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family to the father of the defendant it is clear that it was given for the purpose of enabling him to transact the business of the family. There were many trans[illegible] is that instead of Rs. 1,532 the decree in different members [illegible]ntiffs will be for $\frac{1}{6}$th of 5,786. to have a [illegible] except this modification and the direction as to the trans[illegible] of the elephant and the declaration as to the rights of the defendants other than Jhinga, we affirm the decree of the Court below.

Considering the circumstances we think that in appeals Nos. 262 and 325 the parties ought to pay their own costs in this Court.

Appeal allowed in part.

S. C. C. *Decree modified.*

CRIMINAL REFERENCE.

Before Mr. Justice Ghose and Mr. Justice Gordon.

1897 *January* 20.

RAMZAN KUNJRA (COMPLAINANT) *v.* RAMKHELAWAN CHOWBE AND OTHERS (ACCUSED).*

Criminal Procedure Code (Act X of 1882), section 423, clause (b,) sub-section 3—Penal Code (Act XLV of 1860), sections 147, 379—Enhancement of sentence.

In a case where the accused were convicted by a Deputy Magistrate of the offence of rioting under section 147, and theft under section 379, of the Penal Code, and sentenced to four months for the first and two months for the latter offence, but on appeal the District Magistrate, considering the case to be one of theft rather than rioting, abandoned the sentence under section 147, but upheld the conviction under section 379 of the Penal Code and sentenced them to six months' rigorous imprisonment,

Held that what the District Magistrate had in effect done was to enhance the sentence under section 379 of the Penal Code, which he had no power to do under section 423, cl. (*b*), sub-section 3 of the Code of Criminal Procedure.

THIS was a Reference by the Sessions Judge of Shahabad to this Court asking for an authoritative decision on the following point:—

On 28th August 1896 Ramkhelawan Chowbe, Ramgad Chowbe, and Mohipat Ahir, were convicted by the Deputy Magistrate of

* Criminal Reference No. 294 of 1896, made by F. H. Harding, Esq., Sessions Judge of Shahabad, dated the 30th of December 1896.

which were not ripe for realization. They were to be divided of course when they were realized. In such a state of circumstances the offences [illegible] riotingible 127 would apply. The Code, and (2), theft under section 379, Penal Code. The Sessions Judge would not be sentenced for the first offence to four months and in respect of the offence to two months' rigorous imprisonment. On appeal to the District Magistrate, Mr. Egerton, considering the case to be one of theft rather than of rioting, made the following order: "The conviction is upheld, and that part of the sentence which is passed under section 147, Penal Code, will be changed to a sentence under section 379, Penal Code; the conviction under section 147, Penal Code, is changed to one under section 379, Penal Code, and the sentence of six months' rigorous imprisonment is upheld."

The accused thereupon applied to the Sessions Judge to refer the case to the High Court on the ground that the sentence under section 379, Penal Code, had been enhanced by the District Magistrate in contravention of section 423, clause (*b*), sub-section 3 of the Code of Criminal Procedure. The Sessions Judge accordingly referred the matter for the decision of this Court.

The judgment of the High Court (GHOSE and GORDON, JJ.) was as follows:—

It seems to us that the legal effect of the order of the District Magistrate in this case is to acquit the accused of the offence under section 147 of the Penal Code, and enhance the sentence under section 379. If the accused have been rightly acquitted of the offence under section 147, it follows that the sentence imposed under that section must fall through. And we are of opinion that the necessary consequence of the order of the District Magistrate maintaining the same sentence which the Deputy Magistrate had awarded is to enhance the sentence under section 379 which he had no authority to do under section 423, clause (*b*), sub-section 3 of the Code of Criminal Procedure [see in this connection the decision of this Court, in *Arpin Sheik* v. *Arobdi Datia* (1)].

(1) Revision case No. 60 of 1893 decided by Prinsep and Ameer Ali, JJ., on the 22nd February 1893.

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Tewary would be entitled to set off his share in the amounts realized by any of them on behalf of all the members.

The result, therefore, is that the Magistrate's order enhancing the sentence in favour of the plaintiffs under section 379 of the Penal Code will be set aside.

Save as aforesaid the rule is discharged.

E. C.

cause why the sentence passed by the Sessions Judge should not be set aside.

