

**(1925) 10 BOM CK 0043****Bombay High Court****Case No:** Criminal Application for Revision No. 306 of 1925

Emperor

APPELLANT

Vs

Umaji Krishnaji Sonavni

RESPONDENT

**Date of Decision:** Oct. 13, 1925**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 256

**Citation:** (1926) 28 BOMLR 95**Hon'ble Judges:** Madgavkar, J; Fawcett, J**Bench:** Division Bench**Judgement**

Fawcett, J.

The first point taken by Mr. Desai is that the conviction ought to be set aside because the Magistrate neglected to observe the provisions of Section 256 of the Criminal Procedure Code, inasmuch as he did not ask the accused to state, before he was called upon for his defence, whether he wanted to recall any other prosecution witnesses for further cross-examination. The contention is that the provisions of this section apply to a summary trial like the present by virtue of the provisions of Section 262, which says that "the procedure prescribed for summons-cases shall be followed in summons-cases and the procedure prescribed for warrant cases shall be followed in warrant-cases, except as hereinafter mentioned. There is an important provision in the following Section 263 that, in a case where no appeal lies, such as the present, the Magistrate or Bench of Magistrates need not frame a formal charge. They merely have to record the nature of the offence complained of and proved, and the plea of the accused and his examination, with the other details referred to in that section. In my opinion, the fact that a formal charge is not framed in such a case makes a very material difference when considering the applicability of Section 256, because that section clearly implies that the Court has had a charge read and questions put to the accused u/s 255, and that he has been called upon to plead to the charge. It is only

then that the occasion arises under which the accused is required to state whether he wishes to cross-examine any of the prosecution witnesses further, and, therefore, strictly speaking, as no charge is framed and read and explained to the accused for his formal plea, I do not think that it can be contended that the provisions of Section 256 must apply in a case like the present. I do not want to go so far as to lay down that the provisions of Section 256 cannot properly be used in such a case, but what I do say is that the mere fact that there is an omission on the Magistrate's part to ask this question is not a sufficient ground for holding that the proceedings and the trial are vitiated by illegality. In my opinion, in such a case there is at the most an irregularity, which falls u/s 537, and a ruling like Queen-Empress v. Nasarvanji (1900) 2 Bom. L.R. 542 is not applicable. In the present case the accused had cross-examined the prosecution witnesses and two of these witnesses had made statements in his favour. There remained only the further cross-examination of the complainant, and there does not seem to be any ground for saying that in a simple assault case of this kind there was any real reason why he should have been re-called for further cross-examination. Therefore, that contention, in my opinion, is unsustainable.

2. The second point taken is that the Magistrate has failed properly to comply with the provisions of Section 263(h) under which he has to record not only his finding, but in the case of a conviction a brief statement of the reasons therefor. It has no doubt been laid down that the Magistrate should state, at any rate, sufficient reasons to enable a superior Court to be aware of the main grounds for the conviction and to be satisfied that he has properly applied his mind to the question of the guilt of the accused. In the present case the Magistrate does give reasons for preferring the evidence of the complainant to the evidence of the other two prosecution witnesses. It is true that as regards the defence evidence he merely says "I cannot believe the evidence of alibi of the accused." That would be a necessary consequence of his acceptance of the testimony of the complainant: and it is a common experience in the case of alibi evidence that it is difficult to give definite reasons for disbelieving it, because it may be true except as to the time when the incidents deposed to happened.

3. I do not think there is anything to justify our interference, and I would, therefore, reject the application.

Madgavkar J.

4. On the first question raised for the petitioner, namely, that even in summary trials, Section 256 of the Criminal Procedure Code applies and the accused has a right to recall witnesses for the prosecution for cross-examination, it appears to me that Section 256 cannot be read apart from the two preceding sections, as is clear in fact from the opening words of Section 256 itself. It is after a charge is framed that the accused can either refuse to plead or not plead or claim to be tried. Therefore, Section 256, which gives the accused the right of re-calling witnesses, implies that

there must be a charge framed in the first instance for the right to come into existence. The reason is clear. The charge gives clear notice of the mind of the Court prima facie on the materials as they exist; and in case the charge suggests to the defence any other witnesses or any further questions, that right is given. Where there is no such charge, the defence has no other materials than it already possessed and the need to recall witnesses does not exist. I conclude, therefore, that in summary trials u/s 263, when no charge is framed, the accused has no right as such to recall the witnesses for the prosecution. If the accused even without a charge satisfies the Court that it is necessary or advisable that any particular witness should be re-called, I have no doubt that the Magistrate would consider the application favourably. In the present case the charge is of a petty offence of assault and I do not think that any illegality exists; and the application must, therefore, be rejected.