

(1924) 07 CAL CK 0052

Calcutta High Court

Case No: None

The Government of Bengal

APPELLANT

Vs

Muchu Khan

RESPONDENT

Date of Decision: July 10, 1924**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 276

Citation: AIR 1925 Cal 798

Judgement

1. This is an appeal on behalf of Government against the acquittal of one Muchu Khan who was tried on the charge of murder. The ground that is pressed before us is that the jury was illegally selected. The facts, according to the affidavit which has been filed, are that on the day fixed for the trial, of the 14 of the special jurors three only appeared. The Sessions Judge waited for about an hour and no more came. Subsequently four gentlemen who happened to be in the precincts of the Court were called as jurors in the case. These were not chosen by lot and were not all in the jury list.

2. We are unable to accept the contention that there was anything illegal in the procedure adopted. Section 276, Cr. P.C., provides that in case of a deficiency of persons summoned the number of jurors required may with the leave of the Court be chosen from such other persons as may be present. This section being part of the proviso to Section 276, the words that " the jurors should be chosen by lot " cannot be held applicable thereto. There is nothing in this proviso itself requiring that they should be chosen by lot or that they should be on the jury list. If we refer to a similar Section 279, it is there provided in the second clause that the place of a juror may be taken by any other person present in Court whose name is on the list of jurors or whom the Court considers a proper person to serve on the jury. This shows that the Legislature contemplated the possibility of a person not in the jury list being chosen to serve on the jury in the case of emergency. Also it must be inferred that if it was intended to limit the powers under the second proviso to

Section 276 to persons on the jury list it would have been expressly so stated.

3. The second ground of appeal relates to the fact that objections which were taken to one of the jurors were overruled. In this matter the Judge has a wide discretion and his decision is final. The third ground relating to misdirection on the evidence has not been seriously pressed.

4. The appeal is dismissed. The accused will be released if he be in custody.