

**APPELLATE CRIMINAL.**

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*Before Mr. Justice Campbell and Mr. Justice Addison.*

BUTA SINGH—Appellant

*versus*

THE CROWN—Respondent.

**Criminal Appeal No. 35 of 1926.**

*Indian Evidence Act, I of 1872, section 33—Evidence recorded by a Court having no jurisdiction—whether relevant in retrial before a competent Court.*

The appellant was tried twice on a charge of murder. The first trial was set aside as being without jurisdiction. In the second trial the Sessions Judge, acting ostensibly under section 33 of the Indian Evidence Act, admitted in evidence the statements of certain witnesses made before the Sessions Judge during the first trial and the statement of one witness made in the first committal proceedings.

*Held*, that a proceeding before a Judge or Magistrate who had no jurisdiction is not a judicial proceeding and that the evidence of witnesses given in such a proceeding could not be used under section 33 of the Evidence Act on a retrial before a competent Court.

*Regina v. Rami Reddi* (1), followed.

*Appeal from the order of Lieutenant-Colonel F. C. Nicolas, Sessions Judge, Ferozepore, dated the 30th November 1925, convicting the appellant.*

PINDI DAS, for Appellant.

CARDEN-NOAD, Government Advocate, for Respondent.

The judgment of the Court was delivered by—

ADDISON J.—On the 31st July 1922 Buta Singh of village Manga in the Lahore District and Karam Singh of village Matta in Faridkot State were sentenced to death by the Sessions Judge of Ferozepore

for the murder of Attarpuri of village Gholia Kalan in the Ferozepore District on the night of the 21st-22nd August 1921. On appeal to this Court they were discharged on the 16th December 1922 on the ground that the proceedings were without jurisdiction as the murder had been committed within the boundaries of the Native State of Kalsia. It was suggested that Karam Singh should be handed over to the Kalsia authorities and this was done. He has been tried in that State and sentenced to transportation for life. With regard to Buta Singh who is a native Indian subject it was left to the police to take action under section 188, Criminal Procedure Code. The certificate required by the first proviso to section 188, Criminal Procedure Code, has been obtained and Buta Singh has again been tried and sentenced to death for the same murder by the Sessions Judge of Ferozepore on the 30th November 1925. The long delay in trying him for the second time has not been explained. He has appealed and the sentence is before us for confirmation.

Since the first trial certain witnesses have died or have disappeared and their statements have been transferred to the present record ostensibly under the provisions of section 33 of the Evidence Act. In this way the statements of Sucha Singh, Kalu, Kala Singh, Baga Singh, Nazir and Dhara Singh (P.Ws. 39, 40, 41, 42 and 43 and D. W. 2) recorded by the Sessions Judge at the first trial have been used as evidence at this trial while the statement of Baga *Sanyasi* (P.W. 57), recorded by the first Magistrate, who committed the case, has also been used. This was against law. The first trial was not a judicial proceeding as there is a final order by this Court ruling it to have been without jurisdiction. It was held in *Regina v. Rami Reddi* (1) that evidence which was given in a pro-

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ceeding subsequently pronounced to be one *coram non iudice* was not admissible and could not be used under section 33 of the Evidence Act on a retrial before a competent Court. So far as the statement recorded in the Committing Court is concerned, it was made clear in *Ram Charn v. The Crown* (1) that the proceedings of a Magistrate committing an accused person to the Sessions Court before a certificate under section 188, Criminal Procedure Code, was obtained were void and illegal and the commitment was quashed. We hold that the statements of the witnesses named above could not be transferred and used against the appellant at the retrial.

*[Their Lordships then considered the admissible and relevant portions of the record and maintained the conviction and continued]*

We are of opinion, however, that the capital sentence should not be imposed as this is his second trial for an offence committed in 1921, *i.e.*, 4½ years ago. We accept the appeal to the extent of reducing the sentence to transportation for life.

C. H. O.

*Appeal accepted in part.*

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(1) (1924) I. L. R. 5 Lah. 416.