

CRIMINAL REFERENCE.

Before Mr. Justice Parsons and Mr. Justice Ranade.

QUEEN-EMPRESS *v.* KALU DOSAN.*

1896.

December 10

Criminal Procedure Code (Act X of 1882), Sec. 412—Appeal from a conviction by a Magistrate, other than a Presidency Magistrate, where accused pleads guilty—Appeal.

The accused pleaded guilty to a charge of kidnapping from lawful custody, and was thereupon convicted by a Magistrate of the First Class and sentenced to four months' rigorous imprisonment and a fine of Rs. 20. The accused appealed and in appeal denied that he had committed the offence. The Sessions Judge was of opinion that, as the accused had pleaded guilty at the trial, he had no power to deal with the appeal, except as regards the amount of punishment awarded. He, therefore, referred the case to the High Court.

Held, that the Sessions Judge was competent to deal with the whole appeal. Section 412 of the Criminal Procedure Code (Act X of 1882) had no application. That section provides for convictions by Courts of Session or Presidency Magistrates only, and the exception is not only as to the extent but also as to the legality of the sentence.

REFERENCE under section 438 of the Code of Criminal Procedure (Act X of 1882).

The accused was charged with the offence of kidnapping from lawful guardianship under section 363 of the Indian Penal Code (Act XLV of 1860).

The accused pleaded guilty, and was convicted on his own plea by the First Class Magistrate of Ahmedabad and sentenced to rigorous imprisonment for four months and to pay a fine of Rs. 20.

The accused then appealed to the Sessions Judge, and in appeal denied that he had committed the offence.

The Sessions Judge was of opinion that the conviction was illegal; but as the accused had pleaded guilty at the trial, he held that he had no power to deal with the appeal except as regards the amount of the punishment awarded.

He, therefore, referred the case to the High Court under section 438 of the Code of Criminal Procedure (Act X of 1882).

* Criminal Reference, No. 131 of 1896.

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QUEEN-
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v.
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The reference came on for hearing before a Division Bench (Parsons and Ranade, J.J.).

There was no appearance for the Crown or for the accused.

PER CURLIAM :—We return the appeal to the Sessions Judge for him to dispose according to law. We do not understand what he means by saying that he cannot deal with the appeal except as regards the amount of punishment. Section 412 of the Criminal Procedure Code provides for convictions by Courts of Session or Presidency Magistrates only, and the exception is not only as to the extent but as to the legality of the sentence.

Case remanded.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

QUEEN-EMPERESS v. HANMA.*

1896.

December 10.

[*Criminal law—Practice—Procedure—Sentence—Enhancement of sentence—Power of appellate Court—Conviction and sentence on two separate charges—Retention of sentence where conviction on one of the charges is reversed.*

Where an accused person is convicted and sentenced on two separate charges, the appellate Court has no power, in appeal, to maintain the whole sentence when it reverses the conviction on one of the charges, as to do so is, in effect, to enhance the sentence.

THE accused was convicted by the Second Class Magistrate of Belgi of the offences of theft and mischief by killing, &c., cattle under sections 379 and 429 of the Indian Penal Code (Act XLV of 1860) and sentenced to one month's rigorous imprisonment for each offence.

On appeal, the District Magistrate of Bijápur convicted the accused of the offence of mischief only under section 429 of the Indian Penal Code, but upheld the whole sentence of two months' rigorous imprisonment.

The High Court sent for the record of the case under section 435 of the Code of Criminal Procedure (Act X of 1882).

* Criminal Review, No. 315 of 1896.