REVISIONAL CRIMINAL.

1923

July 2.

Before Mr. Justice Moti Sagar.

THE CROWN—Petitioner

versus

ABDUL AZIZ AND NAWAB—Respondents.

Criminal Revision No. 912 of 1923.

Criminal Procedure Code, Act V of 1898, sections 110, 112, 118, 514, and Schedule V, Form XI—Forfeiture of bond on conviction under section 323 of the Penal Code—Amount recoverable from either the principal or the surety.

Held, that a bond to be of good behaviour under section 110 of the Code of Criminal Procedure can be forfeited on a conviction under section 323, Indian Penal Code.

Fatta v *Crown* (1), and *Crown* v. *Sher Singh* (2), followed.

Held also, that such a bond is for one amount and is discharged on forfeiture by the payment of that amount, either by the principal or the surety, and in no case can a larger amount be recovered either from the principal or the surety or from both.

Kaku v. *Queen-Empress* (3), followed.

Saligram Singh v. *Emperor* (4), not followed.

Queen-Empress v. *Rahim Bakhsh* (5), referred to.

Case reported by J. Addison, Esquire, Sessions Judge, Rawalpindi, with his No. 525 of 3rd May 1923.

The accused, on conviction by H. A. Smith, Esquire, District Magistrate, Rawalpindi District, were sentenced, by order, dated 23rd March 1923, under section 514 of the Criminal Procedure Code, to pay the sum of Rs. 250 each within a fortnight from the date of it being declared that the security is forfeited.

The facts of this case are as follows :—

Abdul Aziz was sent up for trial under section 110, Criminal Procedure Code, and on the 17th June 1922

(1) 6 P. R. (Cr.) 1915.
(2) 10 P. R. (Cr.) 1915.
(3) 26 P. R. (Cr.) 1894.
(4) (1909) I. L. R. 36 Cal. 562.
(5) (1898) I. L. R. 20 All. 206.

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he was ordered to execute a bond for Rs. 250 to be of good behaviour for a period of one year and to furnish a surety in the same amount. Accordingly Nawab stood surety for him and Abdul Aziz and Nawab gave the usual bond for good behaviour as given in Form XI of Schedule V, Criminal Procedure Code.

On the 23rd June, i.e., a few days after the bond was executed, Muhammad Shah, *Lambardar*, who gave evidence against Abdul Aziz in the case under section 110, Criminal Procedure Code, *was murdered by* the same Abdul Aziz and his brother Mir Ahmad Shah. The Sessions Judge, *Lala* Chuni Lal, held on the *26th August 1922*, that Mir Ahmad Shah, the brother of Abdul Aziz, was guilty under section 304, Part (1), Indian Penal Code, and sentenced him to transportation for life. He, however, convicted Abdul Aziz under section 323, Indian Penal Code, and sentenced him to three months' rigorous imprisonment. He held that there was a sudden fight between Abdul Aziz and Muhammad Shah, in which Abdul Aziz hit a blow and received a blow in return and that Mir Ahmad Shah, his brother, then joined the fight and killed the *lambardar* by giving him a severe blow on the head with a sharp-edged heavy spade. Mir Ahmad Shah was not convicted under section 302, Indian Penal Code, because the Sessions Judge held that it was a sudden fight. It seems also to have been found that Abdul Aziz held the *lambardar* by his hair at the time when his brother struck the blow.

On appeal to the High Court, the convictions were upheld though it seems to have been doubted as to whether the brother was entitled to the benefit of the exception.

After the above-mentioned trial, proceedings were commenced against Abdul Aziz and his surety Nawab under section 514, Criminal Procedure Code. They pleaded that the conviction under section 323, Indian Penal Code, was not sufficient to forfeit a bond to be of good behaviour. Thereupon the Magistrate ordered Abdul Aziz and his surety Nawab each to pay a sum of Rs. 250 within a fortnight of the *6th March 1923*.

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They appealed to the District Magistrate who rejected the appeal on the 23rd March 1923.

They have now filed this revision petition before me.

The proceedings are forwarded for revision on the following grounds :—

The third ground of the petition is that a bond under section 110, Criminal Procedure Code, could not be forfeited in the case of a conviction under section 323, Indian Penal Code. This was the only point taken before the Magistrate. Section 121, Criminal Procedure Code, is, however, clear. Besides, there are two rulings, *Fatta* v. *Crown* (1) and *Crown* v. *Sher Singh* (2) which are on all fours with the present case and which show that a bond to be of good behaviour can be forfeited on a conviction under section 323 or 325, Indian Penal Code.

In the second ground, it is stated that the proceedings of the Magistrate were opposed to law. It seems to me that these proceedings are certainly opposed to what has been laid down by the Punjab Chief Court. In *Kaku* v. *Queen-Empress* (3) and *Ali Muhammad* v. *Emperor* (4) it was held that only one sum of Rs. 250 could be forfeited, *i.e.*, that the person convicted under section 110, Criminal Procedure Code, and his surety could only be made to pay one sum of Rs. 250 and not each one sum of Rs. 250. I am, therefore, bound to forward the proceedings to the High Court with the recommendation that the order of the Magistrate be corrected and an order be passed that only one sum of Rs. 250 should be collected from both the principal and the surety, or either.

At the same time I would point out that a Calcutta ruling of 1909, namely, *Salegram Singh* v. *Emperor* (5) has taken the opposite view. It was held

(1) 6 P. R. (Cr.) 1915. (3) 26 P. R. (Cr.) 1894.

(2) 10 P. R. (Cr., (4) 226 P. L. R. 1911.

