APPELLATE CRIMINAL.

Before Mr. Justice Brown.

DAWSON AND ONE
v.
KING-EMPEROR.*

1924
July 3.

Criminal Procedure Code (V of 1898), section 530—Conviction by a Magistrate for minor offence triable by him, whereas the facts disclose a major offence triable exclusively by a Court of Sessions—The minor offence constituting a component of the major offence.

The evidence on which the accused were convicted by the Western Subdivisional Magistrate, Rangoon, was to the effect that they had caused hurt to the complainant for the purpose of extorting a confession, an offence under section 330 of the Indian Penal Code and therefore one triable only by a Court of Sessions. The Magistrate, however, convicted the accused, for offences under sections 323, 342 and 348 of the Indian Penal Code, all of which he was empowered to try.

Held, that the proceedings of the magistrate were not void under section 530 of the Code of Criminal Procedure, there being no clear rule of law which had been disregarded by the Magistrate.

Lekhraj v. *The Crown*, (1910) P.R., Criminal No. 31 ; *Mir Mose Ali and another* v. *King-Emperor*, 23 C.W.N., 1031—*referred to.*

King-Emperor v. *Ayyan and Vallayappa Udaiar*, 24 Mad., 675 ; *Queen-Empress* v. *Gundya*, 13 Bom., 501—*followed.*

Subrahmonia Ayyar v. *King-Emperor*, 25 Mad., 61—*distinguished.*

Keith, Vakharia and Villa—for the Appellant.
Eggar, the Government Advocate—for the Crown.

BROWN, J.—In September last the first appellant, Dawson, was a sub-inspector of police in the detective department in Rangoon, and the second appellant, Nadan, a police constable. They have both been found guilty of causing hurt to a boy, Yenkaswamy, and of wrongfully confining him for the purpose of extorting a confession from him. Dawson has also been found guilty of wrongfully confining the boy on a further charge. Dawson has been sentenced

* Criminal Appeal No. 485 of 1924 from the order of the Western Subdivisional Magistrate, Rangoon, in Criminal Regular Trial No. 1588 of 1923.

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to three concurrent terms of one year's rigorous imprisonment under the provisions of section 323, 342 and 348 of the Indian Penal Code, and Nadan to two concurrent terms of six months' rigorous imprisonment under sections 323 and 348. Both appellants entirely deny their guilt, and a number of legal points have been raised on their behalf. The evidence on which they have been convicted is to the effect that they caused hurt to the boy for the purpose of extorting from him a confession. If that evidence is believed then the appellants are guilty of an offence under the provisions of section 330 of the Indian Penal Code. That is an offence which is triable only by a Court of Session, and it is contended that as the Magistrate had no jurisdiction to try an offence under section 330, his whole proceedings must be regarded as void. Two authorities have been cited in support of this contention. In the case of *Mir Moze Ali and another* v. *K.E.*, (1918) 23 C.W.N., 1031, the evidence against certain accused persons if believed would have established a charge of rape. A first class Magistrate enquired into the case, and came to the conclusion that the story of rape was probably an exaggeration. He accordingly tried the case himself and convicted the accused of offences under the provisions of section 354 of the Indian Penal Code and of various other minor offences.

It was held that the accused ought to have been committed to Sessions, and the Magistrate was directed to draw up charges with regard to the alleged rape and to commit the accused to the Court of Sessions for trial. In the case of *Lekhraj* v. *The Crown*, (1910) P.R. Criminal No. 31, an accused person had been convicted under the provisions of sections 420 and 468 of the Indian Penal Code by a first class Magistrate for forging a hundi. It was held that

as a hundi is a valuable security, the offence charged really fell under section 467 which is only triable by the Court of Session. The whole proceedings of the Magistrate were set aside as far back as and including the charge.

