

(1917) 02 CAL CK 0033

Calcutta High Court

Case No: Ref. No. 32 of 1917

Kaji Sofiuddin

APPELLANT

Vs

Fajel Shaik and Others

RESPONDENT

Date of Decision: Feb. 28, 1917

Judgement

1. We have read the letter of reference in this case. It is abundantly clear from the facts set out by the learned Sessions Judge that there was a misjoinder of charges, that is to say, there ought to have been at least two trials, one in respect of one kabuliyat and one in respect of the other. On that ground alone we must accept this reference and set aside the conviction and the sentence imposed upon the accused. The question then remains whether this is a case in which we ought to direct a retrial. Having regard to the facts set out in the letter of reference submitted to us by the learned Sessions Judge and also to the explanation of the trial Magistrate we are of opinion that this is not a case in which it would be proper for us to direct a retrial; we desire to say further that we are satisfied from the explanation of the Honorary Magistrate that he gave the parties a fair trial and there is no reason whatsoever for the suggestion that he has in any way wilfully disregarded any decision of this Court. In the result the conviction of and sentences upon the accused persons are set aside and we direct that they be released, or if they be on bail, that their bail-bonds be discharged.