

Emperor Vs. Ghure

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Court : Allahabad

Decided On : Jan-13-1914

Reported in : AIR1914All85; (1914)ILR36All168

Judge : Henry Richards, C.J. and ;George Knox, J.

Appellant : Emperor

Respondent : Ghure

Judgement :

Richards, C.J. and Knox, J.

1. A preliminary objection was taken to the hearing of this appeal on behalf of the accused. It is contended that this High Court is no longer properly constituted by reason of the fact that some years ago a sixth Puisne Judge was appointed. In our opinion there is no force in the contention. Under 24 and 25 Vict., Chap. 104, Section 16, the Sovereign was authorized by Letters Patent to establish at any time thereafter a High Court of Judicature in the territories of India other than those comprised within the jurisdiction of the other High Courts. The only limit as to the number and qualifications of the Judges was as therein stated. By Letters Patent, dated the 17th day of March of the twenty-ninth year of the reign of Queen Victoria Her Majesty was pleased to constitute a High Court for the North-Western Provinces in these words:

Section 1. Now know ye that We upon full consideration of the premises and of Our special grace certain knowledge and mere motion have thought fit to erect and establish and by these presents We do accordingly for Us, Our heirs and successors erect and establish for the North-Western Provinces of the Presidency of Fort William aforesaid a High Court of Judicature which shall be called 'The High Court of Judicature for the North-Western Provinces'. And We do hereby constitute the said Court to be a Court of Record.'

2. Section 2 is in these words:

And We do hereby appoint and ordain that the said High Court of Judicature for the North-Western Provinces shall until further or other provision shall be made by Us or Our heirs and successors in that behalf in accordance with the said recited Act consist of a Chief Justice and five Judges * * *.'

3. In our opinion it was perfectly competent by Letters Patent to appoint a sixth Judge. We accordingly overrule the preliminary objection.

4. The appeal is an appeal by Government against the acquittal of one Ghure on a charge of murder. The circumstances connected with the case are as follows: There was a family of four brothers, Sunars, trading at Hathras. The names of these four brothers were Jhunna Lal, Ram Lal, Shama and Babu. There were living at a place called Arjunpur, about four kos away, three Brahman brothers Kunwar Lal, Rup Ram and the accused Ghure. In October, 1911, Jhunna Lal and Ram Lal were murdered. Ghure, Kunwar Lal and Rup Ram, the three Brahman brothers, were all accused of the murder. Ghure was alleged to be absconding, but Kunwar Lal and Rup Ram were put upon their trial, convicted of the murder of Ram Lal and sentenced to death. The sentence authorized by Letters Patent to establish at any time thereafter a High Court of Judicature in the territories of India other than those comprised within the jurisdiction of the other High Courts. The only limit as to the number and qualifications of the Judges was as therein stated. By Letters Patent, dated the 17th day of March of the twenty-ninth year of the reign of Queen Victoria Her Majesty was pleased to constitute a High Court for the North-Western Provinces in these words:

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9. In our opinion it was perfectly competent by Letters Patent to appoint a sixth Judge. We accordingly overrule the preliminary objection.

10. The appeal is an appeal by Government against the acquittal of one Ghure on a charge of murder. The circumstances connected with the case are as follows : There was a family of four brothers, Sunars, trading at Hathras. The names of these four brothers were Jhunna Lal, Ram Lal, Shama and Babu. There were living at a place called Arjunpur, about four kos away, three Brahman brothers Kunwar Lal, Rup Ram and the accused Ghure. In October, 1911, Jhunna Lal and Ram Lal were murdered. Ghure, Kunwar Lal and Rup Ram, the three Brahman brothers, were all accused of the murder. Ghure was alleged to be absconding, but Kunwar Lal and Rup Ram were put upon their trial, convicted of the murder of Ram Lal and sentenced to death. The sentence was confirmed by the High Court and subsequently carried into effect.

11. Ghure was arrested on the 18th of July, 1913, committed for trial and tried by Mr. Sabonadiere, Sessions Judge of Aligarh, and acquitted. It is against this acquittal that the present appeal is preferred by Government.

12. [After discussing the evidence their Lordships proceeded as follows:]

13. The learned Sessions Judge says, and most truly says, that he was bound to hear and to decide the case altogether irrespective of the fact that there had been a previous trial and conviction upheld by the High Court against the other accused. There can be no doubt that the learned Sessions Judge is perfectly correct in this. If the evidence as he heard it did not convince him of the guilt of the accused he was bound to acquit. Just in the same way we are bound to deal with this appeal quite irrespective of the fact that another Bench of this High Court affirmed the conviction in a previous trial. If the learned Sessions Judge had referred less to the judgment of his predecessor, we think his own judgment would have been less open to criticism; for instance, we do not acquiesce in his remarks about the use of the word ' apparently' by his predecessor in giving judgment in the previous case, It is quite clear that the learned judge in that case meant to say that so far as he could see the witness whose evidence he was referring to was trustworthy. He may have been right or wrong in this estimate of the witness, but his meaning is perfectly clear.

14. It has been argued on behalf of the accused that we ought to follow the ruling in *Queen-Empress v. Robinson* (1894) I. L. R. 16 All. 212. In our opinion the law is correctly laid down in the case of *Queen-Empress v. Prag Dut* (1898) I. L. R. 20 All. 459. We must, however, banish from our minds altogether the fact of the previous trial. Whether it was owing to the time that had elapsed between the occurrence and the present trial, or whether it was that Nanda purposely to spoil the case gabbled forth evidence, the learned Sessions Judge found him an unconvincing and unsatisfactory witness. With some of the reasons he has given for not believing him we cannot agree, but as regards some of the other reasons which he has given we are not prepared to say they are not entitled to some weight. His reasons for not relying upon the evidence of Bahu are justified, though, he has failed to consider the corroboration of Hub Lal on the only vital part of his evidence. We are very far from saying that we believe Ghure to be innocent, far less that the conviction of the other accused was incorrect. But deciding this case entirely upon its own circumstances, and influenced mainly by the remarks of so-experienced a Judge on the unsatisfactory way in which the principal witness gave his evidence, we have with great hesitation come to the conclusion that we ought not to set aside the verdict of acquittal given by the learned Sessions Judge. We

accordingly dismiss the appeal. The accused, if in custody, will be Bet at liberty.

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