The view taken was that the fact that the offence included a minor offence did not give the Magistrate power to deal with the case. In neither of these cases was it definitely laid down that the proceedings of the Magistrate were void, nor is it easy to see how it is possible to take that view. Section 530 of the Code of Criminal Procedure lays down that if any Magistrate not being empowered by law in this behalf tries an offender, his proceedings shall be void. In the present case the Magistrate has tried an offender for offences under the provisions of sections 323, 342 and 348 of the Indian Penal Code all of which offences he was empowered to try. It may be that the appellants committed a more serious offence punishable under the provisions of section 330, but it was not an offence under that section which the Magistrate actually did try. If he found that there was a *prima facie* case of causing hurt in order to extort a confession, then the Magistrate's proper course was obviously to commit the case to the Court of Session, and if it can be shewn that the appellants have suffered any injustice from the procedure adopted by the Magistrate the convictions would have to be set aside. But that is a very different thing from the proceedings being absolutely void. This view of the Law has been taken by the High Courts of Bombay and Madras in the cases of *Q.E.* v. *Gundya*, (1887) 23 Bom., 501, and *K.E.* v. *Ayyan and Vellayappa Uddan*, (1901) 24 Mad., 675. In the latter of these cases an accused person had been convicted by a Magistrate of the first class

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under the provisions of section 193, and the convictions were set aside by the Sessions Judge on the ground that the offence disclosed was an offence under section 195 of the Code which was exclusively triable by the Court of Sessions. Their Lordships in the course of their judgment on revision remarked: "In the present case the Deputy Magistrate did not try accused for an offence beyond his jurisdiction. He tried him for an offence punishable under section 193, Indian Penal Code, *i.e.*, for an offence triable by a first class Magistrate and therefore within his jurisdiction. His proceedings were not void, and the Sessions Judge was wrong in treating them as void. Where the facts disclose an offence within the jurisdiction of the Magistrate it seems to us a complete fallacy to say he is not empowered by law to try the person charged for the offence which is within his jurisdiction because the facts disclose a more serious offence which is beyond his jurisdiction. He is expressly so empowered. Whether in so doing he adopts a proper course is another question No doubt it is improper on the part of a Magistrate to intentionally ignore circumstances of aggravation which show that an offence beyond his jurisdiction was in fact committed as well as an offence within his jurisdiction, as for instance if a second class Magistrate should ignore the violence used in committing theft (section 379) instead of sending the accused before a first class Magistrate to be tried for robbery (section 392). Here the action of the second class Magistrate would be improper, but his proceedings would not be void."

This is a very lucid and to me very convincing exposition of the law on the subject. It has been suggested on behalf of the appellants that this decision was prior to the ruling of their Lordships of

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the Privy Council in the case of *Subrahmania Ayyar* v. *K.E.*, (I.L.R. Mad., XXV, page 61). But I am unable to see how that ruling is in any way pertinent to the point at present in issue. What their Lordships laid down was that a disregard of a clear rule of law as to a mode of trial could not be regarded as a mere irregularity which could be cured by the provisions of section 537 of the Code of Criminal Procedure.

In the present case there is no clear rule of law which has been disregarded. I am of opinion that the proceedings of the Magistrate are not void on this ground.

APPELLATE CIVIL.

Before Mr. Justice Duckworth.

MAUNG PO YIN
v.
MAUNG TET TU AND ONE.*

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July 4.

Estoppel—Sale of immoveable property, whether barred from denial of, where no registered deed executed—Contract to sell immoveable property—Acceptance of advance, whether creating any title in the purchaser.

Held, that where no registered deed of sale had been executed, a statement made by a person, prior to the institution of the suit under appeal which was for possession, that immoveable property exceeding Rs. 100 in value had been sold by him to a certain person did not operate to estop denial of the sale by the person making the statement.

Dharam Chand v. *Manji Sahu*, 16 C.L.J., 436 ; *Mathura Mohan Saha* v. *Ram Kumar Saha*, 20 C.W.N., 370—followed.

Dutt—for the Appellant.
Aiyangar—for the Respondents.

DUCKWORTH, J.—In this case the plaintiffs-respondents filed a suit against the present appellant,

* Civil Second Appeal No. 286 (at Mandalay) from the decree of the District Court, Kyaukse in Civil Appeal No. 58 of 1923.