

## REVISIONAL CRIMINAL.

1923  
 —  
 Sept. 10.

Before Mr. Justice Abdul Raouf and Mr. Justice Harrison.

THE CROWN, THROUGH DADDA (COMPLAINANT)

Petitioner,

*versus*

ACHHAR SINGH AND OTHERS—Respondents..

Criminal Revision No. 1182 of 1923.

*Criminal Procedure Code, Act V of 1898, section 438—  
 Revision from an order of acquittal.*

*Held*, that ordinarily the High Court should not entertain a reference under section 438, Criminal Procedure Code, the object of which is to have an order of acquittal passed by an inferior Court set aside.

*In the matter of Sheikh Amin-ud-din (1), Emperor v. Madar Bakhsh (2), Sankaralinga Mudaliar v. Narayana Mudaliar (3), and Pahelwan Singh v. Sahib Singh (4), followed.*

*Case reported by W. deM. Malan, Esquire, Sessions Judge, Amritsar, with his letter No. 532-M./89-F., dated the 16th June 1923.*

GOVERNMENT ADVOCATE, for Petitioner.

NEMO, for Respondents.

*The facts of this case are as follows :—*

On 10th July 1922 in the morning, when Mangal *alias* Dadda was ploughing, the four accused, Achhar Singh, Mala Singh, Vir Singh and Lakha Singh attacked him with *chharis*, hatchets and *dangs* and thereby caused grievous hurt to him.

The accused were acquitted by *Sardar Bahadur Sardar Arur Singh*, Magistrate, 1st Class, Amritsar, on 23rd January 1923.

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

(1) (1902) I. L. R. 24 All. 346.

2) (1902) I. L. R. 25 All. 128.

(3) (1922) 68 Indian Cases 615 (F. B).

(4) (1921) 62 Indian Cases 869.

Achhar Singh, Mula Singh, Vir Singh and Lakha Singh, *Jats* of Miran Kot, were chalaned under section 326, Indian Penal Code, for causing grievous hurt with sharp weapons to Dadda, Christian, of the same village on 11th July 1922. The first information report was made at 10 A.M. on the same day.

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The medical evidence of Dr. Jamna Das shows that Dadda had the upper joints of the 3 middle fingers of his right hand clean cut off, an inside wound, bone deep, on the right shoulder, and *lathi* marks on the left thigh and right hand. The Doctor said that the injuries to the fingers were "doubtful," as the thumb and little fingers were uninjured. Dadda stated that he was attacked by the four accused, while ploughing, because he would not allow them to take his manure. He had a *prani* or stick in his hand, with which he parried the blow of Achhar Singh's *chhavi*. The weapon struck his three fingers and cut them off. Mula Singh struck him with a *chhavi*, Lakha Singh with a *takwa*, and Vir Singh with a *dang*. The statement of the complainant was corroborated by Siddhu, and Sheru son of Shihan.

The accused pleaded that the case had been fabricated, because of the dispute about manure. Defence evidence was produced to prove that no fight actually occurred.

The Honorary Magistrate *Sardar* Arur Singh, relying mainly on the medical evidence held that the case was false. He presumably meant that Dadda's injuries were self-inflicted, or voluntarily suffered at the hands of a friend. The accused were accordingly acquitted.

Dadda applied for revision. I issued notice to the accused, overlooking the fact that they had been acquit-

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ted and not discharged. It is, I know, most unusual for the High Court to interfere with an acquittal on the revision side. In the present case, however, I hold that there has apparently been a serious miscarriage of justice. It is unlikely that the Local Government would appeal in a private case of this kind, and I, therefore, consider that it should be reported to the High Court under section 438, Criminal Procedure Code, with the recommendation that a retrial should be ordered, the acquittals being set aside.

The fact that on 21st December 1922 Dadda applied for leave to compound the case, on the ground that he had not enough evidence, does not, in my opinion, affect the case.

A village Christian would naturally be subjected to every kind of pressure in order to induce him to give up a case against *Jat* proprietors. The application does not, therefore, show that the case was a false one.

It is practically impossible to suppose that a man would deliberately maim himself for life in order to support a case against four of his fellow-villagers. The medical evidence on the point is certainly "doubtful," but not in the sense in which the Magistrate uses the word. I see no difficulty in believing that three fingers of Dadda's right hand were cut off in a fight without injury to the rest of the hand. Dadda was grasping a stick at the time, and his thumb and little finger may very well have been out of the way of the blow. It is contrary to human nature to suppose that such serious injury would be self-inflicted or voluntarily suffered, out of mere spite. Dadda's statement is corroborated by evidence which there is no reason to disbelieve. A man in his position would not be able to produce a large array of witnesses: but the injuries themselves are his main evidence.

I accordingly submit the case to the High Court, recommending under section 438, Criminal Procedure Code, that, as a special case, the order of acquittal be set aside and a retrial ordered.

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The judgment of the Court was delivered by—

ABDUL RAOOF J.—Achhar Singh, Mula Singh, Vir Singh and Lakha Singh were chalaned under section 326, Indian Penal Code, for having caused grievous hurt with sharp weapons to one Dadda, Christian. They were tried by *Sardar Bahadur Sardar Arur Singh*, Honorary Magistrate, 1st Class, Amritsar, and were acquitted for want of proof. Mr. W. Malan, Sessions Judge, Amritsar, has made a reference under section 438, Criminal Procedure Code, recommending that as a special case the order of acquittal be set aside and a retrial ordered. It has repeatedly been held by almost all the High Courts that ordinarily the High Court should not entertain a reference under section 438, Criminal Procedure Code, the object of which is to have an order of acquittal passed by an inferior Court set aside—*vide, In the matter of Sheikh Amin-ud-Din* (1) and *Emperor v. Madar Bakhsh* (2). The latest authorities on the subject are *Sankaralinga Mudaliar v. Narayana Mudaliar* (3) and *Pahelwan Singh v. Sahib Singh* (4). There is no special reason why we should make an exception in this particular case.

We accordingly refuse to accept the recommendation.

A. N. C.

*Recommendation refused.*

- (1) (1902) I. L. R. 24 All. 346.      (3) (1922) 68 Indian Cases 615 (F. B.)  
(2) (1902) I. L. R. 25 All. 123.      (4) (1921) 62 Indian Cases 869.