FULL BENCH

APPELLATE CRIMINAL

Before Bhandari, C.J. Gurnam Singh and Grover, JJ.

THE STATE,—*Appellant*

versus

MANSHA SINGH *alias* BHAGWANT SINGH,—*Respondent.*

Criminal Appeal No. 64 of 1956

1958

Feb. 27th

Code of Criminal Procedure (Act V of 1898)—Sections 369, 430 and 417—Appeal against acquittal—Whether can be entertained after convict's appeal against his conviction on a minor charge has been heard and decided—Section 430—Whether applies to judgments of the High Court— Section 417—Right of the State to appeal—Extent of.

Held, that an appeal against acquittal preferred by the State cannot be entertained when an appeal preferred by an accused against his conviction has already been heard and decided after due notice to the State and after full hearing in the presence of the parties, in spite of the fact that the State appeal against acquittal was pending at the time of decision by the High Court. If both prefer appeals, ordinarily they should be heard together, but if the appeal of the accused is heard and decided by the High Court, there is a pronouncement by that Court which is final under section 430, Criminal Procedure Code, as a decision of the High Court replaces the judgment of the lower Court.

Held, that section 430 of the Code of Criminal Procedure means that wherever an appeal against the judgment of the lower appellate Court is filed under section 417, the finality of the judgment of that Court would be superseded by the judgment of the High Court. This, however, does not mean that even the judgment of the High Court would lose its finality if an appeal against the order of the lower appellate Court has been filed. Section 430 undoubtedly applies to the judgments of the High Court also but the proviso only applies to the lower appellate Court against whose judgment alone an appeal against acquittal can be filed.

Held, (per Grover, J.), that the State has an independent right of appeal conferred by the statute and that right and its exercise should be sustained if it is possible to do so. If, however, owing to the other provisions of the Code and the principle of finality enshrined in sections 369 and 430 the exercise of the right of appeal by the State is lost, it must be held that the right can no longer be exercised.

Case referred by a Division Bench consisting of Hon'ble Mr. Justice Gurnam Singh and Hon'ble Mr. Justice Capoor on 17th September, 1957 to a Full Bench for opinion on the legal point involved in the case.

State appeal from the order of Shri H. S. Bhandari, Additional Sessions Judge, Karnal, dated the 25th November, 1955, for convicting the respondent under section 302 Indian Penal Code instead of 304 part II, Indian Penal Code.

L. D. KAUSHAL, DEPUTY ADVOCATE-GENERAL, for Appellant.

H. S. GUJRAL, for Respondent.

JUDGMENT

Gurnam Singh, J.

GURNAM SINGH, J. The following question was referred to the Full Bench—

> "Does the decision by a Judge of the High Court after full hearing and with notice to both parties, of an appeal against conviction on a minor charge, bar the hearing by the High Court of a pending appeal by the State against the acquittal of the convict on a graver charge comprehending the aforesaid minor charge ?"

The facts which led to the reference are that Mansha Singh was tried on charges under sections 302, 323, 307 and 451 of the Indian Penal Code by the Additional Sessions Judge, Karnal, and was sentenced to seven years' rigorous imprisonment

The State
v.
Mansha Singh
alias Bhagwant
Singh

Gurnam Singh, J.

under section 304, part II, Indian Penal Code, and also to various terms of imprisonment under sections 323, 324 and 451 of the Indian Penal Code; the sentences were ordered to run concurrently. He filed an appeal against his convictions and sentences to the High Court. This appeal came up for final hearing before Kapur, J. The learned Judge by his order, dated 31st of August, 1956, dismissed the appeal maintaining the convictions and sentences passed against the accused. Before the decision of the appeal against the conviction of the accused the State had also filed an appeal against his acquittal under section 302, Indian Penal Code. The Division Bench before whom the appeal against acquittal came for admission passed the following order :—

> "To come up with Criminal Appeal No. 551 of 1955."

Criminal Appeal No. 551 of 1955 was an appeal by the accused against his conviction. When this appeal came up for hearing before Kapur, J., learned counsel appearing for the State prayed that the hearing of the appeal against conviction be postponed in view of the fact that the State had also preferred an appeal against his acquittal. The learned Judge, it appears, proceeded to hear the appeal against conviction and disposed it of by his judgment dated the 31st of August, 1956. He maintained the convictions and sentences recorded by the trial Court against the accused. On the 3rd of January, 1957, a Division Bench of this Court consisting of Kapur and Passey, JJ., admitted the State appeal for hearing by a Division Bench. This appeal against acquittal came up for hearing before me and my learned brother Capoor, J., when Mr. Harbans Singh Gujral, learned counsel for the respondent (accused), raised a preliminary objection against the maintainability of the appeal by

The State
v.
Mansha Singh
alias Bhagwant
Singh

Gurnam Singh, J.

the State against acquittal. After hearing the counsel for the parties we decided to refer the matter to a Full Bench on account of its importance and also in view of some conflict in the judicial decisions by other High Courts.

Now before us counsel for the accused-respondent contends that the judgment of the High Court passed by single Judge on an appeal by the respondent against his conviction is final and cannot be interfered with by way of alteration, reversal or review in view of sections 369 and 430 of the Code of Criminal Procedure. In this view of the matter he urges that the State appeal has become incompetent and incapable of hearing. There appears to be a considerable force in this contention. It is admitted by the learned counsel for the State that the appeal against conviction preferred by the respondent was decided after full hearing in the presence of both the parties and after due notice to them. In such a situation I am firmly of the opinion that the judgment of the trial Court has merged in the judgment of the High Court and has indeed been replaced by it. Section 417 of the Criminal Procedure Code which enables the State to file an appeal against acquittal provides such an appeal to the High Court 'from an original or an appellate order of acquittal passed by any Court other than a High Court.' The contention of the learned counsel for the State that the judgment passed in appeal by this Court was not final because it was an exception provided for in section 417 of the Code cannot prevail, as section 417 itself provides an appeal only against orders of acquittal passed by any Court other than the High Court. It is significant to note that Criminal Procedure Code does not provide a second appeal in criminal cases. Section 430 of the Code, however, provides two Exceptions to this rule of finality of judgments.

