

In *Sardari Lal's* case it was a plaintiff who died, but it is clear from the ruling that the surviving plaintiffs were not her legal representatives.

In the present case, the surviving plaintiffs appear to be the sole legal representatives of Ma Shwe Ma deceased. I hold therefore that the appeal survives as against them, and that it can proceed, even though they have not been specifically joined as Ma Shwe Ma's legal representatives.

The appeal will accordingly be heard on the merits.

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MAUNG PO  
AND ONE  
v.  
MA SHWE  
MA AND  
FOUR.  
DUCKWORTH,  
J.

## APPELLATE CRIMINAL.

*Before Mr. Justice Carr.*

NGA MYAING

v.

KING-EMPEROR.\*

1924  
June 14.

*Practice*—Sentence on accused under section 379, Indian Penal Code, set aside and committal of accused to Sessions under section 379 ordered by the High Court—Committal proceedings, what should be done in.

Where the appellant was tried and convicted under section 379 of the Indian Penal Code and his conviction was set aside and committal to the Sessions under section 397 was ordered by the High Court, *held*, that the committing Magistrate should have merely re-opened the original proceedings, framed a fresh charge, explained it to the accused, required him to give in his list of witnesses for Sessions, and after examining (if he thought fit) any of those witnesses who had not already been examined, by a short formal order committed the appellant.

The appellant in this case was first sent up for trial to the Court of the Headquarters Special Power Magistrate of Bassein and it was found established that he had seized the complainant by the throat, threatened her with a clasp knife, had taken a ring off her finger and had run away with the ring in

\* Criminal Appeal No. 499 of 1924 from the order of the Sessions Judge of Bassein in Sessions Trial No. 10 of 1924.

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his possession. He was sentenced by the Magistrate under section 379, Indian Penal Code, to undergo four months' rigorous imprisonment and also pay a fine of rupees fifty.

On appeal to the Sessions Court, the case was referred by the said Court to the High Court for enhancement of the sentence, and conviction of the appellant under section 397, Indian Penal Code. The matter coming up before Carr, J., in Criminal Revision 8-B of 1924, his Lordship set aside the conviction and sentence under section 379, Indian Penal Code, and with the following remarks directed the committal of the appellant to the Sessions Court on a charge under sections 392 and 397 of the Indian Penal Code:—

“I agree with the Sessions Judge that the case was obviously one falling under sections 392, 397, Indian Penal Code, but I am not prepared to adopt the course recommended by the Sessions Judge. I think it at least very doubtful whether section 439, Criminal Procedure Code, gives this Court the power to convert a conviction under section 379, Indian Penal Code, into one of the more serious offence of robbery, with which the respondent has not been charged. Sections 236-237, Criminal Procedure Code, seem to me of doubtful applicability and clearly section 238 cannot apply.

It is not necessary for me to say more about the evidence than that it does disclose a *prima facie* case against the respondent. I set aside the conviction and sentence passed on Nga Myaing and direct that he be committed to Sessions on a charge under sections 392, 397 Indian Penal Code.”

On receipt of the orders, the committing Court opened a fresh proceeding, took the evidence afresh and wrote a long order of committal to the Sessions Court. The Sessions Court found the accused guilty

and sentenced him under sections 392, 397, of the Indian Penal Code, to seven years' rigorous imprisonment. The accused having thereupon preferred an appeal to the High Court, the same was disposed of by Carr, J., and the following observations, on procedure, the object of this report, are found to appear in his Lordship's judgment :—

CARR, J.—There has been a great waste of time and energy in this case. The accused was first tried by the Headquarters Magistrate of Bassein, who convicted him of theft. On a reference by the Sessions Judge I set aside the conviction and sentence and directed that the accused be committed to Sessions.

The magistrate—the successor of the original magistrate—then opened a new proceeding and took all the evidence again, ending up by writing a committal order of over four pages of typescript. All this was quite unnecessary. All that he should have done was to re-open the original proceedings, frame a fresh charge and explain it to the accused, require him to give in his list of witnesses for Sessions, examine (if he thought fit) any of those witnesses who had not already been examined, and then write a short formal order of committal as under the orders of this Court.

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