in construing S. 8(1), English Act, that the section was capable of this wider interpretation also. We are inclined to accept this wider interpretation — which is in consonance with this principle. We, therefore, hold that the expression 'any person' would include person like the applicant who comes within the definition of the expression 'landlord.' We, therefore, affirm the conviction and the sentence. No doubt rule had been issued at the time of the admission of this application for the enhancement of the sentence. But we think that the sentence of simple imprisonment for six months is quite adequate and we see no reason to enhance the sentence. The rule is discharged.

R.G.D. *Rule discharged.*

A. I. R. (35) 1948 Bombay 244 *[C. N. 67.]*

SEN AND GAJENDRAGADKAR JJ.

Narayan Ramchandra Jarag and another — Accused v. *Emperor.*

Confirmation Case No. 10 of 1947 and Criminal Appeal No. 176 of 1947, Decided on 9-7-1947.

Criminal P. C. (1898), Ss. 375, 423, 418 — Death sentence passed by Sessions Judge at jury trial on majority opinion—Appeal by accused and confirmation case before High Court—It is not necessary to dispose of appeal before dealing with confirmation case — Powers of High Court mentioned in S. 376 are not affected by S. 418 (1) and S. 423 (2) — High Court is bound to consider all questions of law and fact.

Section 376 must be read as conferring upon the High Court the powers mentioned in Cls. (a), (b) and (c) of the said section, unaffected by the provisions of S. 418 (1) and S. 423 (2). Section 376 deals with an exceptional class of cases and to such class of cases the general provisions of S. 418 and S. 423 cannot apply. When an appeal preferred by the accused, convicted and sentenced to death, and the case for the confirmation of the sentence are both before the High Court it is not necessary to dispose of the appeal first before dealing with the confirmation case. Both the confirmation case and the appeal arise from the same order of conviction, and if a case is made out for the exercise of the powers of the High Court under S. 376 in favour of the accused, those powers will have to be exercised whether the accused has made an appeal or not. It would therefore, make no difference even if the appeal preferred by the accused is technically heard before final orders are passed in the confirmation case. [Paras 4, 5]

In such a case the High Court is entitled and indeed bound to consider all questions of fact and law which arise for decision of the High Court. It is true that in deciding these questions the High Court may take into account the fact that there has been a trial by jury and the jury have returned a majority verdict of guilty against the accused. But the importance of the said verdict cannot be exaggerated when the case falls to be decided under S. 376: 33 A. I. R. 1946 Bom. 446, *Rel. on.* [Para 5]

Annotation :—(46-Com.), S. 376, N. 1, Pt. 2.

Cases referred :—

1. ('15) 17 Bom. L.R. 1072 : 2 A.I.R. 1915 Bom. 243: 31 I.C. 994 : 16 Cr.L.J. 818, Emperor v. Daji Yesaba.
2. ('45) 48 Bom. L. R. 163 : 33 A. I. R. 1946 Bom. 446 : 226 I. C. 495 : 47 Cr. L. J. 962, Emperor v. Narhari Borkar.

B. R. Ambedkar and V. R. Gadkari—for Accused.

S. G. Patwardhan, Government Pleader — for the Crown.

Gajendragadkar J.—This confirmation case and appeal arise from the sentence of death passed by the learned Sessions Judge at Poona against the appellant. The appellant and another were charged in the Court of the learned Sessions Judge with having committed an offence punishable under S. 302 and S. 302 read with S. 109 respectively. The prosecution case was that on or about the night between 25th and 26th August 1946, the appellant intentionally caused the death of one Yeshwant Sapre by stabbing him with a knife and thus made himself liable to be punished under S. 302 and the case against the other person was that on the same day and about the same time and place he abetted the appellant in the commission of the said offence of murder. The case against both the accused was tried with the aid of jurors. The jury unanimously returned a verdict of not guilty in regard to the charge against accused 2. The learned Judge agreed with that verdict and acquitted the said accused of the said charge. As regards the appellant the jury were divided, 5 being of the opinion that he was guilty of the offence charged, while 4 were of the opinion that he was not guilty of the said charge. The learned Sessions Judge took the view that the majority verdict of the jury could not be regarded as perverse and agreed with that verdict. Accordingly, he convicted the appellant of the offence under S. 302 and ordered that he should be hanged by the neck until he was dead. That is how the confirmation case and the appeal by the accused have come before us for disposal today.

