
(1873) 04 CAL CK 0008

Calcutta High Court

Case No: Criminal Miscellaneous Case No. 82 of 1873

The Queen

APPELLANT

Vs

Kheraj Mullah and
Another

RESPONDENT

Date of Decision: April 30, 1873

Judgement

Phear, J.

It seems to us that the Judge treated the appeal before him more as if it were a special appeal than a regular appeal; and because he did not find sufficient on the record to convince him that the Magistrate was entirely wrong, he therefore affirmed his decision. But the Judge was in the situation of an Appellate Court in which the matter came before him on regular appeal; and he ought to have judged as best he could from the materials put before him on the Magistrate's written judgment, whether or not, as a matter of fact, the prisoners had committed the offence of which they had been convicted. On reading the Sessions Judge's judgment, it seems pretty clear that he was unable even with the aid of the Magistrate's finding to form an independent judgment as to whether the prisoners had committed the offence or not. That being so, it was I think his duty to have acquitted them. If the evidence which came before him, whatever its shape, was not sufficient to reasonably satisfy him that the prisoners had been rightly convicted, he ought to have acquitted them.

2. There is a passage in his judgment which leads us to suppose that the Sessions Judge somewhat misapprehended the effect of the decision of a Division Bench of this Court passed upon his previously made reference. He appears to imagine that he was in some way bound by that decision of this Court to accept the finding of fact come to by the Magistrate. The decision of the Division Bench has been read to us, and Kemp, J., indeed pronounced that decision, and I think it quite clear that it was not the intention of the Division Bench to fetter the Sessions Judge in any way in regard to his judgment on the facts of the case from the evidence such as it was disclosed in the Magistrate's judgment. We think, as I have already said, that so far as we can arrive at the Judge's view, he ought to have acquitted the prisoners instead of dismissing the appeal. We

accordingly direct that they be acquitted and discharged so far as this charge is concerned. The fine, if paid, must be refunded.