

inder Rai Vs. C.R. Brown

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Court : Kolkata

Decided On : Oct-01-1909

Reported in : (1910)ILR37Cal236

Judge : Chatterjee and ;Ryves, JJ.

Appellant : inder Rai

Respondent : C.R. Brown

Judgement :

Chatterjee and Ryves, JJ.

1. We think that this Rule ought to be made absolute. The Magistrate says that the petitioners were asked at the time of framing the charge whether they would call any of the prosecution witnesses for cross-examination, but they could not at that instant make any answer to his question. They did, however, subsequently apply for re-calling some of the witnesses for the prosecution for the purpose of cross-examination, and the Magistrate thought that, since the defence was conducted by two mukhtears who had cross-examined the prosecution witnesses before the charge, it was not necessary to give them a further chance of cross-examination, and that the petitioners had waived their right by not answering when called upon. This is, however, against both the wording and the spirit of the law. Section 256 of the Criminal Procedure Code only says that the accused shall be required to state whether he wishes to cross-examine any, and if so which, of the witnesses whose

evidence has been taken. It does not say at what particular time he is to be asked this question and up to what time he has this right. In this case an application had been made before the case had closed, and we think that the petitioners were entitled to have their prayer granted. The conviction, therefore, must be set aside. Under the circumstances, as all the petitioners, except one, have served out their sentences, and the other almost the whole sentence, there need not be any re-trial. The order under Section 106 is also set aside.

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