

In Re: Petition of Munshi Sheikh and ors. and Vs. Munshi Sheikh and ors.

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Court : Kolkata

Decided On : Mar-15-1882

Reported in : (1882)ILR8Cal616

Judge : Cunningham and ;Tottenham, JJ.

Appellant : In Re: Petition of Munshi Sheikh and ors. and ;The Empress

Respondent : Munshi Sheikh and ors.

Judgement :

Cunningham, J.

1. We are of opinion that there has been no misdirection in this case. The main ground urged before us in appeal is, that the confessions of two of the accused were recorded in a simple narrative form instead of in the shape of questions and answers. If we could infer from the character of the confessions or from the circumstances of the case, that this mode of recording the confessions had resulted in any prejudice to the prisoners, we should of course deem it necessary to direct a new trial. But there is nothing from which we can draw this inference; and we, therefore, think that, having regard to the concluding paragraph of Section 346,1 we are not at liberty to hold that there has been a misdirection, merely because the Judge allowed these confessions to go to the jury.

2. With regard to the accused Munshi Sheikh, the question does not arise, because the Judge told the jury that, as far as he was concerned, they must, before convicting him, satisfy themselves that there was sufficient evidence to justify his conviction independent of the confession.

3. We think, therefore, that, as far as the matter of the irregularity of the mode of recording the confessions goes, the conviction must be upheld.

1[Section 346: Whenever an accused person is examined, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, and shall be shown or read to him, and he shall be at liberty to explain or add to his answers.

Examination of accused how recorded.

When the whole is made conformable to what he declares is the truth, the examination shall be attested by the signature of the Magistrate or Sessions Judge, who shall certify under his own hand that it was taken in his presence and in his hearing, and contains accurately the whole of the statement made by the accused person.

In cases in which the examination of the accused person is not recorded by the Magistrate or Sessions Judge himself, he shall be bound, as the examination proceeds, to make a memorandum thereof in the vernacular of the district, or in English, if he is sufficiently acquainted with that language; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall be annexed to the record. If the Magistrate or Sessions Judge is precluded from making a memorandum as above required, he shall record the reason of his inability to do so.

The accused person shall sign or attest by his mark such record.

If the examination be taken in the course of a preliminary inquiry, and the Court of Session find that the provisions of this section have not been fully complied with, it shall take evidence that the prisoner duly made the statement recorded: Provided that if the error does not prejudice the prisoner, it shall not be deemed to affect the

admissibility of the statement so recorded.]

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