

Babbon Sheik Vs. Emperor

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Court : Kolkata

Decided On : Feb-01-1910

Reported in : (1910)ILR37Cal340

Judge : Stephen, ;Woodroffe and ;Chetterjee, JJ.

Appellant : Babbon Sheik

Respondent : Emperor

Judgement :

Stephen, J.

1. In this case a Rule has been granted calling on the District Magistrate to show cause why a conviction of the petitioners of an offence of rioting under Section 147 of the Indian Penal Code should not be set aside on two of the grounds mentioned in the petition. The first of these is that the trying Magistrate held a local enquiry and was influenced by certain things he saw there, and imported his knowledge of what he had seen into his judgment in disposing of the case; the second, that the common object stated in the charge was different from that found by both the lower Courts.

2. The second objection may be very shortly dealt with. The common object charged was by means of criminal force to obtain possession of the killkhana lands belonging to one Ghisa Mia. The lands so referred to comprised a fifteen-

cottah plot and a five-cottah plot; the offence was found to have been committed to obtain possession of the five-cottah plot only. As the five-cottah plot was included in the killkhana lands, we have no hesitation in holding that this fact creates no such variance between the common object alleged and that proved as will invalidate the conviction. As far as this part of the Rule is concerned, it must, therefore, be discharged.

3. The first ground, however, requires fuller consideration. The complainant alleged that his master was in possession of the five-cottah plot; the accused contended that one of their number was. In support of his contention, the complainant alleged that the plot in dispute contained five pits which his master used for the disposal of refuse from slaughter-houses he had elsewhere, and also a hut erected for the accommodation of his master's servants. For the defence, it seems that possibly the existence of the pits, and certainly their use as alleged, was denied, and it was alleged that one of the petitioners had erected the hut as a cattle-shed. During the hearing of the case, and apparently after both these points had been made, the trying Magistrate suggested that he had better see the land in question. No objection was made to this, and he accordingly saw the land in the presence of the complainant and the accused. There is no doubt that he made use of the impulsion made on his mind by what he saw in deciding the question he had to consider.

4. On behalf of the petitioners it is argued that the course the Magistrate adopted was illegal, and that he had no right to take anything he saw on the land into consideration in adjudicating on the case. The arguments in support of this contention are as follows. Admittedly, there is no provision in the Criminal Procedure Code expressly enabling a Magistrate to view a place connected with a case before him. Sections 148 and 202 of the Criminal Procedure Code seem to be the only sections expressly enabling any one, except a jury or assessors, to view the place where the facts alleged to have taken place occurred, and they do not justify what was done in this case. Section 556 deals only with the question of interest on the part of a Judge or Magistrate, and confers on him no power that he did not possess before. I cannot regard this argument as sound. The Code is not exhaustive in dealing with the powers of a Magistrate, and it cannot, by omitting to

justify a certain course of action on his part, deprive him of powers which he otherwise possesses. Also, it is to be observed that Sections 148 and 202 enable a Magistrate to send some one else to see a place that he may inform him about it, and seem to take it for granted that the Magistrate may look at the place for his own information. This view seems to me to be supported by the contents of Section 293, which make provision for a jury or assessors viewing a place where an offence is alleged to have been committed. It is true that a Magistrate sitting to decide questions of fact is not mentioned, but I think that this is because he is understood to have the power of inspection already. I think the section may fairly be read as having for its chief object the provision of conditions under which the jury and assessors are to take their view designed to prevent their hearing anything which might influence their minds. I am, therefore, of opinion that the Code does not prevent a Magistrate acting as the Magistrate in this case did.

5. There remains the general question whether apart from the Code, a Magistrate may visit the scene of an alleged offence in order to test the evidence he has heard on a question of fact that has been raised before him. That he has such a power seems to me to be proved by what I believe has been a constant practice and also by considerations of what is reasonable. I have known this practice followed in civil cases, and see no reason to make any distinction in criminal cases. The practice is really only to treat immoveable property as an exhibit, and for the Court to go to it as it cannot be brought to the Court. This seems to me a useful method of proceeding, and I have never known of its correctness being called in question.