These Exceptions are (a) in cases falling under section 417 there shall be a second appeal and the judgment of the lower appellate Court shall not be final, and (b) in cases covered by Chapter XXXII of the Code, i.e., in revisional proceedings the judgment of the lower appellate Court shall be subject to the decision of the revisional Court. We are here concerned with the Exception mentioned in (a). It means that wherever an appeal against the judgment of the lower appellate Court is filed under section 417 the finality of the judgment of that Court would be superseded by the judgment of the High Court. This, however, does not mean that even the judgment of the High Court would lose its finality if an appeal against the order of the lower appellate Court has been filed. Section 430 undoubtedly applies to the judgments of the High Court also but the proviso only applies to the lower appellate Court against whose judgment alone an appeal against acquittal can be filed. In the present case the order of acquittal must be held to have been passed by the High Court as the appeal against conviction was heard after due notice to the State and after full hearing in the presence of the parties. The conviction and sentence were then maintained by the learned Single Judge. Undoubtedly both parties had a right of appeal—the State against acquittal of the accused on a graver charge and the respondent against his conviction on a minor charge. If both prefer appeals ordinarily they should be heard together, but if the appeal of the accused is heard and decided by the High Court, there is a pronouncement by that Court which is final under section 430, Criminal Procedure Code, as a decision of the High Court replaces the judgment of the lower Court. In such a situation the State appeal cannot be entertained. No doubt in the

The State
v.
Mansha Singh
and Bhagwant
Singh

Gurnam Singh, J.

present case a request was made by the counsel for the State for postponing the hearing of the appeal against conviction on account of the State appeal having been filed. Learned Single Judge did not accede to this request presumably on the ground that he did not find much force in the State appeal against acquittal. By that time the appeal against acquittal was not even admitted to a final hearing by the Division Bench. In this connection it is pertinent to note the observations made by Kapur, J., in his judgment, dated the 31st of August, 1956, in appeal by the respondent against his conviction. The learned Judge says :—

> "I am satisfied that the accused had been rightly convicted. Counsel for the State submits that the offence committed by the accused was murder and not merely culpable homicide not amounting to murder. On this point also it cannot be said that the offence caused falls under any of the clauses of section 300 of the Indian Penal Code. I would, therefore, dismiss the appeal of the accused."

> "The appeal filed by the State was never admitted. The order of the Division Bench was 'To come up with Criminal Appeal No. 551 of 1955'. As no notice was sent to the other side I do not think any finding need be given by me or can be given by a Single Judge. In any case I do not agree with the submissions of Mr. Khosla and I would, therefore, order that no action need be taken on that appeal."

This is how the learned Judge felt about the submissions made by the learned counsel for the

State. Presumably the order of the Division Bench was interpreted as amounting to dismissal of the State appeal against acquittal. The learned counsel for the State submitted that it was proper that both appeals had been heard together. Perhaps it was better if it was so done. We are, however, not concerned here with the propriety of the order. We are now only called upon to determine its effects on the State appeal against acquittal. The State has undoubtedly lost its statutory right of audience to this Court. But this right is denied to the State by provisos of section 430 of the Code of Criminal Procedure. As already mentioned the judgment of the High Court becomes final after decision of an appeal against conviction. When the meanings of the statute are plain, they must receive their full effect. Hence it is inadmissible, as is argued by the learned counsel for the State, to consider the resulting injustice following refusal to entertain the State appeal against acquittal. If such a result leads to inconvenience the remedy lies with the Legislature. The duty of the Court is to expound the law as it stands. The manifest intention of the Legislature clearly appears to give finality to the judgments of criminal Courts. This principle, in my opinion, by now stands firmly established and must, therefore, be accepted. The contention of the learned counsel for the State must be repelled.

Learned counsel for the State then contended that the trial Court decided two matters by one judgment, i.e., (a) acquittal under section 302, Indian Penal Code, and (b) conviction under section 304, Indian Penal Code, and that the appeal by the respondent only related to his conviction and as such had nothing to do with the order of acquittal passed by the trial Court. From this he argued that the High Court in appeal against conviction only decided the appeal preferred by the

The State
v.
Mansha Singh
alias Bhagwant
Singh

Gurnam Singh, J.

convict. The appeal by the State still remained unheard and undecided. He further argued that it was beyond the competency of the learned Single Judge to hear and decide the appeal against acquittal. This contention looks attractive at the first sight but appears to be without any substance when probed deeper. It cannot be denied that before the trial Court the only matter for determination was the finding of the nature of the offence, if any, from the proved facts. From these facts the trial Court found the convict guilty of culpable homicide not amounting to murder. In deciding the appeal against conviction the learned Single Judge undoubtedly considered the propriety and legality of his conviction as well as the propriety of the sentence passed by the trial Court. Presumably the learned Judge first considered if on the proved facts the convict was guilty and if so what offence was committed by him. After determining the nature of the offence the learned Judge then considered the propriety of the sentence. In other words he reviewed the entire case against the accused before pronouncing his decision. It cannot be denied that these exactly are the matters which will require determination in the event of entertaining the State appeal against acquittal. On the other hand the competency of the learned Single Judge to hear the appeal against conviction cannot be denied. Therefore, in an appeal against acquittal any finding to the contrary would naturally amount to variance of the judgment already passed by the High Court in appeal against conviction. It means the recording of two convictions on the same set of facts. Even the learned counsel for the State had to admit that the Division Bench hearing the appeal against acquittal was not competent to set aside the conviction already maintained by the Single Judge. So if the contention of the learned counsel for the State is

accepted it will create an anomaly leading to startling results. This situation could never be intended by the Legislature. This is ably illustrated by a learned Judge of the Nagpur High Court in minority judgment in *Mohammadi Gul Rohilla* v. *Emperor* (1), Niyogi, A.J.C., observed :—

> "If an appeal is preferred subsequent to the decision by the High Court of the convict's appeal relating to the minor offence, the Court dealing with such appeal cannot exercise its full powers. I shall explain the position by an illustration : A man is convicted of offence punishable under section 304, but acquitted of offence under section 302. Both the local Government and the convict have the right of appeal. I shall now examine the effect of the High Court's decision in the convict's appeal relating to a minor offence. The Court hearing this appeal can exercise all powers mentioned in (b) of section 423. It may either (i) acquit the accused, or (ii) order a retrial, or (iii) affirm the conviction. Whatever the decision, it cannot be set aside or altered by any Court and it is, therefore, final. (a) If the High Court acquits the accused of the minor offence (e.g., culpable homicide), is the Local Government's appeal against the subordinate original or appellate Court's order of acquittal competent ? I think not ; for this reason that the Court dealing with appeal against acquittal cannot exercise all the powers defined in (a) of section 423. Can it convict the man of murder in the face

(1) A.I.R. 1932 Nag. 121 (F.B.) at page 126

The State
v.
Mansha Singh
alias Bhagwant
Singh

Gurnam Singh, J.

of the High Court's order of acquittal on the same facts ? If it can, which of the two decisions is to prevail ? (b) If the High Court dealing with the convict's appeal orders a retrial, is it open to Court hearing the appeal against acquittal to convict the accused and pass a sentence of death ? Can such a sentence be carried out while the High Court's order of retrial in the convict's appeal stands and is being given effect to ? (c) If the High Court in the convict's appeal affirms the conviction, can the Court hearing the appeal under section 417 order a retrial ? If so, how can this be effective in the face of the other judgment already passed by the same Court ?"

