

(1924) 04 BOM CK 0010

Bombay High Court

Case No: Criminal Revisional Application No. 329 of 1923

Emperor

APPELLANT

Vs

Shivaputraya
Durdundaya

RESPONDENT

Date of Decision: April 2, 1924

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 439
- Penal Code, 1860 (IPC) - Section 326

Citation: AIR 1924 Bom 456 : (1924) 26 BOMLR 438

Hon'ble Judges: Shah, J; Norman Macleod, J

Bench: Division Bench

Judgement

Norman Macleod, Kt., C.J.

The two accused were charged before the First Class Magistrate with having committed an offence u/s 326, Indian Penal Code, and on conviction were sentenced to two years" rigorous imprisonment each, and in addition to a fine. On appeal, for reasons which are not very apparent, the Sessions Judge altered the conviction to one of voluntarily causing simple hurt to the complainant and reduced the sentence in each case to six months" rigorous imprisonment. On the application of Government u/s 439, Criminal Procedure Code, a rule was issued for the enhancement of the sentences, and also for the convictions u/s 323, Indian Penal Code, being altered to convictions u/s 326, Indian Penal Code. We must take it that on the order of the Sessions Judge the accused were acquitted of the offence u/s 326, so that under the powers given to the Court u/s 439, Criminal Procedure Code, we cannot convert a finding of acquittal to one of conviction. It was argued on the authority of a Punjab case *Bhola v. Crown* (1904) P.R. 12--Ens that "acquittal" in Section 439 means a complete acquittal on all the charges framed but we cannot agree with that view. Unless we set aside the conviction and direct a retrial we can only enhance the sentence up to the limit which is admissible u/s 323, Indian Penal

Code. On a consideration of all the circumstances of the case, and specially the fact that a very serious assault was committed by the accused, we think the sentences must be enhanced to a period of one year's rigorous imprisonment in each case, in spite of the fact that the period of imprisonment directed by the Sessions Judge has already expired. The period already suffered will be taken in to account when enforcing the enhanced sentences