6. The authorities that have been quoted before us, to show that such a proceeding is not correct, do not seem to me to support the contention of the petitioners in any way. They are *Girish Chunder Ghose v. Queen-Empress* (1803) I.L.R. 20 Calc. 857, *Hari Kishore Mitra v. Abdul Baki Miah* (1894) I.L.R. 21 Calc. 920, and *Queen-Empress v. Manilcam* (1896) I.L.R. 19 Mad. 263, and in all the cases the trying Magistrate visited the scene of the occurrence before he had heard any evidence, and apparently in the absence of the accused. This seems to me to distinguish these cases completely from that now before us, and the observations of Petheram, C.J., in the second of the cases (at page 928) seem to

me to go to support rather than to condemn what was done here. The Magistrate in that case had begun his connection with the case by such an investigation as is proper under Section 202, and this was disapproved of; but the Chief Justice recognises the fact that it may be desirable for a judicial officer to see the place which is the subject of the investigation before him, if certain precautions are observed, and he confines himself, as I understand the passage in question, to seeing what there is to be seen. It is true that the Chief Justice limits the right of the judicial officer to see a place to cases where he does so 'in order to enable him to understand the evidence that is laid before him,' and it is on this passage that the petitioner's argument is based that he is not to see the place in order to test the evidence. This is not how I understand the passage. If the petitioner's view is correct, the judicial officer is only to see the place in cases where the parties are agreed on the facts, so far as they concern the place, but cannot convey their meaning to the judicial officer, which I cannot think is what the Chief Justice intended. A difficulty would arise if he saw something that was inconsistent with what one of the parties alleged, which would, on the petitioner's theory, lead to the necessity of a new trial. I understand the Chief Justice to mean that the judicial officer may see the place to make up his mind on disputed points raised as to something to be seen there. In addition to these cases, we have the decision of *In re Lalji* (1897) 1 L.R. 19 All. 302, where Sir John Edge refused a transfer asked for on the ground that the trying Magistrate had visited the scene, of an alleged offence, apparently mischief, after he had heard some evidence for the prosecution, and in the absence of the accused, holding that he had not acted improperly. In the present case the Magistrate made his visit after it was settled what it was that he was to see, and what the issues were which he would decide from his inspection. The accused and complainant seem both to have been present or represented. It is not suggested that he did more in the way of taking evidence than look at the pits and the hut. I consider that this was a correct proceeding, and that he was justified in acting on the opinions he formed from what he had seen in adjudicating between the parties, as otherwise his visit would serve no purpose. I am, therefore, of opinion that the Rule should be discharged.

Woodroffe, J.

7. In my opinion this Rule should be made absolute on the first of the grounds mentioned in the petition. Though there is no express statutory provision in that respect the case-law and the practice of the Courts appear to establish that a Magistrate may take a view in order to enable him to understand the evidence that is laid before him. This, I think, was not seriously contested, though some reliance was placed on the terms of my judgment in *Nidani Mondal v. Alaboxa Sirkar* (1905) 9 C.W.N. ccxxii. My language there was not sufficiently guarded, and must be taken in connection with the facts showing the nature of the local investigation in that case. But though a view may be had for the purpose above mentioned, it must be, in my opinion, strictly limited to that. There are indeed Judges who are averse to taking local views at all on the ground that they may be thus unduly influenced. In some cases, however, it may be difficult to appreciate the evidence without a complete model showing the property and its surroundings, or without local inspection. So far, however, as I am aware, there is no authority for holding that a Court may take a view for any purpose other than that of understanding the evidence. The question then is whether, on the facts of the present case, the Magistrate has done more than he is legally entitled to do. The complainant stated, as part of his allegation of possession, that there were certain pits on the land in dispute. The accused denied it. The issue then was as to the existence or non-existence of the pits. There is no question here of the Magistrate going to the land to understand what a pit was, or what it was like, so as to appreciate what had been said of such pits in the evidence. As the learned Deputy Legal Remembrancer has told us, what the Magistrate went to do was to see whether the pits existed in fact, and to see whether the complainant or the accused were speaking the truth on this point. This may perhaps be (speaking without the law) from some points of view, and under certain conditions, a convenient and practical course, and one which might in many cases tend to secure a just decision. But the question is here whether it is permissible in a judicial system which gives to the Court only power to adjudge the existence of facts according as they are deposed to on the evidence before it. If it were, there appears to me to be in such a case no necessity for evidence at all as regards this particular fact. It would be sufficient that the complainant should allege that there were pits in existence. Then, without his oath to that effect, or evidence given on behalf of the accused, the Court might

go itself and ascertain the truth or falsity of the alleged fact. Would it, for instance, be open to a Judge, however expert he might be on the subject, to pronounce on the strength of his personal observation against the truth of an allegation that a room was dark or deprived of air? I think not. Reference has been made to certain cases where the observation of the Judge is properly part of his judgment. The law allows him to note the demeanour of witnesses. He may also express his opinion on the age and appearance and the like of documents and other material exhibits. But this is because they are part of the evidence in the case, and thus form proper material for his adjudication. This appears to me to be a different thing from pronouncing on the existence of a disputed fact, the subject of observation out of Court.

