courtkutchehry.com

Company : Sol Infotech Pvt. Ltd.

Website : www.courtkutchehry.com

Printed For :

Date : 24/08/2025

Moreshwar Janardan Gogate Vs Emperor

Court: Bombay High Court

Date of Decision: June 28, 1928

Acts Referred: Penal Code, 1860 (IPC) â€" Section 186

Citation: 114 Ind. Cas. 854

Hon'ble Judges: Patkar, J; Murphy, J

Bench: Division Bench

Judgement

Patkar, J.
In this case, the accused, a land-holder in the village of Jamsande, was, according to the prosecution case, in arrears to the

extent of Rs. 19-8-9 on account of land revenue for the year 1926-1927. On his failure to pay the same though demand was made several times,

the mamlatdar ordered the recovery of the arrears plus one-fourth fine u/s 148 of the Land Revenue Code by attachment of the accused''s

moveable property. The complainant Balkrishna Ganesh Parulekar, the Talathi, went to the accused''s house on June 30, 1927, for recovery of the

arrears and fine, but the accused refused to pay the arrears on the ground that the demand was not legal. The complainant attached a drinking

vessel of copper which was forcibly taken away by the accused from the peon''s hand. The accused was, therefore, charged u/s 186 of the Indian

Penal Code with causing obstruction to a public servant in the discharge of his public functions. The accused was convicted and sentenced to pay a

fine of Rs. 100. The appeal preferred by the accused to the District Magistrate was transferred on the application of the accused to the High

Court.

2. The accused''s case in the lower Court was that he did not snatch the copper pot from the peon, but that on the accused telling the sepoy that he

would snatch it, he placed it down. The accused, therefore, contended that there was no obstruction in fact, and that if there was an obstruction,

the obstruction was not in the discharge of the complainant''s public functions on the ground that the levy of the assessment was illegal, that the

complainant was not discharging his public functions, and that his act in levying the assessment was ultra vires.

3. It is clear from the evidence of the complainant and the witness Sadu (Ex. 7), and the Panchas (Exs. 8 and 9), and from the Panchnama (Ex. 6-

B), that there was an obstruction in fact offered by the accused to the complainant in that the copper vessel was snatched by the accused. This

finding is not challenged before us. It is urged on behalf of the accused that if the levy of the assessment by the complainant was illegal, the

functions in the discharge of which he was obstructed were not public functions. Reliance is placed on the decisions in the cases of Queen-Empress

v. Tulsiram 13 B. 168 and Emperor v. Kadarbhai Usufalli 51 B. 896 in support of the contention that if the order, under which the public servant

acts, is illegal or ultra vires, any obstruction caused to him would not be punishable u/s 186. It is urged on behalf of the accused that the order for

the levy of the assessment was illegal as the increased assessment was not due from the accused for the year 1926-1927. On July 5, 1926,

Government sanctioned the rates which were varied to 33 per cent. from 22.63 per cent. the rates proposed by the Settlement Officer. Reliance is

placed on Rule 17 in Anderson''s Manual at page 11, and on the Survey and Settlement Manual, page 403, and it is urged that there ought to be

two notifications, one District notification in the form of appendix I to the Land Revenue Code and a second notification in the Gaxette in the form

given at page 403 of the Survey and Settlement Manual. It is further urged that if Government raised the rates proposed by the Settlement Officer,

a fresh notice ought to be issued and a fresh opportunity of objection must be afforded before the orders become final, and reliance is placed on

Government Resolution No. 6141 of 1903, and note 19 at page 8 of Anderson''s Manual. It was suggested by reference to Ex. 23, relating to the

village of Vada, under which objections were invited within two months from the date of the notification, i.e., July 24, 1926, that the Government

started fresh proceedings, and that on August 26, 1926, Government Resolution No. 3937 was issued declaring that the assessments referred to

were fixed for a period of thirty years commencing with the revenue year 1926-27 and ending with the revenue year 1955-56. The notification No.

3937 dated August 26, 1926, was published on September 2, 1926, before the expiry of two months given by Ex. 23. It is, therefore, urged that

there was an omission to declare the sanction of Government u/s 102, that there was an omission to issue a District notification and that

Government was bound to wait for two months according to the notification, Ex. 23. It is further urged that if these contentions are not correct and

the introduction of survey settlement took place on September 2, 1926, by Government Resolution No. 3937, the introduction was in the revenue

year 1926-27, and u/s 104 of the Land Revenue Code, remission ought to have been given for the excess revenue for the year 1926-27.

