

APPELLATE CRIMINAL.

Before Mr. Justice Cunningham and Mr. Justice Maclean.

1881
Feb. 22.

IN THE MATTER OF THE PETITION OF MAYADEV GOSSAMI.*

THE EMPRESS *v.* MAYADEV GOSSAMI.

False Evidence in Judicial Proceeding—Deposition of the Accused when admissible as Evidence—Civil Procedure Code (Act X of 1877), ss. 178, 182, 183, & 647—Evidence Act (I of 1872), s. 91.

Failure to comply with the provisions of ss. 182 and 183 of Act X of 1877 (Civil Procedure Code) in a judicial proceeding, is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition; and under s. 91 of Act I of 1872 (Indian Evidence Act), no other evidence of such deposition is admissible.

Baboo *Baihan Nath Dass* for the appellant.

No one appeared on behalf of the Crown.

The facts of this appeal sufficiently appear in the judgment of the Court (CUNNINGHAM and MACLEAN, JJ.), which was delivered by

CUNNINGHAM, J.—The prisoner in this case applied for a certificate under Act XL of 1858 in respect of the estate of two infants, and in support of his application he gave a sworn deposition on the 4th October last before the District Judge.

His deposition was made in Assamese, and was translated by the Sherishtadar of the Court, and the Judge recorded it in English. He did not sign it, nor was it read over to the witness or translated? The requirements of ss. 182 and 183 of the Civil Procedure Code were, therefore, not complied with. This is clear from the deposition of the Sheristadar before the Deputy Commissioner.

* Criminal Appeal, No. 66A of 1881, against the order of A. Porteous, Esq., Assistant Commissioner of Kamrup, dated the 27th December 1880.

At the conclusion of the proceedings in his Court, the Judge considered that the prisoner had given false evidence, and he directed that he should be prosecuted. This has resulted in his conviction, and as this Court was of opinion, on the facts brought to its notice, that the appeal ought not to be tried by the Judge before whom the false evidence was given, the appeal has been called up to this Court.

It is contended for the defence, that the informalities which took place in recording the accused's deposition render the record of his evidence inadmissible; and that, under s. 91 of the Evidence Act, no other evidence of his deposition is admissible.

We consider this contention sound. By s. 647 of the Civil Procedure Code, the procedure prescribed by the Code is to be followed, as far as it can be made applicable, in all proceedings, in any Court, other than suits and appeals. By s. 178 a party to a suit required to give evidence is governed by the rules as to witnesses. Sections 182 and 183, therefore, applied to the accused's deposition, and those sections not having been complied with, the record is inadmissible.

The conviction must, therefore, be quashed, and the prisoner released.

The record of the proceedings before the District Judge does not show that the Sheristadar was sworn or affirmed as required by Act X, 1873, s. 5 (b). The Judge's attention should be drawn to this, and a copy of this judgment furnished to him from this Court.

Conviction quashed.

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