

**REVISIONAL CRIMINAL.**

*Before Mr. Justice Broadway.*

GODHA, Petitioner

*versus*

THE CROWN, Respondent.

1926

Dec. 6.

**Criminal Revision No. 1192 of 1926**

*Indian Penal Code, 1860, section 215—whether applicable to the actual thief—Duty of Sessions Judge to weigh the evidence before him irrespective of opinion expressed by another Sessions Judge in connected case against a co-accused.*

The present petitioner and one Ismail were accused of having stolen certain bullocks and then having obtained Rs. 220 for recovering them. The petitioner absconded and Ismail was convicted under section 411 of the Penal Code, but on appeal Colonel Roe, the Sessions Judge, disbelieved the evidence of certain witnesses and acquitted him. The petitioner was subsequently arrested, tried and convicted by the Magistrate under section 215. On appeal, the present Sessions Judge held that on the evidence before him the accused should have been convicted under section 411, but bowing to the opinion of Colonel Roe, regarding one of the witnesses, who had given evidence, he confirmed the conviction under section 215.

*Held*, that the conviction of the actual thief under section 215 could not stand.

*Held also*, that it was for the Sessions Judge hearing the accused's appeal to weigh the evidence on the record before him, and not to accept the opinion of another Sessions Judge on evidence that was not before that Judge.

*Queen-Empress v. Muhammad Ali* (1), and *Kehr Singh v. Emperor* (2), followed.

*Application for revision of the order of Mehta Dwarka Nath, Sessions Judge, Jullundur, dated the 7th July 1926, affirming that of Khan Sahib Chaudhri*

1926

GODHA  
v.

THE CROWN.

*Miran Baksh, Magistrate, 1st class, Jullundur, dated the 12th June 1926, convicting the petitioner.*

SHAMBU LAL, PURI, for Petitioner.

*Nemo*, for Respondent.

#### JUDGMENT.

BROADWAY J.

BROADWAY J.—The petitioner in this case, one Godha, son of Abdulla, has been found guilty of an offence under section 215, Indian Penal Code, and sentenced to undergo rigorous imprisonment for a term of one year and to pay a fine of Rs. 50, or in default to undergo a further term of rigorous imprisonment for one month.

It appears that two persons were accused of having stolen certain bullocks and then of having obtained a sum of Rs. 220 for their recovery. Of these two persons, Ismail was arrested and proceeded against. He was convicted of an offence under section 411, but on appeal the learned Sessions Judge, Colonel Roe, found it impossible to believe the evidence of certain witnesses and Ismail was acquitted. The present petitioner Godha absconded while these proceedings were going on. He was subsequently arrested, sent up for trial and the Magistrate found him guilty under section 215 of the Indian Penal Code and sentenced him as stated above. On appeal, the learned Sessions Judge clearly gave it as his opinion that the conviction of this petitioner should have been under section 411, Indian Penal Code. He goes on to say "But inasmuch as my learned predecessor in the previous case found that the evidence of the complainant's son who has been examined again in this case was not believable, I have to bow before his decision". The learned Sessions Judge, *Lala Dwarka Nath*, is wrong in that view. It was for him to weigh the evidence on this record and not

to accept the opinion of another Judge on evidence that was not before that Judge. Be that as it may, it is perfectly clear that, in the opinion of the learned Sessions Judge, the present petitioner was the thief. Following *Queen Empress v. Muhammad Ali* (1), and Criminal Revision No. 6 of 1925, decided by Sir Henry Scott-Smith J., *Kehr Singh v. Emperor* (2). I must hold that the conviction in this case under section 215 cannot stand. I, therefore, accept this petition, set aside the conviction and sentence and direct that Godha be released forthwith.

*N. F. E.*

*Appeal accepted.*

### REVISIONAL CRIMINAL.

*Before Sir Shadi Lal, Chief Justice.*

BIJA, Petitioner

*versus*

THE CROWN, Respondent.

Criminal Revision No. 1507 of 1926.

*Criminal Procedure Code, Act V of 1898, sections 110 and 256—whether defendant under section 110 has right to recall prosecution witnesses for further cross-examination.*

*Held*, that where a person is proceeded against under section 110 of the Criminal Procedure Code, he has no right to further cross-examine the prosecution witnesses under section 256 of the Code.

*Crown v. Ahmad Bakhsh* (3), and *Chintamon Singh v. Emperor* (4), followed.

*Emperor v. Lansha alias Tura Ali* (5), dissented from.

*Case reported by H. Fyson, Esquire, District Magistrate, Ambala.*

(1) (1910) I. L. R. 23 All. 81.

(3) 1 P. R. (Cr.) 1916.

(2) (1925) 88 I. C. 353.

(4) (1907) I. L. R. 35 Cal. 243.

(5) (1910) 9 I. C. 468.

1926

GODHA

v.

THE CROWN.

BROADWAY J.

1926

Dec. 10.