The State of Andhra Pradesh

Vs

Thadi Narayana

Criminal Appeal No. 222 of 1959

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

24.07.1961

JUDGMENT

GAJENDRAGADKAR, J. -

The short and interesting question which arises for our decision in the present appeal is in respect of the powers of the High Court in disposing of appeals under s. 423(1)(b) of the Code of Criminal Procedure. In dealing with an appeal preferred by a convicted person against the order of conviction and sentence imposed on him by the trial court can the High Court in exercise of its appellate powers under s. 423(1)(b) reverse the finding of acquittal recorded by the trial court in favour of the appellant in respect of an offence which is directly not the subject-matter of the appeal ? On this question there has been a difference of opinion amongst our High Courts, and it appears from reported decisions that in the same High Court sometimes conflicting views have been expressed on the point.

This question arises in this way. In the Court of Sessions, Visakhapatnam Division, the respondent Thadi Narayana was charged at the instance of the appellant the State of Andhra Pradesh with having committed offences punishable under s. 302 and s. 392 of the Indian Penal Code. The case against her was that on December 27, 1956 at about night-meal-time at Gangacholapenta she committed the murder of a minor girl K. Sriramulamma by stabbing here with a knife and thus rendered herself liable to be punished under s. 302. It was also alleged against her that at the aforesaid time and place and in the course of the same transaction she had robbed the said victim of her four pairs of gold Konakammulu and a pair of gold Alakalu and thereby committed the offence of robbery under s. 392. On April 16, 1957 the learned trial judge found that the charges against the respondent under ss. 302 and 392 had not been proved beyond a reasonable doubt, and so he acquitted her of the said offences. He, however, held that the respondent was shown to have committed an offence under s. 411 and so he convicted her of the said offence and sentenced her to undergo rigorous imprisonment for a period of two years.

Against the order of conviction and sentence thus imposed on her the respondent preferred a jail appeal in the High Court of Andhra Pradesh. This appeal was heard by Sanjeeva Rao Naidu, J. By his judgment delivered on July 22, 1958 the learned judge expressed his conclusion that he was satisfied that gross miscarriage of justice had resulted in the case "and the only way to rectify this is to order the retrial of the case on the original charges under ss. 302 and 392 of the Indian Penal Code so that the accused may be properly tried thereon and, if found guilty, convicted for the offence or offences proved by evidence to have been committed by her." In the result the conviction and sentence of the accused under s. 411 was set aside and the case was remanded to the trial court for retrial on the charges already framed against her.

Accordingly when her retrial commenced on November 3, 1958 an application was made on behalf of the respondent before the trial judge (Criminal M.P. No. 242 of 1958) in which it was urged that her trial in respect of the offences under ss. 302 and 392 was not permissible having regard to the order of acquittal which had been passed in her favour at the original trial. The validity of the plea of autrefois acquit thus raised by the respondent was challenged by the appellant, and it was urged that by the virtue of the order passed by the High Court ordering her retrial the trial court in law was bound to proceed with the retrial. The trial judge upheld this contention and observed that he was bound to obey the directions given by the High Court and if he were to examine the merits of the contention raised before him by the respondent he would be transgressing his limits, because the determination of the point raised by the respondent would necessarily involve examining the correctness or otherwise of the High Court's order directing a retrial. The trial court thus rejected the application made by the respondent.

Against this order the respondent moved the High Court by her Criminal Revision Application No. 636 of 1958. The Criminal Revision Application was placed before a Full Bench because it raised two important questions of law. These questions were thus framed :

> (1) Where an accused is tried by a Sessions Court on charges of murder and robbery, and the Sessions Court acquits the accused of those charges and convicts her only of an offence under section 411 I.P.C. and the accused appeals to the High Court against the conviction and sentence but the State Government does not appeal against the acquittal of the accused on charges of murder and robbery, is it open to the High Court to set aside the conviction and sentence under section 411 I.P.C. and order the accused to be retried on the charge of murder and robbery ?
>
> (2) When in pursuance of the order of the High Court the Sessions Court again frames charges under sections 302 and 392 I.P.C. against the accused, is it or is it not open to the accused to plead the statutory bar of 'AUTREFOIS ACQUIT' under section 403 Cr. P.C.?

