Supreme Court of India
Jagat Bahadur Singh vs State Of Madhya Pradesh on 30 November, 1965
Equivalent citations: 1966 AIR 945, 1966 SCR (2) 822
Author: M R.
Bench: Mudholkar, J.R.

PETITIONER:
JAGAT BAHADUR SINGH

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT:
30/11/1965

BENCH:
MUDHOLKAR, J.R.
BENCH:
MUDHOLKAR, J.R.
SARKAR, A.K.
BACHAWAT, R.S.

CITATION:
1966 AIR 945 1966 SCR (2) 822
CITATOR INFO :
E 1971 SC 840 (15)

ACT:
Code of Criminal Procedure (Act 5 of 1898), ss. 31(1), 32 and 423(1)(a)-Maximum sentence appellate court can impose.

HEADNOTE:
The appellant was tried by the Magistrate of the First Class for offences under ss. 170, 342 and 392 of the Indian Penal Code and was acquitted. On appeal, the High Court set aside the acquittal, and in respect of the offence under s. 392 , sentenced him to 4 years R.I.
In his appeal to this Court,, the appellant contended that if the Magistrate had convicted him be could not have passed a sentence exceeding 2 years for the offence under s. 392 by virtue of s. 32 of the Criminal Procedure Code, and therefore, the High Court was incompetent to pass the sentence of 4 years.
HELD: As an appellate court is not competent to impose a punishment higher than the maximum that could have been imposed by the trial court, the High Court was in error in sentencing the appellant to undergo imprisonment in respect of the offence under s. 392 for a period exceeding 2 years.

[826 G; 827 C]
An appellate Court is a "court of error", that is, a court established for correcting an error. If, while purporting to correct an error, the appellate court were to do something which was beyond the competence of the trial court, it could not be said to be correcting an error of the trial court. Therefore, the power of the appellate court to pass a sentence must be measured by the power of the court from whose judgment an appeal has been brought before it.
[826 H; 827 A, B]
Case law referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 156 of 1963.

Appeal by special leave from the judgment and order dated February 8, 1963 of the Madhya Pradesh High Court in Criminal Appeal No. 121 of 1962.

E. C. Agarwala for P. C. Agarwala, for the appellant. M. N. Shroff for 1. N. Shroff, for the respondent. The Judgment of the Court was delivered by Mudholkar, J. The appellant, a police constable," was tried for offences under ss. 170, 342 and 392, Indian Penal Code but was acquitted by the trying Magistrate of all these offences. The High Court to which an appeal was preferred by the State Government set aside the acquittal and convicted the appellant of each of these offences. It sentenced him to rigorous imprison-

ment for a period of one year in respect of the offence under s. 170 and to a period of six months for an offence under s. 342. In respect of the offence under S. 392 the High Court sentenced him to undergo rigorous imprisonment for a period of four years and further ordered that all the sentences should run concurrently.

Briefly stated the prosecution case was that the appellant who was posted at Rewa took leave for 15 days from August 7, 1958 with a view to go to his village Hati in District Satna but instead went to Jabalpur wearing the uniform of a police head constable. There he met the complainant Ram Kumar, P.W. 1 at the Omti Bridge near the Pan shop of one Saligram, P.W. 2. He engaged him in conversation and learnt from him that the latter was from village Beldara, police station Maihar. He told Ram Kumar that a theft had been reported from that area and that he had come to Jabalpur to investigate into it and that Ram Kumar answered the particulars of the man wanted in connection with the theft. It may be mentioned that Ram Kumar was wearing a gold 'mohar', threaded in a piece of string, round his neck. Questioned about it by the appellant he told him that he had received it as a present from his father-in-law. The appellant took Ram Kumar along with him from place to place and at one place he tried to relieve Ram Kumar of the gold mohar saying that it was a stolen article. Ram Kumar resisted and protested and so also did one Phoolchand who was there. The appellant then got into a rickshaw along with Ram Kumar on the pretext of taking him to the police station. Instead of stopping at the police station he asked the rickshaw to proceed to Katni road and