4. It is urged, on the other hand, by the learned Government Pleader that only two conditions are necessary for the introduction of the survey

settlement, first, the sanction of Government u/s 102, and second, notice of the same in accordance with the rules made by the Governor-in-

Council; that Government sanctioned the rates by Government Resolution No. 3937 dated July 5, 1926, Ex. 17-A, that the notice u/s 103 was

given by beat of drum in the village and a written notice was posted in the Chavdi under Rule 18 of the Land Revenue Rules in Anderson''s Manual

at page 12, and the introduction of the survey settlement was, therefore, legally effected in the revenue year 1925-26; that the Government

Resolution No. 3937 dated August 26, 1926, and published in the Bombay Government Gazette, of September 2, 1926, was the notice of

declaration u/s 102 of the Land Revenue Code; that Ex. 23 dated July 24, 1926, relied on on behalf of the accused, related only to the village of

Vade, and there is no evidence in the case that a similar notification was issued with regard to the village of Jamsande in question, and that the

survey settlement having been introduced in 1925-26, the excess rates were not leviable during that year and were leviable in the year 1926-27,

and, therefore, the order of the mamlatdar levying the increased assessment from the accused for the year 1926-27, was legal. It is not disputed

that if the levy of the assessment was illegal the accused would not be guilty u/s 186 of the Indian Penal Code. The question, therefore, is whether

the order for levying the increased assessment in the year 1926-27 was legal.

5. Under the old Section 103 of the Land Revenue Code, the introduction of the survey settlement was effected by announcement on the spot of

the revised assessment for each survey number. The old Section 103 of the Land Revenue Code was amended by Bombay Act VI of 1913,

Section 46, which lays down that when the levy of the assessment fixed under Sections 100 and 101 upon any land has been sanctioned u/s 102,

and notice of the same has been given in accordance with the rules made by the Governor-in-Council in this behalf, the settlement shall be deemed

to have been introduced with respect to the lands of which the assessments have been sanctioned. Two conditions are, therefore, laid down u/s

103 to validate the introduction of the survey settlement, first, the sanction u/s 102, and second, the notice in accordance with the rules made by

the Governor-in-Council. It is clear from Ex. 17-A, Government Resolution No. 3937 dated July 5, 1926, that Government sanctioned the rates

for the various classes of land recommended by the Commissioner and by para. 7 intimation was given that the revised rates should be introduced

during the current year 1925, 26 and guaranteed for the period of thirty years, and by para. 8 that the petitions of objections disclosed no grounds

which would lead Government to modify the orders then passed. Under Rule 18 published at page 12 of Anderson''s Manual, the notice required

by Section 103 shall be given by beat of drum in the village for which the assessment has been sanctioned and a written notice shall be posted in

the Chavdi or some other public place in the village. It appears from the evidence of Balkrishna, Ex. 6, that the notification according to the rule

was published by the Police Patil in the village on July 28, 1926, and it is found by the lower Court that the prosecution has satisfactorily proved

that the notice was duly published in the village by beat of drum and also by posting the same in the temple as required by Rule 18 and that was

done in the year 1925-26. It would, therefore, follow that there was the introduction of the survey settlement in the year 1925-26, as the ""revenue

year,"" according to Section 3, Clause (22), of the Land Revenue Code, means ""the period from, and exclusive of, the thirty-first July of one

calendar year until, and inclusive of, the thirty first July in the next calendar year."" The Government resolution having sanctioned the rates and the

notice under Rule 18 having been given in the revenue year 1925-26, it would follow that the revised settlement was introduced in that year. u/s

104, the difference between the old and the new assessment was liable to be remitted in the year 1925-26, and the revised assessment was liable

to be levied from the year 1926-27.

6. With regard to the contention that according to Government Resolution No. 6141 of 1903 and note No. 19 in Anderson''s Manual at page 8,

when Government raised the rates proposed by the Settlement Officer, a fresh notice must be issued and a fresh opportunity of objection must be

afforded, it is sufficient to state that these are departmental orders and have not the force of a legislative enactment or statutory rules. If the

introduction of the settlement in 1925-26 was legal u/s 103 of the Land Revenue Code, the mere fact that certain formalities, which were required

to be observed under a Government resolution, were not so observed, would not nullify the validity of the introduction of the survey settlement u/s

103.

