

**(1890) 01 CAL CK 0003**

**Calcutta High Court**

**Case No:** None

The Queen-Empress

APPELLANT

Vs

Bibhuti Bhusan Bit

RESPONDENT

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**Date of Decision:** Jan. 28, 1890

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 326

**Citation:** (1890) ILR (Cal) 485

**Hon'ble Judges:** Trevelyan, J; O'Kinealy, J

**Bench:** Division Bench

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### **Judgement**

O'Kinealy and Trevelyan, JJ.

In this case Bibhuti Bhusan Bit was charged before the Sessions Judge of Bankura with having committed an offence punishable u/s 326 of the Indian Penal Code and was acquitted. Against that acquittal the Government have now appealed, and it remains for us to determine whether the judgment arrived at by the Court below ought to be reversed or not, Some cases have been cited before us by the learned Counsel who appeared for Bibhuti Bhusan Bit in this Court, and he has argued upon the strength of them, that this Court should not interfere with an acquittal by a lower Court unless the judgment of that Court was manifestly absurd or perverse.

2. Under the Code of Criminal Procedure the Government have the same right of appeal against an acquittal as a person convicted has to appeal against his conviction and sentence. There is no distinction made in that Code as to the mode of procedure which governs the two sorts of appeals, or as to the principles upon which they are to be decided. Both appeals are governed by the same rules, and are subject to the same limitations; and it appears to us that we are bound to decide this appeal, and that we have no discretion to refuse to interfere if we consider that the judgment of the Court below is wrong, and that Bibhuti Bhusan Bit should have been convicted.

3. No doubt, in all cases of appeals, the Judges of a Court of Appeal are naturally very cautious in interfering with the judgment of a Judge and Assessors before whom the witnesses were examined, both on the ground that a Court before whom witnesses are examined has superior advantages in estimating the value of their testimony, and also here on the additional ground that in all criminal cases the accused is entitled to have the advantage of any doubt which may arise in the case; but, after giving the accused every benefit which he can derive from such a decision in his favour, if we are still of opinion that he is guilty of the offence with which he has been charged, we think there is no discretion left to us as to whether we should find him guilty or not.

4. [Their Lordships then proceeded to deal with the evidence in the case, and came to the conclusion that the judgment should be set aside. They accordingly convicted the prisoner and sentenced him to five years" rigorous imprisonment.]