[2] At the hearing of these matters the learned Government Pleader has raised a preliminary point of law. He has contended that since the accused has preferred an appeal against his conviction and sentence in this case, we should, and in fact ought to, dispose of the said appeal before dealing with the confirmation case, and in disposing of the said appeal our powers would not be wider than those mentioned in S. 423 (1) read with sub-s. (2). In other words, the argument is that the appeal preferred by the accused can succeed only if it is shown that the charge given by the learned trial Judge to the jury suffered from misdirections or non-directions and that the said misdirections or non-directions resulted in a verdict which is erroneous. If the accused fails to satisfy the requirements of S. 423 (2), his appeal must fail, and in that event the question of confirming the sentence in the confirmation case may have to be decided almost solely on the consideration as to whether the sentence of

death is justified or not. The learned Government Pleader has conceded that the uniform practice of this Court has been to hear both the confirmation case and the appeal preferred by the accused together and to deal with the merits of the case on the basis that all material questions of fact and law can be agitated by the accused. He has, however, suggested that this practice is inconsistent with the provisions of the Code and has asked us to decide this point as a matter of law. In support of his contention he has relied very largely on the observations of Hayward J. in 17 Bom. L. R. 1072.[1]

[3] In 17 Bom.L.R. 1072[1] this question was raised before Batchelor and Hayward JJ., but their Lordships did not decide it on the merits. They referred to the uniform practice which had prevailed in this Court and proceeded to deal with the merits of the case on the basis that all questions of fact and law had to be decided by them. Hayward J., however, apparently entertained some doubt as to the correctness of this practice and made certain observations in that behalf; "no considered case has been cited before us," said Hayward J., in which it was held upon full argument that the evidence in support of the facts found by the jury is laid open by the mere submission to the unrestricted judgment of the confirming Court" (p. 1073). He also proceeded to observe that should the question as to the powers of this Court in dealing with confirmation cases be hereafter raised, the answer would entirely depend on the interpretation of the language used in Ss. 374 to 376, Criminal P. C., and he pointed out that S. 374 does not require the convictions, but only the sentences of death, to be submitted for confirmation by the High Court. He then referred to the provisions of Ss. 375 and 376 and was disposed to take the view that the cases contemplated in the said two sections might well be such cases in which there had been an error of law, such as improperly withholding evidence from, or misdirection in the charge to, jury, and he emphasised the fact that the proviso to S. 376 lays down that it is only after the disposal of an appeal by an accused, if any, that the powers of confirmation or otherwise of the sentence of death can be exercised by the High Court. The learned Government Pleader has suggested that the doubts expressed by Hayward J. are well founded and the practice prevailing hitherto in dealing with confirmation matters as though the restrictions of S. 423(2) did not apply should be discontinued.

[4] It seems to us that in deciding the question as to the powers of this Court while dealing with confirmation cases the fact that the accused in question has preferred an appeal cannot make any material difference. It is true that the proviso to S. 376 lays down that no order of confirmation shall be made until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of. This proviso is intended to safeguard the right of the accused to make an appeal and to have his case argued by an advocate of his own choice. If the powers of this Court in dealing with confirmation cases are not affected by the limitations imposed by S. 423(2), the fact that an appeal has been preferred by an accused cannot affect the exercise of those powers. It would obviously be wrong to hold that the said powers would not be the same in dealing with all confirmation cases alike without reference to the question as to whether the accused has preferred an appeal or not. In that view we think there is no substance in the contention that we must deal with the appeal first before hearing the confirmation case. Both the confirmation case and the appeal arise from the same order of conviction, and if a case is made out for the exerciss of the powers of this Court under S. 376 in favour of the accused, those powers will have to be exercised whether the accused has made an appeal or not. In that view it would make no difference even if the appeal preferred by the accused is technically heard before final orders are passed in the confirmation case.