7. With regard to the notification, Ex. 23, of July 24, 1926, inviting objections, it is urged by the learned Government Pleader that that notification

refers to the village of Vade, and it is not proved that a similar notification was issued with regard to the village of Jamsande, and that the Talathi

Anant Pandurang, Ex. 18, examined on behalf of the accused, was not questioned on this point. Assuming, however, that a similar notification was

issued with regard to the village of Jamsande, there is no provision in the Land Revenue Code which would nullify the effect of the introduction of

the survey settlement u/s 103. The notification Ex. XXIII is a notification given in the form printed at page 347 of Joglekar''s Land Revenue Code

inviting objections of the village community within two months according to the Government Resolution No. 8914 dated September 14, 1916,

printed at page 345 of Joglekar''s Land Revenue Code. It appears that in the present case, the settlement having been introduced by the sanction

accorded by Government by the Resolution of July 5, 1926, and by the notice under Rule 18, the notification inviting objections was superfluous.

The Government Resolution No. 3927 dated July 5, 1926, Ex. 17-A, by para. 8 states that ""petitions of objections disclose no grounds which

would lead Government to modify the orders now passed."" The necessity of a fresh sanction and a fresh notification under Rule 18 in the event of

Government raising the rates proposed by the Settlement Officer is not prescribed by any section of the Land Revenue Code or by any rules made

there under, and even if a notification inviting objections be presumed to have been given for the village of Jamsande with which we are concerned,

it would not nullify the effect of the introduction of the survey settlement u/s 103 which was completed by the sanction accorded by Government

and the notification under Rule 18. It would appear from Government Resolution No. 8057, dated December 22, 1900, printed at page 359 of

Joglekar''s Land Revenue Code, that the revision survey settlement must be held to have been introduced in the year in which the provisionally

sanctioned assessments are announced u/s 103 and not in the year in which the modifications to which those assessments may have been declared

liable are brought into operation. It appears from Government Resolution No. 15544, dated December 28, 1917 printed at page 375 of

Joglekar''s Land Revenue Code, that it was the intention of Government that if an increase beyond the rates porposed by the Settlement Officer

was ordered, a further opportunity for objection should be allowed the increased rates being held as provisional and subject to reconsideration if

objections, if any, were received.

8. The Resolution No. 3937 dated August 26, 1926, on which reliance is placed on behalf of the accused, expressly states that notice of the

sanction has been given in accordance with the provisions of Section 103, and that recital must obviously refer to the Government Resolution Ex.

17-A, of July 5, 1926. The resolution further says that the revision survey settlement has thereby been introduced into the said villages, and that in

exercise of the powers conferred by Section 102, the Governor in Council is pleased to declare, all the assessments therein referred to, fixed for a

term of thirty years commencing with the revenue year 1926-27 and ending with the revenue year 1955-56. The Resolution, therefore, on which

the accused relies, is a resolution of declaration of rates leviable from the year 1926-27 to 1955-56. The year of introduction is not necessarily the

year of levy. Section 103 provides that when the assessment has been sanctioned and when the notice has been given in accordance with the rules,

the survey settlement shall be deemed to have been introduced, and Section 104 provides that the revised assessment shall be levied from the next

following year, and the declaration u/s 102 would refer to a fixed term of years during which the rates which have been sanctioned would be

levied. The Government Resolution dated August 26, 1926, and published on September 2, 1926, is, therefore, a resolution u/s 102 declaring the

assessment, with such modification as may be deemed necessary, fixed for a term of years not exceeding thirty.

9. It appears from page 358 of Joglekar"s Land Revenue Code, that for some time the year of introduction of revised rates was an intermediate

year between the expiry of the last settlement and the beginnings of the new guarantee. It appears that Government have now directed that a

revised settlement should generally be introduced in the last year of the former settlement and that if the excess of the old assessment over the

revised reduced assessment has been collected in this last year, refund should not be made but the amount recovered in excess should be deducted

from the assessment due in the following year.

