

REG. V. KA'LUBHA'I MEGHA'BHA'I *et al.*1870.
June 9.

Sentence not exceeding one Month—Appeal where one of the co-accused is sentenced to imprisonment exceeding one month—Crim. Proc. Code, Sec. 411.

Where several persons were tried together and convicted, under Sec. 147 of the Indian Penal Code, of rioting, and two of them were sentenced to pay each a fine of Rs. 50, or in default of payment to undergo rigorous imprisonment for a month, and the others were sentenced to a severer punishment, the Session Judge entertained an appeal by all the prisoners, being of opinion that the test, under Sec. 411 of the Code of Criminal Procedure, as to whether a case is appealable, is the maximum sentence passed in it :

The High Court annulled the order of the Session Judge passed with reference to those of the accused who had been only fined Rs. 50, and restored the original sentences passed upon them.

THIS was a reference from the Magistrate of the District of Ahmedábád. The accused, eight in number, were tried and convicted by G. H. Johns, Magistrate F. P., of rioting. Four of the accused were sentenced each to a year's rigorous imprisonment and a fine of Rs. 100, two to a fine of Rs. 100, and the remaining two to a fine of Rs. 50; or, in default of payment, to rigorous imprisonment for six months, two months, and one month respectively. All the prisoners appealed to the Session Judge, who entertained the appeal and reduced all the sentences, though he declined to interfere with the convictions. The Session Judge recorded the following reasons for entertaining an appeal from those persons who were fined only Rs. 50 :—

“The other two accused persons—No. 7, Kálubháí Meghábhái, and No. 8, Jivábhái Dhingábhái, who had been convicted in this case, and sentenced respectively to pay a fine of Rs. 50, or to undergo rigorous imprisonment for one month—also appealed, in the same petition with the others. I reserved for consideration the question as to whether or not their right to appeal is barred by Sec. 411 of the Criminal Procedure Code.

“If it were not for the ruling of the High Court of Calcutta, that jurisdiction over the appeal of one person convicted by a Magistrate does not give constructive jurisdiction to a Court of Session over the convictions of other persons, whose sentences are less than the sentence sufficient to make

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a case appealable (Cal. H. C. No. 922 of 1864*), I would have no hesitation in assuming appellate jurisdiction over the convictions of those persons sentenced only to fines of Rs. 50, and in default to imprisonment for one month. Respect for the ruling of the Calcutta Court has caused me to hesitate, but on consideration I feel so convinced that the ruling is erroneous that I must refuse to be bound by it.

“Sec. 411 of the Criminal Procedure Code runs thus :—

“‘In all cases in which a Court of Session, or the Magistrate of a District, or other officer exercising the powers of a Magistrate, shall pass a sentence of imprisonment not exceeding one month, or of a fine not exceeding fifty rupees, no appeal shall be allowed.’

“In this case sentences above the limit laid down were passed, and in consequence, in my opinion, the whole case becomes appealable. The law does not say, as it easily might, if such were the intention of the Legislature, that a person sentenced to imprisonment for a term not exceeding one month, or to a fine not exceeding Rs. 50, is precluded from appealing, but distinctly sets forth the sentence passed in the case, as the test whether the case is appealable, meaning, as I take it, the *maximum sentence* passed in the case.

“The reason of the law appears to me to be, that appellate machinery is not to be set in motion in cases of trifling moment, and that the maximum amount of penalty inflicted in a case is a fair test of its importance.

“Moreover, I think that if a reasonable doubt arise in interpreting a statute as to appellate jurisdiction, the benefit of the doubt should be given to the jurisdiction. Appellate procedure is an equitable procedure, and the largest, not the smallest, possible construction should be put on statute law affecting such jurisdiction, ‘*ampliare justitiam.*’

“Further it appears that to hold that some convicts in a case may appeal, and that others in the same case may not appeal, leads to a serious difficulty. Take a supposititious case. It is to my mind impossible that it can be good law

* Referred to under Sec. 411 in Criminal Procedure Code by Prinsep.

to hold that if A, B, and C are sentenced respectively to fines of Rs. 1,000, Rs. 500, and Rs. 50, on appeal A and B may get off scot-free, while C, whose case is on all fours with theirs as to proof, but who is entitled to leniency (in the opinion of the original court) on other grounds, is to be mulcted in Rs. 50. I cannot read the law so as to arrive at such an inequitable result. It is with extreme diffidence that I go contrary to the Calcutta precedent, but my opinion is so strong on the point that I must decline to submit it to less authority than that of the High Court to which I am subordinate. I affirm the convictions, and reduce the sentences to fines of Rs. 20 each, in default rigorous imprisonment for fifteen days."

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The reference was considered by WESTROPP, C.J., and LLOYD, J.

PER CURIAM :—The Court annuls the order of the Session Judge, and restores the original sentences passed upon those convicts who were fined only Rs. 50 by the Magistrate F. P.

REG. V. HANMA'PA' bin MALA'PA'.

June 9.

Sentence passed by Subordinate Magistrate—Annulment of Sentence of District Magistrate—Commitment to Court of Session.

Where a District Magistrate annulled a conviction passed by a Subordinate Magistrate, 1st Class, of voluntarily causing hurt by means of an instrument for stabbing, cutting, &c., under Sec. 324 of the Indian Penal Code (an offence cognisable by the Subordinate Magistrate), and directed the Subordinate Magistrate to commit the accused to the Court of Session for trial on the charge of voluntarily causing grievous hurt by means, &c. (a charge cognisable by the Court of Session) :

The High Court annulled the order of the District Magistrate, and restored the conviction and sentence of the Subordinate Magistrate.

THE accused was tried before Shankar Pándurang Pandit, Subordinate Magistrate of the 1st Class in the district of Kaládgi, for the offence of voluntarily causing hurt by an instrument of cutting, under Sec. 324 of the Indian Penal Code, and was sentenced to suffer rigorous imprisonment for six months, and pay a fine of Rs. 150, or in default to suffer