

it seems to me that the presenting the gun in this case, loaded as it was with powder and ball, and being in the belief of the prisoner capable of being discharged—for he was under the impression that the gun was capped—was an act sufficiently approximate to the commission of the offence to bring it within Sec. 511.

I have not arrived at this conclusion without difficulty, but I believe it to be consistent with common sense, and that Sec. 307 was not intended to exhaust all attempts to commit murder which should be punishable under the Code. I wish also to express my concurrence in the remarks of the Chief Justice in respect to the case of *Reg. v. Collins*.

Upon the other charges it is unnecessary to express an opinion.

Verdict of *Guilty* entered upon the 3rd head of charge.

REG. V. GANU BHA KRISHINA' GURAV and others.

March 6.

Obscene Songs—Láruí—Ind. Pen. Code, Sec. 294 —Crim. Proc. Code, Secs. 66, 257, and 265.

On a reference by a Session Judge, convictions and sentences by a Magistrate F. P., reversed, as the record of the case did not disclose that the accused had committed any offence.

GANU and four others appealed to the Court of Session at Tháná, from an order of Rámchandra Amrit Dugal, Magistrate F. P. at Ratnágiri, dated the 13th of October 1866, by which they were convicted, under Sec. 294 of the Penal Code, of singing obscene songs in a public place to the annoyance of others, and sentenced, No. 1 to pay a fine of Rs. 5, and Nos. 2, 3, 4, and 5 to pay each Rs. 3; and in default to suffer No. 1 five days', and Nos. 2, 3, 4, and 5 each three days' simple imprisonment.

The record and proceedings were referred for the orders of the High Court, on the 9th of February 1867, by R. II. Pinhey, Session Judge of the Konkan, with the following remarks :—

1897.

RESO.
v.
GANU K.
GURAV
et al.

"I am of opinion that the conviction and sentence recorded by the Magistrate F. P. in this case must be reversed, both by reason of the illegal procedure of the Magistrate, and also because, as a matter of fact, the record of the case does not disclose that the accused committed any offence whatsoever.

"(1) As to the Magistrate's procedure. The accused are convicted of having sung obscene songs in a public place (a temple) to the annoyance of others—an offence punishable under Sec. 294 of the Indian Penal Code. The accused were arrested without warrant by the police, on the complaint of Mahádev Dinkar Joshi made before the Foujdár at Ratnágiri. As persons charged with an offence punishable under Sec. 294 may be arrested without a warrant, the police committed no illegality. The complaint of Mahádev Dinkar Joshi, being preferred to the police only, might have been oral. It was, however, made in writing. There is no harm in this. But the written complaint is worth no more than an oral complaint would have been, so far as the ulterior proceedings of the Magistrate are concerned. The complaint was not, of course, sworn to before the Foujdár; nor was it afterwards verified on solemn affirmation before the Magistrate, to whom the accused were sent by the Foujdár. The Magistrate, on getting the accused before him, indorsed the written complaint, preferred before the Foujdár, to the effect that the substance of this complaint had been stated to the accused; that the accused admitted their guilt; and that they were, therefore, convicted and sentenced.

"Now the Magistrate clearly meant to proceed with this case under Sec. 265 of the Code of Criminal Procedure. This section provides for the summary conviction of a person who, on having the substance of such a complaint as is referred to in this section stated to him, admits the truth of the complaint. But the complaint referred to in Sec. 265 is clearly a complaint such as is contemplated in Sec. 257 of the Code of Criminal Procedure—that is, a complaint, made before a Magistrate having jurisdiction, of an offence

punishable with imprisonment not exceeding six months. Again Sec. 257 must be read with Sec. 66 of the Code; and this section does not appear to have been attended to at all in this case. As the Magistrate did not examine the complainant on solemn affirmation, and had no sworn information before him at all, it appears to me that his summary procedure, under Sec. 265 of the Code of Criminal Procedure, was illegal (a).

1867.
REG.
v.
GANU K.
GURAV
et al.

“(2) But if no notice be taken of the procedure of the Magistrate, still the conviction and sentence recorded by the Magistrate cannot stand: for the record of the case discloses no offence. Supposing the complaint of Mahádev Dinkar Joshi be taken as a well-received complaint, sworn to before the Magistrate, what does it say? It says that some ‘tumáswa Gurav’ (not named) had dressed up some boys in women’s clothes, and that some ‘tamásgir lok’—(still not named) had been repeating *lávnyá*. Now a *lávni* is not necessarily an obscene song. It may be obscene, and often is obscene; and if the Magistrate had examined the complainant, as he ought to have done, on solemn affirmation, perhaps he might have elicited that the particular *lávnyá* referred to in the complaint were obscene. But I cannot presume, nor ought the Magistrate to have presumed, that they were obscene. * * * In Molesworth’s Maráthi Dictionary the meaning of the word *lávni* is given as ‘a song of a particular kind (sung generally by women);’ and there are numbers of *lávnyá* in the Selections from the Maráthi Poets published by Ráv Sáheb Bháskar Dámodhar in 1862, which, so far from being obscene, are considered almost sacred by the Maráthá people.”

PER CURIAM (COUCH, C.J., and NEWTON, J.):— The Court reverses the convictions and sentences, for the reasons stated in the latter portion of the remarks of the Session Judge.

(a) See next case.