The answer given by the Full Bench to the first question is that except in exercise of the revisional powers under s. 439 of the Code of Criminal Procedure subject to the limitations prescribed therein it is not open to the High Court to order a retrial on the charges on which the accused was acquitted by the trial court in an appeal by the accused against his conviction, though it is empowered to reverse the conviction and order a retrial on that charge alone. On the second question the Full Bench held that it was open to the accused to plead the bar of autrefois acquit under s. 403 notwithstanding the order of the High Court unless there is an adjudication on the acquittal by the High Court either under s. 423(1)(a) or s. 439 of the Code of Criminal Procedure. As a result of these answers the revisional application preferred by the respondent was allowed, her plea under s. 403 was upheld and it was ordered that the retrial of the respondent for the offences under ss. 302 and 392 of the Indian Penal Code cannot be proceeded with. This order was passed on March 11, 1959. It is against this order that the appellant has come to this Court by special leave.

The powers of the appellate court in disposing of appeals are prescribed by s. 423 of the Code. This section occurs in Chapter XXXI of the Code which deals with appeals, reference and revision. In the present appeal we are concerned with the provisions of s. 423(1)(b). However, it is convenient to read s. 423(1)(a) and (b) :

> 423. (1) The Appellate Court shall then send for the record of the case, if such record

is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 411A, sub-section (2) or section 417, the accused, if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may -

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retries or committed for trial as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trail, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduced the sentence, or, (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of section 106, sub-section (3), not so as to enhance the same;

Section 423(1)(a) expressly deals with an appeal from an order of acquittal and it empowers the Appellate Court to reverse the order of acquittal and direct that further inquiry be made or that the accused may be tried or committed for trial, as the case may be, or it may find him guilty and pass sentence on him according to law. In appreciating the powers conferred on the Appellate Court in dealing with an appeal against an order of acquittal it is necessary to bear in mind that the only forum where an appeal can be preferred against an original or an appellate order of acquittal is the High Court, that is to say, the powers conferred on the Appellate Court by s. 423(1)(a) can be exercised only by the High Court and not by any other Appellate Court. Under s. 408 the Court of Sessions is an Appellate Court to which appeals from orders of conviction passed by an Assistant Sessions Judge, a District Magistrate or any other Magistrate lie, and so the Court of Sessions is an Appellate Court, but no appeal against an order of acquittal passed by any of the aforesaid authorities can lie to the Court of Sessions. All appeals against acquittal whether passed by the trial court or the Appellate Court lie only to the High Court, and so the powers prescribed by s. 423(1)(a) can be exercised only by the High Court. As we will presently point out this fact has some bearing on the construction of the material words used in s. 423(1)(b)(2).

Section 423(1)(b)(1) in terms deals with an appeal from a conviction, and it empowers the Appellate Court to reverse the finding and sentence and acquit or discharge the accused or order a retrial by a Court of competent jurisdiction sub-ordinate to such Appellate Court or committed for trial. In the context it is obvious that "the finding" must mean the finding of guilt. The words "the finding and sentence" are co-related. They indicate that the finding in question is the cause and the sentence is the consequence; and so what the Appellate Court is empowered to reverse is the finding of guilt and consequently the order as to sentence. There is no difficulty in holding that s. 423(1)(b)(1) postulates the presence of an order of sentence against the accused and it is in that context that it empowers the Appellate Court to reverse the finding of guilt and sentence and then to pass any one of the appropriate orders therein specified. In our opinion s. 423(1)(b)(1) is, therefore,

> clearly confined to cases of appeals preferred against orders of conviction and sentence, and the powers exercisable under it are therefore conditioned by the said consideration. It is impossible to accede to the argument that the powers conferred by this clause can be exercised for the purpose of reversing an order of acquittal passed in favour of a party in respect of an offence charged in dealing with an appeal preferred by him against the order of conviction in respect of another offence charged and found proved. There can thus be no doubt that the order passed by Naidu, J. cannot be justified under this clause.

