

WOODROFFE AND CUMING JJ. Having regard to the fact that, according to the scale of this Court, R. A. 221 of 1919 carries with it a hearing fee of Rs. 300, we fix the hearing fee in each of the other two cases at Rs. 150.

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Appeals dismissed.

ORIGINAL CRIMINAL.

Before Buckland J.

EMPEROR

v.

REED.*

1921
 June 22.

Witness—Duty of prosecution to call witness examined as a Court-witness on a previous trial—Criminal Procedure Code (Act V of 1898) s. 291.

It is not the duty of a public prosecutor to call, or put into the box for cross-examination, a witness called at a previous trial by the Court itself and not the Crown, whose evidence he believes to be false.

Queen-Empress v. Durga (1) followed.

THE accused, who was the assistant manager of the Khoreal tea garden, was put on trial before the Deputy Commissioner of Cachar and a jury charged, under s. 326 of the Penal Code, with grievous hurt to one Gangadhar Goala. The prosecution story, so far as it is material to this report, was that the accused who had made immoral overtures to a coolie girl named Hira which she had rejected, on the night of the 25th May 1920, went to her house with a revolver and called her, that her mother sent her small son,

* Ordinary Original Criminal Jurisdiction. Third Criminal Sessions.

(1) (1893) I. L. R. 16 All. 84.

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Nepal, to fetch his father, that the father arrived shortly after and was shot by the accused. The defence story was that on the night of the occurrence, after dinner, the accused heard the sound of a barking deer and followed it with a revolver, but lost his way, that he was then near the coolie lines, that he tried to retrace his steps through the lines and was set upon by a large mob, that he fired his revolver in self-defence and hit Gangadhar.

At the trial Mr. Grant, the manager of the garden who lived with the accused in the same bungalow, was called by the Court. The Deputy Commissioner put no questions to Mr. Grant but he was cross-examined by the prosecution and the accused. He supported the defence story. The jury found the accused not guilty and the Court acquitted him.

Gangadhar thereupon moved the High Court in revision, and the order of acquittal was set aside and the accused was committed to the High Court for trial (see *Gangadhar Goala v. Reed* (1)). The prisoner was tried at the Third Criminal Sessions of the High Court before Buckland J. and a special Jury on a charge under s. 326 of the Indian Penal Code. At the close of the prosecution a question arose as to the duty of the prosecution to call Mr. Grant as a witness.

Mr. Langford James, for the prisoner. It is the duty of the prosecution to call Grant as he was present at the time of the occurrence, and can also speak to the statement made to him by the prisoner after the occurrence and to the books of the garden: *Ram Runjan Roy v. Emperor* (2).

Mr. B. L. Mitter, for the Crown, also relied on the same case. Grant is not a truthful witness. He

(1) (1921) 25 C. W. N. 609.

(2) (1914) I. L. R. 42 Calc. 422

is essentially a defence witness, and it would be improper for me to examine him. Moreover, a book produced before Bartley has not been produced here, and on the face of that I cannot call him.

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Mr. Langford James, in reply.

BUCKLAND J. I know of no authority, nor has any been advanced, for the proposition that it is the duty of the Public Prosecutor to call a witness who he has reason to believe would give false evidence. In stating my opinion I cannot do better than adopt the language of a former Chief Justice of the High Court at Allahabad when he said in *Queen-Empress v. Durga* (1): "It cannot be the duty of a Public Prosecutor acting on behalf of the Government and the country to call or put into the witness box for cross-examination a witness whom he believes to be a false or unnecessary witness." The learned Standing Counsel has refused to call Mr. Grant on the ground that he believes him to be a false witness. In the former trial Mr. Grant was called by the Court and cross-examined by both sides. He was not examined as a witness for the Crown, in which case other considerations would have arisen, and in the circumstances I decline to interfere.

Prisoner acquitted.

E. H. M.

(1) (1893) I. L. R. 16 All. 84