

1806.  
July 12.

## REG. V. SHANKAR BHA'GVAT.

*Ind. Pen. Code, Sec. 384—Extortion.*

*Held* that it is not necessary, in a case of extortion, under the Indian Penal Code, that the threat should be used, and the property received, by one and the same individual; nor that the receiver should be charged with abetment, although that might be done.

THE prisoners were committed by Shámráv Ganesh, Second Class Subordinate Magistrate, charged, under Sec. 384 of the Indian Penal Code, with extortion; and were tried by R. White, Session Judge of Cánará.

The Session Judge held it fully proved that the prisoners were guilty of extortion, in having intimidated the complainants, Devagaudá and Sarvagaudá, and thereby dishonestly induced them to deliver money. It appeared that advantage was taken of the circumstance of their relative Subi having had a miscarriage, to accuse her of having voluntarily caused it; that they were sent for and detained by one Shankarayá (who was somehow or other not committed) and the accused persons, and threatened by them with criminal proceedings for having concealed the alleged offence, and also with personal violence, unless they paid some money, which, in order to get off, they did, in the house of the first accused, on the 14th or 15th of November 1865, the payments amounting to Rs. 141.

The Session Judge, differing from the assessors, convicted the accused; and sentenced them each to suffer rigorous imprisonment for one year, and to pay a fine of Rs. 250, or in default to suffer further rigorous imprisonment for six months.

*Vishvanáth Naráyana Mandlik*, for the prisoners, contended that the evidence did not prove the charge: pointing out discrepancies, but relying chiefly on the fact that the threat, which was the gist of the charge, was not used by the prisoners, but by one Shankarayá, who had not been charged, whilst they had at most acted only as receivers.

*Dhírajál Mathurádás*, in support of the conviction, submitted that the charge was fully made out by the evidence.

Cochin, C.J. :—In this case, the charge was one of extortion, under Sec. 384 of the Indian Penal Code; and it is urged for the prisoners that there was no extortion, inasmuch as the putting in fear was not done by them.

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Now, it is not necessary that the threat should be used, and the property received, by one and the same individual. It may be matter of arrangement between several persons that the threat should be used by some, and the property received by others; and they would be all guilty of extortion. It would not, under such circumstances, be necessary to charge the receivers with abetment, although that might be done; but then, under the provisions of the Code, the punishment would be the same as for extortion.

We must uphold the conviction. There is sufficient evidence against the two persons charged. Shankarayá has escaped being tried, in an apparently unaccountable manner; and we must direct inquiry to be made as regards him.

WARDEN, J., concurred.

*Petition rejected.*

REG. V. KALLA' LAKHMA'JI.

Nov. 14.

*Crim. Proc. Code, Secs. 205, 366, 380, 426, and 439.*

1. When the examination of the prisoner by the Magistrate has not been recorded in full, so as to include the questions, as required by Sec. 205 of the Code of Criminal Procedure, it cannot be given in evidence at the trial before the Court of Session, under Sec. 366, without further proof.

2. When the examination would, either alone or with other evidence, be sufficient for the conviction of the accused, the proper course is to remand the case to the Court of Session, in order that proof may be taken of the examination.

3. When the evidence, exclusive of the inadmissible examination, is sufficient to support the conviction, it may be affirmed by the High Court without remanding the case; and the admission of such an examination by the Court of Session does not invalidate the trial and conviction under Secs. 426 and 439 of the Code.

*Reg. v. Timmi* (2 Bom. H. C. Rep. 131) observed upon.

THE prisoner was convicted of murder by N. M. W. Daniell, Acting Session Judge of Ahmedabad, and sentenced to