

CALCUTTA HIGH COURT

Raja Khan

Vs

Emperor

(Lancelot Sanderson, C.J A Mookerjee, J.)

26.11.1920

JUDGMENT

Lancelot Sanderson, C.J.

1. This is an appeal by Raja Khan and Cherak AH Akon, The gist of the case was that one Torap Ali was guilty of cheating by personating one Sabdar Faraji, and using his name on a surety-bond. The charge against Torap Ali was that he was the principal in the case and the charge against Raja Khan and Cherak Ali Akon, the two appellants, was that they abetted by being present at the personation which is alleged to have been committed by Torap Ali. Torap Ali has been acquitted by the Jury; and, therefore, it must be taken that the case against him could not be substantiated. The learned Judge did not tell the Jury that the first thing that must be decided was, whether the alleged offence had been committed by Torap Ali, and he omitted to tell them that unless they found that Torap Ali was guilty of the offence Raja Khan and Cherak Ali Akon could not be found guilty of abetting that offence Having regard to the omission to which I have referred in the Judge's summing up, I think the conviction of these two men must be set aside. Consequently, this appeal must be allowed and the conviction of, and the sentence passed on, these two appellants must be set aside. If either of them is in Jail he must be released; if on bail, his bond must be discharged.

Asutosh Mookerjee, J.

2. I agree.