Babu *Dwarka Nath Chuckerbutty* for the petitioner.

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

The judgment of the High Court (PRINSEP and AMEER ALI, JJ.) was as follows:—

In this case the Magistrate has convicted the petitioner of robbery, under section 392 of the Penal Code, and hurt, under section 323 of the Penal Code, and sentenced him for the former offence to 18 months' *rigorous* imprisonment, and for the latter to one day's rigorous imprisonment.

On appeal, the Sessions Judge found that the charge of robbery was not established, and he held that it was what we may term an exaggeration of the actual facts of the case. He accordingly set aside the conviction on the charge of robbery, but, in confirming the conviction of hurt, he sentenced the appellant to six months' rigorous imprisonment.

It is contended on behalf of the petitioner that this was an enhancement of sentence which the Sessions Judge as an Appellate Court was not competent to pass.

In granting the rule we intimated that, although the sentence appeared to be open to this objection, in dealing with the case we should consider the facts found and pass such sentence as would seem to us to meet the ends of justice. We have no doubt that the Sessions Judge had no power to pass this sentence which amounted to an enhancement from one day to six months for the offence of hurt. At the same time, after considering the facts found by both Courts, it seems to us that the attack on the complainant was of a somewhat serious nature, and that severe injuries were inflicted. We think therefore that the sentence of six months' rigorous imprisonment is a proper sentence, and we accordingly direct that that sentence be recorded under section 323 of the Penal Code. The effect of this order will be to make legal the sentence which the Sessions Judge has already passed.

C. E. G.

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RAMZAN KUNJRA v. RAM-KHELAWAN CHOWBE.

Before Mr. Justice Banerjee and Mr. Justice [illegible]

KANTI CHUNDER MOOKERJEE (DEFENDANT) *v.* SA[illegible], the AND ANOTHER (PLAINTIFFS).*

Second appeal -Order setting aside order granting review—Civil Procedure Code (Act XIV of 1882), sections 591, 623, 629.

No second appeal to the High Court lies from an order setting aside an order granting a review of judgment.

THIS was an application for the admission of an appeal from an order of the Subordinate Judge of Lakimpur, dated 2nd September 1896, setting aside an order of the Munsif of Dibrugarh, dated 24th June 1896, by which he granted a review of a former order by which the suit was decreed against the defendant, the present appellant.

The case was put in the *loazima* board, the Deputy Registrar noting on it that "section 629 of the Civil Procedure Code permits of but one appeal against an order admitting a review in an application under section 623," and referring to a previous case [appeal from order 61 of 1897 decided by TREVELYAN and BANERJEE, JJ., on 7th December 1893 (1)], in which it was held

*Miscellaneous Appeal No. 410 of 1897.

(1) *Imam Bux* v. *Mahadeo Gope.* Appeal from Appellate order No. 61 of 1893, against the order of G. F. Mathews, Esq., District Judge of Purneah, dated the 8th of December 1892, affirming the decree of Babu Raj Narain Chuckerbutti, Munsif of Arrah, dated the 27th of August 1892.

Moulvie *Mahamed Yusoof*, and Moulvie *Mahamed Habibulla* for the appellant.

Babu *Golap Chundra Sarkar* for the respondent.

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

This is an appeal from an order of the District Judge dismissing an appeal to him from an order of the first Court admitting a review. Objection has been taken, somewhat late, that we have no jurisdiction, because no second appeal lies. We think it clear that the objection is fatal. Section 591 of the Code of Civil Procedure permits but one appeal. There is no provision of law allowing a second appeal in a case of this kind. That being so, the appeal must be dismissed, but under the circumstances we make no order as to costs.

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RAMZAN KUNJRA v. RAM-KHELAWAN CHOWBE

The order of the District Judge of Rs. 1,532 the sentence from two to six months will be for $\frac{1}{5}$th of 5,786. ...l be set aside except this modification and the direction as to the ...e elephant and the declaration as to the rights of the ...endants other than Jhinga, we affirm the decree of the Court below.

Considering the circumstances we think that in appeals Nos. 262 and 325 the parties ought to pay their own costs in this Court.

Appeal allowed in part.

S. C. C. *Decree modified.*

CRIMINAL REFERENCE.

Before Mr. Justice Ghose and Mr. Justice Gordon.

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