

**(1898) 03 CAL CK 0001**  
**In the Calcutta High Court**  
**Case No : No. 138 of 1898**  
**In Re: Munni Buksh**

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**Date of Decision : 22-03-1898**

**Acts Referred:**

**Citation : (1898) 03 CAL CK 0001**

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## **Judgement**

1. The Petitioner in this case was convicted by the District Magistrate of Purnea on the 12th January 1898 under sec. 193 of the Indian Penal Code on three several charges, and sentenced to two months rigorous imprisonment on each charge. The offences, which he was alleged to have committed, were that he made three contradictory statements in the course of his evidence before the Magistrate in a rioting case. The contradictory statements are set out in the form of an appendix to the charge drawn up against the accused. The learned Sessions Judge very properly pointed out that there was no inconsistency in respect of the two statements which form the subject-matter of the first count against the accused. But he thought that the statements which form the subject-matter of the 2nd and 3rd counts were irreconcilable. It is unnecessary for us to deal with the case at any very great length, or to give at any length, our reasons for setting aside the conviction. It appears to us that the statements, which the Sessions Judge has considered to be irreconcilable, are not so irreconcilable as he seems to think. So far as the second charge is concerned, it seems to us that the view of the Sessions Judge proceeds upon some misapprehension regarding the two answers C. and I), set forth in the second charge; or at least he does not seem to keep in view the difference in the wording of the two statements. In one case the accused seems to be speaking of the men surrounding and beating Bonai; in the other he merely speaks of the surrounding of Bonai. As regards the 3rd charge there may be some inconsistency with reference to the statements about Marif. It seems to us that the District Magistrate would have exercised a proper discretion if he had taken into consideration the fact that the statement was made in the course of cross-examination, when possibly he may have been either confused, or under some mistake regarding the question put to him. See. 193, under which the accused has been convicted, distinctly provides that the

false evidence must be given intentionally in order to make the person who is charged with the offence criminally liable. It seems to us that both Courts have lost sight of the essential ingredient in the constitution of the offence, namely, the intention of the person. There is no circumstances shown in either of the judgments from which it can be inferred that the accused intentionally gave false evidence. He may have made contradictory statements under the pressure of a lengthy cross-examination; but the Magistrate, in his explanation, is unable to point out any motive which might have induced the accused to make false statements; in view of these considerations it seems to us the conviction of the Petitioner is erroneous, and ought to be set aside. We accordingly direct that it be set aside, and that the Petitioner be discharged.