

REVISIONAL CRIMINAL.*Before Mr. Justice Harrison.*

THE CROWN—Petitioner

versus

SHER AND ANOTHER—Respondents.

1927

*Jan. 15.***Criminal Revision No. 1238 of 1926.**

*Criminal Procedure Code, Act V of 1898, section 439 (6).
Revision—Petition by accused—dismissal of by High Court—
effect of—upon further application by Crown for enhance-
ment of sentence—Indian Penal Code, 1860, section 325—
Determined attack—by two men on one—Sentence.*

A petition presented by the accused for revision of his conviction and sentence was dismissed by the High Court, whereupon the Crown presented a revision-application for enhancement of the sentence.

Held, that owing to the inherent incapacity of one Judge of the High Court to reconsider the decision of another (whether arrived at on an appeal or on revision), the accused was no longer entitled under section 439 (6) of the Criminal Procedure Code, to reopen the question of his guilt in the face of such previous finding by the High Court.

Emperor v. Jorabhai Kisabhai (1), followed.

Emperor v. Mangal (2), dissented from.

Held further, on the question of sentence, that a distinction must be drawn between a determined, premeditated attack with *lathis* made by two men upon one, as compared with an unsought quarrel leading to *lathi* blows.

Application for enhancement of sentences passed upon the respondents by Lala Khan Chand. Janmeja, Magistrate, 1st class, Gurgaon, dated 30th March 1926 and modified by Pandit Kundan Lal, Bashisht, Sessions Judge, Hissar, dated 1st June 1926.

RAM LAL, Assistant Legal Remembrancer, for
Petitioner.

N. C. MEHRA, for Respondents.

JUDGMENT.

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—
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v.
SHEER.
—
HARRISON J.

HARRISON J.—Sher Singh and Bhup Singh, sons of Nand Lal, were convicted by Mr. Khan Chand Janmeja of having attempted to murder Nanu Ram, *lam-bardar*, and were sentenced to undergo rigorous imprisonment for four years and to pay fines of Rs. 200 each. On appeal the convictions were changed and shown under section 325, and the sentences of imprisonment were reduced to one year in the cases of both the appellants. From this order an application for revision was presented by the accused which was dismissed by a Judge of this Court. Subsequently an application was made by the Government Advocate for revision of the sentences by enhancement, and at the opening of the hearing Mr. Ram Lal who appears for the Crown, has drawn my attention to a very recent authority, *Emperor v. Jorabhai Kisabhai* (1), which, Mr. Nihal Chand concedes, lays down good law. This is to the effect that where a High Court has given a finding on appeal as to the guilt of an accused person and subsequently a notice is served upon that person to show cause why his sentence should not be enhanced, the right, which he would have had under section 439 (6) to reopen the question of his guilt, had no such finding been given, vanishes because of the inherent incapacity of any Judge of a High Court to reconsider the decision given by another. This principle, it appears to me; applies equally to a previous order on revision and a previous order on appeal, and I follow this authority which dissents from the view taken in *Emperor v Mangal* (2). The only question, therefore, is whether the finding of the Sessions Judge is correct, and whether on that finding the sentence is adequate. Counsel has drawn

(1) (1926) I. L. R. 50 Bom. 783. (2) (1925) I. L. R. 49 Bom. 450.

my attention to the fact that the Sessions Judge is wrong in saying that the assailants scrupulously avoided all vital parts for there was one contused wound on the back of the head of Nanu Ram, and he has asked me to find that the facts establish a deliberate attempt to murder.

The facts are that at about half past ten in the morning the two accused armed with *lathis* rushed out and made an attack upon their enemy, Nanu Ram, beat him to the ground, broke his thigh and his ulna bone, struck him at nine places and continued to strike him after he had fallen on the ground. There was only one injury on the head. It is contended by counsel for the Crown that had they not been interrupted they would have put an end to their victim. This no man can tell. Taking the injuries as a whole I think the inference drawn by the Sessions Judge is correct that they did not intend to kill him but merely intended to cause him very serious injuries. I, therefore, maintain his finding.

The question of sentence remains, and this is I think very inadequate indeed. It is one thing for two men to quarrel and one to strike the other with a *lathi*; it is quite another matter when a determined, premeditated attack is made by two men on one. I accept the application presented by the Crown to the extent of enhancing the periods of imprisonment to three years each. I have taken into account the fact that substantial fines have been imposed in addition to the imprisonment.

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Revision accepted.