

## CRIMINAL REVISION.

*Before Mr. Justice Caspersz and Mr. Justice Chitty.*

1907  
 ~~~~~  
 Sept. 27.

JAMAIT MULLICK

v.

EMPEROR.\*

*Judgment of Appellate Court—Defective judgment—Appellate Court's judgment not supplementary to that of first Court—Criminal Procedure Code (Act V of 1898) ss. 367, 424—Practice.*

The judgment of an Appellate Court must show on the face of it that the case of each accused has been taken into consideration, and reasons should be given, as far as may be necessary, to indicate that the Court has directed judicial attention to the case of each accused.

The Appellate Court's judgment cannot be read in connection with, and as supplementary to, the judgment of the Court of first instance, but must be quite independent and stand by itself.

THE petitioners, ten in number, together with seven others, were charged with bad livelihood, under s. 110 of the Criminal Procedure Code, before Jogendra Nath Chuckerbutty a Deputy Magistrate of Midnapore. The petitioners were directed by his order, dated the 17th June 1907, to execute bonds of Rs. 100 each, with two sureties in the same amount, to be of good behaviour for one year, and the other seven were required to execute similar bonds to be of good behaviour for two years.

The petitioners appealed to the District Magistrate who upheld the order of the first Court in the following terms:—

“In this case seventeen persons have been ordered to find security to be of good behaviour, seven of them for two years, and the ten appellants for one year. The case, as far as the former seven are concerned, was sent up to the Sessions Judge, and he has confirmed the order. Now the other ten prefer this appeal to me.

“The main grounds taken before me are that the accused have been prejudiced by a joint trial, that the case was instituted partly because of failure to detect the Agra dacoity case, and mainly because of a petition put in against the Police Inspector who supervised the inquiry in this case, charging him with assault,

\* Criminal Revision, No. 1079 of 1907, against the order of D. Weston, District Magistrate of Midnapore, dated July 3, 1907.

oppression, &c. It is also urged that the evidence is the outcome of party feeling.

"The trying Magistrate has made a very careful record of the evidence and written a well considered judgment. There is a mass of evidence on the record to show that all these accused form a gang and are supported by one Nilkamal, a wealthy man, whom they consult and visit. This being the case, it is clear that resorting with men of bad character, old convicts, is an integral portion of the charge and they are no more prejudiced by that than they are by being charged separately with bad livelihood.

"Admittedly, the police took up this case after their failure to detect the dacoity case, but there were indications in that case that it was the work of this gang, and their action was, therefore, proper. That this case was the outcome of the Inspector's revenge is absurd, unless it be believed that the Inspector also managed to getover sixty other witnesses to support his animosity, and these were witnesses from some eighteen different villages.

"As to the party feeling, there seems to have been some feeling between Hindus and Mussalmans regarding water-supply, but the accused were both Hindus and Mussalmans, as also the witnesses.

"I consider the order to find security justified, and reject the appeal. Appellants will be committed to jail in default of finding security."

*Babu Dasharathi Sanyal*, for the petitioners. The judgment of the Appellate Court is not in accordance with law. Section 424 of the Criminal Procedure Code, read with s. 367, lays down what the Appellate Court's judgment should contain. The District Magistrate has not referred to a single accused by name, and there is nothing in the judgment to show that he considered the case against each accused separately, or what the evidence against each accused was.

CASPERSZ AND CHITTY JJ. This is a Rule on the District Magistrate of Midnapore to show cause why he should not be directed to re-hear the appeal in the matter of the security demanded from the petitioners to be of good behaviour, and to consider the case of each petitioner on the evidence on the record.

The appellate judgment of the learned District Magistrate is not in compliance with the law and the authorities on the subject. He was dealing with the case of seventeen persons, and the evidence of seventy witnesses for the prosecution and fifty-four for the defence. This mass of evidence he disposes of in, what we may call, a very stereotyped manner. The name of not

1907

JAMAIT  
MULLICK  
v.

EMPEROR.

1907  
 JAMAAT  
 MULLICK  
 v.  
 EMPEROR.

one of the accused, and the name of not one single witness, appear in the judgment of the learned District Magistrate. We have not the slightest doubt, as he mentions in his explanation, that he made notes for his guidance, with reference to each of the accused, as to what the witnesses against him said and what the witnesses in favour of him said, and that before writing his judgment he considered the evidence against each man. But this cannot be considered sufficient. It must appear, on the face of the judgment, that the case of each accused has been taken into consideration, and reasons should be given, as far as may be necessary, to show that the Appellate Court has devoted judicial attention to the case of each accused. The necessity is the greater when, as in the present instance, a very large number of persons was jointly proceeded against and directed to furnish security for good behaviour. We are unable to accept the explanation that the appellate judgment may be read in connection with, and as supplementary to, the judgment of the Court of first instance. The appellate judgment must be quite independent and stand by itself.

The only order, therefore, that we can pass in the matter of this Rule is that the District Magistrate do re-hear the appeal, and consider the case of each petitioner on the evidence on the record. The Rule is accordingly made absolute.

Pending the re-hearing of the appeal by the District Magistrate, the petitioners will be released on bail to his satisfaction.

*Rule absolute.*

E. H. M.