

1929  
 PREMAN  
 v.  
 THE CROWN.  
 BHIDE J.

In *Meajan v. Sharafatullah Khan* (1), there was no finding that the accused had any "intention to annoy."

I reject the petitions.

N. F. E.

*Revision dismissed.*

### REVISIONAL CRIMINAL.

*Before Shadi Lal C. J.*

ROORA—Petitioner

*versus*

THE CROWN—Respondent

Criminal Revision No. 1215 of 1929.

*Criminal Procedure Code, Act V of 1898, sections 421, 423—Appeal—dismissal for non-appearance of appellant—whether legal.*

*Held*, that the criminal Appellate Court cannot dismiss an appeal merely for non-appearance ; it must decide the appeal on the merits.

*Case reported by I. M. Lall, Esquire, Sessions Judge, Ludhiana, with his No. 1108 of 1929.*

*Report of Sessions Judge.*

The facts of this case are as follows:—

Roora applicant was ordered under section 118 of the Criminal Procedure Code to give security for good behaviour. He had to execute a bond in the sum of Rs. 1,000 with one surety, failing which he had to undergo rigorous imprisonment for such period "not exceeding one year, until which the security demanded is not furnished." This order is dated 24th September, 1928. Against this order he preferred an appeal to the District Magistrate on 25th October, 1928, and as he did not file the copy of the judgment along with his memorandum of appeal, he

(1) (1912) 17 I. C. 415.

1929  
 Nov. 15.

was directed to file it on 1st November, 1928. On that date he did not appear, nor did he file a copy of the judgment. His appeal was adjourned to 3rd November, 1928. On 1st November, 1928, when this order was passed, the District Magistrate was in camp in the village Bassain. On 3rd November, 1928, the case was taken up by the learned District Magistrate at the headquarters. On that date the applicant did not appear and he had not filed the copy of the judgment. His appeal was dismissed for default. Against this judgment of the learned District Magistrate, Roora applicant has come to me in revision with the prayer that the order of the learned District Magistrate dismissing his appeal in default is illegal and that a recommendation may be made to the High Court for the setting aside of this order.

On 28th November the applicant presented a petition to the District Magistrate stating therein that he filed an appeal on the 25th October, 1928, and that the District Magistrate after that went in camp which the applicant did not know and could not find and that he has learnt now that his appeal has been dismissed in default. He explained that the memorandum of appeal was filed without the copy of the judgment because the copy of the judgment could not be obtained. He requested that his appeal may be admitted and stated that he will obtain copy of the judgment and present it to the Court and that deducting the period of time spent in obtaining copy his appeal would be in time. On this petition the District Magistrate asked for report and ordered that the petition should be put up before him on the 15th December, 1928, and that the applicant should appear on that day. On the 15th December, the file had not come and the note does not show whether the appli-

1929

ROORA

v.

THE CROWN.

1929  
ROORA  
v.  
THE CROWN.

cant was present on that date or not. The case was adjourned to 4th January, 1929. On the 4th January, 1929, the file had come, while the District Magistrate had not time and therefore the appeal was adjourned to 14th January, 1929. On the 14th Roora was present, but on that date too the District Magistrate had no time and the appeal was adjourned to 12th February, 1929. Roora was present on the 12th February. On that day too the District Magistrate had no time and the appeal could not be heard. It was adjourned to 13th March, 1929. The 13th was a public holiday. The appeal was taken up on the 14th March. Roora was not present and the appeal was adjourned to 21st March. On the 21st March Roora was not present and the appeal was dismissed.

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

There are two orders of dismissal by the learned District Magistrate. One is dated the 3rd November, 1928, and the other is dated the 21st March, 1929. These orders of the learned District Magistrate are not in accordance with law. The appeal cannot be dismissed for absence of the appellant. On receiving petition under section 419 of the Criminal Procedure Code, the Appellate Court should consider whether there is sufficient ground for interfering with the judgment appealed against, irrespective of the fact whether the appellant is present to support the petition or not. Dismissal of appeal merely for absence of appellant is not proper. The learned District Magistrate dismissed the appeal simply because the appellant was not present on those days on which his appeal came up for hearing. Although it is not necessary for me to go into the point whether the absence of the appellant was justified, I think in this

1929

ROORA

v.

THE CROWN.

case the appellant had good reasons to be absent on 3rd November, 1928, when his appeal was first dismissed. He did not know that his case was to be taken up at Ludhiana and on that day. His appeal had really been fixed for the 1st November when the learned District Magistrate was in camp in the village Bassian and it was adjourned to 3rd November. There is nothing on the file to show that the appellant was informed that his appeal would be taken up at Ludhiana on the 3rd November, 1928. As he was not informed of the order passed on the 1st November, he could not be expected to be present. Similarly on the 21st March the appellant was not present. The appeal had been fixed for the 13th March and as it was a public holiday it was adjourned to 21st March. Even in this case too there is nothing on the file to show that the appellant was informed of this adjournment. He could not therefore be expected to be present on the 21st March. His absence on both these dates is absolutely justified. Apart from these facts, I am of opinion that the appeal of the applicant is very strong and he should not suffer because he was unable to be present in the Court of the District Magistrate on the dates on which his appeal was to be heard and of which he was not informed. I therefore recommend that the orders of the learned District Magistrate dismissing the appeal of Roora applicant because he was not present on the days when his appeal was to be heard may be set aside and the District Magistrate directed to admit the appeal again and hear it on merits in the presence of the appellant.

#### ORDER OF THE HIGH COURT.

SHADI LAL C.J.—The learned District Magistrate was entirely wrong in dismissing the appeal

1929

ROORA

v.

THE CROWN.

SHADI LAL C.J.

preferred by the convict simply because the latter did not appear on the date of the hearing. The Code of Criminal Procedure does not permit the dismissal of an appeal on the ground that the appellant does not appear to support it. Section 421 read with section 423 of the Code makes it incumbent on an Appellate Court to hear the appeal on the merits; and there is no warrant for the dismissal of the appeal by reason of the non-appearance of the appellant. I must therefore quash the order of the District Magistrate dismissing the appeal for default.

The learned Magistrate, instead of disposing of the appeal on the merits promptly, has allowed it to drag on and postponed it from time to time without any adequate reason. The appeal is accordingly transferred to the Court of the Sessions Judge, who is directed to decide it without any further delay.

*N. F. E.*

*Revision accepted.*