

1883.
March 9.

CRIMINAL REVISIONAL.

Before Mr. Justice Oldfield.

EMPRESS *v.* SAJIWAN LAL.

Appellate Criminal Court, powers of, in disposing of appeal—Appellant bound to show ground for interference—Criminal Procedure Code, ss. 421, 423.

A convicted person appealing is not in the same position before the Appellate Court as he is before the Court trying him: he must satisfy the Appellate Court that there is sufficient ground for interfering with the order of conviction; and if no such ground is shown, it is the duty of the Appellate Court not to interfere.

THIS was an application for the revision under s. 439 of the Criminal Procedure Code of an appellate order of Mr. R. J. Leeds, Sessions Judge of Gorakhpur, dated the 10th February, 1883. The applicant had been convicted by a Magistrate, and had appealed to the Court of Session, and his conviction had been affirmed.

It was contended on behalf of the applicant that the Sessions Judge had not properly dealt with the appeal. It was urged that the Sessions Judge had failed to form an independent judgment on the evidence, having, after expressing doubts whether the evidence for the prosecution or that for the defence was most reliable, decided in favour of the prosecution, with reference to the conclusion arrived at by the Magistrate, on the ground that the latter had better opportunities of judging of the veracity of the witnesses; whereas he should have given the applicant the benefit of the doubt.

The Sessions Judge's observations were:—"An Appellate Court is bound to examine the evidence and consider carefully whether it is such as to warrant the conclusions arrived at by the Magistrate; but it should give very great weight to such conclusions, and is not justified in reversing a Magistrate's decision unless it is fully satisfied that such decision is wrong." Again:—"It is for the appellant to show beyond all reasonable doubt that his conviction is wrong." Again, after dealing with the grounds of appeal and the evidence, the Sessions Judge came to this conclusion:—"On the whole, after reading twice through the evidence with care, I can find no very strong reason for believing one side rather than the other, and such being the case, I consider that I am bound to accept the conclusions arrived at by the Magistrate, who, having

seen and heard the witnesses, has necessarily had a better opportunity of judging of their relative credibility.”

Mr. *A. S. Reil*, for the applicant.

OLDFIELD, J.—(After stating the contention on behalf of the applicant, and the observations of the Sessions Judge, continued:) This is in effect holding that the appellant should satisfy the Court that there are good reasons for interfering, and that in this case none such having been shown, the conviction is fit to be affirmed. I am of opinion that in thus dealing with the appeal the Judge is not in error, but has followed the course prescribed by the Criminal Procedure Code. It will be seen that s. 421 gives an Appellate Court a summary power of rejecting an appeal, if, after perusing the petition and copy of judgment, it considers there is no sufficient ground for interference; and if the appeal has not been rejected under the provisions of s. 421, the Appellate Court, under s. 423, after perusing the record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, may, if it considers there is no sufficient ground for interfering, dismiss the appeal. From the above provisions it is obvious that an appellant is not precisely in the same position before an Appellate Court as he is before the Court trying him, but must satisfy the Court that there is sufficient ground for interfering with the order of conviction; and if no sufficient ground is shown, it is the duty of the Appellate Court not to interfere. I am of opinion, therefore, that no case has been made out for revision, and the application is dismissed.

1883

EMPRESS
v.
SAJIWAN
LAL.

Before Mr. Justice Oldfield.

EMPRESS v. JAMNI.

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False charge—Act. XLV. of 1860 (Penal Code), ss. 182, 211.

J complained to the police that she had been raped by *R*. The police having reported the charge to be false, criminal proceedings were instituted against her under s. 182 of the Penal Code. In the meantime *J* made a complaint in Court, again charging *R* with rape. This complaint was not disposed of, but the proceedings against her under s. 182 of the Penal Code were continued, and she was eventually convicted under that section.

Hall, setting aside the conviction and directing that *J*'s complaint should be disposed of, that such complaint should have been disposed of before proceedings were taken against her under s. 182.