

**Emperor Vs. Ujagar Singh**

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**Court :** Kolkata

**Decided On :** Feb-09-1945

**Reported in :** 1949CriLJ560

**Judge :** Henderson, J.

**Appellant :** Emperor

**Respondent :** Ujagar Singh

**Judgement :**

ORDER

**Henderson, J.**

1. The learned Government Counsel has asked me to quash this commitment.
2. The accused is a taxi driver. The prosecution case is that while driving his taxi in a negligent manner, he knocked down two persons one of whom subsequently died. He was sent up on a charge under Section 304A, Penal Code. The Magistrate accordingly started to try him under that section. He, however, suddenly altered his mind and committed him to this Court for trial on two charges (1) under Section 804, Penal Code, for causing the death of Qualm Ali, (2) under Section 838, Penal Code, for causing grievous hurt to Joyanal Sircar.

3. I am bound to say that the jury could only be asked to convict under Section 304 on a far fetched view of the evidence. Learned Government Counsel stated that he Could not press for anything more than a charge under Section 304A, and I should certainly alter the charge accordingly.

4. Now the grounds on which I am asked to quash the commitment are the failure of the Magistrate to comply with the provisions of Sections 208 and 360, Criminal P. C. Under the former the Magistrate is required to take evidence in the manner prescribed in Section 326, Under the latter, as the evidence of each witness is completed it shall be read over to him in the presence of the accused or of his pleader. Neither of these provisions has been complied with. Indeed, it cannot really be said that the learned Magistrate has even made a memorandum of the evidence. It is obvious that, if an objection is taken by the accused, the Crown could not possibly contend that no prejudice has been caused, and the commitment would have to be quashed. As, Mr. Roy was not in a position to say that no prejudice was caused to his client, that is sufficient to dispose of the present matter.

5. As other points were argued, I propose to express an opinion thereon. I could only refuse to quash the commitment if I were satisfied, firstly, that no prejudice had been caused to the accused, and secondly, if the failure of the learned Magistrate to follow the correct procedure was not fatal to the proceedings, The effect of the failure to read over the depositions of the witnesses has been considered on many occasions. So far as this Court is concerned, the weight of the authorities is certainly to the effect that the whole proceedings are vitiated and must be set aside. I need only refer to the decision of the Pull Bench in the case reported in Narendra Chandra Budra Pal v. Sabar Ali, 52 Cal. 721 : (A.I.B. (12) 1925 Cal. 822: 26 Or L.J. 1194 F.B.).

6. It is also clear that the procedure adopted by the learned Magistrate may have caused prejudice to the prosecution. Under Section 288, Criminal P. C, the evidence of a witness duly recorded may be treated as evidence in the case. If a witness were to resile from his deposition, the Court would have a discretion to treat that deposition as evidence in the case to go before the jury. In view of the

procedure adopted by the learned Magistrate, there is nothing which could be put before the jury under Section 288.

7. For these reasons, I direct that the commitment be quashed. The accused may remain on the same bail, to surrender before the Chief Presidency Magistrate in order that the case may be heard and disposed of in accordance with law.

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