

[APPELLATE CRIMINAL JURISDICTION.]

The QUEEN *Appellant.* 1873.
 September 4.
 RAKHMA' and another *Respondents.*

Code of Criminal Procedure, Secs. 272, 283, and 443—Government appeal against acquittal—Omission of the word 'dishonestly' in charge and record of conviction.

The omission of the word 'dishonestly,' both in the charge and in the record of the conviction, is not a ground for reversal of conviction and sentence, where an accused person has fully understood the nature of the offence with which he is charged, and has not been prejudiced by the omission.

Conviction and sentence recorded by a Magistrate, and reversed by the Session Judge upon this ground, restored by the High Court, on appeal directed by Government under Sec. 272, Cr. Proc. Code.

THE respondents were convicted by A. Keyser, Magistrate F. P. at Pandharpur, under Sec. 411 of the Indian Penal Code, for the offence of receiving stolen property, knowing it to be stolen; and sentenced to two months' rigorous imprisonment.

Upon an appeal preferred by the respondents to R. H. Pinhey, Session Judge of Puna, he reversed the convictions and sentences on the following ground:—

“The receipt of stolen property, even if the property be known to be stolen, is not an offence punishable under Sec. 411 of the Indian Penal Code, unless the stolen property be received *dishonestly*. The policeman who brings stolen property before a court, to be used as evidence, receives the property knowing it to be stolen property; but he commits no offence, because he does not receive the property *dishonestly*. In this case, neither in the charge on which the prisoners were tried, nor in the record of the conviction, is it stated that the appellants *dishonestly* received stolen property. They have, therefore, been convicted of what was not an offence punishable under the section of the Indian Penal Code under which they were sentenced.”

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At the instance of Mr. Keyser, the District Magistrate referred the proceedings to the High Court, which declined to interfere unless the Government should direct an appeal under Act X. of 1872, Sec. 272 (Crim. Proc. Code).

An appeal having been preferred, and a notice thereof given to the respondents, it was heard by MELVILL and NA'NA'BHA'I HARIDA'S, JJ.

Dhirajlál Mathuradás, Government Prosecutor:—The wording of the charge, though it does not contain the word 'dishonestly,' is quite sufficient to apprise the accused persons of the offence charged against them. The evidence in the case also shows the nature of the offence clearly. It cannot, therefore, be said that the accused persons were in any way prejudiced, or that the omission has occasioned a failure of justice. On the contrary, such a failure of justice has been occasioned by the reversal of the convictions by the Session Judge. He referred to Sec. 283 of the Criminal Procedure Code.

[MELVILL, J. :—The illustration (a) to Sec. 443 seems directly in point.]

PER CURIAM:—The Session Judge has reversed the convictions and sentences for no other reason than because the word 'dishonestly' was omitted in the charge, and in the record of conviction. But it is quite clear that the accused persons fully understood the nature of the offence with which they were charged, and that they were not prejudiced by the omission. The omission, therefore, was no ground for the reversal of the convictions and sentences. (The Criminal Procedure Code 1872, Secs. 283 and 443.)

We think that the evidence on the record was sufficient for the conviction of both the accused persons, Rakhmá and Manohar; and we, therefore, reverse the judgment of acquittal, and restore the convictions and sentences recorded by the Magistrate.

Order accordingly.