[5] What then are the powers of this Court while dealing with confirmation cases under chap. XXVI of the Code? Section 374 provides that no sentence of death shall be executed unless it is confirmed by the High Court. While dealing with confirmation cases the High Court is given power to direct further inquiry to be made or additional evidence to be taken under S. 375. Sub-section (2) of the said section provides that such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors, and it also says that unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken. It may be somewhat material to point out that S. 428 which deals with the appellate Court's powers to take further evidence or direct it to be taken provides under sub-s. (3) of the said section that the accused or his pleader shall be present when such additional evidence is taken, unless the appellate Court otherwise directs. It is thus clear that in dealing with confirmation cases if the High Court sees fit to make an order under S. 375 and directs a further inquiry to be made or additional evidence to be taken, the result of such inquiry or the effect of such additional evidence would have to be considered before deciding the confirmation case. The powers conferred by this section seem to indicate

tha in dealing with confirmation cases the High Court should be free to go into all questions of fact and law and take further evidence if necessary. Section 376, which deals with the powers of the High Court to confirm sentence or annul conviction, makes no distinction between confirmation cases arising from trials held with the aid of assessors or by jury. In terms it provides that in all cases submitted under S. 374, whether tried with the aid of assessors or by jury, the High Court may confirm the sentence, or pass any other sentence warranted by law or may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or acquit the accused person. On comparing the provisions of this section with those of S. 423, which deals with the powers of appellate Court in disposing of criminal appeals, it would be found that in S. 376 there is no provision corresponding to the provisions of sub-s. (2) of S. 423. It would not, therefore, be unreasonable to hold that the powers referred in S. 376 in regard to a special class of cases are unaffected by the provisions of S. 423(2). Besides, S. 418 makes the position perfectly clear. Sub-section (1) of S. 418 provides that an appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only. Sub-section (2) of the said section, however, provides for an exception. It says that notwithstanding the provisions of sub-s. (1) of S. 418 or sub-S. (2) of S. 423, when, in the case of a trial by jury any person is sentenced to death, any other person convicted and sentenced to a lesser punishment in the same trial with the person so sentenced may appeal on a matter of fact as well as a matter of law. This sub-section has been added in the Code by S. 115, Criminal P. C. Amendment Act, XVIII of 1923. Under the old Code, it had been held by some of the High Courts that where in a sessions trial of several accused one of the accused is sentenced to death and the other to lesser punishments and all of them appeal, and the case of the person sentenced to death is referred for confirmation under S. 374, the appeal preferred by the other accused sentenced to lesser punishments must be confined to matters of law and must be decided by reference to the provisions of S. 423(2). By making this amendment Legislature has made it clear that even with regard to persons who have been sentenced to lesser punishments their appeals may have to be considered even on questions of fact if they were tried jointly with another co-accused and the said co-accused had been sentenced to death. It is thus obvious that the foundation of the provisions of S. 418 (2) is that in dealing with confirmation cases the provisions of S. 418 (1) and those of S. 423 (2) cannot apply. We are, therefore, clearly of opinion that S. 376 must be read as conferring upon this Court the powers mentioned in cls. (a), (b) and (c) of the said section, unaffected by the provisions of S. 418 (1) and S. 423 (2). Section 376 deals with an exceptional class of cases and to such class of cases the general provisions of S. 418 and S. 423 cannot apply. It may be pointed out that when Hayward J. expressed his doubts on this question in 17 Bom. L. R. 1072[1] sub-s. (2) of S. 418 had not been introduced in the Criminal Procedure Code. In our opinion the amendment made by the said sub-section leaves no room for doubt that the powers of this Court in dealing with confirmation cases are what in practice they have always been held to be. We are, therefore, satisfied that the uniform practice of this Court is consistent with both the letter and the spirit of S. 376 of the Code. On that view we think we are entitled—and indeed bound—to consider all questions of fact and law which arise for our decision in the present case. It is true that in deciding these questions we may take into account the fact that there has been a trial by jury and the jury have returned a majority verdict of guilty against the accused. But the importance of the said verdict cannot, in our opinion, be exaggerated when the case falls to be decided under S. 376. The same view has been expressed by a Division Bench of this Court in 48 Bom. L. R. 163[2] in a judgment delivered by my learned brother. The learned Government Pleader suggested that the point had not been fully argued in the said case and wanted a decision from us as the question was of some importance. With respect, I agree with the observations of my learned brother in 48 Bom. L. R. 163[2] that there is little doubt that the uniform practice of this Court in dealing with confirmation cases is correct and fully justified by the provisions of the Code. It may not be immaterial to mention that the same practice apparently prevails in all the Indian High Courts.