To meet this objection learned Deputy Advocate-General appearing for the State submitted that the conflict in two contrary findings arrived at by the High Court can be resolved by an action of the Government taken under section 401 of the Criminal Procedure Code. The answer to this submission is also supplied by the same learned Judge in the same authority of the Nagpur High Court. The learned Judge observed :—

"The competency of the appellate Court to hear appeals depends upon its power to enforce its orders ; any circumstance which takes away or restricts this power must affect the competency of the Court. It must follow that any appeal filed in such circumstances will turn out to be futile. In other words the appeal itself will be incompetent."

The learned Judge then quoted the observations of Lord Herschell in delivering his opinion upon an analogous question in *Cox* v. *Hakes* (1).—

> "I think it is impossible to read the section. Your Lordships have to construe without seeing that the power to hear and determine an appeal, and the power to enforce the judgment of the Court of appeal in case it should differ in opinion from the Court below, were intended to be co-extensive. And I cannot think that it was ever contemplated that an appeal should be entertained from any class of orders when that which was effected by them could never be effectually interfered with..... and if it had been intended that an appeal should lie against such an order. I think that provision would have been made to enable the Court of appeal to restore to custody the person erroneously discharged. In the absence of such a power the appeal is futile, and this appears to me to be a sufficient reason for holding that the legislature did not intend the right to hear and determine appeals to extend to such cases."

The principle enunciated by Lord Herschell was stated in connection with a case where the legislature did not make any provision for enforcing the appellate Court's judgment. This principle, in my opinion, will undoubtedly apply with equal force to a case where the appellate Court, as in the present case, is unable to enforce the powers conferred on it by law. The Code of Criminal

(1) (1891) 15 A.C. 506 at p. 534

The State
v.
Mansha Singh
alias Bhagwant
Singh

Gurnam Singh, J.

Procedure has made no provision for resolving the conflict between such decisions of a High Court. The very fact that the learned Deputy Advocate-General thinks it necessary to invoke powers of the Government under section 401, Criminal Procedure Code, is itself an argument to prove the incompetency of the appellate Court to hear and determine the appeal. Section 401 of the Code referred to by the learned Deputy Advocate-General gives no power to the Government to reverse the judgment of the Court. It only provides with the power of remitting the sentence. It, therefore, follows that the legislature could not have intended to give a right of appeal in a case where the appellate Court which is to hear the appeal is unable to exercise its powers vested in it by law and enforce its own orders, by reason of another judgment of the same Court having become final and effective. For all these reasons I find myself in agreement with the observations of the learned Judge. In fact the submission of the learned counsel for the State was mainly based on the findings arrived at by the learned Judges in the majority judgment of the Nagpur High Court. If I may say so with respect, in my opinion, the majority judgment of that Court does not state the law correctly. The finding of Macnair, J.C., was mainly based on the decision of the Bombay High Court in *Emperor* v. *Jorabhai* (1). It has now been found by the Supreme Court in *U. J. S. Chopra* v. *State of Bombay* (2), that the law laid down in that authority is not correct. At any rate I prefer to follow the reasoning adopted by Niyogi, A.J.C. Apart from this, section 425 of the Criminal Procedure Code stands in the way of accepting the interpretation sought to be put by the learned counsel for the State. This aspect of the case does

(1) A.I.R. 1926 Bom. 555
(2) A.I.R. 1955 S.C. 633

not necessitate any comments as it is self-explanatory. Section 425 requires the High Court to certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. The Court to which the High Court certifies its judgment, etc., then makes such order as is conformable to the judgment or order of the High Court. If necessary that Court shall amend its record in accordance with the decision of the High Court. In the event of conflicting decisions of the High Court on the same set of facts in the same case unsurmountable difficulty of certification required by this provision of law would naturally arise. This again is a strong indication against the competency of the State appeal against acquittal after the appeal of the convict had already been decided by the High Court. I am, therefore, clearly of the view that an appeal against acquittal in such circumstances is barred. This question has been the subject-matter of decision by the various High Courts. I will now proceed to cite those judicial decisions. In *Emperor* v. *Modkia* (1), it was held—

> "No appeal under S. 417 can be preferred by the Local Government against an order of acquittal when an appeal preferred by the accused against his conviction has already been heard and decided by the High Court. The proper course would be for the Standing Counsel, when an appeal has been preferred by an accused person in such a case to ask that proceedings be stayed to enable the Local Government to prefer an appeal under section 417, if so advised. This difficulty can only arise in cases where an accused person is acquitted of a graver charge, but convicted of a lesser

(1) A.I.R. 1932 Nag. 73

The State
v.
Mansha Singh
alias Bhagwant
Singh

Gurnam Singh, J.

charge, on the same facts. In such a case, both Local Government and the accused person have a right to appeal, the Local Government having a right of appeal under section 417 and the accused person a right of appeal against conviction. Ordinarily the two appeals should be heard together, but if the appeal of the accused person is heard and decided by a High Court before the Local Government has appealed, under section 417, the appeal by the Local Government is barred and cannot be entertained by the High Court, as there has been a pronouncement by that Court, which is final under section 430 of the Code....."