8. The principle contended for by the Crown may be tested in another way. Where the Court limits its judgment strictly to the materials placed before it by the parties in Court, then its judgment can be tested by the Court of appeal by reference to these same materials which are also before the Appellate Court. This is not possible where the lower Court's judgment is based in personal observation out of Court. If the Court's impartiality or accuracy of observation were by a party put in question, are we to say that in all such cases the results of the Court's observation must be accepted, even though it may be at variance with the sworn testimony of numerous and reliable witnesses?. And if not, what means has the Appellate Court in such a case of deciding the matter

9. The next point taken on this subject is with reference to the hut on the land. The complainant alleged that it was used for dwelling-purposes. The accused said it was used for keeping cattle waiting to be slaughtered. The Magistrate says, as a matter of personal observation, that the hut was too small for the latter purpose. This is his opinion and it may be wrong, for he may be in my case and know nothing about the accommodation which is required for cattle about to be slaughtered. This could only have been established by evidence which learned Counsel informed us was wanting. Nextly, he did not acquaint the parties with the opinion he had formed. It has always appeared to me to be a very objectionable practice that the Court should withhold from a party affected an opinion formed by it adverse to him. It seems to me to be only just that an opportunity should be

given to such party of showing that such opinion was erroneous. In the present case, learned Counsel for the accused states that his client, had he known the Magistrate's opinion, was prepared to give evidence to show that it was ill-founded. It was next contended on behalf of the Crown that no objection was taken by the parties to the proposal (which emanated from the Magistrate himself) to inspect. I do not see what objection could have been taken. It is not for litigants to assume that the Court is going to do that which it is not entitled to do. On the contrary, the accused may have, and in any case should have, assumed that the inspection was going to be held for purposes allowed by law only. When they discovered that this was not so, they took objection before the lower Appellate Court and made it one of the grounds of this Rule.

10. It was lastly argued for the Crown that, apart from the Magistrate's own observations, there is sufficient evidence on the record to support the conviction. In my opinion such an objection must fail, for it is a matter of entire speculation how far the Magistrate was influenced by what he saw, as distinguished from what was deposed to. The matter in question was an important part of the case. It may be that the Magistrate has allowed a predominant influence to what he himself saw. This is only natural. We cannot say what the result should have been without a retrial, which I think is necessary.

11. [Owing to this difference of opinion, the case was referred by the learned Chief Justice, under Section 429 of the Criminal Procedure Code, to Chatterjee, J.]

12. Mr. Monnier (with him Mr. Chippendale), for the petitioners. Two questions arise for determination: first, whether a Magistrate has, during the trial of an offence, power to inspect the locus delicti in order to understand or follow the evidence; and secondly, whether he has the power of inspection for the purpose of determining the credibility of the witnesses. The Code is silent on both points: the only provisions thereof relating to local inspection or inquiry being Sections 148, 202 and 293, which do not apply to this case. The Code is exhaustive: see Section (1), (2) and *Banu Singh v. Emperor* (1906) I.L.R. 33 Calc. 1353, 1357. A criminal Code must be construed strictly in exclusion of rules of procedure not therein contained, though, if the disputed rule is not inconsistent with any particular

