Sessions Judge states that "in these simple and very common cases I do not record much of the evidence." In this case he has recorded none at all. Consequently a Court of Revision is unable to satisfy itself that the order is a proper order. The case must therefore be properly tried.

1892

KALI DASI v. DURGA CHARAN NAIK.

Order set aside and new trial directed.

H. T. H.

CRIMINAL MOTION.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

ROHIMUDDI AND ANOTHER (PETITIONERS) *v.* THE QUEEN-EMPRESS, ON THE PROSECUTION OF ASIRAM BIBI (OPPOSITE PARTY).*

1892 *December* 1.

Judgment—Form and contents of judgment—Criminal Procedure Code (Act X of 1882), *ss.* 367, 537.

A Sessions Judge in disposing of a Criminal Appeal recorded the following judgment :—

"The appellants have been convicted of breaking into Hari's house at night, dragged Hari's wife to the fields and dishonoured her, though they did not have intercourse with her. I have read through the evidence, and heard the appellant's pleader, and I think that the Deputy Magistrate was quite right to believe the evidence. The sentence of one year's imprisonment and Rs. 50 is not heavy. I dismiss the appeal."

It was contended that this was not a judgment within the terms of section 367 of the Code of Criminal Procedure.

Held, that having regard to the provisions of section 537, it does not follow that because the form of a judgment does not exactly comply with all the requirements of section 367, it is not a valid judgment, and that as this judgment showed that the Sessions Judge had appreciated the point that the prosecution had to establish, viz., the credibility of the evidence of the witnesses for the prosecution, and had expressed his opinion on that point, there being nothing to show that any other point was raised before him, it was not a case in which the High Court should exercise its revisional powers.

Kamruddin Dai v. *Sonatun Mandal* (1) and *In the matter of the petition of Ram Das Maghi* (2) referred to and commented on.

* Criminal Revision No. 497 of 1892, against the order passed by B. G. Geidt, Esq., Sessions Judge of Rungpur, dated the 17th September 1892, affirming the order passed by Babu Dina Nath Dey, Deputy Magistrate of Rungpur, dated the 29th August 1892.

(1) I. L. R., 11 Calc., 449. (2) I. L. R., 13 Calc., 110.

1892

ROHIMUDDI v. THE QUEEN-EMPRESS.

THE petitioners in this case were tried before the Deputy Magistrate of Rungpur and convicted of offences under sections 457 and 354 of the Penal Code, and sentenced to one year's rigorous imprisonment and a fine of Rs. 50 each.

The facts of the case appear fully from the judgment of the Deputy Magistrate, the material portion of which was as follows:—

"Accused went with others into the house of the complainant, broke open the door, entered it and dragged her out to some distance, whore she was thrown down. Accused No. 1 sat on her chest, squeezed her breasts, and attempted to commit rape on her, while defendant No. 2 and another (not named) held her hands for the purpose of helping defendant No. 1 in committing the rape. To trace out the cause of this occurrence it is necessary to give a short history. Some time ago Changa brought a case under section 494, Penal Code, against two tenants of Kina Singh, a powerful zemindar of this district. Kina Singh, it was alleged, helped the accused and made every effort to frighten away the witnesses for the prosecution. He requested Mahtab and Khetab Khan, two brothers, who have local influence, to prevail upon the witness Hari not to appear and give evidence in that case. Hari did not appear till he was arrested on a warrant issued from this Court. It is in evidence that Mahtab frightened Hari not to give true evidence. Hari refused to hear him; he was threatened with dishonour to his family, but Hari came to Court and gave his evidence on the 13th instant. According to Hari he left home on the 12th for the purpose of coming to Rungpur, and it is strange that that very night this happened. During the absence of Hari, his young wife was dragged out and dishonoured by the servants of Mahtab Khan, two of whom are the present accused. The case for the prosecution has been fully proved. The complainant is a young fair girl of 14, her manner of giving evidence and her demeanour showed that she was telling us an account of the matter as it had actually happened, and not out of pure imagination. Her mother Rati Mai also does not show any signs of having been telling a tutored story.

"The witnesses, Gura and Jan Mahmed, who saved the girl from being actually raped, are neighbours of the place where the girl was dragged, and I see no reason to distrust them.

"Witness Khetab Khan not only deposes against his brother Mahtab Khan, but has frankly admitted that he has been helping the prosecution with money. There is one thing in his evidence which I must notice. He says when Hari refused to hear Mahtab Khan he told him:—'You can go to Gadu Babu's land or go over to my brother, and Hari has accordingly sold his jot to him.' This Hari also admits. I have myself tested the truth of this fact. It is true that Hari presented a deed of sale on 13th instant

(the day he gave evidence in Changa's case) which he executed. Hari's evidence does not go against the accused, but goes to suggest the motive which actuated the accused in committing this offence. It is true, as Hari says, that he did not appear on summons, and that he was arrested by a warrant in Changa's case. The counsel for the defence contended that there are several houses nearer the spot where the girl Asiram was thrown down, but none of the owners of those houses came. That might be explained in a variety of ways. The occurrence being at dead hour of the night, they might not have heard any noise, or they might not have been at home. Mere absence of these men does not show that the case is false.