This decision of the Nagpur High Court was overruled by a majority judgment reported in *Mohammadi Gul Rohilla* v. *Emperor* (1). I have already made reference to the majority judgment and have given my reasons for not agreeing with it. The same view, as expressed by the Nagpur High Court in *Emperor* v. *Modkia* (2), and also expressed in minority judgment of the Full Bench as reported in the same authority at page 121 finds support in the Rajasthan and Madhya Bharat High Courts judgments reported as *The State* v. *Babulal and Bherumal* (3), and *State* v. *Kalu* (4). In my opinion this question has been finally concluded by their Lordships of the Supreme Court in *U. J. S. Chopra* v. *State of Bombay* (5). In that case the question was whether after the dismissal of an appeal by the High Court summarily it was open to an accused to show cause against his conviction under section 439(6), Criminal Procedure Code,

(1) A.I.R. 1932 Nag. 121
(2) A.I.R. 1932 Nag. 73
(3) A.I.R. 1956 Raj. 67
(4) A.I.R. 1952 Madhya Bharat 81 (F.B.)
(5) A.I.R. 1955 S.C. 633

in case there was an application for enhancement of the sentence against him. The principle enunciated by their Lordships of the Supreme Court in that case in my view aptly applies to the present case. The entire law relevant to the determination of the present question is reviewed by their Lordships. It is held—

> "Where the accused's petition of appeal or application for revision has been summarily dismissed either without hearing him or after hearing him or his pleader, as the case may be, there is no judgment of the High Court replacing the judgment of the lower Court and the High Court in exercise of its revisional jurisdiction either *suo motu* or on the application of the interested party would be in a position to issue the notice of enhancement of sentence which would require to be served on the accused under section 439(2) so that he would have an opportunity of being heard either personally or by pleader in his own defence.
>
> The right which is conferred on the accused of showing cause against his conviction under section 439(6) is a right which accrues to him on a notice for enhancement of sentence being served upon him and he is entitled to exercise the same irrespective of what has happened in the past unless and until there is a judgment of the High Court already pronounced against his conviction after a full hearing in the presence of both the parties on notice being issued by the High Court in that behalf."

The State
v.
Mansha Singh
alias Bhagwant
Singh

Gurnam Singh, J.

At page 645 the learned Chief Justice observed—

> "With great respect I think that the better reasoning would have been to say that such a dismissal of the revision after a full hearing was a judgment final against both parties on both points of conviction and sentence and that as the State did not, during the pendency of that revision, apply for revision it had, after that dismissal which became a final judgment, no right subsequently to apply for enchancement of sentence and consequently no notice under section 439(2) could issue and no question could arise for the accused person asserting his right under section 439(6).

Again at page 649 his Lordship (Bhagwati, J.), observed—

> "A judgment pronounced by the High Court in the exercise of its appellate or revisional jurisdiction after issue of a notice and a full hearing in the presence of both the parties would certainly be arrived at after due consideration of the evidence and all the arguments and would, therefore, be a judgment and such judgment when pronounced would replace the judgment of the lower Court, thus constituting the judgment of the High Court the only final judgment to be executed in accordance with law by the Court below."

The learned Judge at page 653 observed—

> "The principle as to the finality of judgments applied by the Court by virtue of the provisions of section 369 and section 430 of the Criminal Procedure Code

should not have been confined merely to the question of confirming the conviction but also should have been extended to the confirming of the sentence in so far as the High Court did not see any reason to reduce the sentence already passed by the lower Court upon the accused.

When the High Court hears the appeal on its merits it does not apply its mind only to the question whether the conviction should be confirmed but also applies its mind to the adequacy of the sentence passed upon the accused by the lower Court. In thus applying its mind to the question of sentence it also considers whether the sentence passed upon the accused by the lower Court is adequate in the sense that it is either such as should be reduced or is such as should be enhanced."

At page 660 of the same judgment the learned Judge remarked—

"If the accused had an opportunity of showing cause against his conviction either in an appeal or a criminal revision application filed by him or on his behalf and the conviction was confirmed on a full hearing in the presence of both the parties after the issue of the requisite notice by the Court to the opposite party the judgment of the High Court would replace that of the lower Court which judgment could not be reviewed or revised by the High Court at all in exercise of its revisional powers under section 439(1)."

The State
v.
Mansha Singh
alias Bhagwant
Singh

Gurnam Singh, J.

Finally at page 660 it was observed :—

> "The real test is not whether the accused has had an opportunity of showing cause against conviction but whether a judgment of the High Court pronounced after a full hearing in the presence of both the parties after notice issued in that behalf has replaced the judgment of the lower Court. If the judgment of the lower Court is so replaced there is no occasion at all for the exercise of the revisional powers under section 439(1) of the Criminal Procedure Code."

It is admitted that a notice was issued to the State in the appeal against conviction and the appeal was finally decided by Kapur, J., after full hearing in the presence of both the parties. In these circumstances I find no difficulty in applying the principle enunciated by their Lordships of the Supreme Court to the present case. The observations of their Lordships apply *mutatis mutandis* to the consideration of appeal against acquittal after the confirmation of conviction of the accused in his appeal to the High Court against his conviction. Following this authority, I hold that an appeal against acquittal preferred by the State cannot be entertained when an appeal preferred by an accused against his conviction has already been heard and decided after due notice to the State and after full hearing in the presence of the parties, in spite of the fact that the State appeal against acquittal was pending at the time of decision by the High Court. My answer, therefore, to the reference is in the affirmative.

Grover, J.

GROVER, J. I agree with the answer proposed by my learned brother Gurnam Singh, J., but I wish to state my own reasons.

There is no need of recapitulating the facts. It would suffice to refer to the principal charge which had been framed against the respondent and which was in the following terms :—

> "That you, on the 3rd day of May, 1955, at Vijay Lakshmi Weaving Factory, Panipat, Police Station City Panipat, did commit murder by intentionally causing the death of Gurbachan Singh deceased, and thereby committed an offence punishable under section 302 of the Indian Penal Code and within the cognizance of the Court of Session at Karnal."

The learned Sessions Judge, by whom the respondent was tried on the above charge and other charges (with which we are not concerned in the present case), found that the injuries inflicted on Gurbachan Singh deceased were sufficient in the ordinary course of nature to cause his death ; but, from the facts established, he came to the conclusion that the respondent had no intention of causing injuries that he knew were likely to cause death. He held that the respondent had intentionally caused the death of Gurbachan Singh by inflicting injuries without any intention of causing them as such. The respondent was, therefore, convicted under section 304 Part II of the Indian Penal Code for culpable homicide not amounting to murder, but was acquitted of the charge under section 302.

Against the judgment of the Sessions Judge two appeals were taken to this Court—one by the respondent against his conviction and the other by the State against his acquittal. Both these appeals were certainly competent under the Code.

The State
v.
Mansha Singh
alias Bhagwant
Singh

Grover, J.

However, the appeal of the respondent was heard first and decided on 31st August, 1956. A learned Single Judge, after hearing the respondent as well as the State, maintained the conviction and the sentence. The question that at once arises is the effect of the decision of this Court given on 31st August, 1956, on the appeal preferred by the State under section 417 of the Code of Criminal Procedure. There can be no doubt that the State had an independent right of appeal conferred by the statute and, in accordance with well-settled principles of interpretation, that right and its exercise should be sustained if it is possible to do so.