dismissed the rickshaw puller after paying his fare. He then gave a beating to Ram Kumar and snatched the gold mohar from his neck. While they were standing on the road to Katni a motor truck happened to pass that way. The appellant stopped it and got into it along with Ram Kumar and proceeded towards Katni. After reaching the place the appellant sent off Ram Kumar to fetch a cup of tea for him. While Ram Kumar was away the appellant got into a goods train which happened to be leaving Katni railway station in the direction of Satna at that time and travelled in the brake van. Ram Kumar, finding that the appellant had escaped, lodged a report with the police. Eventually the appellant was apprehended and challenged. He denied the offence and said that he was falsely implicated and also said that it was a case of mistaken identity.

The main question was regarding the appellant's identity. There is voluminous evidence on the point which has been disp. CI/66-6 cussed fully by the High Court. On the basis of that evidence the High Court came to the conclusion that the person who had snatched away the gold mohar from Ram Kumar was no other than the appellant.

Mr. E. C. Agarwala who appears for the appellant tried to urge before us that the High Court was in error in holding that the person who committed the various offences was the appellant. This Court does not ordinarily interfere with a finding of the High Court based on appreciation of evidence, unless there are strong reasons for doing so. Mr. Agarwala could point out no other reason except this that the High Court had taken a view of evidence different from that of the trying Magistrate and set aside the appellant's acquittal and that therefore this Court should appraise the evidence. That of course is no ground for discarding the finding of the High Court. The High Court has given good reasons in its judgment for accepting the prosecution evidence for coming to the conclusion that the identity of the appellant was established. It has also given good reasons for not accepting the defence evidence. In these circumstances we did not permit learned counsel to take us through the evidence adduced in the case.

The only other question urged by learned counsel is regarding sentence. He points out that the appellant was tried by a Magistrate of the First Class and that under s. 32 of the Code of Criminal Procedure the maximum sentence which such a Magistrate is entitled to pass is imprisonment for a term not exceeding two years and a fine not exceeding Rs. 2,000/-. There is nothing to show that the learned Magistrate was invested with powers under s. 30 of the Code by virtue of which he could, under s. 34, pass a sentence of imprisonment up to the limit of seven years. If the learned Magistrate, instead of acquitting the appellant, had con- victed him, he could, therefore, not have passed a sentence of imprisonment in respect of the offence under s. 392 for a term exceeding two years and that, therefore, the High Court was incompetent to pass the sentence of imprisonment of four years.

Mr. Shroff, however, contended that even though that was so the High Court having held the appellant guilty of the offence under s. 392 is as competent to pass any sentence in respect of that offence as is permissible under the Indian Penal Code. In support of the contention he relied on cl.

(a) of S. 423 (1) of the Code of Criminal Procedure. Under this clause, after setting aside the acquittal of a person, the appellate court can "pass sentence on him according to law." It is true that

S. 31 (1) also empowers the High Court to pass any sentence, authorised by law. But the question is whether these provisions enable the High Court to pass a sentence which the Court from whose decision an appeal has been preferred before it was not authorised to pass.

There are several cases of the High Courts in which this question has been considered. One of them is Sitaram v. Emperor(1) where the question has been elaborately discussed. Stanyon A.J.C. who decided the case has said thus :

