

**In Re: Bogra**

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**SooperKanoon Citation :** [sooperkanoon.com/816210](http://sooperkanoon.com/816210)

**Court :** Chennai

**Decided On :** Mar-31-1910

**Reported in :** 7Ind.Cas.414; (1910)20MLJ943

**Judge :** Miller, J.

**Appellant :** In Re: Bogra

**Judgement :**

ORDER

**Miller, J.**

1. It was held by Collins, C.J., and Parker, J., in the Criminal Revision Case No. 453 of 1894 In re Singiri Eradu II Weir 435 that procedure identical with that adopted by the Sessions Judge in the present case is materially irregular. The deposition taken in the Sessions Court was, therefore, irregularly taken and it may be that a conviction based upon such evidence could not be sustained.

2. But in the present case the person convicted is the witness who made the deposition and not the accused against whom it was made, and it has been read over to the witness admitted to be correct and signed. It is very difficult, I think, to see any good reason why this admission of the witness should not be taken to be a proof of the correctness of this document. There is, no doubt, direct authority in this Court for this view that a deposition not read over in the hearing of the Judge and the Vakils (in a Civil case) is not a deposition at all and cannot be used as

evidence for any purpose in the case of Kamatchinathan Chetty v. King-Emperor 28 M. 308 : 2 Cri. L.J. 756. But that decision seems to be in part based on the reasoning that the presence of the Judge and Vakils at the reading is required for the protection of the witness. I very respectfully differ from that, if that is what is meant by the Chief Justice. The presence of the Judge and the Vakils or the accused is required to make it seem that the deposition is correctly recorded and the accused or the Court or the deponent or plaintiff is not prejudiced by any mistake in the recorded evidence. But when the deposition has been read over to the witness and he has admitted it to be correct, there seems to be no good reason why that admission should not so far as he is concerned be regarded as a proof of its correctness. I cannot see why a deposition irregularly recorded is necessarily to be treated as a nullity for all purposes even as against the man who made it and who has admitted that it represents what he said. It, of course, may be open to him to prove that the record was incorrectly made; but that is not suggested in the present case. In holding this view, I am not, therefore, prepared to hold that the conviction is illegal.

3. The accused has not himself applied for the revision of the Sessions Judge's decision. I do not think it necessary to do more than point out that the deposition was undoubtedly irregularly recorded and that the provisions of the Code and the law as laid down in this Court must be followed in the recording of evidence by the Courts of this Presidency.

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