If, however, owing tc the other provisions of the Code and the principle of finality enshrined in sections 369 and 430 the exercise of the right of appeal by the State is lost, it must be held that the right can no longer be exercised.

The first provision, which deserves notice on the question of finality of criminal judgments, is section 369 which runs as follows :—

> "Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court by the Letters Patent or other instrument constituting such High Court, no Court, when it has signed its judgment, shall alter or review the same except to correct a clerical error."

It would be pointless to refer to earlier decisions of various High Courts with regard to judgments to which finality attaches under section 369, as the pronouncement of their Lordships of the Supreme Court in *U. J. S. Chopra* v. *State of Bombay* (1), is the last word on the subject. The question of a

(1) A.I.R. 1955 S.C. 633

correct interpretation of section 369 is important because, if the judgment of Kapur, J., pronounced on 31st August, 1956, in the appeal filed by the respondent was the final judgment and if section 369 applies to appellate judgments of this Court, then there can be no review of the previous judgment or its substitution by another judgment which will be given by this Court in the State appeal filed under section 417. In the Supreme Court itself there has not been unanimity on the question whether finality of section 369 attaches to the judgments pronounced by the trial Courts or whether it also extends to judgments pronounced by appellate Courts which would be this Court in the present case. In *Chopra's case* (1), according to the view of S. R. Das, J. (as he then was), the finality of section 369 attaches to judgments pronounced by all trial Courts including the High Court in the exercise of its original criminal jurisdiction, and it has no bearing on the question of finality of appellate judgments which is specifically provided for by section 430 of the Code. On the other hand, Bhagwati and Imam, JJ., made a distinction between two classes of cases—

(1) Appeals and revisions which were dismissed summarily or *in limine* without issuing notice to the opposite party; and

(2) such appeals and revisions as were heard, after notice on the merits and then decided.

Their Lordships held that, with regard to class (1), the principle of finality under section 369 would not apply; but, with regard to class (2), it would be fully applicable when once a judgment of the High Court had replaced that of the lower Court and in such cases the High Court would not be

(1) A.I.R. 1955 S.C. 633

The State
v.
Mansha Singh
alias Bhagwant
Singh

Grover, J.

competent to review or revise its own judgment. In the said case before the Supreme Court the points were almost identical. The question was how far it was open to the accused person to exercise the right under section 439(6) when a petition for enhancement of sentence had been made after dismissal of his petition for revision by the High Court against his conviction and sentence. According to the majority judgment, the principle of finality did not apply as there had been summary dismissal and the judgment of the High Court had not replaced the judgment of the lower Court; but their Lordships laid the law very clearly and their observations may be summarized in the following manner :—

(i) Section 369 referred to judgments when both sides had been heard and decision given on the merits. The judgment of the High Court thus pronounced was the expression of an opinion of the Court arrived at after due consideration of evidence and all the arguments and would, therefore, be either a judgment of conviction or acquittal.

(ii) A judgment pronounced by the High Court in the exercise of its appellate or revisional jurisdiction, after issue of notice and a full hearing in the presence of both the parties, would be a judgment and when pronounced it would replace the judgment of the lower Court, thus constituting the judgment of the High Court the only final judgment to be executed in accordance with law by the Court below.

(iii) When the judgment of the High Court is so given, as stated above, there would

be no occasion at all for the exercise by the High Court of its revisional powers which can only be exercised *qua* the judgment of the lower Court and certainly not *qua* its own judgments the judgments of the High Court in these circumstances being invested with finality and otherwise being outside the purview of the exercise of its revisional jurisdiction, there could be no question of enhancement of sentence after the judgment in the revision against conviction had already been given by the High Court.

The next question that arises is the effect of the Exception provided in section 430 which is as follows :—

> "Judgments and orders passed by an Appellate Court upon appeal shall be final, *except* in the cases provided for in section 417 and Chapter XXXII.

S. R. Das, J. (as he then was) held that section 369, being subject to the other provisions of the Code, must be read as subject to section 430, and, as the finality enshrined in the latter section did not attach to decisions or orders made on revision by reason of Chapter XXXII being expressly excepted from its operation, section 369 could not affect cases provided for in the said Chapter. Section 439 (6) was not, therefore, controlled by section 369. On the contrary section 439(6) must be read as controlling section 430. Bhagwati and Imam, JJ., were of the view that the right, which was conferred on the accused showing cause against his conviction under section 439(6) of the Code of Criminal Procedure, was a right which accrued to him on a notice

The State
v.
Mansha Singh
alias Bhagwant
Singh

Grover, J.

for enhancement of sentence being served upon him and the said right was not curtailed by anything contained in the provisions of section 439 nor by anything contained in section 369 or section 430 of the Code of Criminal Procedure; but their Lordships laid down the over-riding principle that all this was possible only so long as there was no judgment of the High Court already pronounced against the conviction of the accused after a full hearing in the presence of both the parties on notice being issued by the High Court in that behalf. The ratio of the decision of the majority of their Lordships of the Supreme Court which is binding on us, therefore, is that once the judgment of the High Court has replaced the judgment of the lower Court when it had been pronounced after a full hearing and in the presence of both the parties, that alone would be the final judgment. This principle as to the finality of criminal judgments had been adopted by their Lordships of the Supreme Court in an earlier case, *Janardhan Reddy and others* v. *The State of Hyderabad and others* (1). The difficulty, however, is created by the words "except in the cases provided for in section 417 and Chapter XXXII" occurring in section 430. It is contended on behalf of the State that, although the judgment of this Court pronounced on 31st August, 1956, would have become final in accordance with the provisions of section 430, nevertheless, the State appeal filed under section 417 fell within the Exception and, therefore, such a judgment could not be regarded as final and should be deemed to be subject to the result of the appeal. This argument is specious and looks plausible at first sight, but, if once it is held that the combined effect of section 369 and section 430 of the Code of Criminal Procedure is that a judgment in appeal against conviction of the accused

(1) A.I.R. 1951 S.C. 217

given by the High Court replaces the judgment of the lower Court and becomes final for all purposes, then there is an end of this argument and it could not be advanced further. In the Supreme Court case itself the effect of this Exception with particular reference to Chapter XXXII, which appears along with section 417 in the Exception in section 430, was considered and the final decision of the majority was that the real test was not whether the accused had an opportunity of showing cause against conviction but whether a judgment of the High Court pronounced after a full hearing in the presence of both the parties had replaced the judgment of the lower Court. If the judgment of the lower Court was so replaced, there was no occasion at all for the exercise of the revisional powers.

