

**CRIMINAL REVISION.***Before Mr. Justice Holmwood and Mr. Justice Imam.*

JABBAR SHAIK

1912

v.

April 12.

TAMIZ SHAIK.\*

*Criminal Procedure Code (Act V of 1898), s. 263—Hearing and recording of evidence—Complainant and his witnesses, examination of—Procedure—Practice.*

Section 263 of the Criminal Procedure Code does not excuse the Magistrate from hearing the evidence of all witnesses. In all criminal cases the complainant and such witnesses as he may produce must be examined, whether their evidence is required to be recorded or not, and the case must be decided upon the effect of their evidence.

THE facts are shortly these : The complainant on the 10th of November 1911 lodged an information that the accused had cut and destroyed his unripe paddy from his land. A police investigation was held and the accused was sent up before the Subdivisional Officer of Tangail, under sections 143 and 447 of the Indian Penal Code. The learned Subdivisional Officer examined the complainant, held a local investigation, but refused to examine the complainant's witnesses who were in attendance in Court. By his order, dated the 4th of January 1912, he acquitted the accused under section 245 of the Criminal Procedure Code. Against this order the High Court issued a Rule.

*Babu Atulya Charan Bose*, in support of the Rule, contended that under section 263 of the Criminal Procedure Code the Magistrate was excused from recording evidence, but under section 244 he was *not*

\* Criminal Revision No. 316 of 1912, against the order of P. H. Waddell, Subdivisional Magistrate of Tangail, dated Jan. 4, 1912.

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excused from taking all such evidence as may be produced in support of the prosecution.

No one appeared to shew cause.

HOLMWOOD AND IMAM JJ. This Rule must be made absolute on the ground on which it was issued. We are surprised to find that the learned Subdivisional Officer should so misapprehend the provision of the law under section 263, Criminal Procedure Code. That section does not excuse the Magistrate from hearing the evidence of all witnesses. It excuses him from recording the evidence of any of the witnesses. But it is an elementary point that recording evidence is not the same as hearing evidence. In all criminal cases if the accused denies the charge, the complainant and such witnesses as he may produce must be examined, and the case must be decided upon the effect of their evidence. The order of acquittal is, therefore, clearly without jurisdiction having been made without evidence having been heard.

The order of the lower Court is set aside, and there will be a re-trial before any Magistrate the District Magistrate may direct.

S. K. B.

*Order of acquittal set aside.*