At this stage it would be relevant to point out that Naidu, J. did not purport to proceed under s. 439 in dealing with the respondent's case when the appeal preferred by her against her conviction was being argued before him. It is true that the learned judge noticed that the appeal in question was a jail appeal and the respondent was not defended by a lawyer. So he ordered Mr. A. Gangadhara Rao, an Advocate of the Court, to apear amicus curiae to argue the plea on behalf of the respondent; but, as the Full Bench has pointed out, the record clearly shows that neither the respondent nor her pleader was given notice under s. 439(2) of the Code, and even the advocate appointed amicus curiae did not know mush less the respondent herself that the learned judge intended to exercise his powers under s. 439 against the respondent in respect of the offences under ss. 302 and 392 despite the fact that the appellant had not preferred an appeal against the order of acquittal passed in favour of the respondent on those grounds. Therefore, it is unnecessary for us to consider in this appeal the question about the scope and effect of the provisions of ss. 423 and 439 of the Code read together. The only provision under which the order passed by Naidu J. is seriously sought to be supported is s. 423(1)(b)(2) and it is to that provision that we must now turn.

It is urged by Mr. Choudhury on behalf of the appellant that in construing the expression "alter the finding" it would be necessary to remember that when the High Court deals with an appeal against conviction the proceedings in the Appellate Court are in substance a continuation of the proceedings in the trial court and so the entire case is in that sense pending before the Appellate Court. The argument is that in exercising the powers conferred on it by s. 423(1)(b)(2) the High Court is not confined only to the order of conviction which is directly the subject-matter of the appeal but it is possessed of the entire proceedings of the case against the accused and it is in the light of this fact that the expression "alter the finding" must be construed. In our opinion, this argument is not well-founded. The scheme of s. 423 itself clearly shows that when appeals against conviction are brought before the Appellate Court by the convicted person it is only with the orders of conviction and matters incidental thereto that fall to be decided by the Appellate Court. An order of acquittal passed in favour of an accused person can be challenged by an appeal as provided by s. 417 of the Code, and s. 423(1)(a) therefore expressly deals with the powers of the High Court in dealing with such appeals against orders of acquittals. Prima facie, if an order of acquittal is not challenged by an appeal as contemplated by s. 417 and if no action is taken by the High Court under s. 439 the said order of acquittal becomes final and cannot be impugned indirectly by the State in resisting an appeal filed by a convicted person against his conviction. In a case where several offences are charged against an accused person the trial is no doubt one; but where the accused person is acquitted of some offences and convicted of others the character of the appellate proceedings and their scope and extent is necessarily determined by the nature of the appeal preferred before the Appellate Court. If an appeal is preferred against an order of acquittal by the State and no appeal is filed by the convicted person against his conviction it is only the order of acquittal which falls to be considered by the Appellate Court and not the order of conviction. Similarly, if an order of conviction is challenged by the convicted person but the order of acquittal is not challenged by the State then it is only the order of conviction that falls to be considered by the Appellate Court and

not the order of acquittal. Therefore the assumption that the whole case is before the High Court when it entertains an appeal against conviction is not well-founded and as such it cannot be pressed into service in construing the expression "alter the finding".

In this connection we ought to recall the fact that it is only the High Court which is authorised to entertain appeals against acquittal under s. 417 of the Code. But the provisions of s. 423(1)(b) are applicable to all the Appellate Courts and so the meaning of the expression "alter the finding" cannot change according as the Appellate Court is the High Court or the Court of Sessions. It is common ground that the Court of Sessions which is an Appellate Court cannot alter the finding of acquittal in pursuance of the provisions of s. 423(1)(b)(2) but the argument is that the High Court can. This argument puts two different interpretations on the same expression "alter the finding" and that would not be a proper mode to adopt in construing the clause. We are, therefore, inclined to hold that just as the Court of sessions is not entitled to alter the finding of acquittal in exercising its powers under s. 423(1)(b)(2) so is the High Court not entitled to do it. In other words, the expression "alter the finding" has only one meaning, and that is alter the finding of conviction and not the finding of acquittal.

Besides, if the expression "alter the finding" was to include the power to reverse the finding of acquittal it is not easy to realise why s. 423(1)(a) should have been enacted at all. From the very fact that s. 423(1)(a) deals independently with the topic of appeals from orders of acquittal, it would be reasonable to infer that the appellate power in respect of the orders of acquittal are dealt with separately and exclusively under s. 423(1)(a), whereas appellate powers to deal with orders of conviction are dealt with separately and exclusively under s. 423(1)(b). The scheme of s. 423, therefore, is inconsistent with the argument that cl. (2) of s. 423(1)(b) covers orders of acquittal and empowers the Appellate Court to alter the said orders.

