

Mafizuddin Khan Vs. Emperor

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Court : Kolkata

Decided On : Nov-30-1920

Reported in : AIR1921Cal557,61Ind.Cas.793

Judge : Lancelot Sanderson, C.J. and; Asutosh Mookerjee, JJ.

Appellant : Mafizuddin Khan

Respondent : Emperor

Judgement :

1. This Rue has been granted on the second ground in the petition which was as follows: ' For that the trial has been vitiated by the fast that the Trial Court admitted evidence of case diaries, confessions, and statements of persons who have not been examined, etc., which are all inadmissible in evidence.' The learned Vakil who appeared in support of the Rule has told us that he does not rely upon the alleged improper admission of evidence of case-diaries or the statement of persons who have not been examined and, we have, therefore, to deal with the admission of confession only.

2. Now, it appears that the confession of a man sailed Mukti was pat in evidence. Mukti was one of the persons involved in the Section 110, Criminal Procedure Code, case. But the confession which is alleged to have been made was made when he (Makti) and Mafiz, the present petitioner, were co accused in another ease, which, we are informed, was a dacoity case. In my judgment, that

confession was not admissible in the Section 110 proceedings. It would have been, no doubt, admissible in the dacoity case not only against Mukti but also against Mafiz, under Section 30 of the Indian Evidence Act. But Section 30 does not make that confession of Mukti in the dacoity case admissible in these Section 110 proceedings against Mafiz. That has already been decided by this Court in *Amirulla Pramanik v. Emperor* 49 Ind. Cas. 649 : 22 C.W.N. 408 : 20 Cr.L.J. 201.

3. The result is, that this Rule must be made absolute, and the case must be remitted to the Additional district Magistrate of the lower Appellate Court for further investigation, upon the record as it stands. We wish to make it clear that the witnesses should not be re-called and examined and the lower Appellate Court will come to its decision upon perusal of the record as it stands exclusive, of course, of the confession, which we have held to be inadmissible.

4. The accused will be enlarged on bail to the satisfaction of the lower Appellate Court. We ask the lower Appellate Court to expedite the re-hearing of the matter as much as possible.

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