

(1913) 11 CAL CK 0011

Calcutta High Court

Case No: Criminal Reference No. 232 of 1913

Ramjiwan Rai

APPELLANT

Vs

Abilakh Barai

RESPONDENT

Date of Decision: Nov. 19, 1913

Final Decision: Dismissed

Judgement

1. This is a Reference by the Officiating District Magistrate of Sarun asking for the setting aside of an order of acquittal passed by the Sub-Deputy Magistrate of Gopalgunj under sec. 247, Cr.P.C., on account of the absence of the complainant at the time of the hearing of the argument in the case. The case that was before the Sub-Deputy Magistrate was a summons case and therefore governed by the procedure laid down in Chap. XX of the Code of Criminal Procedure. The principal point on which the District Magistrate has asked for our interference with the acquittal is that the Code makes no provision for argument in a case governed by Chap. XX, and therefore the presence of the complainant at that stage was not required by law. It is true that Chap. XX of the Code makes no provision for argument in a summons case, but we are not prepared to say that the hearing of a case is concluded with the examination of the witnesses for the parties. As a matter of fact the case had been adjourned by the Sub-Deputy Magistrate to be heard again for the purpose of the documentary and oral evidence being explained to him. In that view the hearing of the case did not end and therefore sec. 247 of the Code of Criminal Procedure had application to the circumstances of the case. In the case of Mudoosoodun v. Hari Dass 22 W.R. Cr. 40 (1874), it was laid down that "under sec. 208 of the Code of Criminal Procedure of 1872, (sec. 247 of the present Code), the Magistrate may dismiss the complaint if the complainant does not appear on the day to which the hearing has been duly adjourned, even though the complainant and his witnesses have been examined and their further attendance seems unnecessary." Regard being had to the authority of the case we have just now cited we are unable to interfere with the order of acquittal passed by the Sub-Deputy Magistrate.