

**(1998) 03 AHC CK 0151**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Criminal Miscellaneous Case No. 330 of 1991

State of U.P.

APPELLANT

Vs

Munna

RESPONDENT

**Date of Decision:** March 20, 1998

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 320

**Citation:** (1999) 3 ACR 2655

**Hon'ble Judges:** R.P. Nigam, J; I.P. Vashishtha, J

**Bench:** Division Bench

### **Judgement**

I.P. Vashishtha and R.P. Nigam, JJ.

Heard the learned Government Advocate for leave to appeal against acquittal of the Respondent recorded by the learned Additional Sessions Judge, Kheri, vide his judgment dated 25.3.1991.

2. It was submitted that even though the prosecution failed to adduce sufficient evidence to warrant finding of conviction against Respondent yet the Court itself failed to compel the presence of the witnesses on exercising its power u/s 320, Code of Criminal Procedure.

3. On perusing the record and hearing the learned Government Advocate we are not inclined to sustain his viewpoint because perusal of the judgment reveals that the prosecution examined two eyewitnesses neither of whom supported its case and thereafter no application was moved before the Court to seek procurement of any other witnesses. As a matter of fact, the prosecution itself closed its evidence and had the Court ventured into finding out any possible evidence on its own. it might have compromised its impartiality. There is no gainsaying that Court is not supposed to act as the prosecutor.

4. No merit, hence dismissed.