

**(1904) 06 CAL CK 0002**

**Calcutta High Court**

**Case No:** Rev. No. 481 of 1904

Emamdu and others

APPELLANT

Vs

The King-Emperor

RESPONDENT

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**Date of Decision:** June 7, 1904

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### **Judgement**

1. The twelve Petitioners were convicted by the Chief Presidency Magistrate of an offence under sec. 143, I. P. C., and were sentenced each to 21 days" rigorous imprisonment. A Rule was issued to show cause why the conviction should not be set aside and a new trial ordered chiefly on the ground that the record of the case, the trial of which was somewhat protracted, is insufficient to enable this Court to deal with the case adequately upon revision. We have heard Mr. Jackson for the Petitioners and the learned Standing Counsel for the Crown and have considered the authorities cited which lay down the rule that the Magistrate should state the reasons for conviction in such a manner that this Court on revision may judge whether there were sufficient materials before him to support the conviction. Sec. 362 of the Code prescribes that the evidence in appealable cases, that is in which a Presidency Magistrate imposes a fine exceeding Rs. 200 or imprisonment for a term exceeding 6 months, shall be duly recorded. There is no obligation in law to record evidence in other cases. In sec. 370 it is enacted that instead of recording a regular judgment a Presidency Magistrate need only record certain specified particulars (a) to (b) and (i) in all cases in which the Magistrate inflicts imprisonment or fine exceeding Rs. 200 or both, a brief statement of the reasons for the conviction.

2. Now in the present case the record of the evidence is undoubtedly very meagre. It is urged that it is usual for Presidency Magistrates at all events in cases where accused is represented by counsel, to record the evidence with some fulness and that this arrangement is convenient for the parties as well as for the Magistrate in preparing his judgment. This may be so, but we are unable to prescribe a procedure which the law has not rendered obligatory. The discretion rests with the Magistrate and we cannot rule otherwise. The Magistrate explains that he thought it necessary to record the evidence only so far as it bore on the question of identification.

3. Turning to the "brief statement of the reasons for conviction" we find that the Magistrate sets out in a closely written statement of two pages of foolscap the following particulars : The case arose on the 10th day of the Mohurrum when processions were brought out The accused in this case are members of one party who came to blows with members of another party. He then disposes of the case against two of the 14 accused against whom the evidence was insufficient and whom he acquits. Then he refers to 5 men who were arrested red-handed as he says:--Only one of them called evidence in his defence to show that be was arrested away from the scene but this evidence the Magistrate could not accept against the testimony of an Inspector and a sergeant who saw accused among the combatants when the constable arrested him. The Magistrate proceeds to indicate the evidence against No. 6. Of the witnesses to an alibi two speak of a time subsequent to the riot, so the Magistrate very properly considers that they prove no alibi, as to the 3rd witness the Magistrate gives full reasons for not believing him. In a similar way the Magistrate indicates the evidence bearing on each of the remaining accused persons. As regards the alibi set up by them the Magistrate treats the evidence somewhat curtly no doubt, but we know what evidence of this class is generally worth, and when the Magistrate had before him strong evidence for the prosecution we cannot say that the view he took was at all unreasonable. The law does not demand a full and complete statement of reasons, but only a brief one. Following the rule which we cited at the outset, we are of opinion that there is no sufficient reason for interfering with the conviction in this case. At the same time we think that as no serious harm was done and as the Petitioners have suffered some imprisonment besides incurring heavy legal expenses, the ends of justice do not require that they should be sent back to jail, In lieu of the unexpired terms of imprisonment we direct that they do each pay a fine of Rs. 10 or in default be rigorously imprisoned for 10 days,