As a matter of construction the words "the finding" in the expression "alter the finding" must mean the finding of conviction, because the clause begins with "in an appeal from a conviction" and it is obvious that read in the context of the opening words of the clause "the finding" must mean the finding of conviction and no other. It is with an appeal from conviction that the clause deals and it is the finding of conviction or guilt which it empowers the Appellate Court to alter. The word "alter" must in the context be distinguished from the word "reversed". Whereas, under s. 423(1)(b)(1) power is conferred on the High Court to reverse the order of conviction the power conferred on the Appellate Court by the expression "alter the finding" is merely the power to alter. Reversal of the order implies its obliteration, whereas alteration would imply no more than modification and not its obliteration. This consideration also shows that what the expression aims at is the finding of conviction or guilt and not the finding of acquittal or innocence.

There is yet another consideration which leads to the same conclusion. Section 423(1)(b)(2) emphatically refers to the sentence and requires that despite the alteration of the finding the sentence must be maintained. In other words, the finding and the sentence go together and the clause provides that even if the finding is altered the sentence may be retained. Similarly, the sentence may be reduced with or without altering the finding. The reference to the sentence in both the cases indicates that the finding which can be altered under the clause is a finding which has led to the imposition of sentence on the accused person. This clause would naturally raise the question as to what are the kinds of cases in which the power can be exercised ? The answer to this question is furnished by the provisions of s. 236, 237 and 238. Section 236 deals with cases where it is doubtful what offence has been committed s. 237 with cases where a person may be charged with one offence and yet he can be convicted of another, and s. 238 with cases where the offence proved includes the

offence charged and another offence not so charged. Where a person is charged with a major offence, such as for instance under s. 407 of the Indian Penal Code, he may be convicted either of that offence or of a minor offence, as for instance under s. 406. That is the result of s. 238 of the Code. Now, if a trial court charges, and convicts an accused person of, an offence under s. 407 and sentences him the Appellate Court may alter the finding of guilt of the accused from s. 407 to s. 406 and in that case it may retain the same sentence or reduce it. It is, however, clear that in exercising the power conferred by s. 423(1)(b)(2) the sentence imposed on an accused person cannot be enhanced, and that may mean that the conviction of a minor offence may not be altered into that of a major offence. In our opinion, therefore, the power conferred by s. 423(1)(b)(1) is intended to be exercised in cases falling under ss. 236 to 238 of the Code. We would accordingly hold that the power conferred by the expression "alter the finding" does not include the power to alter or modify the finding of acquittal. The finding specified in the context means the finding as to conviction, and the power to alter the finding can be exercised in cases like those which we have just indicated.

If s. 423(1)(b)(2) was intended to confer power on the Appellate Court to alter findings of acquittal the whole clause would have been differently worded and s. 423(1)(a) would not have found a separate place in the section. Besides, if without an appeal against an order of acquittal the finding as to acquittal can be altered by the Appellate Court it is not easy to appreciate why s. 439 should have been separately enacted. Section 439 has been separately enacted in order to empower the High Court in the interest of justice to examine the orders of acquittal and if it is satisfied that in any case the order of acquittal needs to be revised the High Court can exercise its power suo motu. The legislature has therefore deliberately provided wide powers under s. 439 in the interest of justice, and so it is very unlikely that the legislature could have intended to confer a similar power on the High Court under s. 423(1)(b)(2).