"The Magistrate who tried the case had power under section 32 of the Code of Criminal Procedure, to pass a sentence of imprisonment for a term not exceeding six months, and fine not exceeding two hundred rupees. By section 423 of the same Code, the District Magistrate, sitting as an Appellate Court on an appeal from the conviction of the applicants, was empowered, on maintaining the conviction of each applicant, to alter the nature of the sentence, subject only to the proviso that he did not enhance the same. The alteration of a sentence of imprisonment for four months, into a sentence of fine in the sum of Rs. 300, or in default imprisonment for four months, was clearly no enhancement, but A reduction in severity of the sentence. Section 402 of the Code follows human sentiment and common sense in regarding the Substitution of fine for imprisonment as a merciful commutation of punishment. Therefore, the sentences ordered by the District Magistrate were all within the letter of the rule set out in section 423 aforesaid. Section 32 contains no word which makes it applicable to any Court of Appeal or Revision : nor is there any restricting proviso to be found in section 423 or any other section dealing with appellate jurisdiction, such as we read in section 439, subsection (3). Nevertheless, it is a rule underlying the whole abric of appellate jurisdiction that the power of an Appellate Court is measured by the power of the Court from whose judgment or order the appeal before it has been made..... it is a fundamental principle that every Court of Appeal exists for the purpose, where necessary, of doing, or causing to be done, that which each court subordinate to its appellate jurisdiction should have, but has not, done, or caused to be done, and nothing further. Therefore, the jurisdiction in appeal is necessarily limited in each case to the same extent as the jurisdiction from which that particular case comes. It is a proposition which cannot be disputed that all powers conferred upon an Appellate Court, as such, must be interpreted as subject to the general rule above stated. In a case reported at 2 Weir 487, the Madras, (1) 7 Nag. L.R. 109: 11 I.C. 788.

High Court held that an Appellate Court cannot pass, on appeal, a sentence which the original Magistrate was not competent by law to pass. Section 106, sub-section 3 of the Criminal Procedure Code, 1898, appears to give an Appellate Court power to make an order under that section in any appeal in which an accused may have been convicted of rioting, assault, or other offence referred to therein. If such a person were acquitted by a District Magistrate, but convicted on appeal by the High Court, there can be no doubt that the Appellate Court, as such, could make an order under this sub-section. Its power to make the order would not be confined to cases where conviction had taken place before the Magistrate. But it has been held-and, in my opinion, rightly held-that the Appellate Court, as such, is not 'competent to make an order under section 106 if the Magistrate, from whose decision the appeal has come before it, could not have made it. This dictum was laid down in Mahmudi Sheikh v. Aji Sheikh(1) Muthiah v. Emperor(2); and Paramasiva Pillai v. Emperor(3). In the second of the above cases the learned Judges remarked,-

> 'We think that the power given to an Appellate Court to make an order under this section is not an unlimited power to make such an order in any circumstances, but is to be taken as giving the Appellate Court power to do only that which the lower Court could and should have done.' I do not see why any other rule of construction should be applied to the power given by section 423 to alter the nature of a sentence."

We have seen the three decisions to which the learned Judge has made reference and they undoubtedly support his conclusion. This decision was followed in Emperor v. Abasali Yusufalli(4) and also in Mehi Singh v. Mangal Khandu(5); Emperor v. Muhammad Yakub Ali(1); and Maung E Maung v. The King(1). In in re Tirumal Raju(8) it has been held that an appellate court is not competent to impose a punishment higher than the maximum that could have been imposed by the trial court. It seems to us that these cases lay down the correct law. An appeal court is after all "a court of error", that is, a court established for correcting an error. If, while purporting to correct an error, the court (1) I.L.R. 21 Cal. 622.

(3) I.L.R. 3) Mad. 48.

(5) I.L.R. 39 Cal 157.

(7) A.I.R. 1940 Rangoon 118.

(2) I.L.R. 29 Mad. 190.

(4) A.I.R. 1935 Nag. 139.

(6) I.L.R. 45 All. 594.

(8) A.I.R. 1947 Mad. 868.

were to do something which was beyond the competence of the trying court, how could it be said to be correcting an error of the trying court ? No case has been cited before us in which it has been held that the High Court, after setting aside an acquittal, can pass a sentence beyond the competence of the trying court. Therefore, both on principle and authority it is clear that the power of the appellate court to pass a sentence must be measured by the power of the court from whose judgment an appeal has been brought before it. The High Court was thus in error in sentencing the appellant to undergo imprisonment in respect of the offence under s. 392 for a period exceeding two years. Accordingly we allow the appeal partially and reduce the sentence of imprisonment in respect of the offence under S. 392 from rigorous imprisonment of four years to a period of two years. Subject to this modification we dismiss the appeal.

Appeal allowed in part..