

CRIMINAL REVISION.

Before Lord-Williams and Jack J.J.

KALIDAS SARKAR

v.

EMPEROR.*

1935.

July 11.

Certificate—Certificate of a lunatic asylum, how to be proved—Presumption of genuineness, when arises—Code of Criminal Procedure (Act V of 1898), s. 473—Indian Evidence Act (I of 1872), s. 79.

A certificate of the visitors of a lunatic asylum, made receivable as evidence by section 473 of the Code of Criminal Procedure, upon the usual Government form and signed by the Superintendent of the asylum, is a public document, the genuineness of which is to be presumed under section 79 of the Indian Evidence Act.

Formal proof of such a certificate is not necessary.

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The material facts and arguments appear from the judgment.

Sateendranath Mukherji for the petitioner.

No one for the Crown.

LORT-WILLIAMS J. In this case, a Rule was issued to show cause why the order of the Sessions Judge refusing to refer to this Court the question as to the propriety and legality of the verdict of the jury that the accused in this case was fit to stand his trial and was of sound mind should not be set aside.

The Rule was issued only upon the ground that a certain document, namely, the certificate of the visitors of the Ranchi Mental Hospital dated the 28th February, 1935, had not been proved according to law. This document was read to the jury and, in addition, the Civil Surgeon of the district, Dr. Mukherji, gave evidence and was cross-examined. The learned judge made no further reference in his

*Criminal Revision, No. 508 of 1935, against the order of B. K. Guha Sessions Judge of Birbhum, dated May 14, 1935.

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charge to the certificate of the visitors, but directed the jury substantially with regard to the evidence of Dr. Mukherji and asked them to consider his evidence and the demeanour of the accused person. The jury came to the conclusion that the accused was able to stand his trial.

Section 473 of the Code of Criminal Procedure provides that if a person is detained in a lunatic asylum, and if the visitors of that asylum certify that, in their opinion, such person is capable of making his defence, he shall be taken before a magistrate; and the certificate of such visitors shall be receivable as evidence.

Section 79 of the Evidence Act provides that—

The court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in British India, who is duly authorised thereto by the Governor-General in Council, to be genuine :

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

The document in question in this case is upon a Government form, Schedule No. XXIX—Lunatic Asylum Form No. 3, Government of Bihar and Orissa, addressed to the Sessions Judge of Birbhum and dated the 28th February, 1935. It purports to be signed by three persons as visitors. To this form is attached a second form entitled Schedule XXIX—Lunatic Asylum Form No. 14—Form D, stating a number of particulars about the lunatic and signed by a Major, I.M.S., Superintendent, Indian Medical Hospital, Kanke (Ranchi). This purports to be the medical history sheet of the lunatic. Also there is attached a form entitled Schedule XXIII—Lunatic Asylum Form No. 17, which is an abstract from the Asylum Case Book regarding the criminal lunatic giving a detailed history of the case from 8th March, 1933, until the 25th February, 1935.

In our opinion, such a document as this certificate comes within the provisions of section 79 of the Indian Evidence Act and is a public document, the genuineness of which is to be presumed, in view of the provisions of that section and section 473 of the Code of Criminal Procedure to which I have referred, and that formal proof is not necessary.

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Consequently, the Rule is discharged.

JACK J. I agree.

Rule discharged.

A. C. R. C.