In this connection we ought to deal with another argument which is sometimes pressed into service in support of the wider construction of the clause "alter the finding". It is said that the provisions of s. 439 apply to cases where there is a complete and express order of acquittal, whereas s. 423(1)(b)(2) covers cases of implied and partial acquittal. It is also urged that whereas there is a specific provision made in s. 439(4) by which the High Court is precluded from converting a finding of acquittal into one of conviction there is no such limitation in s. 423. Both these arguments do not appear to us to be well-founded. In regard to the argument of implied acquittal being open to review by the High Court under s. 423(1)(b)(2) it would be enough to refer to a decision of the Privy Council where this argument has been rejected. In Kishan Singh v. The King-Emperor [(1928) 56 I.A. 390] the appellate had been tried by a Sessions Judge under s. 302 on a charge of murder. He was convicted under s. 304 of culpable homicide not amounting to murder. This conviction was recorded in the light of the provisions of s. 238(2) of the Code. For the offence under s. 304 he was sentenced to five years' rigorous imprisonment. While convicting the appellant under s. 304 the trial court did not record a specific order of acquittal for the offence under s. 302. The State Government did not appeal but applied for revision on the ground that the appellant should have been convicted of murder and that the sentence was inadequate. The High Court thereupon convicted the appellant of murder and sentenced him to death. This order of conviction and sentence was successfully challenged by the appellant before the Privy Council. The Privy Council held that the finding at the trial ought to be regarded as of acquittal on the charge of murder and that consequently s. 439(4) of the Code precluded the High Court from having jurisdiction upon revision to convict on that charge. Dealing with the argument that s. 439(4) should be confined only to cases where there is complete acquittal their Lordships thought it necessary to say that "if the learned Judges of the High Court of Madras intended to hold that the prohibition in s. 439, sub s. (4) refers only to cases where the trial has ended in a complete acquittal of the accused in respect of all charges or offences, and not to a

case such as the present, where the accused has been acquitted of the charge of murder, but convicted of the minor offence of culpable homicide not amounting to murder, their Lordships are unable to agree with that part of their decision. The words of the sub-section are clear and there can be no doubt as to their meaning. There is no justification for the qualification which the learned Judges attached to the sub-section." It would thus be clear that any attempt to confine the operation of s. 439(4) to cases of the so-called complete acquittal cannot be entertained; and so it would be idle to suggest that s. 423(1)(b)(2) covers cases of implied or partial acquittal and s. 439 deals with cases of express and complete acquittal. In setting aside the order of conviction for the offence of murder imposed by the High Court on the appellant the Privy Council observed that the High Court had acted without jurisdiction and so it could not accept the plea that no prejudice had thereby been caused to the appellant. This case, therefore, clearly establishes that in exercising the powers conferred on it by s. 423(1)(b) the High Court cannot convert acquittal into conviction that can be done only by adopting the procedure prescribed in s. 439 of the Code.

Then, as to the argument based on the specific provision contained in s. 439(4) it is obvious that no such limitation could have been prescribed in regard to the provisions of s. 423(1)(b) for the reason that the orders of acquittal are outside the purview of that clause. Therefore, it would be unreasonable to suggest that because there is no limitation on the power of the High Court as there is in s. 439(4) the High Court can, in dealing with an appeal against conviction, alter the finding of acquittal recorded at the Trial in favour of the accused person. We must accordingly hold that the Full Bench of the Andhra High Court was right in coming to the conclusion that Naidu, J. acted without jurisdiction in altering the finding and order of acquittal passed in favour of the respondent in respect of the offences under ss. 302 and 392 when he was dealing with the appeal preferred by the respondent against her conviction under s. 411.

In this connection we may incidentally refer to the observations made by Venkatarama Ayyar, J., who spoke for the Court, in Jayaram Vithoba v. The State of Bombay [(1955) 2 S.C.R. 1049]. In dealing with the contention of the accused that the Court had no power under s. 423(1)(b) of the Code of Criminal Procedure to award a sentence under s. 148 in a case the accused was charged under ss. 324 and 148 of the Indian Penal Code, the High Court had observed that they had ample power to transpose the sentence so long as the transposition does not amount to enhancement, and this observation raised a question about the construction of s. 423(1)(b). Dealing with the said question, Venkatarama Ayyar, J. observed "there is nothing about the transposition of the sentence under s. 423(1)(b). It only provides for altering the finding and maintaining the sentence, and that can apply only to cases where the finding of guilt under one section is altered to a finding of guilt under another. The section makes a clear distinction between a reversal of a finding and its alteration". These observations seem to take the same view of the scope and effect of the provisions of s. 423(1)(b) as we are inclined to do.