The learned counsel for the respondent has attempted to raise an argument on the general principle of law that a person cannot be convicted twice on the same set of facts. He contends that in an appeal the Court considers—

(a) Whether the accused is guilty ?

(b) What is the offence established on the facts proved ?

(c) What punishment should be awarded ?

In this case, according to the submission, it has been finally decided by this Court that the respondent should be punished for the minor offence under section 304 of the Indian Penal Code. If the State appeal is now entertained and if this Court comes to the conclusion that the offence proved on the same set of facts is one of murder, another punishment will be awarded, namely, death or transportation for life. This will directly result in

The State
v.
Mansha Singh
alias Bhagwant
Singh

Grover, J.

two punishments being awarded for an offence based on the same set of facts. The counsel did not amplify this argument by any authority or material.

The basic principle of criminal jurisprudence, however, which is embodied in the ancient maxim "*Nemo debet bis puniri proo uno delicto*" that is to say that no one ought to be punished twice for one offence, is well known indeed. In *The Queen* v. *King* (1), it was observed by Hawkins, J. at page 218 that it was against the very principles of criminal law that a man should be placed twice in jeopardy upon the same facts. In that case a person had been previously convicted upon a charge for obtaining credit for goods by false pretences. It was held that he could not afterwards be convicted upon a further indictment charging him with larceny of the same goods. In *The King* v. *Barron* (2), the principle was stated in this manner : "It is thus, that the law does not permit a man to be twice imperilled of being convicted of the same offence." In *Queen* v. *Miles* (3), Charles, J., with whose judgment Lord Coleridge, C.J., and Grantham, J., concurred, referred to the rule as well established rule at common law—that where a person has been convicted for an offence by a Court of competent jurisdiction, the conviction is a bar to all further criminal proceedings for the same offence and observed further : "This rule has ben acted on again and again, and I can see no reason why it should not be acted on in this case. It cannot be material that a magistrate has power by statute to deal with a convicted person otherwise than by fine or imprisonment, for it is the conviction and not the nature of the sentence which constitutes the bar. The principle is that

(1) (1897) I Q.B.D. 214
(2) (1914) 2 K.B. 570
(3) (1890) 24 Q.B.D. 423

no man shall be placed in peril of legal penalties more than once on the same accusation." In the same case Hawkins, J., made the following observations :—

> "No doubt it seems a little startling that a conviction for a common assault, accompanied by a shilling fine or a dismissal of the complaint as too trifling for any punishment, should afford an answer to a subsequent indictment for that same assault, upon conclusive evidence that it was accompanied by an intent to murder; but reason and good sense point out that, even at the risk of occasional miscarriages of justice, when once a criminal charge has been adjudicated upon by a Court having jurisdiction, that adjudication ought to be final, and, after all such miscarriages are very rare."

It is stated in Broom's Legal Maxims that it is an established fact that out of the same state of facts, a series of prosecutions against a prisoner is not to be allowed, *R.* v. *Elrington* (1), *Welton* v. *Taneborne* (2). The principle of "*Nemo debet bis vexari*" has been partly embodied in Article 20(2) of the Constitution of India. If a man is indicted again for the same offence in an English Court, he can plead as a complete defence his former acquittal or conviction, or, as it is technically expressed, take the plea of "*autrefois acquit*" or "*autrefois convict.*" The corresponding provision in the Federal Constitution of the United States of America is contained in the Fifth Amendment which provides *inter alia*—

> 'Nor shall any person be subjected for the same offence to be put twice in jeopardy of life and limb."

(1) 1 B and S 688, 696
(2) 99 L.T. 668

The State
v.
Mansha Singh
alias Bhagwant
Singh

Grover, J.

Article 39 of the Japanese Constitution provides—

> "No person shall be held criminally liable for an act .....of which he has been acquitted, nor shall he, in any way, be placed in double jeopardy."

There was no corresponding provision in the Government of India Act, 1935, itself; but the principle was recognised and adopted by the Indian Legislature and embodied in the provisions of section 26 of the General Clauses Act and section 403 of the Code of Criminal Procedure. It has, however, been held in *S. A. Venkataraman* v. *The Union of India* (1), that the common Law rule in England or the doctrine of "Double Jeopardy" as found in the American Constitution has not been embodied in their entirety in Article 20(2) of our Constitution, as the aforesaid Article does not contain the principle of "*autrefois acquit*" at all. According to their Lordships of the Supreme Court, the words "prosecuted and punished", as appearing in Article 20(2), are to be taken not distributively so as to mean prosecuted or punished; but both factors must co-exist in order that the operation of the clause may be attracted. It is perfectly true that in the present case the State appeal cannot be regarded as a second trial or a second prosecution and it cannot be said that the respondent is being prosecuted for the same offence. Therefore, strictly speaking, the matter will not be covered by the aforesaid Article, but, when the provisions of section 403 of the Code of Criminal Procedure are examined, there is a definite bar so far as the trial of the respondent is concerned on the charge of murder after he has been convicted of culpable homicide. This is clear from Illustra-

(1) 1954 S.C.A. 466

tion (d) occurring under section 403 which is as follows :—

> "A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B."

The provisions of section 403 again would not apply as no second trial is being held in the present case ; but the principle, which is embodied in Illustration (d) is of the utmost importance. It is quite clear that, if a person has been convicted of a minor offence on the same facts, he cannot later on be tried and convicted on the same facts for a graver offence. In English Law also, an acquittal upon an indictment for murder may be pleaded a bar to an indictment for manslaughter on the same facts and *vice versa*. [*See Holcrafts case* (1)]. The case, *Reg.* v. *Grimiwood* (2) (also reported in annual Digest T.L.R. Vol. XIII at page 70), is very instructive. Charles Grimwood was indicted for unlawfully inflicting grievous bodily harm to a policeman, named William Waite at Hastings. Other counts charged the prisoner with "unlawful wounding" and "unlawfully assaulting, occasioning actual bodily harm." The jury at the Sessions trial gave a verdict finding him guilty of a common assault by striking the policeman in the face, but did not agree as to the other counts. The Recorder then discharged the jury, and sent the prisoner for trial at the assizes on the first three counts. The defence on behalf of the prisoner was one of "*Autrefois convict*", and it was submitted that the finding of the jury at Hastings was a bar to any retrial as the prinsoner had already been put on his trial on the same facts and convicted of a common assault which was the verdict the jury

(1) 1578 2 Hale 246
(2) (1896) 66 J.P. 809

The State
v.
Mansha Singh
alias Bhagwant
Singh

Grover, J.

could find on any one of the four counts of the indictment. It was submitted on behalf of the prosecution that no verdict had ever been given on the first three counts of indictment. Baron Pollock, however, posed a question as follows:—

> "How can you separate the various blows struck within a few seconds of each other ?"

and observed—

> "This is not a case of an assault in the morning followed by another in the evening. The whole affair was practically one assault, and the jury have found a verdict of common assault."

