

(1880) 07 CAL CK 0005

Calcutta High Court

Case No: None

Noor Bux Kazi and
Others

APPELLANT

Vs

The Empress

RESPONDENT

Date of Decision: July 29, 1880

Acts Referred:

- Evidence Act, 1872 - Section 30

Citation: (1881) ILR (Cal) 279

Hon'ble Judges: Richaed Garth, C.J; Tottenham, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

(who, after stating the facts, proceeded to deal with the evidence against each prisoner individually, and with regard to the statement made by Daghu before the Committing Magistrate as affecting Noor Bux observed):

2. The Judge also attaches some weight to what he calls the original confession made by one of the prisoners named Daghu (who has been convicted u/s 148, Penal Code) to the Committing Magistrate, in which he mentions Noor Bux Kazi as present. It is our duty to point out to the Judge that this statement of Daghu's, which we have read, is no sort of evidence against Noor Bux even u/s 30 of the Evidence Act, for it is not a confession; it does not amount to any admission by Daghu himself, that he was guilty in any degree of the offence charged; but it is simply an endeavour on his part to explain his own presence on the occasion in such a manner as to exculpate [283] himself. Any mention made by him in such a statement of other persons having been engaged in the riot, is altogether irrelevant, and is not evidence against them either u/s 30 or otherwise.

3. (The learned Chief Justice then went into the further evidence, and finding, with regard to Noor Bux, that there was not sufficient evidence of his having been

present at all, ordered the conviction as regards him to be set aside. With respect to the other two appellants, the Chief Justice found that they were members of the unlawful assembly, but there was not sufficient evidence to show that the object of the assembly was the murder of Kobin; nor that they, as leaders of the assembly, openly incited the others to cause his death, and therefore they ought not to be found guilty of murder, but only of rioting u/s 148 of the Penal Code. The learned Chief Justice then concluded as follows):

4. We think it right to point out to the Sessions Judge, that the course which he adopted in the examination of the witnesses for the prosecution was irregular, opposed to the provisions of Section 138 of the Evidence Act, and not fair to the prisoners.

6. We find that, on the examination-in-chief being finished, the Judge questioned almost all the witnesses at considerable length upon the very points to which he must have known that the cross-examination would certainly and properly be directed. The result of this, of course, was to render the cross-examination by the prisoner's pleaders to a great extent ineffective, by assisting the witnesses to explain away, in anticipation, the points which might have afforded proper ground for useful cross-examination.

7. It is not the province of the Court to examine the witnesses, unless the pleaders on either side have omitted to put some material question or questions; and the Court should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in Section 138 of the Act. The Judge's power to put questions u/s 165 is certainly not intended to be used in the manner which we have had occasion to notice in the present case.