

at the time; for we do not find any account of any examination of those parts of the body affected until such is made by the doctor. After very careful consideration I have come to the conclusion that the appellant has been rightly convicted of rape.

I have at an earlier stage of my decision given my reasons for thinking that the conviction and sentence passed against the appellant in connection with the charge against him of culpable homicide not amounting to murder must be set aside: but it will be observed that the sentence of 3 years' rigorous imprisonment imposed under section 304 and of 4 years' rigorous imprisonment in respect of the rape were made consecutive punishments. If the sentence of 3 years' rigorous imprisonment imposed in connection with section 304 is set aside, the appellant will have at present only to undergo a period of 4 years' rigorous imprisonment, *i. e.*, in respect of the rape. I have no doubt that this is not an adequate punishment and notice must issue upon the appellant to show cause why the sentence passed upon him in connection with his conviction for rape should not be enhanced.

ADAMI, J.—I agree.

REVISIONAL CRIMINAL.

Before Adami and Bucknill, J.J.

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*Penal Code, 1860 (Act XLV of 1860), section 494—
Bigamy—Abetment of bigamy—Venue of trial—Code of
Criminal Procedure, 1898 (Act V of 1898), section 531.*

January, 14.

The High Court has power to quash a committal order committing an accused person to stand his trial in a Session Court which has no territorial jurisdiction at the place where the alleged offence was committed.

*Criminal Revision No. 605 of 1923, against an order of commitment by S. Senapati, Esq., I.C.S., Magistrate, 1st Class, Buxar, dated the 29th August, 1923.

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The proper court to try a charge under section 494 of the Penal Code (marrying again during the lifetime of the husband or wife) is the court which has territorial jurisdiction at the place where the offence was committed.

Persons accused of abetting the commission of the offence are triable by the court within whose territorial jurisdiction the abetment takes place.

An order of committal to a Session Court is an order under section 531 of the Code of Criminal Procedure 1898. *Query*, however, whether the section applies to a case in which an order has been made by a court which had over the matter no territorial or local jurisdiction at all, such as in a case in which jurisdiction could only properly have been exercised by some court outside the limits of the jurisdiction of the High Court of the Province in which the court making the order complained of is situate.

This was an application in Criminal Revisional Jurisdiction made to the High Court by six persons who had been committed to the Court of Session at Arrah by a Magistrate of the 1st class at Buxar on charges connected with sections 494 and 494/109, Penal Code (marrying again during the lifetime of husband).

Objection was taken to the committing order to the effect that the committing Magistrate had no jurisdiction to commit the case to the Session Court at Arrah and that the Session Court at Arrah had no jurisdiction to try the case. As a matter of fact the case had already been taken up by the Sessions Judge, but an application was made to him on behalf of the applicants, objecting to the jurisdiction of his Court on the ground that the Magistrate of Buxar had no jurisdiction to commit the case for trial to his Court. The Sessions Judge, however, in discussing the application which was made to him, came to the conclusion that, in the first place, he was not satisfied that the commitment was illegal, and secondly, that he, as Sessions Judge, was not in a position legally to make any reference to the High Court. He, however, allowed the trial to stand over until the applicants had an opportunity of moving the High Court in revisional jurisdiction.

The first applicant was named Mussammat Bhagwati. She was married it was alleged, to one Deonarain some seven or eight years ago. They lived in the Shahabad district. The second applicant was her mother Mussammat Ramdasi. She appeared to have lived at a place called Nilphamari, in the province of Bengal. The third applicant was Lachmi Narain. This was the man to whom, it was alleged, that the first accused was married in Bengal at Nilphamari, the first applicant's first husband Deonarain being still alive. This was the bigamous alliance of which complaint was made. The fourth applicant, named Ram Prasad, was the father of her second husband Lachmi Narain. The fifth applicant was Lachman Ram, who was the grandfather of the first applicant, and the sixth applicant, Raghunath Ram, was her uncle. The case for the prosecution appeared to have been that long after Bhagwati had been married to Deonarain, her mother came up to the Shahabad district and Bhagwati was sent by her husband, together with her grandfather, to go and see her. She never came back; but, it was alleged, went with her mother, and, presumably, at her mother's instigation, to Nilphamari in Bengal where she was bigamously married to Lachmi Narain, the third applicant.