He then referred to the words of Chief Justice Cockburn—

> "We must bear in mind the well-established principle of our criminal law that a series of charges shall not be preferred, and, whether a person accused of a minor offence is acquitted or convicted, he shall not be charged again on the same facts in a more aggravated form."

Judgment was entered for the prisoner on the plea of "*autrefois convict*". The principle laid down by Chief Justice Cockburn is one of the basic principles which finds expression in Illustration (d) to section 403 of the Criminal Procedure Code, as already mentioned. It is in the light of these principles that the question, which has been referred to us, has to be decided. Nobody can possibly urge that there has been no final judgment in the matter of conviction for culpable homicide in the present case. The judgment of Kapur, J.,

given in August, 1956, has set the seal of finality and the respondent has clearly been convicted of culpable homicide not amounting to murder. Can it now be said that, notwithstanding the principle recognised in Illustration (d) (Section 403) and stated so lucidly by Chief Justice Cockburn, the respondent can still be punished on the same facts for the more aggravated offence of murder? It would be contrary to these basic concepts, namely, that no one should be punished twice and a clear departure from the rule "*Nemo debet bis vexari pro una et eadem causa*" if this Court now were to entertain the appeal and proceed to convict the respondent under section 302 on a finding that he was guilty of murder, on the same facts on which he had already been convicted and punished for culpable homicide not amounting to murder. It will be proper at this stage to examine what the result will be if in a similar case the High Court in an appeal against conviction on the lesser offence acquits the accused and thereafter a State appeal comes up for decision before the same Court and it decides to convict the accused on a graver charge and sets at naught the previous acquittal which became final after the first judgment. Even Macnair, J.C., in the Nagpur Full Bench case, *Mohammadi Gul Rohilla* v. *Emperor* (1), agreed that if the convict had appealed and the finding and sentence had been reversed with or without an order for retrial, the appeal of the local Government must fail. While testing the validity of a particular point, it is necessary to pursue the results which will flow from a particular view to logical conclusion. With all respect to Macnair, J.C., it will be wholly illogical to hold that in a certain set of events, namely, if the appeal is dismissed and the conviction is confirmed on the lesser offence, the State appeal with regard to the graver offence can

(1) A.I.R. 1932 Nag. 121

The State
v.
Mansha Singh
alias Bhagwant
Singh

Grover, J.

still proceed ; but if the previous appeal results in acquittal of the accused of the lesser charge, it cannot proceed. The American Law Institute framed certain model statutes and in the (Administration of Criminal Law, Double Jeopardy) proposed final draft 1935, suggested legislation on the following lines :—

> "(Section 18) where proof of the same facts is sufficient to convict a person of either of two offenses, a conviction or acquittal of such person of one of such offenses is a bar to a prosecution of such person for the other of such offenses based on the same facts.
>
> (Section 19), where a person has been convicted of an offense on evidence proving him guilty not of that offense but of another offense he shall not be prosecuted for the offense proved unless the conviction has been set aside."
>
> (*See* Criminal Law and its Enforcement by Waite).

This illustrates the principle which is firmly established in England as well as America that where a person has been convicted for an offence by a Court of competent jurisdiction, the conviction is a bar to all further criminal proceedings for the same offence. I consider that there is nothing in the Code of Criminal Procedure which runs counter to this principle. On the contrary, the rule is enshrined in section 403 of the Code of Criminal Procedure as also partly in Article 20(2) of the Constitution of India. I am fully alive to the fact that the present case does not fall directly within the ambit of either of the aforesaid provisions ; but the question is the extent to which the

aforesaid principle should be kept in mind while examining the question whether the State appeal can now proceed in spite of the fact that the respondent has already been convicted and sentenced for culpable homicide on the same set of facts on which he is now being sought to be convicted and sentenced under section 302 of the Indian Penal Code. It seems to me that the principle upon which "*autrefois acquit*" and "*autrefois convict*" are based can, apart from the rule of double jeopardy, be founded on that of finality of judgments. Basu, in his well-known Commentary on the Constitution of India, Volume I, page 251, actually refers to this matter and states that the principle, upon which "*autrefois acquit*" is founded, is sometimes stated as different from that of double jeopardy, viz., that of finality of judgment.

In the United States of America, majority of the Courts consider that a State has no right to appeal or seek a review in a criminal case, the rule apparently being based primarily upon the ground that to grant to the State the right to appeal or review would be to place the defendant twice in jeopardy, and statutes granting the right to appeal to the State have been held to be unconstitutional. (*See* Criminal Law and Procedure by Hall, page 899). It is not possible to go to that extent here and even in the States it has been held in some cases that, since an appeal involves merely a continuation of the original prosecution and the original jeopardy, a statute expressly allowing the State to appeal from a verdict of acquittal is valid ; but there can be no denying the fact that in the Anglo-American system of jurisprudence as also in this country the rule that an accused person, who has been convicted of an offence, cannot afterwards be convicted and punished on the same facts had and has deep roots and

The State
v.
Mansha Singh
alias Bhagwant
Singh

Grover, J.

there can be no reason why it should not be applied while deciding the present matter.

Apart from these considerations, the provisions of section 425 of the Code of Criminal Procedure cannot be ignored. According to that section, whenever a case is decided on appeal by the High Court it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed, and the Court to which the High Court certifies its judgment or order has thereupon to make such orders as are conformable to the judgment or order of the High Court, and, if necessary, the record has to be amended in accordance therewith. In the present case, according to the judgment of the High Court, the previous order passed by Kapur, J., in August, 1956, must have been certified. Now, if the State appeal is entertained and a conviction is recorded under section 302 and punishment awarded according to law, another order will have to be certified by this Court which will mean a clear conflict between the decisions of the High Court on the same set of facts. If Kapur, J., had acquitted the respondent in the appeal filed by him, then he would have been entitled to be set at liberty and the record of the Court below would have been amended in accordance with the provisions of section 425. In such a case, if the present appeal had been entertained and decided against the respondent, another order would have to be certified which would involve either a sentence of death or one for transportation for life. This would be on the same set of facts and the question would at once have arisen which judgment is to be executed. The Legislature could never have intended such results and, therefore, it is exceedingly difficult to hold that the State appeal could have ever been intended to be capable of being proceeded

with if once a final judgment has already been given by this Court on the same set of facts.