(5) (1909) I.L.R. 36 Cal. 562.

there that a surety is liable to pay the amount specified in the bond in addition to the penalty paid by the principal. It was argued that this followed from the contents of Form XI, Schedule V, Criminal Procedure Code, and there is undoubtedly something to be said for this argument. It was further laid down in that ruling that the object of requiring a surety to such a bond was not to ensure the recovery of the amount of the bond, from the principal but to serve as an additional security for his keeping the peace. This latter view was also taken in *Queen-Empress* v. *Rahim Bakhsh* (1), where it was said that the object of requiring security to be of good behaviour is not to obtain money for the Crown by the forfeiture of recognizances but to ensure that the particular accused person shall be of good behaviour from the time mentioned in the order.

The matter is discussed at page 1243, paragraph 22 of the 10th Edition of Sohoni's Code of Criminal Procedure and the two conflicting views of the Calcutta and Punjab High Courts are given there.

In this case there is not the slightest doubt that the whole amount should be confiscated whatever that amount may be, *i.e.*, either Rs. 250 or Rs. 500 should be confiscated. The accused, it seems to me, was very leniently dealt with in the murder trial in view of what I have written above. It seems to me possible that the *lambardar* was murdered merely because he gave evidence against Abdul Aziz in the proceedings under section 110, Criminal Procedure Code. The full amount of the bond should, therefore, be confiscated. This disposes of the fourth ground of the petition.

With these remarks, I forward the proceedings to the High Court for such orders as it thinks fit to pass.

MOTI SAGAR J.—The facts are fully stated in the order of reference made by the learned Sessions Judge and it is not necessary to repeat them here at length.

(1) (1898) I. L. R. 20 All. 206.

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On the 17th of June 1922 the petitioner Abdul Aziz was ordered under section 110, Criminal Procedure Code, to execute a bond in the sum of Rs. 250 to be of good behaviour for a period of one year and to furnish a surety in the like amount. One Nawab stood surety for him and the usual bond for good behaviour was executed by both in Form XI of Schedule V of the Criminal Procedure Code. On the 26th of August 1922 Abdul Aziz was convicted under section 323, Indian Penal Code, and sentenced to three months' rigorous imprisonment by *Lala* Chuni Lal, Sessions Judge of Rawalpindi. Shortly after, proceedings were started against the principal Abdul Aziz and his surety Nawab under section 514 of the Code of Criminal Procedure for the forfeiture of their bond. It was pleaded on their behalf that a conviction under section 323, Indian Penal Code, was not sufficient to justify a forfeiture of the bond to be of good behaviour. The learned Magistrate, however, did not give effect to this plea and ordered Abdul Aziz and his surety Nawab each to pay a sum of Rs. 250 within a specified time. An appeal against this order was filed to the District Magistrate but dismissed. The learned Sessions Judge has now reported the case to this Court under section 438 of the Criminal Procedure Code.

In my opinion the learned Sessions Judge is right in holding that a bond to be of good behaviour can be forfeited on a conviction under section 323 or 325, Indian Penal Code. *Fatta* v. *Crown* (1) and *Crown* v. *Sher Singh* (2) are clear authorities in support of this view, and must be followed.

The next question for consideration is whether only one sum of Rs. 250 could be forfeited or whether both the petitioners could be called upon to pay a sum of Rs. 250 each. In my opinion only one sum of Rs. 250 could be forfeited and the order of the learned Magistrate calling upon the petitioners to pay an amount in excess of the amount secured by the bond is illegal. It has been held in *Kaku* v. *Queen-Empress* (3) that a bond contemplated by sections 112

(1) 6 P. R. (Cr.)1915. (2) 10 P. R. (Cr.) 1915.

(3) 26 P. R. (Cr.) 1894.

and 118 of the Criminal Procedure Code is one bond for one amount and is discharged, on forfeiture, by the payment of the amount due by either the principal or the surety. The bond in the present case is clearly secured for the sum of Rs. 250 only and the amount secured in case of forfeiture could be recovered either from the principal or from the surety or from both, but in no case a sum exceeding Rs. 250 could be recovered under this bond. I order accordingly.

A. N. C.

Revision accepted.

APPELLATE CIVIL.

Before Mr. Justice Abdul Raoof and Mr. Justice Fforde.

MUHAMMAD SHAFI AND ABDUL RASHID (DEFENDANTS) Appellants,

1923

July 23.

versus

Mst. KALSUM BI AND OTHERS (PLAINTIFFS and DEFENDANTS) Respondents.

Civil Appeal No. 2 of 1922.

Muhammadan Law—Sale by widow of immoveable property on her own behalf and as guardian for her minor children in which her adult daughters joined—suit for cancellation of the sale on ground of fraud—no proof of fraud—parda nashin *ladies*—onus probandi.

On 30th August 1918 *Mst.* K. B., a widow, on her own behalf and as guardian of her minor children, a son and two daughters, executed two sale-deeds in favour of M. S. and A. R., the present appellants, in respect of their shares in the entire property left by F. D., the deceased husband of *Mst.* K. B., her two adult daughters also joined her in the execution of the deeds by which they transferred their shares in the estate. On the 19th March 1919, *Mst.* K. B. and her children brought the present suit against the vendees for cancellation of the two sale-deeds on the ground of fraud; details of which were given.

Held, that as regards the minor plaintiffs the sale was *ab initio* void as a mother under Muhammadan Law has no power to dispose of the immoveable property belonging to her minor children.

Imambandi v. *Mutsaddi* (1), followed.

(1) (1918) I. L. R. 45 Cal. 878 (P. C.).