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S. P. Varma (with him *H. P. Sinha*), for the petitioner: The Magistrate had no jurisdiction to commit the accused to the Court of Session at Shahabad, inasmuch as the offence of bigamy is said to have been committed in Bengal. Section 177, Criminal Procedure Code, lays down the general rule with regard to the local jurisdiction of a trying Court. The exceptions to section 177 do not cover the present case. In *Assistant-Sessions Judge, North Arcot v. Ramammal* (1), *Queen-Empress v. Ram Dei* (2) was considered and the commitment order was set aside. In *Assistant-Sessions Judge, North Arcot v. Ramammal* (1), their Lordships set aside the commitment order

(1) (1911) 10 Mad. L. T. 553; 13 Ind. Cas. 275.

(2) (1896) 1 L. R. 13 All. 350.

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irrespective of the question of prejudice. Section 531, Criminal Procedure Code, is not a bar. The order may or may not be quashed but the only question is whether the Assistant-Sessions Judge of Shahabad can try a case which is not within his territorial jurisdiction. I rely on *Emperor v. Sheodoyal* (1).

Gour Chandra Pal, for the opposite party: The jurisdiction of the Court is controlled by the complaint and the complainant's deposition. A case of abetment within the local jurisdiction of the trying Court is made out by the complaint. The commission of the crime, therefore, commenced at Shahabad.

[BUCKNILL, J. : Can you try the principal offender at Shahabad, simply because you are trying the abettor there?]

See section 182, Criminal Procedure Code. Part of the offence having been committed within the local limits of the Sessions Judge, and part outside, he can try the whole offence.

[BUCKNILL, J. : But abetment is not a part of the principal offence.]

I submit that the principal offence could not have been committed but for the offence of abetment.

S. A. K.

BUCKNILL, J. (after stating the facts, as set out above, proceeded as follows) :—

It is not clear from the Committing Magistrate's order exactly what part Bhagwati's mother took with regard to the alleged abetment of the offence of bigamy with which Bhagwati and Lachmi Narain are substantively charged; nor is it in the least clear what parts Lachmi Narain's father or Bhagwati's uncle and grandfather took in abetting the offence. The learned Counsel who has appeared for the applicants here, stressed the distinction which must be drawn between the first applicant, her second husband and the third

applicant on the one part and the rest of the applicants who were charged with abetting the offence of bigamy. So far as can be seen from the committing order, the only charge which has been made against the first and third applicants is in effect that of the bigamous marriage outside the jurisdiction not only of the Magistrate at Buxar and the Sessions Judge of Arrah but also of this Province. With regard to the abetment it is not clear as I have said where it is alleged it took place; but I can see nothing in the order which, possibly, with the exception of the case of Bhagwati's mother, could be taken to show that the abetment alleged against Bhagwati's grandfather and uncle took place other than within the jurisdiction of our local provincial Courts.

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With regard to the father of Lachmi Narain (*i.e.* of Bhagwati's second husband) I can see nothing in the committing order which indicates where his abetment is alleged to have taken place; and I can only imagine that such abetment is presumed to have taken place at the locality where his son was married to Bhagwati. The commitment order is indeed extremely unilluminating and inexhaustive.

The question of what jurisdiction over these different applicants was held by the Magistrate of Buxar and by the Sessions Judge of Arrah was not apparently raised before the Committing Magistrate but was only brought up when the matter came up before the Sessions Judge: but a point of jurisdiction can be raised at any stage. Here it is not a point which can be dismissed without very careful consideration. In the Criminal Procedure Code it will be observed that section 531 points out:

"No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, subdivision or other local area, unless it appears that such error has in fact occasioned a failure of justice."

