Ghunnai Vs. Emperor

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Court : Allahabad

Decided On : Sep-14-1933

Reported in : AIR1934All132; 147Ind.Cas.630

Appellant : Ghunnai

Respondent : Emperor

Judgement :

Young, J.

1. Ghunnai was charged in the Court of the Sessions Judge of Allahabad under Section 302, Penal Code. It was alleged that he had murdered a small boy of 8 years of age by chopping off his hands for the sake of some ornaments he was wearing. The learned Sessions Judge found Ghunnai guilty and sentenced him to death. Ghunnai appeals and there is before us an application for confirmation of the death sentence.

2. In the village of Sipauwa in the Koraon Police Circle a small boy named Rajhtan Singh disappeared towards the evening of 22nd March 1933. Several villagers searched for him. They discovered two men named Baldeo and Musau who said that they had seen the missing boy together with the accused proceeding towards the west of the village and that the accused was carrying an axe under his arm. This information was, that evening, given to the Mukhiya of the village. Ghunnai was sent for and questioned but he denied all knowledge of the missing boy. Eventually he admitted that he had been with Eajhban Singh that evening, but he said that they had separated and he knew nothing of his movements after that. A girl however named Kani was present when the Mukhiya was making his investigations and she said that she too had seen the accused, walking up and down the bank of a nala to the west of the village, with an axe under his arm. The next morning the Mukhiya and his party went to the nala and there they discovered the corpse of the missing body floating on the surface of the water. The body was taken out of the nala and it was then found that both his hands had been chopped off at the wrists. The corpse was taken to the house of Mukhiya and the accused was again charged With having murdered the boy. After having first again denied the charge, he confessed his guilt, before the assembled villagers. The accused next took the party to a small thatched hut in which he lived and in the presence of all of them produced from a hole in the floor the missing ornaments including a pair of silver wristlets, a pair of gold earrings and; a gold amulet with two corral beads. These ornaments were identified as having belonged to the deceased boy as having been worn by him on the preceding day. Further, a bandi which was identified as having been worn by the deceased boy, was discovered in the accused's hut. An axe too was discovered there. The dhoti which the accused was wearing was noticed to be stained and was sent to the chemical examiner and the Imperial Serologist. The latter report states the stains were those

of human blood. It is not necessary in this case for us to attach any weight to the evidence of these reports as the other evidence, in our opinion, is overwhelming. Eventually, on another search being made at the nala two severed human hands were discovered in the water together with a stone which from the marks upon it, looked as if it had been used as a chopping block.

3. The evidence of all these witnesses was produced. The learned Sessions Judge says that the evidence was given in a straightforward and convincing manner. There is one point which we have to notice. It was proved by the prosecution that the accused made a confession to a crowd of villagers. Apparently the chaukidar of the village was present in the crowd. Some of the witnesses denied the presence of the chaukidar as they were under the impression - which the Sessions Judge shared - that a confession made in the presence of a chaukidar was a confession to a policeman and therefore not admissible in evidence under Section 25, Evidence Act; The learned Sessions Judge, thinking that there might possibly be a doubts upon the question as to whether the chaukidar was there or not, excluded the evidence of the confession from his consideration. On this point we have two observations to make: Firstly that a confession to a chaukidar is not, in our opinion, a confession to a policeman within the meaning of Section 25, Evidence Act. Secondly, we are not inclined to think that even if a policeman happened to be a member of a crowd of villagers and a confession was made to the villagers at large, the mere fact that a policeman happened to be present in the crowd would not make the confession under the circumstances inadmissible in evidence. There was then, in our opinion, no reason for the learned Judge to exclude the confession from his mind, and we can and do take it into consideration. The learned Sessions Judge however was perfectly right when he said that there was ample evidence to convict the accused even after he had excluded the confession.

4. The accused was the person last seen with the deceased boy when he was alive. He was observed walking with the deceased boy with an axe under his arm and was seen at the actual place where the body was discovered. He dug up in the presence of trustworthy witnesses ornaments clearly identified as belonging to the deceased. There is also the evidence which we consider admissible that he made a confession of the offence to a large body of witnesses. The case for the Crown has been clearly proved. The learned Judge was correct when he said that it was an inhuman and horrible murder perpetrated in cold blood. We have however seen the appellant in Court. His age is given officially as 18. We have little doubt from his appearance that he is considerably younger. We think that his age is probably 15 or 16. Under these circumstances we do not think that we ought to confirm the sentence of death. In our opinion, however horrible the crime, a boy of his age should not be hanged. At the age of 15 or 16 when a boy has just come to the age of puberty, he may do many things then which he would never dream of doing when he was older. It is even possible that he may become a useful citizen. While remitting the sentence of death we have no alternative but to inflict the punishment of transportation for life. We direct that the civil surgeon of Allahabad, in whose charge the accused is in the District Jail should examine the boy and report to this Court as to his age. On receipt of the report of he civil surgeon the case will be put up again before this Bench.

5. In this matter the civil surgeon in charge of the District Jail has reported that Ghunnai is now 15 years of age. We are informed by the learned Government Advocate that as the boy is not under 15 years of age it is impossible to pass an order under the Reformatory Schools Act for him to be kept in a Reformatory. We consider

it inadvisable for a boy of this age to be kept in an ordinary jail. We can only leave this matter to be dealt with by the Government under the circumstances.