10. Government, by its departmental rules, may make changes as to the collection of the revenue, but the Government Resolutions which are not

consistent with the Land Revenue Code have not the force of law. If, as a matter of fact, a notification inviting objections had been issued for the

village of Jamsande as it had been issued for the village of Vade, it would have been proper to reconsider the provisional rates, which were

sanctioned and notified so as to result in the introduction of the revision survey settlement, if the objections were upheld by Government; but, the

legality of the survey settlement validly introduced u/s 103 cannot be nullified.

11. We think, therefore, that the revision survey settlement having been validly introduced in the year 1925-26 the levy of the increased assessment

for the year 1926-27 was not illegal.

12. It is further urged on behalf of the accused that assuming that the revision settlement was properly introduced, on arithmetical calculation more

than what is due has been ordered to be levied from the accused. Reference has been made to Ex. 16-A and to the statement of the accused Ex.

5-A, para. 2, and it is urged that the assessment has been levied at a higher rate than the one sanctioned by Government, and the attachment to

recover such increase is illegal. The Talathi Anant Pandurang, examined on behalf of the accused, proved that after the revision the accused was

liable to pay Rs. 36-9-11 and Rs. 2-4-7 as local fund. He has not been questioned as to whether the excess has been properly calculated, and as

to whether more than what is sanctioned is sought to be levied from the accused. There are not, therefore, sufficient materials in the case to prove

that more than what is sanctioned is sought to be levied from the accused.

13. The last point urged on behalf of the accused was that the assessment on his Survey No. 221 was reduced from Rs. 15 to Rs. 6-1-0

according to Government Resolution No. 7322 dated August 7, 1914, and reliance is placed on Ex. 15C and Ex. 24. It is further urged that there

was no increase with regard to khari land in the revision survey and reliance is placed on Ex. 22 in which there is no increase shown with regard to

khari land. It appears, however, from Ex. 24 that the assessment on khari land was reduced in the Ratnagiri District with regard to twenty-six

villages to the extent of Rs. 3,888-7-6, and that with regard to the land, Survey No. 221, the assessment was reduced from Rs. 15 to Rs. 6-1-0.

It does not appear, however, that the classification of the land was changed. It is urged on behalf of the Crown that Ex. 22 is with reference to the

village of Vade, and does not relate to the Jamsande village, Assuming, however, that a similar notification was issued with regard to the Jamsande

village, it does not necessarily appear that there was a separate classification of khari lands in this District. The lower Court on this point observes:

The printed form of notice might contain as many classes of land as are applicable to the several Districts in the Presidency but only such as are

applicable to this District are to be taken into account here. Of course if khari land is not separately treated in the Survey Records of this District

and no separate maximum rates sanctioned for such class of land, the column for the proposed increase in respect of such land is left blank as has

been done in the case of sandy land given in the same form of notice.

14. It appears from Ex. 23, that with regard to the pulan and nokird lands no increase has been shown in Ex. 22, and it is not proved that there

was a classification in this District with respect to khari, pulan and nokird lands. It appears from the report of the Settlement Officer that only four

classes of land, viz., kharif, rabi, warkas and bagayat, are referred to in the report of the Assistant Settlement Officer, Devgad at pages 42 and 43.

and also in the report of the Settlement Officer at gages 61 to 63, and in the report of the Commissioner at pages 70 and 71. Further, only four

classes are mentioned in Ex. 17A, Government Resolution dated July 5, 1926, namely, rice, rabi, warkas and bagayat being sub-divided into agri

and dongri. I think, therefore, that it is not shown that the khari land was not included in the rice land though its assessment was reduced. With

regard to the assessment of Chikhli Khajan, referring to Survey Nos. 223-1, 224-1, and 224-8, it appears to be the name of the field, and if there

had been a corresponding reduction of the assessment, evidence would have been forthcoming with respect to this land as has been adduced with

reference to land Survey No. 221 by Ex. 15-C. It further appears that with respect to Survey No. 221, which is described as ""Valku"" and not

Chikhali Khajan"" the survey assessment is raised from Rs. 6-2-6 to Rs. 7-11-0. That must be in accordance with the increase in the assessment

of the rice land, and the previous assessment of Rs. 15 is not restored but the assessment of Rs. 6-1-0 by Ex. 15-C has been taken as the basis

for the increase in the present calculation. By Ex. 16A Rs. 6-2-6 has been raised to Rs. 7-11-0. The original assessment is shown to be Rs. 6-2-6

though the assessment was reduced to Rs. 6-1-0 by Ex. 15-C. It is not contended that amount of Rs. 6-2-6 shown as the original assessment in

Ex. 16-A was wrongly entered. However that may be, it is not shown that khari land was classified separately from the other lands in the revision

survey and that it was exempted from increase by the introduction of the revision survey settlement.

