUSED 2 AND 3) AND
P. BAYAPPA REDDI, PETITIONER IN CRL. R.C. No. 969
OF 1929 (ACCUSED 5), PETITIONER,

1930,
July 14.

v.

MANGALA BABANNA, RESPONDENT IN BOTH (P.W. 2).*

Code of Criminal Procedure, 1898, sec. 428—Powers of an Appellate Court under—Certain persons convicted under ss. 347 and 384, Indian Penal Code—Finding of Appellate Court that evidence did not support conviction but charge under sec. 423 could be framed—Trial Court directed to take additional evidence—On receipt of it Appellate Court framed charge and convicted under section 423—Procedure adopted whether proper.

Certain persons were convicted under sections 347 and 384 of the Indian Penal Code by a Joint Magistrate, and on appeal, the Sessions Court decided that the evidence did not support the conviction of the accused of either offence, but that a charge under section 423 of the Code could be framed against some of the accused, and for that purpose, directed the Joint Magistrate to take additional evidence, and on receipt of such evidence framed a charge under section 423 against such accused—acquitting the other accused who remained before him—and convicted them under section 423.

Held, in revision, by the High Court, that, though section 428 of the Code of Criminal Procedure enabled an Appellate Court, if it thought it necessary, to call for additional evidence which would explain or supplement within limitations, the evidence for the prosecution in support of a charge which had resulted in a conviction and which conviction was the subject of an appeal, it did not entitle an Appellate Court to substitute an offence in respect of which there had been no conviction,

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and to direct additional evidence to be taken which may support such an offence, and that, therefore, the procedure adopted by the Sessions Court was not proper, and that the conviction should be set aside.

PETITIONS 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 Anantapur Division in Criminal Appeal No. 5 of 1929 preferred against the judgment of the Court of the Joint Magistrate of Penukonda in Calendar Case No. 75 of 1927.

K. V. Sesha Ayyangar and *T. Jagannatha Rao Nayudu* for petitioners in Criminal Revision Case No. 968 of 1929.

K. S. Jayarama Ayyar and *D. R. Venkatesa Ayyar* for petitioner in Criminal Revision Case No. 969 of 1929.

K. Venkataraghavachari for *Ag. Public Prosecutor* (*K. N. Ganpati*) for the Crown.

No one appeared for the respondent.

The JUDGMENT of the Court was delivered by

BEASLEY
C.J.

BEASLEY C.J.—Four persons including the appellants in Criminal Revision Case No. 968 of 1929 (Accused 2 and 3) and the appellant in Criminal Revision Case No. 969 of 1929 (Accused 5) were convicted by the Joint Magistrate of Penukonda for offences under sections 347 and 384, Indian Penal Code, for wrongful confinement to extort property and extortion.

The facts can be dealt with quite shortly, and they are that on the 3rd December 1927 a document was registered by the District Registrar at Anantapur the material portions of which ran as follows:—

“Deed of sale caused to be written and given to Nethi Narayanappa of Pamdurthi. To discharge debts due to others for the purchase of mango trees, I have received from you in cash this day Rs. 300. The land sold to you for this sum is S. No. 882, extent 0·71 acres with the various fruit trees standing therein. I have put you in possession this day.

Henceforward you will have all my rights. My heirs and I will have nothing to do with it."

Then there is the mark of Mangala Babanna who admittedly was an illiterate person and the two witnesses are accused 2 and 3. Upon this document were founded the two charges against the accused, the prosecution case being that Mangala Babanna was by confinement and extortionate methods made to execute that document, that he as a matter of fact was not the owner of the property at all and that it was a spurious document got for the purpose of defrauding others. In support of the prosecution case, some evidence was given to show that, whereas in the body of the document Rs. 300 was stated to have been paid by way of consideration, none in fact was paid. Though the question of consideration was quite an irrelevant one to the two charges then before the Court, because both the charges could be supported equally well, whether there had been consideration passing or not, the Joint Magistrate considered it as of some importance as supporting the case for the prosecution and dealt with it. This resulted, as before stated, in the conviction of four of the accused, three of whom are the appellants here. The case then came up before the learned Sessions Judge of Anantapur, and he after going very carefully into the facts in a very lengthy and elaborate judgment came to the conclusion, to put it quite shortly, that the evidence certainly did not support the conviction of the accused of either offence. He then resorted to a procedure which is called in question here. Having come to the conclusion that no conviction under sections 347 and 384, Indian Penal Code, could be supported upon the evidence, he dealt with the evidence given with regard to the consideration which passed for the document, and decided, for reasons which he has given

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in his judgment, that a charge could be framed under section 423, Indian Penal Code, and that in order that such a charge might be framed, there should be additional evidence before him; and he accordingly made an order that the Joint Magistrate should take evidence on the question as to whether or not the Rs. 300 consideration or any part of it passed on the date or at about the time of execution of that document. The result of that enquiry was that he proceeded upon the additional evidence which came before him and found that no consideration for the sale did pass. He thereupon framed charges against the appellants under section 423, Indian Penal Code, acquitting the other accused who remained before him; and having framed those charges, he proceeded at once, for the reasons which he has given in the earlier part of his judgment, to convict the appellants and ordered them to pay fines amounting in the case of the 3rd accused to Rs. 500, and in the case of the 2nd and the 5th accused to Rs. 1,000 each, in default of which there was to be a term of imprisonment.

The matter reduces itself to this, was the procedure adopted by the learned Sessions Judge a proper one or not? It is of course conceded that, under section 428 of the Code of Criminal Procedure, an Appellate Court in dealing with an appeal under the Chapter in which the section appears may, if it thinks it necessary, order additional evidence to be recorded, after stating its reasons for so doing, and may either take the evidence itself or direct it to be taken by a Magistrate, and it was purporting to act under this section that the additional evidence was ordered to be taken by the learned Sessions Judge. The strong criticism that is made here by Mr. Jayarama Ayyar is that the accused had been convicted under sections 347 and 384, Indian Penal

Code, and had appealed to the Sessions Court of Anantapur against their conviction for those offences and none other, and that there was no appeal against any conviction under section 423, Indian Penal Code, because there had not been any conviction or any trial even for an offence under that section. He contends that section 428, Criminal Procedure Code, merely deals with an appeal against a conviction, and does not enable the Appellate Court to substitute an offence in respect of which there has not been a conviction, and then say that additional evidence must be called which may support such an offence. We think that that criticism is clearly correct and well-founded, and that section 423, Criminal Procedure Code, merely enables an Appellate Court, if it thinks it necessary, to call for additional evidence which will explain or clear up or perhaps supplement within limitations the evidence for the prosecution in support of a charge, which has resulted in a conviction, and which conviction is the subject of an appeal, and that it does not enable an Appellate Court to adopt the procedure adopted in this case by the learned Sessions Judge. He might—although we say nothing about its being proper in this case, it is merely an indication of a possible procedure—have indicated that a charge under section 423, Indian Penal Code, might be framed and sent the case back again for retrial. But in this case he did not adopt that procedure, and we are of the opinion that this petition must be allowed. The convictions will be set aside and the fines paid will be refunded to the appellants.

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