It is common ground that an order of committal to the Session Court is an order under this section. It is

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not, however, at all clear that the provisions of this section contemplate a case in which there has been an order by a Court which had no territorial jurisdiction at all; such as in a case in which jurisdiction could only properly have been exercised by some Court outside the territorial limits of the jurisdiction of a Provincial High Court. There is, however, nothing in the section itself which limits in any way its operation. But under section 177 of the Criminal Procedure Code it will be observed that it is laid down that :

“ Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed :”

and by section 179 it is further laid down that :

“ when a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued ;”

by section 180 which reads :

“ when an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.”

It is, in *Illustration (a)*, pointed out that :

“ A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.”

Now, as I have said already, the position here, as shown in the—somewhat unsatisfactory—committal order, with regard to the two persons who are said to have been the actual contracting parties in the bigamous alliance, indicates an offence committed outside the borders of this Province. There arises, therefore, with regard to them, little doubt that the Court of the Sessions Judge at Arrah has no jurisdiction to try them for an offence committed at Nilphamari in Bengal.

With regard to the abettors, the committal order leaves one in the dark as to the alleged venue of the

abetment. The abetment, however, of the father of Bhagwati's second husband (Lachmi Narain) does not appear, on the face of the committal order, to have taken place within the limits of the jurisdiction of the Session Court of Arrah: though he is said to have a house at Jamshedpur in another district of this Province. The question arises then as to what should be the procedure which should be adopted by this Court? There are authorities which seem to indicate that, in certain cases, a transfer to a Court which undoubtedly *has* jurisdiction is proper where a committal order has been made by a Court which has no jurisdiction. But, where extra provincial jurisdiction is concerned, I take it that this Court has no power to order such a transfer to the jurisdiction of a Court in another Province: though it might suggest through a proper channel that action might be taken by an appropriate tribunal in another province where jurisdiction over the matter in question seemed to lie: and, therefore, no question of transfer can well arise in this case. On the other hand it has been suggested that, possibly, it would be best not to interfere with the committal order but simply to inform the Sessions Judge that he has no power to try the substantive offence with which the first and third applicants are charged; leaving the complainant to take such steps as he may be advised to take in the proper Court; wherever that may be.

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The third alternative in this case is to quash the committal order so far as it relates to those persons whose offence, if any, seem clearly, on the face of the committal order, not to have occurred within the limits of the jurisdiction of this Province. Now those persons to whom this last alternative applies are clearly Mussammat Bhagwati, the woman who is said to have bigamously married Lachmi Narain and Lachmi Narain himself. The offence committed by those two persons is said to have been committed, if at all, at Nilphamari in Bengal outside this Province. I am

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also inclined to think that, on the face of this obscure committal order, the same remarks must also apply to Ram Prasad the father of Lachmi Narain: for, although in the committal order it states that he has a house at Jamshedpur which is in this Province where Bhagwati and Lachmi Narain are said to have been recently residing, I can find nothing showing, before the offence was committed, that any abetment by Ram Prasad took place in this Province. In my view, therefore, the committal order with regard to these three persons should be set aside and quashed; leaving it to the complainant to take such steps as he may be advised to take in a Court which has proper jurisdiction. With regard to the other three applicants, namely, (No. 2) Mussammat Ramdasi the mother of Bhagwati; (No. 5) Lachman Ram her grandfather and (No. 6) Raghunath Ram her uncle: here, again, there is nothing to indicate in the committal order, except with regard to Mussammat Ramdasi, whether the abetment of the offence of bigamy took place other than inside this Province. It is probable that with regard to the mother, if there *was* by her any abetment of the offence, it took place both in and outside this Province. With regard to Bhagwati's grandfather and uncle, I can see nothing in the committal order which indicates that they ever left this Province although there may be something in evidence which we have not seen which shows to the contrary effect. With regard to these three persons, the committal order must stand.

The result is that with regard to the first, third and fourth applicants, the committal order will be quashed and with regard to the second, fifth and sixth, the committal order will be maintained.

I think that I ought, with regret, to say that in this case the commitment order was not well drawn up, conveyed insufficient information and shows signs either of haste or lack of what is requisite in such a record.

ADAMI, J.—I agree.