

## REVISIONAL CRIMINAL

Before Soni J.

THE STATE,—Petitioner.

versus

KANGAN,—Respondent.

Criminal Revision No. 297 of 1952.

1952

November  
25th

*Code of Criminal Procedure (Act V of 1898)—Section 439—Revisional Powers—Scope of—When to be exercised to enhance sentence.*

K caused grievous hurt to B. B.'s son grappled with K and caused him ten injuries. K was convicted under section 325 Indian Penal Code and was sentenced to pay a fine of Rs. 100 on 29th October, 1951. The State filed a revision for enhancement of sentence in the Court of the Sessions Judge who referred the case to the High Court with a recommendation that the sentence of fine only was illegal and in the circumstances of the case a substantive sentence of imprisonment was called for. The reference was made in March, 1952 and it was heard in November 1952.

*Held*, that the revisional powers of the High Court are intended for the redress of genuine grievances and not of mere formal defects. Even if the sentence passed by the lower court is irregular or illegal the High Court is not bound to alter or enhance it. The power must be exercised having regard to the facts of each particular case.

*Case reported by S. Harbans Singh, Barrister-at-law, Sessions Judge, Ludhiana, with his letter No. 777, dated Ludhiana, the 27th March, 1952, for revision of the order of Shri Sawan Mal, Magistrate, 1st Class, Ludhiana, dated the 29th October, 1952, convicting the petitioner (Reported under section 438 Criminal Procedure Code.)*

*Charge:—*Under Section 325 Indian Penal Code.

The accused, on conviction by Dewan Sawan Mal, exercising the powers of a Magistrate of the First Class in Ludhiana District, was sentenced, by Order, dated the 29th October, 1951, under section 325 of the Indian Penal Code to a fine of Rs. 100 or in default to undergo two months' rigorous imprisonment.

The facts of this case are as follows:—

Kangan, aged 30 was challaned under section 325 I.P.C., for having caused injuries to Mst. Bachni with a *dang*, which resulted in the fracture of her right leg. The learned trial Magistrate convicted the accused and sentenced him to a fine

of Rs. 100 or in default to under go two months' rigorous imprisonment.

The proceedings are forwarded for revision on the following grounds:—

If a person is convicted under section 325 I.P.C., he is liable to be punished with a term of imprisonment and is also liable to fine. Thus a substantive sentence of imprisonment has to be passed in case of conviction under section 325 I.P.C. and consequently the sentence of fine only is illegal. According to the findings of the trial Magistrate, the accused caused a grievous injury by breaking the leg of Mst. Bachni, without any reasonable provocation and a substantive sentence of imprisonment under section 325 I.P.C. is not only obligatory but is also called for under the circumstances. The proceedings are, therefore, forwarded to the High Court with the recommendation that the Hon'ble Court may be pleased to set aside the sentence passed and substitute a sentence warranted by law.

Mr. YASH PAL GANDHI, Advocate, for Advocate-General, for the Petitioner.

NEMO, for the Respondent.

#### ORDER OF THE HIGH COURT

Soni, J.

SONI, J. On the 1st of August 1951 Ujagar Singh, a boy of about 12 years of age, had gone out to graze his cattle. The accused Kangan who is a Muslim Gujar aged about 30 years was also grazing his cattle there. Some row took place between Ujagar Singh and Kangan regarding trespass of cows and it is said that Ujagar Singh was given a beating by Kangan. In the evening Ujagar Singh came home and complained about the matter to his aunt Bachni. Bachni asked the accused as to why he had given beating to her nephew. The accused appears to have said that he would give him more beating and hit Bachni on the leg with a dang. Bachni's son Kartar came out and the accused and Kartar Singh grappled with each other, the result of which was that the accused was given ten injuries. Bachni was examined by a doctor who found that there was a contusion mark on her leg and the tibia bone was fractured. This is the only injury which because of the fracture is a grievous injury. The Magistrate believed the story but having regard to the nature of the

quarrel and of the fact that the accused had received sufficient punishment from Bachni's son Kartar Singh, he sentenced the accused to pay a fine of Rs. 100 though he convicted him under section 325, Indian Penal Code. Thereupon there was a revision taken to the Sessions Judge, Ludhiana, who recommended the case for enhancement of sentence on the ground that under section 325 it is obligatory on the Court convicting the accused to sentence the accused to a term of imprisonment to which a fine may or may not be added.

Mr Gandhi in support of the reference has said that the punishment of imprisonment being imperative it was the duty of the Magistrate to impose a substantive sentence of imprisonment in addition to the fine of Rs. 100 which he had imposed on the accused. The conviction of the accused was on the 29th of October 1951. The reference by the Sessions Judge is dated the 22nd of March 1952, and today is the 25th of November 1952. After such a long delay I would not like to enhance the sentence to one of imprisonment. Moreover, the enhancement of the sentence in such cases is not always done. Sir Shadi Lal in a ruling reported in 1913 P.L.R. 313 referred to a case of *Empress v. Chuni Lal* (1), in which Sir Meredyth Plowden stated the principle on which the Chief Court acted as a Court of revision in relation to the enhancement of sentences. Sir Meredyth Plowden made the important observation that the Court is in particular slow to interfere where interference involves imprisonment of persons already..... discharged from jail though this circumstance was no insuperable difficulty. There are a number of other authorities in which it has been held that though an illegality of the kind has been committed it is not obligatory on the High Court to interfere in revision. The authorities to which reference may be made are of Mr. Justice Skemp in *Emperor v. Ghani Shah and others* (2), of a Division Bench of Allahabad High Court reported in *Bisheshar and others v. Rex* (3), and of a Division

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(1) 7 P.R. 1889

(2) A.I.R. 1937 Lah. 131

(3) A.I.R. 1949 All. 213

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Bench of Patna High Court reported in *Ram Chander Rai and others v. Ram Bela Tewari* (1). In the last-mentioned case the Patna High Court said—

“Notwithstanding that the sentence was irregular we shall not interfere under our revisional powers which are intended for the redress of genuine grievances and not of mere formal defects.”

The only case to which Mr Gandhi made reference and in which the High Court enhanced the sentence was *In re Venkata Subbayya* (2), but it is to be noticed that in that case the learned Judge, who decided the case, held that the sentence inflicted in that particular case was inadequate.

Coming to the present case, we find that the incidents of this nature are of common occurrence and in the present case substantial punishment was given to the accused by Bachni's son Kartar Singh who gave him sufficient beating. This beating was taken into account by the Magistrate when he sentenced the accused to a fine only. The occurrence took place, as I have said before, on the 1st of August, 1951 and on the 25th of November, 1952, I am not prepared to sentence the accused to undergo imprisonment in the circumstances of the present case. I, therefore, reject the reference.

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(1) A.I.R. 1933 Pat. 179(1).  
(2) A.I.R. 1942 Mad. 550