

Premgir Vs. Emperor

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Court : Allahabad

Decided On : Oct-05-1917

Reported in : AIR1918All298; 43Ind.Cas.785

Judge : P.C. Banerji and ;Walsh, JJ.

Appellant : Premgir

Respondent : Emperor

Judgement :

1. Premgir a boy whose age is between 14 and 15 years, has been convicted of having murdered another boy named Parshotam, aged about 12 years. He has been sentenced to death and the record has been submitted for confirmation of the capital sentence. He has appealed from jail. The case for the prosecution is that the accused and the deceased were gambling with cowries in a jungle. There was some quarrel between them. The deceased struck the accused a lathi blow and thereupon the latter who had a small axe in his hand struck him with it and killed him, and subsequently cut off his hands and appropriated the silver bangles which the deceased was wearing as also his gold earrings. The evidence proves that the deceased boy was missing. His relatives searched for him but without success. A woman of the name of Budhni told Sat Narayan, the uncle of (he deceased, that if he went to the jangle he might find something. He did go there and discovered the dead body of the boy. The matter was mentioned to Hira Lal, the headman of the village, who sent for the accused. Hira Lal swears that the

accused admitted having killed the boy Parshotam. Hira Lal says that the accused told him that the winnings of the deceased went up to twelve annas and the deceased pressed him for payment. The accused promised to pay by instalments, but the deceased apparently did not agree and hit him with his stick on the shoulder. He (the accused) had an axe in his hand and with it he cut him down and covered him with leaves under a sal tree. According to Hira Lal the accused brought the axe from his house and handed it over to Hira Lal. Its handle had been changed. This according to Hira Lal was before the arrival of the Sub-Inspector. The accused in his statement before the Committing Magistrate admitted that he had made the confession deposed to by Hira Lal, but he said that he had done so at the desire of the darogha. As we have already said, according to the evidence of Hira Lal, the darogha had not arrived when the confession was made. Hira Lal also proves that when the Sub-Inspector came at night the accused took him to the spot where the murder had been committed and then to a tree where the body was lying. The hands of the deceased boy had been cut off and his throat was cut, there being marks of 5 or 6 blows on the head. The bamboo handle of the axe and also the stick which was said to have been Parshotam's stick were found near the spot. Subsequently the accused produced the bangles and earrings in the presence of a number of witnesses from the thatch of his house and handed them over to the Police. There can be no doubt that the accused murdered the boy, Parshotam.

2. The learned Vakil for the appellant has asked us to set aside the conviction, because he contends that the provisions of Section 289 of the Code of Criminal Procedure have not been complied with. He urges that under Clause 4 of that section the Court should have called upon the accused to enter on his defence and this was not done in the present case. In the first place, we may observe that there is nothing to show that the Court did not call upon the accused to enter on his defence. On being asked he had told the learned Judge that he would not call any witness. He was being defended by a Pleader and there is no affidavit before us or anything else to show that the Court had not called upon the accused or his Pleader to enter on his defence. In the next place, if there was any omission it would, in our opinion, be covered by the provisions of Section 537 of the Code of Criminal Procedure, as it is manifest that the accused was not in any way

prejudiced by it. We agree with the learned Sessions Judge that the accused is guilty of murder, but in consideration of his youth and the fact that he is a mere boy we think the extreme penalty of the law is not called for in this case. We accordingly alter the sentence to one of transportation for life. We allow the appeal so far that we set aside the sentence of death and in lieu thereof sentence the accused Premgir to transportation for life with effect from the 13th of August 1917.

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