

REVISIONAL CRIMINAL.

Before Mr. Justice Scott-Smith.

THE CROWN—*Petitioner,*

versus

JAGAT SINGH AND OTHERS (ACCUSED)—
Respondents.

1920

June 12.

Criminal Revision No. 368 of 1920.

Criminal Procedure Code, Act V of 1898, section 439—Enhancement of punishment by High Court in case tried by a Magistrate, second class—after expiry of the sentence.

The three accused had committed a very serious assault upon the complainants. They were tried for offences under section 325 of the Penal Code by a Magistrate of the second class, who convicted them and sentenced them to three months' rigorous imprisonment and a fine of Rs. 25 each. The case was reported by the District Magistrate to the High Court for enhancement of punishment. The sentences of imprisonment had expired when the case came up for hearing by the High Court.

Held, that the practice of the Court is not to enhance the sentence when the accused has completed his sentence of imprisonment except in exceptional circumstances as in the present case.

Held, also that under section 439 (3) of the Criminal Procedure Code the High Court has power to inflict any punishment which might have been inflicted for the offence by a Magistrate of the first class and is not limited to the powers of the trying Magistrate.

Emperor v. Kamal (1), followed.

Case reported by Major M. L. Ferrar, District Magistrate, Lahore, with his No. 1467 of the 29th March 1920.

RAM LAL (for Government Advocate), for Petitioner.

MEHR CHAND, for Respondents.

1920

THE CROW

JAGAT SINGH.

The facts are sufficiently given in the order of the District Magistrate and the judgment of this Court.

Order of District Magistrate—

The accused on conviction by *Lala Khan Chand, Tahsildar*, Kasur, exercising the powers of a Magistrate of the 2nd class in the Lahore District, were sentenced by order, dated 23rd December 1919, under section 325 of the Indian Penal Code, to three months' rigorous imprisonment to each with a fine of Rs. 25 to each, in default $1\frac{1}{2}$ months' further imprisonment.

The facts of this case are as follows :—

Fauja, a *Mehra*, had ceased working for the accused some time before. On 5th November 1919 they saw him taking water for his cattle from the pond. They were angry, and they said that they would not let him take water as he would not supply water for them and they at once attacked him. He was helped by Sohni, a relative, who had also been getting water there, and thereupon the accused turned on him and beat him severely; he then ran away, and on the way came up with Phuman, a relative, who was washing clothes. Phuman tried to help him, and then the accused turned on him and ferociously attacked him with *lathis* so that the parietal bone of his head was broken and two wounds were inflicted on the back and the right side of the head. The accused were challaned and convicted. Their appeal was rejected by Mr. P. Marsden, Sub-Divisional Magistrate, Kasur. He found that while the Lower Court had come to a right finding in the case the sentences passed were quite inadequate. The case should have been heard by a higher Court, and the offence called for a punishment of at least three years' rigorous imprisonment. I agree with Mr. Marsden that the attack by the accused was a most wanton and savage one, and that the punishment awarded is not sufficient either from a retributive or a deterrent point of view. Therefore, the case is submitted for enhancement of sentence.

SCOTT-SMITH, J.—Bur Singh, Jagat Singh, and Arur Singh were convicted by a *Tahsildar* exercising

powers of a Magistrate, 2nd class, of voluntarily causing grievous hurt to Phuman Singh and Sohni, and were sentenced to three months' rigorous imprisonment and a fine of Rs. 25 each. Their appeal was dismissed by the Sub-Divisional Magistrate of Kasur, who sent the record on to the District Magistrate, with a recommendation that the High Court should be moved to enhance the sentences which he considered to be inadequate. The District Magistrate has now reported the case to this Court in order that the sentences may be enhanced.

1920
 ———
 THE CROWN
 v.
 JAGAT SINGH.

The sentences of imprisonment awarded by the *Tahsildar* expired more than two months ago, and the accused are, therefore, now at liberty. It has been the practice of the Chief Court in the past, when an accused person has completed his sentence of imprisonment, not to enhance the sentence and send him back to jail except in exceptional circumstances. I have considered the facts of this case, and I am satisfied that the accused have been rightly convicted. They made a very ferocious and unprovoked attack upon Phuman Singh. The latter received no less than three injuries on the head, one was on the forehead and caused the fracture of the skull. There was another serious injury on the back of his head and the ulna bone of his left arm was broken. In addition he received other injuries on other parts of the body. The fracture of the skull was a very serious one, and his life was in danger from it. I agree with the Sub-Divisional and the District Magistrates that the sentences imposed in this case were grossly inadequate.

It is contended by *Diwan Mehr Chand*, on behalf of the accused, that this Court cannot enhance the sentences and inflict a greater punishment for the offence than might have been inflicted by the *Tahsildar* who tried the case. He has, however, no authority in support of this proposition, and section 439(3) is against him. It runs as follows :—

“ Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.”

1920

THE CROWN
v.
JAGAT SINGH.

The power of enhancement of sentence conferred upon the High Court by section 439, Criminal Procedure Code, is limited only by clause (3) of that section, which clause does not regard the difference in the powers of the trying Magistrate under section 32 of the same Code, but lays down the general rule that in cases of sentences passed by Magistrates not empowered under section 34 the limit of enhancement shall be the sentence that may be inflicted by a Presidency or a first-class Magistrate. This was the view taken by two Judges of the Sind Judicial Commissioner's Court in the case reported as *Emperor v. Kamal* (1). In accordance with this interpretation of law this Court can inflict any punishment for the offence which in the opinion of the Court has been committed which might have been inflicted for such offence by a Magistrate of the first class. In other words, it can inflict a sentence of two years' rigorous imprisonment in spite of the fact that the Magistrate who tried the accused could only have inflicted a sentence of six months' rigorous imprisonment.

I have perused the evidence for the prosecution and I find that all the witnesses say that Bur Singh struck Phuman Singh the blow upon his forehead. Arur Singh then came up and aimed a blow at his head and felled him to the ground, but Phuman Singh warded off the blow with his arm and the consequence was that it did not hit his head, but his arm was broken. Jagat Singh then came up and hit him on the head and all the accused gave him a sound beating. Under the circumstances there is very little to choose between any of the three accused and I can find no reason for making any difference in the sentence imposed upon them.

I consider the case to be a very bad one, and I enhance the sentences to ones of two years' rigorous imprisonment each, and the fine as imposed by the Magistrate.

Revision accepted.