

REG. V. MURA'R TRIKAM.

1868.
Jan. 20.

*Session Judge—Power to quash Sentence of Assistant Session Judge—
Cognate Offence.*

Held that a Session Judge has no power to quash a sentence passed by an Assistant Session Judge and by him submitted for confirmation, and direct new sentences to be passed, even supposing the sentence of the Assistant Session Judge to be illegal.

Held, also, when more than one offence is proved, it is not proper to convict only of one and to acquit of the other, although the offences may be cognate.

Reg. v. Vináyak Trimbak (2 Bom. H. C. Rep. 414) followed.

THE prisoner was convicted, by S. H. Phillpotts, Acting Senior Assistant Session Judge at Broach, of the offences of (1) cheating by personation, under Sec. 419; (2) forgery for the purpose of cheating, under Sec. 468; and (3) using as genuine a forged document knowing it to be such: under Sec. 471 of the Indian Penal Code; and sentenced (in one aggregate sentence) to rigorous imprisonment for five years, subject to the confirmation of the Session Judge of Súrat.

The case having been sent up for confirmation, the Session Judge, C. G. Kemball, on the 30th of October, recorded the following judgment:—

“I observe that the Assistant Session Judge has convicted the prisoner of the three offences with which he was separately charged, and has then passed one sentence in respect of all three convictions. The finding not being alternative, such a sentence was manifestly illegal. I, therefore, without going into the merits of the case, quash the sentence submitted for confirmation, and direct the lower court to pass legal sentences. I further direct that if, after this order has been carried out, no one sentence exceeds the term of three years, these proceedings be re-submitted to this court for the purpose of review.”

Upon this the Acting Senior Assistant Session Judge passed the following sentences on the prisoner:—

Under Sec. 419, rigorous imprisonment for three years.

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II. Under Sec. 468, rigorous imprisonment for one year, to commence at the expiration of the above.

III. Under Sec. 471, rigorous imprisonment for one year, to commence at the expiration of the above.

In review [on the 12th of December 1867] the Session Judge at Súrat considered that the case should be referred for the orders of the High Court, for the following reasons:—

“The charges appear to me to be so vague as to be really unintelligible. From the evidence for the prosecution, it appears that the complainant was a partner in a firm at Broach, with which firm certain moneys belonging to two persons, Virchand Devchand and Dipchand Tárachand, were lodged, and these moneys, at several different times in different sums, the accused succeeded in getting possession of, by producing forged letters. The prisoner, Murár, in doing so, personated some other person. On these facts two courses were open to the committing Magistrate, or afterwards to the Sessions Court—either to take each separate item of money obtained by fraud, and to frame thereon a distinct charge or a distinct set of alternative charges, or to select one item for the purpose of prosecuting the accused and abandon all the rest. But it appears to me wrong, where the evidence disclosed the commission, on different dates, of offences which might or might not be made the subject of alternative charges, to charge the accused generally with having committed a number of offences distinctly provided for in the Code.

“It is difficult to understand the course pursued, but I apprehend the meaning of the Senior Assistant Session Judge to be this—that, taking all the distinct acts of forgery as one forgery, and so on, if a man fraudulently uses a document which he has forged, and, in order to the fraudulent use, personates some third person, he has committed three distinct offences, and should be convicted of them. With regard to the incorrectness of the manner of charging the accused I have nothing to do, but the point with which I have ~~to do~~, and in respect of which I deem a reference to the High

Court necessary, relates to the separate convictions recorded by the Senior Assistant Session Judge, which, in my opinion, were wrong. In my opinion, a man who offends as above supposed does not commit three offences, for each of which he is liable to punishment, but one entire offence. The fraud of using the forged instrument could not be perpetrated without first committing the forgery, and the cheating by personation was, after all, only part of the other offences. It seems to me that the offences are cognate, and that the only course was, if all these were held proved, to convict of the most serious offence, and to acquit of the others."

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PER CURIAM (COUCH, C.J., and NEWTON, J.):—The Court is of opinion that the order of the Session Judge of the 30th of October 1867 must be annulled. As the punishment was not in excess of that which might have been awarded under one of the heads of the charge upon which the accused was found guilty, and was within the powers of the Acting Senior Assistant Session Judge, the sentence originally passed by him was not illegal, and ought not to have been quashed (see *Reg. v. Vináyak Trimbak (a)*); nor had the Session Judge, in the opinion of the High Court, power to quash the sentence, and direct the lower court to pass new sentences, even supposing such sentence to have been illegal.

The Court considers it necessary further to observe, upon the proceedings of the Session Judge of the 12th of December 1867, that, where more than one offence is proved, it is not proper to convict of one only, and to acquit of the other, although the offences may be cognate.

Session Judge's order annulled.

(a) 2 Bom. H. C. Rep. 414.