

(1906) 04 CAL CK 0022
In the Calcutta High Court
Case No : Revision No. 291 of 1906

In The Matter of Kismat Akanda

APPELLANT

Vs

The Emperor

RESPONDENT

Date of Decision : 23-04-1906

Acts Referred:

Citation : (1906) 04 CAL CK 0022

Judgement

1. The Petitioner before us was tried with two other persons on charges under secs. 395 and 457 of Penal Code for having committed the offences on the 13th January 1905 in the house of one Karim Mondal. They were convicted by the Sessions Judge of Bogra, but on appeal to this Court they were acquitted. On the 9th January 1906, this Court acquitted Sabetulla Sardar, one of the three accused and previous to that the Petitioner and Afan Chowkidar had been acquitted. Five days after on the 14th January 1906, the Petitioner and the other two accused in the dacoity case were again arrested and were placed on their trial under sec. 110 of the Code. The evidence against the Petitioner consists of the evidence given in the dacoity case which was disbelieved by this Court and such evidence must there fore be excluded from consideration in the trial of the accused under sec. 110. The rest of the evidence is extremely flimsy. We find that of the 11 witnesses who were examined, most of them said that the Petitioner bore a good character, that there was nothing known against him and that they began to suspect him since the case of dacoity.

2. On such evidence it is impossible to compel the Petitioner to give sureties for good behavior under sec. 110. It wood seem that falling to obtain a conviction In the dacoity case a proceeding in a different way was started in order to partially attain the same object. We accordingly set aside the order of the Magistrate, dated the 15th March 1906, and direct that the Petitioner be released.