

Emperor Vs. Umar Khan

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SooperKanoon Citation : sooperkanoon.com/450138

Court : Allahabad

Decided On : Feb-23-1917

Reported in : (1917)ILR39All399

Judge : Tudball and ;Muhammad Rafiq, JJ.

Appellant : Emperor

Respondent : Umar Khan

Judgement :

Tudball and Muhammad Rafiq, JJ.

1. This is a reference by the Sessions Judge of Saharanpur. One Umar Khan is an accused person who was examined by a Magistrate and his statement recorded in accordance with Section 364 of the Code of Criminal Procedure. When called upon by the Magistrate to sign the record of his statement Umar Khan refused to comply. He has been tried and convicted of an offence under Section 180 of the Indian Penal Code. The learned Sessions Judge is in doubt as to the correctness of this conviction in view of the decision in *Imperatrix v. Sirmpa* (1877) I.L.R. 4 Bom. 15, and he has referred the matter to this Court. The decision to which the Sessions Judge has referred is one which was passed when Act X of 1872 was in force. In Section 346 of that Act there was a separate paragraph which ran as follows: 'The accused person shall sign, or attest by his mark, such record.' It was held in that case that this was merely directory and not mandatory, and therefore

the accused person could not be compelled to sign his statement. It will be seen on examination of Section 364 of the present Criminal Procedure Code, that the language of the two sections differs considerably. Clause (2) of the present section runs as follows: 'When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.' It is quite clear to our minds that, at least so far as the Magistrate himself is concerned, Clause (2) of Section 364 is mandatory and that the Magistrate is bound in law to sign the statement and also to append the certificate mentioned therein. As the clause is worded it is clearly impossible to hold that it is mandatory as to the Magistrate and merely directory as to the accused. The words run, 'the record shall be signed by the accused and the Magistrate'. The section is worded very much as the first clause of Section 200 of the Code, which orders a Magistrate to examine a complainant upon oath and to reduce to writing the substance of the examination, and which says that the record thereof shall be signed by the complainant and also by the Magistrate. The same Order is also laid down under Section 154, in the case of information given to a police officer and reduced to writing. It is clear that the alteration of the language of the old Code to the language as it now stands in the present Code, has placed the matter, which was in doubt before, beyond all doubt at the present time. In our opinion the language of Section 364 makes it compulsory upon the Magistrate to sign a statement and also upon the accused. The Magistrate is a public servant legally competent to require the accused to sign the statement, and if he refused to do so, the accused committed an offence under Section 180. It will be noted that an accused person is not bound to make any statement whatsoever, but if he does and if he is examined by the Magistrate and replies to the Magistrate's questions, the court is bound to reduce the statement to writing in the form of questions and answers, and the Magistrate is bound to sign it, as also is the accused. In our opinion the conviction is a good one and in accordance with law. We therefore see no cause for interference and return the record.

