

In Re: Kader Batcha Saheb and ors.

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Court : Chennai

Decided On : Nov-10-1927

Reported in : (1928)54MLJ442

Appellant : In Re: Kader Batcha Saheb and ors.

Judgement :

ORDER

Devadoss, J.

1. The first point urged in this revision petition is that the Magistrate inspected the scene of occurrence without notice to the accused. The Magistrate in his report says that he informed the vakils of his intention to inspect the place and the accused was present at the time of the inspection. There is nothing in this ground.

2. The next point is that the Magistrate has imported into the case impressions received by him at the time of inspection. A Magistrate is entitled to inspect a place in order to understand the evidence. But if he receives an impression which is in favour of one side or the other, he should give an opportunity to the side against which he forms an impression to explain away if possible the impression created in his mind by the inspection. In this case the whole question turned upon there being an entrance or not. The impression that the Magistrate received at the inspection was that the entrance was an old one, for in his opinion it was made up of old materials which he thought must have been there long. The old materials

could have been put in there seeing that the Magistrate was going to inspect the place and that would not be a sufficient ground for holding that the entrance was an old one. He should have in fairness to both sides asked them to say how long the materials were there and why the materials were old. I think this view of the impression received by the Magistrate has influenced him in accepting the evidence for the prosecution as true. The learned Magistrate ought not to have allowed the impression created in his mind to greatly weigh in considering the evidence in this case. The impression received at the time of the inspection has vitiated the appreciation of the evidence in the case. Therefore I set aside the conviction, and as this is a very trivial case, I do not think it is necessary to order a re-trial. The fine if paid will be refunded to the petitioners.

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