

Empress of India Vs. Kaliprosunno Doss and ors.

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Court : Kolkata

Decided On : Feb-02-1886

Reported in : (1887)ILR14Cal245

Judge : Trevelyan, J.

Appellant : Empress of India

Respondent : Kaliprosunno Doss and ors.

Judgement :

Trevelyan, J.

1. It seems to me that, having regard to the provisions-of Section 289 of the Criminal Procedure Code, the putting in of documentary evidence by an accused during the hearing of the evidence of the prosecution, before he is asked whether he intends to call any evidence, does not give a right of reply to the Crown. I am referred to the decisions of Mr. Justice Field in the case of *The Queen-Empress v. Grees Chunder Banerjee* 10 C. 1024 and of Mr. Justice Norris in a case which has not been reported. The reasons for the latter decision do not appear, and I prefer to follow the decision of Mr. Justice Field above referred to, and I therefore hold that by putting in this document the accused does not give the Crown the right of reply.

2. After Mr. Phillips had examined a number of witnesses for the prosecution, and tendered others for cross-examination, who had been called before the Magistrate, he closed the case for the prosecution without calling Brahma Pershad Singh, an Inspector of Police, or tendering him for cross-examination. Brahma Pershad Singh was the Inspector of the Sukhea Street Thanna, where the original charge had been laid by the complainant, and he had been called as a witness for the prosecution before the Magistrate.

3. Mr. Gasper thereupon contended that the prosecution were bound to tender Brahma Pershad Singh for cross-examination, or that the Court should call him so as to give the prisoners an opportunity of cross-examining him, and he referred to the case of *In the matter of The Empress v. Grish Chunder Talukdar* 5 C. 514 as an authority in support of his contention, and also to Roscoe's *Criminal Evidence*, 9th Ed., p. 138. He submitted that at all events the witness should be called by the Court.

4. Mr. Henderson referred to Section 540 of the Criminal Procedure Code, and contended that it was clear that he was a witness of the class referred to in that section, as his evidence was essential to the just decision of the case. He also referred to the cases of *R. v. Simmonds* 1 C. & P. 84 and *R. v. Bodle* 6 C. & P. 186.

5. Mr. Phillips contra--The prosecution are not bound to call any witness or to tender a witness called before the Magistrate for cross-examination. All that they are bound to do is to have such witnesses in attendance, so that the defence can call them if they like. The prosecution cannot be forced to put forward a witness on whose evidence no reliance can be placed.

6. (after taking time to consider the question)--I have been asked by Mr. Gasper to call Brahma Pershad Singh as a witness so as to give the defence an opportunity of cross-examining him. Brahma Pershad Singh was the Inspector of the Sukhea Street Thanna and was called as a witness at the Police Court. I have been referred by Mr. Henderson to the provisions of Section 540 of the Criminal procedure Code and to two English decisions on the subject. In a case in which there is a matter necessitating enquiry, or there is a question to be cleared up, and the witness proposed to be called is one upon whose testimony the Court could place confidence, I think I should call him, but I certainly should not call any witness on whose evidence I could not place reliance, at any rate in a case in which the prisoner is defended by counsel.

7. I have again read over the deposition of Brahma Pershad Singh before the Police Magistrate, and I do not think I could put implicit reliance on his evidence. I therefore decline to call him. I do not think that the prosecution is bound to tender him for cross-examination or do more than have him present in Court for the accused to call him or not as they may think fit.

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