

Emperor Vs. Robert Stewart

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Court : Kolkata

Decided On : May-10-1904

Reported in : (1904)ILR31Cal1050

Judge : Geidt, J.

Appellant : Emperor

Respondent : Robert Stewart

Judgement :

Geidt, J.

1. I have seen Mr. Justice Pratt with reference to his decision cited by the Standing, Counsel and he has very kindly shown me his note of the case. From that it appears that in addition to depositions taken before the committing Magistrate other documents that did not form any part of the record sent up by the committing Magistrate were put in by the accused during the cross-examination of the witnesses for the prosecution and it was upon that circumstance that his decision was based. This is not the case here. The depositions of witnesses taken before the committing Magistrate and statements of the accused forming part of the record sent up by that Magistrate cannot be said to be evidence adduced by the accused after, the case for the prosecution is closed. As the witnesses have been examined in this Court, their depositions before the committing Magistrate may in the discretion of the presiding Judge he treated as evidence, independently

of their being tendered by the accused, and I regard the tender as an application that the discretion of the presiding Judge be exercised in the manner provided by Section 288. The record of the statement of the accused made by the head-constable cannot be used by itself as evidence. That is forbidden by Section 162(1) of the Criminal Procedure Code. Properly speaking it could only be used by the Sub-Inspector as a writing from which he refreshed his memory as to what was said by the accused. I am of opinion, therefore, that no evidence has been adduced by the accused in this case, and that the prosecution is not entitled to reply.

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