provision, or the general scheme, or the spirit of the Code it may be admitted. In accordance with this view, I concede the power of inspection of the locus in quo for the purpose of understanding the evidence. But the power of inspection to determine the credibility of evidence is contrary to the general scheme of the Code and to the provisions relating to inquiries and trials. In every inquiry conducted under the Code, it is contemplated that the adjudication shall be on evidence taken in Court, and on such evidence alone (except under Sections 148 and 202): see Sections 117, 137(1), 145(4) and 488. Even in cases under Section 148. it has been held that the local enquiry thereby authorized must be limited to an inspection of the local features of the case and to testing the evidence on that point only, and that the section does not permit a Magistrate to act on what he saw and inferred as to other matters in issue and capable of proof by evidence in Court: *Lal Behari Saha v. Bejoy Sankar Sikdar* (1905) 10 C.W.N. 181. 182, *In re Baikunt Kumar* (1878) 3 C.L.R. 184. The determination of the innocence or guilt of the accused must be on evidence taken in Court: see Sections 241, 245, 251-257; and the introduction into the case of matters personally observed by the Magistrate, on inspection or inquiry, in order to test the accuracy of the prosecution or defence story, is quite foreign to these provisions. The Explanation to Section 556 does not confer a power not already existing, but merely saves the Magistrate's competency to hold a trial. It does not confer on him a power of local inspection or inquiry, but precludes him, if he has held such inspection or inquiry, e.g., under Sections 159 and 202, from becoming thereby incompetent to try] the case. The 'inquiry' therein referred to must be an inquiry allowed by the Code: see Section 4(k). Further, if a Magistrate is legally justified in holding a local inspection to test the credibility of witnesses, the necessity for holding any trial at all is not apparent, especially in cases of mischief, where the issues might be determined by his going over to the place of occurrence and seeing the damage done for himself. The Magistrate did not place on record the results of his observations, but sprung them on the accused for the first time in his judgment. Again, the matters which he imported in his judgment are matters of inference and opinion, and the accuracy of his observations cannot be tested by the Appellate Court. The decided cases are mostly in my favour: see *Girish Chunder Ghose v. Queen-Empress* (1893) I.L.R. 20 Calc. 857, 865, *Hari Kishore Mitra v. Abdul Baki Miah* (1894)

I.L.R. 21 Calc. 920,928, Queen-Empress v. Manikam (1896) I.L.R. 19 Mad. 263, Nidani Mondal v. Alaboxa Sirkar (1905) 9 C.W.N. ccxxii. The observations in Satri Dulali v. Empress (1899) 3 C.W.N. 607 and In re Lalji (1897) I.L.R. 19 All. 302 are against me; but the latter confuses the two question for determination here. Another difficulty arises if the Magistrate is empowered to hold a local inspection in order to test the evidence as to a prisoner's guilt or innocence. It would be obviously unfair for the Magistrate to act on his personal observations without noting them on the record, but, if he does so, can the parties cross-examine him on his inspection note, and can he thereafter continue the trial himself?. A person who is the sole judge of law and fact cannot give evidence before himself and continue to act as Judge; Empress v. Donnelly (1877) I.L.R. 2 Calc. 405, Swamirao v. Collector of Dharwar (1892) I.L.R. 17 Bom. 299, 303, Girish Chunder Ghose v. Queen-Empress (1893) I.L.R. 20 Calc. 857, 865, Hari Kishore Mitra v. Abdul Baki Miah (1894) I.L.R. 21 Calc. 920,928 Queen-Empress v. Manikam (1896) I.L.R. 19 Mad. 263 and see Queen v. Mookta Singh (1870) 13 W R. Cr. 60.

13. The Deputy Legal Remembrancer (Mr. Orr), for the Crown. The Magistrate has the power of inspection even for the purpose of testing the evidence before him. The law is now contained in the Explanation to Section 556: see In re Krishnappa Gounden (1900) 2 Weir 727 and In re Davaraja Nayagar (1903) 2 Weir 728. He can do so provided he does not import into the judgment matters outside the record. Here there was ample oral evidence of the existence of some of the pits on the disputed land and of the erection of the hut by the complainant's master. Apart from the Magistrate's personal observations, the conviction can, therefore, be sustained on the evidence in the case.

Chatterjee, J.

14. The main question in this case, and that on which there has been a difference of opinion, is whether a Magistrate can hold a local inspection for the purpose of testing the credibility of the witnesses examined on either side.

