## APPELLATE CRIMINAL.

*Before Mr. Justice O'Kinealy and Mr. Justice Trevelyan.*

IN THE MATTER OF THE PETITION OF THE DEPUTY LEGAL REMEMBRANCER ON BEHALF OF THE GOVERNMENT OF BENGAL. 1890 *January* 28.

THE QUEEN-EMPRESS *v.* BIBHUTI BHUSAN BIT.*

*Appeal in criminal case—Appeal by Local Government from judgment of acquittal—Criminal Procedure Code (Act X of 1882), s. 417.*

Under the Code of Criminal Procedure (Act X of 1882) the Local Government have the same right of appeal against an acquittal as a person convicted has of appealing against his conviction and sentence, and there is no distinction between the mode of procedure and the principles upon which both classes of appeals are to be decided.

THE respondent Bibhuti Bhusan Bit was charged with having committed an offence punishable under s. 326 of the Indian Penal Code by causing grievous hurt to one Protap Madak.

The trial took place before the Sessions Judge of Bankura with the aid of Assessors. The opinion expressed by the latter was, that the accused was not guilty, the reasons given being the want of sufficient proof, and the existence of numerous discrepancies in the evidence adduced by the prosecution. The Sessions Judge, in an elaborate judgment, analysed the evidence for the prosecution, and came to the conclusion that a conviction on the evidence could not be sustained, and accordingly acquitted the accused, and directed his discharge.

Against that acquittal the Deputy Legal Remembrancer, at the instance of the Local Government, appealed.

The *Deputy Legal Remembrancer* (Mr. *Kilby*) for the Crown.

Mr. *R. Allen* and Baboo *Sridhar Dass* for the respondent.

The *Deputy Legal Remembrancer* contended that, upon the evidence, the accused ought to have been convicted.

*Mr. Allen*, upon the facts, contended that the acquittal was correct; and he further contended that this was not a case in which the Court should interfere with the order of the lower Court. Upon this question his argument was as follows:—

This Court should not interfere in an appeal from an acquittal unless the judgment of the lower Court is manifestly absurd or perverse. The mere fact that this Court might, on the facts, have

* Criminal Appeal No. 4 of 1889, against the order passed by G. W. Place, Esq., Sessions Judge of Bankura, dated the 10th of July 1889.

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come to a different conclusion, would not justify it in reversing the decision of the lower Court and convicting the accused. To justify its interference, there must be a miscarriage of justice of such an extraordinary nature and of such extraordinary importance, that the Court, in the interests of the public and of the administration of justice, would be bound to interfere. [*Empress* v. *Gayadin* (1). *Anonymous, In the matter of the petition of the Government Pleader* (2). *Queen* v. *Dukaran* (3). *Reg.* v. *Ramajirav Jivbajirav* (4). *Queen-Empress* v. *Chotu* (5). *Queen-Empress* v. *Balwant* (6). *Queen-Empress* v. *Goburdhun* (7).] These cases show that a Court would be justified in interfering when, upon the facts as found, an offence was clearly disclosed, and when the acquittal was due to an erroneous application of the law. There is no case reported in which the Court has interfered merely because it would have come to a different conclusion on the evidence from that arrived at by the Court below. This Court has not the advantage of hearing the evidence and watching the demeanour of the witnesses, which must naturally have a great effect on the Judge and Assessors when they come to deal with the credibility of the witnesses. The right to appeal against an acquittal was first introduced in the Code of 1872. The Code of 1861 contained no such provision. The power is an arbitrary one, and should be most sparingly used. A second trial for the same offence after an acquittal is foreign to the fundamental principles of all criminal procedure. Should the Court, however, be of opinion that this case comes within the principles submitted, and that there has been a miscarriage of justice requiring its interference, a new trial should be directed, and this Court should not take upon itself the grave responsibility of deciding upon the evidence, as it appears on paper, after an acquittal by the Judge and Assessors in the Court below.

The *Deputy Legal Remembrancer* in reply.

The judgment of the Court (O'KINEALY and TREVELYAN, JJ.) was as follows :—

In this case Bibhuti Bhusan Bit was charged before the

(1) I. L. R., 4 All., 148.
(2) 7 Mad. H. C., 339.
(3) 7 N. W. P., 196.
(4) 12 Bom. H. C., 1.
(5) I. L. R., 9 All., 52.
(6) I. L. R., 9 All., 134.
(7) I. L. R., 9. All., 528.

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Sessions Judge of Bankura with having committed an offence punishable under s. 326 of the Indian Penal Code and was acquitted. Against that acquittal the Government have now appealed, and it remains for us to determine whether the judgment arrived at by the Court below ought to be reversed or not. Some cases have been cited before us by the learned Counsel who appeared for Bibhuti Bhusan Bit in this Court, and he has argued upon the strength of them, that this Court should not interfere with an acquittal by a lower Court unless the judgment of that Court was manifestly absurd or perverse.

Under the Code of Criminal Procedure the Government have the same right of appeal against an acquittal as a person convicted has to appeal against his conviction and sentence. There is no distinction made in that Code as to the mode of procedure which governs the two sorts of appeals, or as to the principles upon which they are to be decided. Both appeals are governed by the same rules, and are subject to the same limitations; and it appears to us that we are bound to decide this appeal, and that we have no discretion to refuse to interfere if we consider that the judgment of the Court below is wrong, and that Bibhuti Bhusan Bit should have been convicted.

No doubt, in all cases of appeals, the Judges of a Court of Appeal are naturally very cautious in interfering with the judgment of a Judge and Assessors before whom the witnesses were examined, both on the ground that a Court before whom witnesess are examined has superior advantages in estimating the value of their testimony, and also here on the additional ground that in all criminal cases the accused is entitled to have the advantage of any doubt which may arise in the case; but, after giving the accused every benefit which he can derive from such a decision in his favour, if we are still of opinion that he is guilty of the offence with which he has been charged, we think there is no discretion left to us as to whether we should find him guilty or not.

[Their Lordships then proceeded to deal with the evidence in the case, and came to the conclusion that the judgment should be set aside. They accordingly convicted the prisoner and sentenced him to five years' rigorous imprisonment.]

H. T. H. *Appeal allowed.*