

**Parbhu Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/483324](http://sooperkanoon.com/483324)

**Court :** Allahabad

**Decided On :** Jul-29-1929

**Reported in :** AIR1929All914a

**Appellant :** Parbhu

**Respondent :** Emperor

**Judgement :**

**Sen, J.**

1. Parbhoo has been convicted by a Magistrate of the First Class, under his judgment, dated 16th February 1929, for an offence under Section 325, I.P.C., and sentenced to one year's rigorous imprisonment and a fine of Rs. 30 or one month's further rigorous imprisonment in default of the payment of fine. He had two confederates in Imam Uddin and Siraj Uddin who were convicted under Section 323, I.P.C., and sentenced to one month's rigorous imprisonment each. The case of these two is not before me.

2. Mahadeo, the complainant, is a servant of the zemindar of Rangpura. He found some cattle and goats belonging to the employees of the Phaphamau railway station grazing in the field of his master. He was driving off the cattle to the pound-house and when he got near the level crossing, Parbhoo Kahar the applicant, who is the Hindu water carrier at the Phaphamau railway station attacked Mahadeo, gave him a good thrashing, took one of the fingers in his mouth and bit the top

joint completely off. His two associates took a minor part in this affair.

3. The defence put forward by Parbhoo was that

the complainant was standing in the Phaphamau station with his hand on the window of a railway carriage when somebody shut down either the window or the shutter with such violence that it cut off the complainant's finger, and that thereupon the complainant went off to the police station and concocted the story of the cattle trespass and rescue.

4. In support of his defence, Parbhoo examined a number of witnesses. The trial Court believed the story of the complainant's witnesses, discarded the story as told by Parbhoo and held that the case for the prosecution was proved up to the hilt in all essential particulars.

5. Parbhoo sought to examine in this case one Ram Narain Misra, the relieving station master of the Phaphamau railway station. At the time when he was requisitioned by the Court, the Magh Mela was in progress, and the railway authorities could not spare the services of Ram Narain Misra even for a day. The learned Magistrate did not adjourn the hearing of the case to such time when the evidence of Ram Narain Misra might be available; but ordered that the deposition of Ram Narain Misra might be wholly dispensed with. The learned Magistrate refers to Section 256, Criminal P.C., in support of this procedure. Section 256, Criminal P.C., has absolutely no bearing. Section 257(1), Criminal P.C., contains the following provision:

If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness... the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purposes of vexation or delay or for defeating the ends of justice; such ground shall be recorded by him in writing.

6. The aforesaid provision is mandatory and imperative. Where an accused person has entered upon his defence, he ought to be allowed every reasonable facility in establishing his defence and the Magistrate is bound to issue any process for

enforcing the attendance of a witness required by the accused person, unless the Magistrate is convinced that the accused wants that witness not in the interest of justice but for the purpose of vexation and delay or for defeating the ends of justice. In the absence of any finding by the Magistrate that the accused in requiring the presence of Mr. Ram Narain Misra was actuated by ulterior motives and that his object was vexation or delay or for defeating the ends of justice, the Magistrate was not justified in not staying his hands and waiting for such time when the evidence of Ram Narain Misra would be procurable. In the present case, the Magistrate does not state that the accused person had asked for the examination of Sam Narain Misra for the purpose of vexation or delay or for defeating the ends of justice. The Magistrate has not recorded in writing any such grounds. The proceeding therefore adopted by the learned Magistrate militates against the imperative and mandatory provision of Section 257(1), Criminal P.C. Here this section is imperative and the Magistrate had no discretion to refuse to issue process to compel the attendance of any witness unless he considered that the application should be refused on the ground that it was made for the purpose of vexation or delay or for defeating the ends of justice: Emperor v. Purshotam [1902] 26 Bom. 418. In Narayana Mudaly v. Emperor [1908] 31 Mad. 131, it was held that the refusal of a Magistrate to issue process to a witness named by the accused when such refusal in regard to any particular witness is not based on any grounds mentioned in Section 257, Criminal P.C., was an illegality which could not be cured by Section 537 of the Code.

7. Parbhoo appealed to the learned Sessions Judge of Allahabad who uphold the conviction and sentence.

8. It is contended by Parbhoo in revision that the trial is vitiated by reason of the omission of the Magistrate to give full effect to the provision of Section 257(1), Criminal P.C. The omission on the part of the Magistrate was unquestionably an illegality and not a mere irregularity and the defect could not be cured by invoking the aid of Section 537, Criminal P.C.

9. On an application for revision being made, a learned Judge of this Court forthwith directed the trial Court to summon Ram Narain Misra to record his

statement and to certify the said statement to this Court. This thing has been done. The statement of Ram Narain Misra has been examined and the learned Counsel for the applicant admits that his statement is not helpful to the applicant in any form or shape.

10. It is competent to this Court to direct the trial Court to comply with the provision of law as contained in Section 257, Criminal P.C., where the same has not been done with microscopic exactness. The accused person is entitled in law to insist upon the forms of law being observed, more especially when the said forms have been prescribed by statute deliberately with the object of helping the accused in establishing his defence with reasonable facility. In the present case the lacuna contained in the procedure of the trial Court has been removed by the order of this Court and the applicant ought not to have any cause for grievance.

11. It will be useless in a case like the present to upset the orders of the Courts below and to direct a retrial. The Courts below had the entire material evidence before them to enable them to come to the right conclusion. The judgment of the Courts below therefore ought not to be disturbed.

12. An appeal has been made to me for the reduction of the sentence. The conduct of the accused is marked by brutal savagery and abandoned ruffianism. The cattle of the accused trespassed upon the field of Mahadeo's master. The accused persons were unquestionably the wrongdoers. Mahadeo was within his rights in taking the cattle to the pound. The rescue of the cattle by Parbhoo and his associates was unjustified and the attack of Parbhoo upon Mahadeo was aggressively brutal. I dismiss this application.