

In Re: Mayadeb Gossami

In Re: Mayadeb Gossami

SooperKanoon Citation : sooperkanoon.com/855010

Court : Kolkata

Decided On : Feb-22-1881

Reported in : (1881)ILR6Cal762

Judge : Cunningham and ;Maclean, JJ.

Appellant : In Re: Mayadeb Gossami;The Empress

Respondent : ;mayadeb Gossami

Judgement :

Cunningham, J.

1. The prisoner in this ease applied for a certificate under Act XL of 1858 in respect of the estate of two infants, and in support of his application he gave a sworn deposition on the 4th October last before the District Judge.
2. His deposition was made in Assamese, and was translated by the Sherishtadar of the Court, and the Judge recorded it in English. He did not sign it, nor was it read over to the witness or translated. The requirements of Sections 182 and 183 of the Civil Procedure Code were, therefore, not complied with This is clear from the deposition of the Sheristadar before the Deputy Commissioner.
3. At the conclusion of the proceedings in his Court, the Judge considered that the prisoner had given false evidence, and he directed that he should be prosecuted.

This has resulted in his conviction, and as this Court was of opinion, on the facts brought to its notice, that the appeal ought not to be tried by the Judge before whom the false evidence was given, the appeal has been called up to this Court.

4. It is contended for the defence, that the informalities which took place in recording the accused's deposition render the record of his evidence inadmissible; and that, under Section 91 of the Evidence Act, no other evidence of his deposition is admissible.

5. We consider this contention sound. By Section 647 of the Civil Procedure Code, the procedure prescribed by the Code is to be followed, as far as it can be made applicable, in all proceedings, in any Court, other than suits and appeals. By Section 178 a party to a suit required to give evidence is governed by the rules as to witnesses. Sections 182 and 183; therefore applied to the accused's deposition, and those sections not having been complied with, the record is inadmissible.

6. The conviction must, therefore, be quashed, and the prisoner released.

7. The record of the proceedings before the District Judge does not show that the Sheristadar was sworn or affirmed as required by Act X, 1873, Section 5 (b). The Judge's attention should be drawn to this, and a copy of this judgment furnished to him from this Court.