It would be useful now to refer to some of the decided cases on the point. The very first case, in which a similar question arose, is *Emperor* v. *Modkia* (1). There it was held by Subhedar and Staples, A.J.Cs., that no appeal under section 417 could be preferred by the local Government against an order of acquittal when an appeal preferred by the accused against his conviction had already been heard and decided by the High Court. There also certain persons had been convicted under the latter part of section 304 of the Indian Penal Code and the appeals of some of them against that conviction had been dismissed. The local Government then preferred an appeal under section 417 against the acquittal of one of them under section 302 of the Indian Penal Code. The matter was not considered at any great length and, apart from the general observations, this case is not of any great assistance. In the same year a Full Bench of the same Court reconsidered the matter in *Mohammadi Gul Rohilla* v. *Emperor* (2). Macnair, J.C., took the view that the State appeal in such circumstances was quite competent. Subhedar, A.J.C., who had taken a different view in the previous case, agreed with Macnair, J.C.; but Niyogi, A.J.C., gave a dissenting judgment which was more reasoned than the previous one. Even Macnair, J.C., on an interpretation of section 430 of the Code thought that the Exception mentioned in the aforesaid section furnished no authority for the proposition that a Court could vary its own judgment when deciding an appeal presented under the provisions of section 417. The learned Judicial Commissioner referred to *Emperor* v. *Jorabhai* (3), which decided that the dismissal of

(1) A.I.R. 1932 Nag. 73
(2) A.I.R. 1932 Nag. 121
(3) 50 Bom. 783

The State
v.
Mansha Singh
alias Bhagwant
Singh

Grover, J.

the appeal against the conviction would not prevent the enhancement of the sentence under the provisions of section 439 of the Code. That authority was applied *mutatis mutandis* to the consideration of an appeal against acquittal after confirmation of a conviction. It was further held by the learned Judicial Commissioner that the judgment confirming the conviction for the minor offence did not prevent a decision that a more serious offence had been committed. The view that an appeal against acquittal was competent after an appeal against the conviction had been dismissed, was sought to be supported by two considerations. In the first place, the appeal against conviction might have been summarily dismissed and elementary principles of justice demanded that the local Government should not be precluded from appealing by an order passed behind its back. In the next place, had the conviction and acquittal dealt with two separate offences, it was clear that a judgment passed in appeal against the conviction would not prevent consideration of an appeal against acquittal, and it was considered impossible to interpret section 430 as allowing such an appeal but allowing no appeal when the conviction was of a minor offence. The argument with regard to section 403 of the Code of Criminal Procedure was raised, but it was neither developed nor properly examined. It was dismissed on the short ground that it referred to a fresh trial and had no application to the case. The judgment of the learned Judicial Commissioner suffers from the infirmity that it followed *Emperor* v. *Jorabhai* (1), which has now been expressly overruled by the majority judgment of their Lordships of the Supreme Court in *Chopra's case* (2) (*supra*). The question of finality of judgments of the High Court and the bar created by section 369 once an appeal

(1) 50 Bom. 783
(2) A.I.R. 1955 S.C. 633

against conviction had been heard and decided on the merits, was not considered in connection with the maintainability of the State appeal under section 417. The difficulty, which is created in such cases, was sought to be overcome by the observation that the High Court would presumably make a recommendation to the Government that action should be taken under the provisions of section 401 of the Code. Nor was the principle that there should not be a second conviction and a second punishment if there has already been a previous conviction and punishment on the same set of facts, considered and examined. With respect the view of the learned Judicial Commissioner cannot be sustained in the face of the judgment of their Lordships of the Supreme Court in *Chopra's case* (1), and the other principles discussed above. The reasons given in the dissenting judgment of Niyogi, A.J.C., were quite formidable, particularly with reference to the illustrations given by him. He relied on another reason which was indeed weighty. Basing himself on the observations of Lord Herschell in *Cox* v. *Hakes* (2), it was stated that where the appellate Court was unable to enforce the powers conferred on it by law, the right of appeal should be deemed not to exist. It was observed that the Code made no provision for resolving the conflict between the decisions of the High Court of the nature indicated. The following observations deserve particular notice:—

> 'It must be noticed that the local Government has no power to reverse the judgment, but only to remit the sentence. It must, therefore, follow that the legislature could not have intended to give a right of appeal in case where the appellate Court which is supposed to hear

(1) A.I.R. 1955 S.C. 633
(2) (1891) 15 A.C. 506

The State
v.
Mansha Singh
alias Bhagwant
Singh

Grover, J.

the appeal is unable to exercise its powers vested in it by law and enforce its own orders, by reason of another judgment of the same Court having become final and effective."

I am in respectful agreement with the view expressed by Niyogi, A.J.C.

A Full Bench of the Madhya Bharat High Court had occasion to consider an identical question in *State* v. *Kalu, son of Girdhari, and another* (1). The view accepted was that where after an appeal by the accused against conviction had been dismissed by the High Court, if an appeal was filed against acquittal of the accused of other charges by the Government under section 417 such an appeal was not competent, the reason being that the previous decision was final; and, if the appeal against acquittal was heard on merits, it might lead to a disturbance so far as the finality of the previous judgment was concerned. Main reliance was placed by Chaturvedi, J., on the decision of Niyogi, A.J.C., in *Mohammadi Gul Rohilla* v. *Emperor* (2), and the previous decision in *Emperor* v. *Modkia* (3). Apparently, the view of Macnair, J.C., was not accepted. The Madhya Bharat Court rested its decision mainly on the principle of finality of judgments enshrined in section 369 of the Code, and the fact that the Code in spite of several amendments gave no power of review to any Court in a criminal case. No other reasons were stated, but the Madhya Bharat decision supports the view that the State appeal in such circumstances cannot proceed. The point was hardly considered directly in the *State* v. *Babulal and Bherumal* (4), and, therefore, that case can be of no help.

(1) A.I.R. 1952 M.B. 81
(2) A.I.R. 1932 Nag. 121
(3) A.I.R. 1932 Nag. 73
(4) A.I.R. 1956 Raj. 67