15. I shall first examine the provisions of the Criminal Procedure Code and see whether there is any provision which authorizes such an inspection. Section 148

provides that, in cases under Chapter XII, the District Magistrate or the Sub-Divisional Magistrate may depute a Subordinate Magistrate to make a local inquiry, and the report of such Magistrate will be read as evidence. This section has no bearing on the present case. Section 202 lays down that if the Chief Presidency Magistrate, or any other Presidency Magistrate authorized in that behalf by the Local Government, or a Magistrate of the first or second class, is not satisfied as to the truth of a complaint, he may order a local investigation by any officer subordinate to himself, or a police officer or such other person as he thinks fit for the purpose of ascertaining the truth or falsehood of the complaint; and Section 203 provides that the result of the investigation shall be used for the purpose of seeing whether there is sufficient ground for proceeding with the case. Only specially qualified Magistrates are, therefore, given this power of ordering a local investigation, which may include an inspection of the locality where a crime has been committed. The result of the investigation is one factor only for determining whether the case is to go on. The report is not evidence in the case unless it is proved as such. To this limited extent only, therefore, there is authority for a local inspection by a Magistrate under the Code. Section 293 provides that jurors or assessors in a sessions trial may be asked to view a place of occurrence or connected place, provided they are accompanied by an officer of the Court and hold no sort of communication with any party: they are to be conducted back to the Court, and they must not talk with anybody. Section 294 provides that if a juror or assessor is personally acquainted with any relevant fact, he must be examined and cross-examined as a witness. There is no provision, however, for the Sessions Judge himself joining in the inspection. In this state of the statutory provisions of law, it was held in the case of *Girish Chunder Ghose v. Queen-Empress* (1893) I.L.R. 20 Calc. 857 that when the Magistrate saw the locality and also a part of the occurrence and referred in his judgment to matters which came under his personal observation, and which, if relevant, should have been deposed to on oath, the Magistrate was disqualified from trying the case. The learned Judge said 'the Magistrate cannot himself be a witness in a case in which he is the solo judge of law and fact.... The accused are entitled to have nothing stated against them in the judgment which was not stated on oath in their presence and which they had no opportunity of testing by cross-examination and of rebutting.'

Then in the case of Hari Kishore Mitra v. Abdul Baki Miah (1894) I.L.R. 21 Calc. 920 it was laid down that the Magistrate can see the locality for the purpose of understanding the evidence, but if he gets any information by personal observation he is disqualified from trying the case. In the case of Queen-Empress v. Manikam (1898) I.L.R. 19 Mad. 263, the Madras High Court held that by seeing the locus in quo the Magistrate made himself a witness in the case, and as he is the sole judge of law and fact, he should not try the case. The learned Judges say--'Although the law makes' no provision for a local inspection by a Magistrate of the locus in quo in a case being tried by himself, we do not go the length of saying that under no circumstances may local inspection be made. But we are satisfied that such inspection should only be made for the purpose of enabling the Magistrate to understand the better the evidence which is laid before him, and it must be strictly confined to that.' In this state of the case-law the new Criminal Procedure Code was passed in 1898, and the Explanation to Section 556 was amended by adding that a Magistrate shall not be disqualified from trying a case 'by reason only that he has viewed the place in which an occurrence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in the case.' This amendment, therefore, overruled those cases which had held that merely by viewing the locus in quo the Magistrate made himself a witness in the case and could not try it. It did not directly authorise a Magistrate to make a local inspection, but it saved his jurisdiction to try a case, notwithstanding that he may have made a local inspection or investigation. It did not, however, go the length of doing away with the restrictions under which such investigations should be made as laid down in the case of Hari Kishore Mitra v. Abdul Baki Miah (1894) I.L.R. 21 Calc. 920. It was, therefore, held in the case of Satri Dulali v. Empress (1899) 3 C.W.N. 607 that the Magistrate can inspect the locus in quo to understand the features of the locality, but if he imports into the case anything else, he becomes a witness and cannot try the case. In the case of Nidani Mondal v. Alaboxa Sirkar (1905) 9 C.W.N. ccxxii, Mr. Justice Woodroffe said that 'there was no authority in the Criminal Procedure Code for making any such local investigation as has taken place in this case. In my opinion, local investigation, except where expressly provided by law, is not advisable.' In this case the result of the local investigation,

which was contrary to the evidence adduced by the accused, was not placed on the record. In the case of *Lal Behari Saha v. Bejoy Sankar Sikdar* (1905) 10 C.W.N. 181, where the Magistrate discarded the evidence on the record as unreliable and decided the case upon what he saw, heard and inferred at a local inquiry, the order was set aside on the ground that the Magistrate had erred materially in the exercise of his jurisdiction. The learned Judges say 'he did not, however, use the local inquiry for the purpose of making himself familiar with the local facts in order that he might test the evidence adduced by both sides at the trial.' Although this was a case under Chapter XII, the local investigation was made by the trying Magistrate himself. Mr. Justice Woodroffe in his Judgment in the present case does not refer to the above case, but says that what he said in the case of *Nidani Mondal v. Alaboxa Sirkar* (1905) 9 C.W.N. 102, was not sufficiently guarded. The result to my mind of an examination of the statute and the case-law on the subject is that the Magistrate may inspect the locus in quo in cases where he cannot follow or understand the evidence without himself seeing the features of the land, and does not, merely by so doing, disqualify himself from trying the case.