"Now it is necessary to see what evidence there is of house-breaking. Asiram and her mother distinctly prove that the present accused entered the house and brought out Asiram. This evidence cannot be disbelieved, and there was no other means for the prosecution to prove it. As I have already said these witnesses are wholly reliable, and I do rely on them, but except Asiram's evidence, there is no evidence to prove the attempt at rape. I have accordingly charged the accused with an offence under section 354, coupled with section 457, Penal Code.

"Next comes the question of punishment. Accused are servants of a local zemindar, and, it is asserted, committed the offence at his instigation. No amount of fine would, therefore, be any punishment. This I say because a suggestion was thrown out by the defence that a sentence of fine would be sufficient. Apart from this consideration, I can by no means say that the offence is anything but serious. Taking advantage of the absence of her husband from home, accused dishonoured her and her family, put them into all sorts of indignities, and went so far as to take away the *ijjut* of a poor innocent young girl. The offence has taken a more aggravated form, because the accused did it not for being subjected to any casual passion, but being excited by their master. I find, therefore, no extenuating circumstance in their favour. The Court finds the accused guilty under sections 457-354, Penal Code, and sentences each of them to one year's rigorous imprisonment and to a fine of Rs. 50; on default rigorous imprisonment for three months. Out of the fine Rs. 25 to be given to complainant as compensation."

Against this conviction and sentence the accused appealed to the Sessions Judge, who delivered the following judgment:—

"The appellants have been convicted of breaking into Hari's house at night, dragged Hari's wife to the fields and dishonoured her, though they did not have intercourse with her.

I have read through the evidence and heard the appellant's pleader, and I think that the Deputy Magistrate was quite right to believe the evidence.

The sentence of one year's imprisonment and Rs. 50 is not heavy.

I dismiss the appeal."

1892

ROHIMUDDI v. THE QUEEN-EMPRESS.

Against that decision an application was then made to the High Court under its revisional powers, and a rule was issued which now came on for argument.

Mr. *A. P. Gasper* and Baboo *Atulya Charan Bose* for the petitioners.

No one appeared for the opposite party.

The only ground upon which it was contended that the conviction and sentence should be set aside was that the judgment of the Sessions Judge was not a judgment in accordance with law, not being in conformity with the provisions of section 367 of the Code of Criminal Procedure, and Mr. *Gasper* contended on the authority of the cases of *Kamruddin Dai* v. *Sonatun Mandal* (1) and *In the matter of the petition of Ram Das Maghi* (2), that he was entitled to have the conviction and sentence set aside and the case remanded to the Sessions Judge for a rehearing of the appeal.

The judgment of the High Court (PRINSEP and GHOSE, JJ.) was as follows :—

In this case we have been required on revision to consider whether the judgment of the Sessions Judge of Rungpur on appeal is a judgment within the terms of section 367 of the Code of Criminal Procedure, or whether it is not so defective in substance as to demand a retrial of that appeal. The judgment runs as follows :—(Their Lordships here read the judgment and continued.)

We have been referred by the learned Counsel who appears for the petitioners to the judgments of two Division Benches of this Court in *Kamruddin Dai* v. *Sonatun Mandal* (1) and *In the matter of the petition of Ram Das Maghi* (2), which followed the first-mentioned decision.

The reports of those two cases, which set out the judgments delivered, do not give in what respects the learned Judges held that the judgments of the Criminal Appellate Courts then before them were not judgments within the terms of section 367. We observe, however, that in neither of those cases did the Courts of appeal in their final orders purporting to be their judgments

(1) I. L. R., 11 Calc., 449. (2) I. L. R., 13 Calc., 110.

state any of the points for determination, or expressly find on the evidence that the appellants had committed the particular offence, or the several acts which might constitute that offence, for which they were sentenced. We take it, therefore, that the ground upon which the judgments in the cases cited to us really proceeded was the omission of such a finding. We are not inclined, in the absence of any authority, to hold that merely because the form of a judgment does not exactly comply with all the requirements of section 367, it is not a valid judgment. It seems to us that this is the object of the Legislature as expressed in section 537, in which it is provided that "no sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the judgment * * * * during trial, unless such error, omission, or irregularity has occasioned a failure of justice." The omission must be substantial. We would refer to the judgment of White, J., in *Protab Chunder Mukerjee* v. *Empress* (1), and also to the cases of *Kheraj Mullah* v. *Janab Mullah* (2), and *In the matter of the petition of Goomanee* (3), also to *In re Shivappa* v. *Shidlingappa* (4), in which the functions of a Court of Criminal Appeal are described. The judgment of the Appellate Court shows that the Sessions Judge appreciated the points which the prosecution had to establish, and that he had clearly in view the point for determination, viz., the credibility of the evidence of the witnesses for the prosecution, and he expressed his opinion on that point. That evidence as set out in the judgment of the Magistrate established the particular offence of which the appellants had been convicted. It is not contended, nor does it otherwise appear that any other point was raised at the hearing of the appeal or submitted to him for determination. Under such circumstances we think there is no sufficient reason for us to interfere as a Court of revision.

The rule is accordingly discharged.

Rule discharged.

H. T. H.

(1) 11 C. L. R., 25.
(2) 11 B. L. R., 33; 20 W. R., Cr., 13.
(3) 17 W. R., Cr., 59.
(4) I. L. R., 15 Bom., 11.