

(1878) 05 CAL CK 0021

Calcutta High Court

Case No: None

The Empress

APPELLANT

Vs

Mohim Chunder Rai
and Another

RESPONDENT

Date of Decision: May 10, 1878

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 233

Citation: (1878) ILR (Cal) 765

Hon'ble Judges: R.C. Mitter, J; Maclean, J

Bench: Division Bench

Judgement

Maclean, J.

The appellants have been convicted by the Sessions Court of the 24-Pargannas of an offence under the Registration Act, VIII of 1871, and as the trial was held with a jury, the petition of appeal filed on 13th April was directed to show certain errors of law, such as defects in the Judge's charge to the jury. By a subsequent petition of 17th April, the prisoners claim to be heard against the conviction on questions of fact as well as law, as the offence of which they have been convicted is not one of those to which trial by jury has been made applicable by the Government notification of January 1862 (Calcutta Gazette, 8th January 1862, p. 87).

2. It has been contended before us by the Government Pleader that the Sessions Judge was competent to try the prisoners with a jury notwithstanding that the offence charged is not included in the Government notification referred to, and therefore the prisoners are not entitled to appeal against their conviction except upon matter of law; but it is not necessary for the purposes of this appeal to decide that question. The trial by a jury of an offence triable with assessors is not invalid on that ground Section 233, Criminal Procedure Code--Explanation)^[1]; but it appears to me that the prisoners, who would have been entitled to an appeal on the facts, if the case had been tried with assessors, are not debarred from that merely by the fact

that their trial by jury is not invalid. An error of procedure not affecting the merits of the case ought not to affect the prisoner's right of appeal

3. Dealing, however, with this appeal as an appeal upon the facts, I consider the conviction of the prisoners a proper one, and I would dismiss the appeal.

Mitter, J.

4. I concur; but I do not desire to express any opinion as to whether the prisoners are entitled to appeal on questions of fact. But assuming that they have this right, I concur with my learned colleague that the conviction of the prisoners is fully supported by the evidence. We accordingly dismiss the appeal.

[1]

Section 233: The Local Government may order that the trial of all offences of a particular class of offences, before any Court of Law, shall be by jury, in any district and such Local Government may from time to time revoke or alter such order. Order made under this section shall be published in Official Gazette. This section shall be published in Official Gazette. Other manner as the Local Government from time to time.

Explanation. If an offence triable with assessors is tried by a jury, the fact that ground merely be invalid. If an offence triable by a jury is tried with assessors, the trial shall not on that ground merely be invalid, unless objection be taken at the time the jury records its finding.