[6] The material facts on which the prosecution is based are few and can be conveniently stated at the outset. One Drupadi is a widowed daughter of Dagdoba who is a resident of Nanded. She has a son named Laxman, who is a young boy of 10 or 11 years, and a brother named Ramchandra. Accused 1 as well as the deceased Yeshwant Sapre were carpenters from Poona. Accused 2, Tukaram, is the son of Dagdoba's cousin and thus a somewhat distant relative of Drupadi. It appears that in the summer of 1946 Dagdoba had engaged the services of accused 1 and the deceased for the purpose of fixing

up an engine in his field at Nanded. Accused 1 and the deceased, who were working as carpenters under Dagadoba, naturally came to know Drupadi during their stay at Nanded. About 2½ months before the date of the offence Drupadi had gone to Poona in order to arrange for the education of her son Laxman. Meanwhile, accused 1 and the deceased had also returned to Poona after the job at Dagdoba's place had been completed. According to the prosecution case when Drupadi came to Poona the deceased started visiting her and the frequent visits of the deceased provoked some comment from the neighbours. The young son of Drupadi resented the scandal that was going about and protested to Drupadi about the visits of the deceased. He resented the visits so badly that there was an incident between the son and the mother on or about 20th August, as a result of which the mother beat her son and the son left her house and went to his grand-father. Subsequently the mother of Drupadi having gone to Poona both of them proceeded to the place where Laxman had gone and brought him back. On 25th August it is alleged by the prosecution that accused 1 and 2 had gone to the place of Sundrabai who resides in the same locality as Drupadi and from her place they arranged to send word with Sundrabai's daughter, Samindra, to Laxman calling him to Sundrabai's place. When Laxman came to Sundrabai's place, accused 1 and 2 asked him to meet them at a hotel near Datta Mandir. Accordingly, the three persons met at the said hotel. Accused 1 and 2 there asked Laxman to arrange to take the deceased Sapre to the Globe talkies that night for the 10 P. M. show and accused 2 assured Laxman that they would see to it that the deceased did not repeat his visits at Drupadi's place. Accordingly, Laxman took a rupee from his mother, told her that he was visiting the cinema along with the deceased, contacted the deceased and went with him to the cinema at 10 P. M. The picture "Santan," which was being exhibited at the Globe that night, was over by 12.30 or 1 A. M. According to the prosecution case, as Laxman and the deceased entered the cinema house they saw accused 1 and 2 moving thereabout. After the show was over, Laxman and the deceased left the cinema house and the deceased offered to accompany Laxman to his place to see that he safely reached there. On the way Laxman sat down to ease himself and the deceased was walking a few paces ahead of him when Laxman saw accused 1 rushing at the deceased with a knife in his hand. He also saw that the deceased was stabbed by accused 1 on the back. The deceased fell down on the road and accused 1 ran away after throwing the knife at the place. Laxman then ran home and informed his mother that accused 1 had stabbed the deceased Sapre with a knife. Laxman and Drupadi then came on th scene of the offence. Meanwhile one Nilkant, a young boy of 18 who resides in house No. 507 in that locality, came out because he heard a noise. According to the prosecution case Laxman told Nilkant that a man named Narayan had stabbed the deceased. The boy Nilkant then went to the Sowar Gate Police Chowki and informed Mugutrao Jadhav, the Head Constable, in charge. Jadhav immediately went to inspector Giakwad and told him what he had heard with regard to the