16. But can the Magistrate test the sworn testimony on the record by the light of his own observations? The Allahabad High Court seems to be of opinion that he can. Sir John Edge, C.J., in the case of *In re Lalji* (1897) I.L.R. 19 All. 302 said: 'It appears to me that it never could have been the intention of the Legislature that in a criminal case, in which the evidence is conflicting or is difficult to understand by a person not acquainted with the locality, the Magistrate trying the case should not go and see the locality for himself. It is highly convenient that he should adopt such a course if the evidence is conflicting....' In the case of *Lal Behari Saha v. Bejoy Sankar Sikdar* (1905) 10 C.W.N. 181, Pargiter and Woodroffe JJ. are reported to have said: 'He (the Magistrate) did not, however, use the local enquiry for the purpose of making himself familiar with the local facts, in order that he might test the evidence adduced by both sides at the trial.' No doubt this was a case under Section 145 of the Criminal Procedure Code, in which a local inquiry by some other Magistrate is permitted by Section 148; but it was, nevertheless, a local enquiry by a trying Magistrate, which is not expressly provided for by the Act.

17. If the Magistrate has seen a certain state of things, and if witnesses examined before him testify to the contrary, it is natural that he should believe the testimony of his own senses and disbelieve the sworn testimony. It seems to be a psychological impossibility that he should do otherwise. If a Magistrate is required to see a place and its environments for the purpose merely of understanding what the witnesses are speaking about, and to ignore what he has seen when weighing the credibility of the witnesses who confirm or contradict his own senses, it would be asking him to do what no man in the ordinary course of human experience can be expected to do. As soon, therefore, as we admit that a local inspection is permissible, we must admit also that the Magistrate can use the testimony of his own senses for testing the veracity of the witnesses deposing before him as regards the features of the locality. There is no doubt that he may be wrong in his observation, and may, therefore, apply a wrong test which there is no means of controlling or checking, but that is a contingency which is rendered possible by the Code as amended, but which may perhaps be guarded against by requiring him in every case in which he makes a local inspection to place at once on the record a report of what he sees, leaving it open to the parties to qualify or contradict the same by an application for a further inspection. If he does anything more, he will be doing what is neither directly nor indirectly authorised by the law.

18. It is one of the most cherished and salutary principles of English criminal jurisprudence that no man shall be convicted except upon evidence which he has had an opportunity of testing by cross-examination and contradicting by rebutting evidence. If the Magistrate, therefore, imports into the case any facts which he has himself observed, he would be introducing into the case evidence which has not been subjected to these tests, and in regard to which he may have been misled by his senses or biassed in favour of either party. It is on this account that many Judges refuse to make a local inspection. When the law, however, allows a view of the locality, and it is in some cases not only convenient, but necessary, for the ends of justice, every possible precaution should be taken that such a view should be nothing but a view of the local features, and an immediate report of what is seen should be placed on the record, and laid open to the scrutiny of the parties.

19. In this case the learned Magistrate has done much more than viewing the place for the purpose of following or understanding the evidence and testing it. He says: 'I myself saw that this place could have only been used for throwing of refuse and not for tethering cattle: the hut is also too small for the purpose of keeping cattle.' These are matters of opinion and inference based upon circumstances not on the record. The accused, if aware of the way in which the Magistrate was going to use his inspection, could have adduced evidence or shown by a further inspection that the Magistrate was wrong. To spring such opinions or inferences upon the accused at the time of pronouncing judgment is an error of procedure that may have materially prejudiced the accused, and they are quite justified in complaining that they have not had a proper trial.

20. In the result, therefore, I agree with Mr. Justice Woodroffe in making the Rule absolute. I think there should be a retrial before another Magistrate with liberty to examine the Magistrate, who made the local inspection, as a witness.