15. I think, therefore, that the levy of the assessment for the year 1926-27 was not illegal.

16. I would, therefore, confirm the conviction and sentence.

Murphy, J.

17. Appellant is a land-holder of the village of Jamsande in the Deogad Taluka of the Ratnagiri District and has been convicted by the Second

Class Magistrate, Deogad, u/s 186, Indian Penal Code, of obstructing a public servant in the discharge of his public functions by resisting the

attachment of his moveable property for an arrear of land revenue. He has been fined Rs. 100, and ordered, in default of its payment, to suffer

twenty days'' rigorous imprisonment.

18. The High Court has by its order of March 27, 1928, transferred the appeal for hearing to itself.

19. Though the matter comes up in the guise of a cirminal appeal, it is really a challenge of the legality and propriety of the revision settlement of the

Deogad Taluka, as appellant''s position throughout has been that the sum for which attachment was sought to be levied, was not legally due from

him, it being the difference between the old and the new assessment imposed by the revision survey and a fine of 25 per cent for contumacy.

20. The revision settlement report was drawn up by Mr. B.B. Vaidya and submitted on May 3, 1923, through the usual channels. Government

passed orders on it on July 5, 1926, and the result of these orders was an enhancement of the demand, varying in the different groups in which the

villages of the Taluka are placed. Later, Government ordered that the term of the new settlement should be for thirty years, the usual period.

21. The relevant sections of the Land Revenue Code are Sections 102, 103 and 104. The statutory requirements are, that Government should ""fix

the assessment, for a term of years not exceeding thirty (Section 102) and then by Section 103, when this has been done, ""and notice of the same

has been given in accordance with rules made by the Governor-in-Council in this behalf, the settlement shall be deemed to have been introduced

with respect to the lands of which the assessments have been sanctioned."" Section 104, so far as is relevant, provides that the enhanced

assessment shall not be levied in the year in which a survey settlement is introduced. There is no other statutory requirement. The rules made u/s

103, are admittedly Rules 17 and 18.

22. If, therefore, these requirements have been complied with, the requisites for the legality of the new settlement are all present.

23. Now the revised assessments were certainly sanctioned by the Government Resolution No. 3937 of July 5, 1926, which directed that the

revised rates should be introduced during the current year, 1925-26, and guaranteed for a period of thirty years, and it is admitted and proved that

notices in the terms of Rule 17, made u/s 103, were given and announced in the village by beat of drum.

24. Subsequently to this, on August 26, 1926, Government issued another notification, u/s 103 of the Land Revenue Code, declaring the revision

setllement already introduced to be fixed for a term of thirty years, commencing with the revenue year 1926-27, and ending with the revenue year

1955-56. There follows a list of the villages of the Devgad Taluka, including Jamsande.

25. A point has been made about the discrepancy between the statement in the first resolution, that the revised settlement was introduced in the

year 1925-26 and the declaring in the second resolution, that its term is from 1926-27, and one of appellant"s arguments is based on this fact.

26. The explanation is that the announcement and the introduction are identical, for the assessment is introduced by being announced. The revised

assessment comes into force in the sense that it is levied, in or from the year after its introduction, and as the intention is that rates once fixed should

be collected for thirty years, the guarantee for thirty years should run from the year in which the new rates are first levied, as the first year of the

thiry. This would be 1926-27, and there is really no discrepancy and no illegality in the matter.

27. Appellant has, however, raised another point in this connection. On July, 24, 1926, a notice was issued by the Collector stating the rates

proposed by the Settlement Officer and those sanctioned by Government, giving concise reasons for the increases,and inviting objections to be

made within two months by representatives of the villages affected.

28. It appears that by G.R. No. 6141 of July, 9, 1903, it was resolved that when Government have not accepted the Revision Settlement Officer''s

proposal by enhancing them, another notification should be published, showing the assessments as determined under the orders of Government in

Form G. This is in fact what has been done. Objections may under this notice still be made to the proposed grouping, and the maximum rate of a

village; but to argue, as the appellant has done, that the effect of this notice, which is issued by the Collector, is to cancel the Government resolution

introducing the survey, and the one declaring its duration, is manifestly wrong.