murder. Thereupon Inspector Giakwad came on the scene of the offence at once. He saw the boy Laxman, made some inquiries with him and on going to the Faraskhana Police Station he registered his own first report and commenced investigation. In consequence of some information gathered by him from Laxman Inspector Giakwad went to Poona and Shevajinagar railway station in search of accused 1. At about 2.30 A. M. he went in his own car to Nanded along with Laxman. The inquiries which he made at Nanded, however, proved to be futile. The Inspector then took the brother of accused 1 with him and came back to Poona. At Poona he went to one Bhimrao where he expected to get some information about the accused. This was about 6 A. M. the next day. Accused No. 1 was not found at the place of Bhimrao. Having failed to secure accused 1 the Inspector proceeded to attend to the business of inquest and other matters concerning the dead body which was still lying on the road. A panchnama was made about the scene of the offence, about the dead body and about the knife which was attached and the dead body was despatched for *post mortem* along with a constable. That done, the Inspector proceeded to record the statements of Laxman, Nilkant and Drupadi and other people. This was about 2 P. M. on the 27th. He then made further attempts to secure accused 1. During the night of the 26th he went to Yeshwant Patil, whose house is about 5 or 6 furlongs from the scene of the offence. Yeshwant was present in his house. According to the prosecution case Yeshwant Patil produced before the Inspector a blood stained shirt and a muffler. These articles were attached in the presence of panchas. Yeshwant himself was kept at the Faraskhana for about a week. According to the prosecution Yeshwant had told the Inspector that on the night of the 25th the accused had gone to Yeshwant's place and had kept his blood stained shirt and a muffler with him and had borrowed from him a shirt. Yeshwant had also

stated that accused 1 had left his place on the morning of the 26th. In the course of investigation, the Inspector learnt that some information may be available from the owners of a cycle shop and the inquiry with them promised to be fruitful because he learnt from the shop-keepers that accused 1 and another person had borrowed 2 cycles on the 25th. One of the cycles had been returned but accused 1 had not returned the cycle which he had taken. A constable was then posted at the shop in the hope that accused 1 would come to return the bicycle and would thus be available for arrest. On the 27th the Inspector began to look out for accused 2. On the 28th constable Ibrahim who had been posted at the cycle shop of Maruti came to the police station with accused 1. Accused 1 had arrived at the cycle shop and had been arrested by Ibrahim. A panchnama was made about the person of the accused since he had some injuries. A panchnama was similarly made about the dhoti which he was wearing since the dhoti was blood-stained. On the 29th Head Constable Dhamale produced accused 2 at about 10 A. M. and the Inspector proceeded to arrest him straightway. Thereafter the Inspector apprehended that some of the witnesses were likely to go back upon the statements which they had already made. Accordingly, he took steps to record the statements of Laxman, Sundrabai and Drupadi on September 7 and 11 respectively. Finally a charge sheet was sent on September 12 and the learned Magistrate having committed both the accused for their trial, the trial was eventually held by the learned Sessions Judge at Poona. Accused 1 denied the charge and pleaded that the whole case was entirely false. He explained the injury on his person by saying that it had been caused while he was doing his work as a carpenter and stated that the blood stains on his dhoti were the result of the said injury.

