

**Emperor Vs. Hulasi**

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**SooperKanoon Citation :** [sooperkanoon.com/475325](http://sooperkanoon.com/475325)

**Court :** Allahabad

**Decided On :** Oct-27-1931

**Reported in :** AIR1933All286

**Appellant :** Emperor

**Respondent :** Hulasi

**Judgement :**

**Young, J.**

1. One Hulasi, son of Ram Sanehi, caste Khangar, appeals from a conviction and sentence of death recorded against him by the Sessions judge of Jaulaun under Section 396, Penal Code. With him were tried four others. The Sessions Judge however acquitted the four others and convicted the appellant only. He appeals, and there is an application before us for confirmation of the death sentence. On the night between 8th and 9th July 1930 a dacoity took place at the house of a Darzi woman, Mt. Tribeni, in the village Kathonda. Mt. Tribeni was found in the next morning by her friends and neighbours suffering from a cut in throat and she died from suffocation owing to her injuries. The village in question is near the border of the Dattia State, and the authorities had been on the look out in connexion with another dacoity which had taken place at Basti. The appellant Hulasi was arrested in the Dattia State on suspicion. Various articles of jewellery were found upon him, and the police in British India were communicated with, and

eventually he was taken before a Third Class Magistrate in Dattia State by the police in order that a confession might be recorded by him. In that confession he gave a very clear story of the dacoity and the part he took therein.

2. The learned Sessions Judge convicted this appellant on his confession, corroborated as it was by the discovery shortly afterwards on him of jewellery which clearly had been taken from Mt. Tribeni at the dacoity and some of which had been stained with human blood. We have no doubt whatever that the offence with which this appellant was charged has been clearly proved if we can in law take into consideration the confession which was put in evidence. It is objected by counsel for the appellant that the confession is inadmissible in that it is not in accordance with Section 164, Criminal P.C., as the Magistrate before whom the confession was made was only a Magistrate of the Third Class, and therefore not empowered under Section 164 to record a confession. It is admitted that every other formality under Section 164 was complied with. The confession was voluntary, and the necessary certificate was appended by the Magistrate, who himself was called in the trial before the learned Sessions Judge and gave evidence. The point is a law point and purely technical. We are satisfied that there is nothing in law to bar a confession, under the circumstances such as we have outlined above, from being admissible in a trial in British India. Section 26, Evidence Act, 1872, clearly makes such a confession admissible. All that the section insists on is that the confession should be made in the presence of a Magistrate. It is enacted in the General Clauses Act that a Magistrate shall include:

every person exercising all or any of the powers of a Magistrate under the Criminal procedure Code for the time being in force.

3. Magistrates other than those exercising jurisdiction under the Code are not excluded. The use of the word 'include' shows that other Magistrates are contemplated. The officer in question before whom this confession was made is clearly a Magistrate within the meaning of Section 26, Evidence Act. We can hardly believe that it was the intention of the legislature to exclude Magistrates of a foreign nationality. To decide otherwise would put great difficulty in the way of the administration of justice in British India. To hold that the terms of Section 164 must

be complied with as regards the particular Magistrate before whom a confession is made, would make it extremely difficult, where the criminal is caught in an Indian State, to obtain justice. It is perfectly clear for instance that no Second Class Magistrate even in an Indian State would be empowered to take such a confession, as he would not be specially empowered 'in this behalf by the Local Government.' A confession would have to be taken by a Magistrate of the First Class only. The difficulty of discovering such a Magistrate might be insuperable in an Indian State. We see no reason in the circumstances of this particular case to take the view that there is anything in Section 164, Criminal P.C., Section 26, Evidence Act, to make the confession in this case inadmissible. We are confirmed in our view by consideration of the case of Panchanathan Pillai v. Emperor A.I.R. 1929 Mad. 487 and also the case of Queen-Empress v. Naglakala (1808) 22 Bom 235.

4. Having decided that the confession is admissible in evidence, we are satisfied that there is abundant evidence as against this appellant which justified the conviction by the Sessions Court. After serious consideration however we have decided that in this case the sentence of death should be set aside. We have to take as against this appellant his confession as being true. The dacoity was committed by him and four other men very much older than himself. The appellant's age is variously given as 18 or 20. We can conclude that he was under the influence of his older companions. We must take from his confession that he himself did not actually commit the murder, and it may well be that owing to his youth he was too frightened to make any protest against the action of his elders. We think under all the circumstances of the case that the sentence of transportation for life will be sufficient. We therefore, set aside the sentence of death and substitute a sentence of transportation for life.