

PART E.-APPEALS FROM ORDERS OF ACQUITTAL.

Sessions Judges and District Magistrates should bear in mind the following order of the State Government regarding appeals against acquittals under section 417 of the Criminal Procedure Code.

Appeal to be filed in certain cases.

The State Government will not direct an appeal-

- (1) Where the case is trifling in itself and the acquittal involves no erroneous principles of law, the correction of which is of public importance;
- (2) Where, however, serious or otherwise important the case, the legal guilt of the accused is fairly questionable or the evidence admits of any reasonable doubt, and the Court has considered and Weighed it with impartiality, intelligence and care;
- (3) *merely* on account of ,the production of fresh evidence after the acquittal;
- (4) where there is no distinct probability that the appeal will result in an order of re-trial.

2. In cases where it is decided that an appeal ought to be filed, the Central Government consider that the accused should have legal assistance at his trial and, with this end in view, the Judges are pleased to direct that the District Magistrate, on receipt of a notice for service upon the person acquitted to show cause why he should not be convicted, shall, if he is satisfied that the accused is unable because of poverty to proceed to the High Court, provide him with sufficient funds to enable him to do so and, in the event of the apprehension of the person concerned and his custody in a lock-up, arrange that the accused be conveyed to the High Court for the purpose of attending the hearing of the appeal against his acquittal.

Travelling expenses for the accused.

3. With the same object in view, namely, to give every reasonable protection to the defence, a reasonable fee to enable him to engage counsel, if such is his intention, shall be paid by the Government to the accused in all such cases, whatever may be the result

Legal Assistant to the accused.

of the appeal and whether he is or is not in attendance when the appeal is heard. He would be at liberty to supplement this himself in order to obtain counsel of superior, calibre, should he so desire. The payment of the fee herein referred to shall be arranged and paid by the District Magistrate concerned in consultation with the Legal Remembrancer to Government, Punjab, in the form of a letter of credit which the accused person's counsel can cash after actual appearance in the High Court.

Legal Assistance in cases of enhancement of sentence.

4. In the case of an application for enhancement of sentence made by the State Government the same procedure should be followed in the matter of provision of counsel for the accused as is prescribed in paragraph 3 above.

High Court cannot alter conviction from section 304 to 302 IP Code unless there is an appeal under section 417 Cr. P.C.

5. In this connection it should be noted that the Privy Council has held that when a person is tried for an offence under section 302, Indian Penal Code, but is convicted under section 304, Indian Penal Code, and sentenced to a term of imprisonment, the Sessions Judge's order amounts to an acquittal under section 302. On application to a High Court for revision of sentence, the High Court has no jurisdiction in view of the provisions contained in clause (4) of section 439, Criminal Procedure Code, to alter the conviction to one under section 302 and sentence the accused to death. In such cases an appeal under section 417 of the Code is required to give the High Court jurisdiction, if it is desired to, alter the conviction. (Indian Law Reports, Allahabad, Volume 50, page 722)

Requisition for records for scrutiny when appeal for acquittal is contemplated.

6. For securing the original records of trial court for scrutiny in cases where an appeal against an acquittal, etc., is under contemplation the following procedure should be observed:-

- (a) where there has been a complete acquittal by the Sessions Court of all the accused in a case, the Sessions Judge should, on a certificate furnished by the District Magistrate that an appeal from acquittal is in contemplation, hand over to the District Magistrate the sessions record of the case

and such other connected papers in the custody of the Sessions Court as the District Magistrate may require;

- (b) in cases where some of the accused have been convicted and others acquitted by the Sessions Court and no appeals against convictions are pending the procedure laid down in (a) above should be followed, but where appeals from convictions are pending, the records should, on receipt of a certificate from the District Magistrate that an appeal from an acquittal is in contemplation, be forwarded to the High Court;
- (c) when sending records to District Magistrate, Sessions Judges should see that the Sessions records of the case are complete in all respects and include the Committing Magistrate's records and Police papers if they are in the possession of the Sessions Court.

7. Section 417 of the Code has been substituted by Act No. 26 of 1955. Now where an order of acquittal is passed in a case instituted upon complaint, the complainant can file an appeal from the order to the High Court if he has been granted special leave to appeal on an application made under section 417(3). After the High Court has refused such an application the State Government would be debarred from filing an appeal from the order of acquittal.

Complainant's
appeal