As we have already indicated at the commencement of this judgment, on the question raised for our decision in the present appeal there has been conflict of judicial opinion. We do not, however, propose to consider the several decisions to which our attention was drawn because, in our opinion, no useful purpose would be served by examining the facts in all those cases and subjecting to scrutiny, the reasons adopted for arriving at different conclusions. We would, therefore, content ourselves with the broad statement that respondent has relied upon the decisions in Indra Kumar Nath v. The State [A.I.R. (1954) Cal. 375]. The State v. Amalesh Chandra Ray [I.L.R. (1953) 1 Cal. 302], Fulo v. State [(1956) I.L.R. 35 Pat. 144] (Full Bench), and Taj Khan v. Rex [A.I.R. 1952 All. 369] (Full Bench), whereas the appellant has relied upon the decisions in Krishna Dhan Mandal v. Queen-Empress [(1895) I.L.R. 22 Cal. 377], Queen-Empress v. Jabanulla [1896 I.L.R. 23 Cal.

975],. In Re Illuru Lakshmaih [A.I.R. 1952 Mad. 101] Golla Hanumappa v. Emperor, [(1912) I.L.R. 35 Mad. 243] Re K. Bali Reddi, [1914 I.L.R. 37 Mad. 119] In Re Rangiah, [A.I.R. 1954 Mys. 122] Bawa Singh v. The Crown [(1942) I.L.R. 23 Lah. 129] (Full Bench) and the majority judgment in Emperor v. Zamir Qasim [I.L.R. (1944) All. 403]. The minority view expressed by Mulla J. in Emperor v. Zamir Qasim [I.L.R. (1944) All. 403] contain a careful and exhaustive discussion of the topic and the respondent has strongly relied upon it.

There is one more point which still remains to be considered and that is the subject-matter of the second issue referred to the Full Bench. It is urged before us by Mr. Choudhury on behalf of the State that the Full Bench itself has acted in excess of jurisdiction in entertaining the plea raised by the respondent under s. 403, because he contends that the judgment delivered by Naidu J. could not be revised by the High Court having regard to the provisions of s. 369 of the Code. We have already mentioned that this question has also been answered in favour of respondent by the Full Bench. The judgment of the Full Bench does not show that the effect of the provisions of s. 369 was argued before it. In substance, however, the Full Bench has held that the order passed by Naidu J. is outside the authority conferred on the High Court under s. 423(1)(b)(2) and as such can be treated to be without jurisdiction and therefore a nullity. We do not propose to decide this point in the present appeal, because we have allowed Mr. Rama Reddy, who appeared for the respondent at our instance, to make an application for special leave against the order passed by Naidu J. Accordingly Mr. Rama Reddy has made an application, Special Leave Petition (Criminal) No. 476 of 1961, for special leave and has prayed for excuse of delay made in filing it. Having regard to the very unusual circumstances in which the present application has been made we feel no difficulty in condoning the delay made by the respondent in filing her application for special leave and granting her special leave to appeal against the order in question. In fairness we ought to add that Mr. Choudhury did not resist the respondent's prayer for excuse of delay in the present case. Since we are now possessed of an appeal, Criminal Appeal No. 112 of 1961, filed by special leave against the judgment and order of Naidu J. the question as to whether the Full Bench could have considered the validity of the said judgment and order has become a matter of academic importance. There can be no doubt that in the appeal preferred by the respondent against the said order it is certainly open to her to challenge its validity, and as we have come to the conclusion that the order passed by Naidu J. is without jurisdiction we have no difficulty in allowing the respondent's appeal and setting aside the said order.

In the result Criminal Appeal No. 112 of 1961 preferred by the respondent. Thadi Narayana is allowed and the High Court's order passed in Criminal Appeal No. 237 of 1957 by which case against her had been sent back for retrial on the original charges against her under ss. 302 and 392 of the Indian Penal Code is set aside. The consequence of this decision is that the order of acquittal passed in her favour by the trial court in respect of the said offences is restored. The State has not preferred any appeal against the High Court's decision in Criminal Appeal No. 237 of 1957 where by the conviction of Thadi Narayana in respect of the offence under s. 411 and sentence imposed on her in that behalf have been set aside while ordering her retrial for the major offences under ss. 302 and 392 of the Indian Penal Code; and so this latter order of acquittal in respect of s. 411 will stand. In the circumstances of this case this result cannot be avoided. Criminal Appeal No. 222 of 1959 preferred by the State against the decision of the Full Bench therefore fails and is dismissed.

Criminal Appeal No. 112 of 1961 allowed.

Criminal Appeal No. 222 of 1959 dismissed.

</html