29. The object of the notice is, in fact, explained in G.R. No. 15544 of December, 28, 1917:

The attention of the officers concerned should be invited to G.R. No. 6141 dated September, 7, 1903, and they should be informed that by the

issue of those orders, it was the intention of Government, that if an increase beyond the rates proposed by the Settlement Officer was ordered a

further opportunity for objections should be allowed, the increased rates being held as provisional and subject to reconsideration of objections if

any received.

30. These facts and announcements dispose of the first eleven points raised by appellant, as also point No. 16.

31. Appellant''s next grievance is as to his khajan or khari lands, that is salt rice lands, namely items Nos. 3, 4 and 5 in the list of his land in Form

8-A of Jamsande. This shows that the assessment on these numbers has been enhanced six annas in the first; Rs. 1-8-6 in the second; and Rs. 2-

12-0 in the third case. He relies on a G.R. No. 7322 of August 7, 1914. From this document it appears that certain khajan lands were re

classified, and the assessment was reduced. Jamsande is the eighth in the list of the villages in which this was done and the assessment on such

lands in it was reduced by Rs. 297-12-6 or by about fifty per cent. There is nothing in the Government resolution to the effect that this assessment

could not be increased at a revision settlement. The settlement report refers to this matter in the last para of Section 41 and it appears these were

reclaimed lands classed as sweet rice lands; and that they were re classed, and this objection as now raised was made to the Settlement Officer,

and is referred to in para. 44 of his report, point No. 3, and the answer to it is in sub-para. 5. The enhancement has been made according to the

new rates sanctioned for the class in which these lands now are, they having formerly been in a higher class and having been reduced to a lower

one, and the objection is hollow.

32. One more point has been argued as to rates, though it is not clearly stated in the memo of appeal, unless point No. 14 is intended to refer to it.

It is, that though the enhancement mentioned in the misapprehended notice of July, 24, 1926, Ex. 23, and in the notice Ex. 22 (this Exhibit actually

refers to another village called Wade, and is dated July, 15, 1926) on kharif lands is mentioned as annas four in the rupee, and so on, the actual

increases shown in Ex. No. 16-A, e.g., in the first item ""Shillem"" 209/5, 11 gunthas, assessment Re. 1-0-0 which has been increased to Rs. 1-6-0

exceeds annas four in the rupee. There are no materials before us for verifying all these calculations, nor, except for the a priori one, has appellant

suggested any method by which we can do so. A reference to the Government resolution sanctioning the new rates shows that these are not

arithmetically regular increases. The former rates in group 1 were Rs. 8, Rs. 2, Rs. 1-4-0, and Rs. 12-9-0 for kharif rabi warkas and bagayat and

the new ones are Rs. 10. Rs. 2-10, Rs. 1-10-0, and Rs. 15 or Rs. 12 respectively. The notice Ex. 22 only mentions, as it shows on its face, what

the approximate increase works out at for the village, namely, annas 4, annas 5, and annas 4, and Ex. 16-A relied on by appellant is a mere list of

survey numbers and the old and new rates of assessment, and does not show the class of the land, on which the assessment depends. It is enough,

however, to say that it has not been shown, as has been asserted by appellant, that these calculations are wrong arithmetically.

33. Various other objections to the legality of the conviction have been taken, but they have not been pressed. Such are that the burden of proof

has been misplaced, that the Talathi is not a Government servant and was not at the time discharging a public function, that he was not obstructed,

that all the points arising have not been raised and decided by the learned Magistrate, that appellant''s action was bona fide and that the warrant of

attachment was ultra vires. I think these objections are all lightly made and ill founded.

34. Lastly, it has been urged that the punishment is very severe since appellant only wished to test the validity of the new settlement in his village,

and paid all his dues directly the original Court found against him on this point.

35. We are not in a position to gauge appellant''s motive but it is evident that there are ways, other than the one of obstructing a public servant in

the discharge of his functions, by which an effective legal decision on the points raised could have been obtained. I think the appellant''s contentions

all fail, and since it has been proved that he deliberately obstructed the levy of an attachment of his moveables in due course of law, that his

conviction and sentence should be confirmed and his appeal dismissed.