[7] [His Lordship after dealing with the merits of the case concluded:] In any case there are so many unusual and suspicious features about the evidence in this case that we feel that it would be unsafe to accept the evidence as a whole and to hold that the charge of murder against the accused has been proved. This is a matter in which there is a reasonable doubt and we think that the accused is entitled to the benefit of that doubt.

[8] The result is the appeal succeeds, the order of conviction and sentence passed against accused 1 is set aside, and the accused is acquitted and ordered to be discharged.

Sen J.—I agree and have nothing to add.

S.C. *Appeal allowed.*

A. I. R. (35) 1948 Bombay 248 *[C. N. 68.]*

SEN AND GAJENDRAGADKAR JJ.

Emperor v. *P. A. Joshi — Accused.*

Criminal Ref. No. 51 of 1947, Decided on 8-8-1947, made by Sessions Judge, Nasik.

Criminal P. C. (1898), S. 197— Accused must be a Judge at the time when accusation is made—Accused though "Judge" when offence was committed ceasing to be so, at time of accusation—No sanction is required.

The word "is" in the expression "who is a Judge" in S. 197 indicates that the person who is accused must be a Judge at the date of the accusation of the offence, and where he had ceased at such date to hold the office in which he could possibly be said, under the provisions of S. 19, Penal Code, to hold a position of a Judge, the protection afforded to him under S. 197, Criminal P. C. will cease to apply :30 A. I. R. 1943 Cal. 527 and 25 A.I.R. 1938 All. 513, *Rel. on*; 24 A. I. R. 1937 Nag. 293, *Dissent.* [Para 3]

Annotation.—('46-Com.) Cr. P. C., S. 297. N. 1.

Cases referred:

1. ('88) 12 Bom. 36, Queen-Empress v. Tulja.
2. ('24) 47 Mad. 585 : 10 A. I. R. 1923 Mad. 475 : 73 I. C. 619, Sarvothama Rao v. Chairman Municipal Council, Saidapet.
3. ('29) 16 A. I. R. 1929 Mad. 175 : 114 I. C. 817 : 30 Cr. L. J. 365, Abboy Naidu v. Kanniappa Chettiar.
4. ('44) I. L. R. (1944) 1 Cal. 113 : 30 A. I. R. 1943 Cal. 527 : 207 I. C. 393 : 44 Cr. L. J. 633, Prasad Chandra v. Emperor.
5. ('38) I. L. R. (1938) All. 776 : 25 A. I. R. 1938 All. 513 : 177 I. C. 462 : 39 Cr. L. J. 925, Suraj Narain v. Emperor.
6. ('37) 24 A.I.R. 1937 Nag. 293 : I. L. R. (1939) Nag. 419 : 172 I.C. 669: 39 Cr. L. J. 146, In re S. Y. Patil.

R. A. Jahagirdar—for Accused.

R. B. Kotwal—for Complainant.

S. G. Patwardhan, Government Pleader — for the Crown.

Sen J.—This a reference from the Sessions Judge of Nasik, who has submitted the proceeding in criminal case No. 192 of 1946 in the Court of the City Magistrate, First Class, Nasik, wherein one P. A. Joshi is being tried for offences punishable under Ss. 465 and 477, Penal Code. The accused made an application to the District Magistrate that the proceedings should be dropped as the previous sanction of the Governor of Bombay was necessary under the provisions of S. 197, Criminal P. C., for his prosecution, and as such sanction had not been obtained in this case. The learned Magistrate rejected the application on 8-4-1946. The accused thereupon filed a criminal revision application in the Court of the Sessions Judge of Nasik and again contended that on the facts of this case the previous sanction of the Governor of Bombay under S. 197, Criminal P. C., was necessary. A few material facts bearing on this question may be stated. The complainant alleged that the accused, who was the Chief Officer of the Nasik Municipality, was appointed the Returning Officer by the Collector in the triennial municipal