order only affects Bajrangi Gope, Nithu Gope, Sheolochan Gope, Mahadeo Gope and Raghunandan Gope, the other petitioners having been acquitted on the only charges against them; the orders on them under section 106 will of course go with the conviction.

1910

BAJRANGI GOPE v. EMPEROR.

E. H. M. *Rule absolute.*

---

# CRIMINAL REVISION.

*Before Mr. Justice Holmwood and Mr. Justice Sharfuddin.*

AMANAT SARDAR

*v.*

NAGENDRA BISWAS.*

1910

*Dec. 15.*

*Appeal—Right of reply—Duty of Appellate Court to determine accomplice character of evidence—Criminal Procedure Code (Act V of 1898), s. 421—Practice.*

The appellant has a right of reply to the Crown on the hearing of an appeal.

*Promoda Bhusan Roy* v. *Emperor* (1) followed.

The Appellate Court is bound to find specifically whether witnesses said to be accomplices are so or not, and to weigh their evidence accordingly.

THE accused, a boat manji, was put on trial before Babu Srish Chunder Ghose, Sub-Divisional Officer of Narail, on a charge, under s. 407 of the Penal Code, in respect of some tins of mustard oil alleged to have been entrusted to him by the complainant at the Ultadinghi ghat for carriage to Dumuria, but sold by him at an intermediate station, and convicted and sentenced thereunder, on 10th June 1910, to two years' rigorous imprisonment. He thereupon preferred an appeal

* Criminal Revision, No. 1355 of 1910, against the order of L. Palit, Sessions Judge of Jessore, dated July 26, 1910.

(1) (1906) 11 C. W. N. xliii.

1910

AMANAT SARDAR v. NAGENDRA BISWAS.

against the order to the Sessions Judge of Jessore, who upheld the same on the 26th July 1910.

It appeared from the explanation submitted by the trying Magistrate that the Sessions Judge heard the senior pleader for the appellant, and then the pleader for the Crown, but refused to hear the defence pleader again in reply, observing that he did not desire any further arguments in the case. The accused then moved the High Court and obtained the present Rule.

*Babu Manmatha Nath Mukerjee*, for the petitioner.

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

HOLMWOOD AND SHARFUDDIN JJ. We are of opinion that this appeal should be re-heard on the three grounds on which the Rule was issued. The law under section 421 of the Criminal Procedure Code does not appear to be very precise, but it does lay down that the appellant or his pleader shall have a reasonable opportunity of being heard in support of the appeal. Now, this must be taken to include the possible right of reply, if necessary, for it is obvious that if the Crown in its reply raises any points or displaces, in the opinion of the learned Judge, the points which were raised in the opening, the appellant or his pleader will have no reasonable opportunity of supporting their case, unless they are allowed to reply, and that this is so has been laid down by a Bench of this Court in the case of *Promoda Bhusan Roy* v. *Emperor* (1).

As regards the other two points, the finding of the learned Judge is vague as to the question whether Shashi and Afsar are or are not accomplices. 'A mere statement at the end of his judgment that some of the witnesses may be suspected of being accomplices is not sufficient, for, it being affirmed by the defence that two important witnesses were as a matter of fact accomplices, he was bound to find either that they were or were not accomplices, and to have weighed their evidence accordingly.

(1) (1906) 11 C. W. N. xliii.

1910

AMANAT SARDAR v. NAGENDRA BISWAS.

As regards the third point, the entry, exhibit No. 4, has been explained in a certain way by the Magistrate who tried the case, but that explanation is disputed by the defence, and the learned Judge's judgment does not deal with the question. Therefore, it appears necessary for us to direct a rehearing of the appeal, and we accordingly do so.

We leave the question as to the propriety of admitting the petitioner to bail to the learned Sessions Judge.

E. H. M.

# CIVIL RULE.

*Before Mr. Justice Mookerjee and Mr. Justice Sharfuddin.*

## *In re* ABIRUDDIN AHMED.*

1910

Nov. 22.

*Muktear—Dismissal from the roll on conviction of an offence implying moral turpitude—Application for re-instatement after a lapse of years—Deliberate omission to disclose the facts of enhancement of sentence and of an order directing his prosecution for making a false affidavit—Power of the High Court to re-instate a legal practitioner after disbarment—Grounds of re-instatement.*

The High Court has power, when a legal practitioner has been dismissed for misconduct of any description, in the widest sense of the term, to re-admit him after a lapse of time, if he satisfies the Court that he has in the interval conducted himself honourably, and that no objection remains as to his character and capacity.

*King* v. *Greenwood* (1), *Anonymous case* (2), *In re Smith* (3), *In re Robins* (4), *In re Pyke* (5), *In re Pyke* (6), *In re Pyke* (7), *In re Brandreth* (8), *In re Barber* (9), *Boston Bar Association* v. *Greenwood* (10)

* Application No. 3443 of 1910 against an order of dismissal under s. 12 of the Legal Practitioners Act (XVIII of 1879), dated Jan. 28, 1903.

(1) (1760) 1 W. Black. 222.
(2) (1853) 17 Beav. 475.
(3) Unrep. cited in 17 Beav. 477.
(4) (1865) 34 L. J. Q. B. 121.
(5) (1845) 1 New Pract. Ca. 330.
(6) (1865) 6 B. & S. 703; 34 L. J. Q. B. 121.
(7) (1865) 34 L. J. Q. B. 220; 6 B. & S. 707.
(8) (1891) 60 L. J. Q. B. 501.
(9) (1854) 19 Beav. 378.
(10) (1897) 168 Mass. 169; 46 N. E. 568.