

Nahar Singh Vs. Emperor

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Court : Allahabad

Decided On : Feb-09-1921

Reported in : AIR1921All61; 62Ind.Cas.583

Judge : Walsh and ;Ryves, JJ.

Appellant : Nahar Singh

Respondent : Emperor

Judgement :

Walsh, J.

1. This appeal is against a conviction and sentence of transportation for life for having taken part in a dacoity. The evidence against the accused is slight beyond his own confession, but he has been convicted by the Sessions Judge and by all the three Assessors unanimously. We see nothing in the confession itself to throw doubt upon its veracity, except a somewhat familiar attempt made by the confessing accused to represent his own connection as slight as possible. The confession has been retracted and at a later stage the accused has suggested that it was extracted from him by torture. The value of this common form of repudiation in this particular case is very largely diminished by his saying that he did not make the confession at all. To corroborate the confession there is the simple fact that he admitted in his statement that one of the doors of the house was broken open and also that three articles corresponding in description to

articles lost in the dacoity, were undoubtedly found in his possession. Here the value of this evidence is largely strengthened by his denial that they were so found. He does not claim them as his property. They were found and a search list was properly signed by an independent witness. The Assistant Government Advocate has properly drawn our attention to a question raised in the judgment as to whether the confession was recorded by the Magistrate in accordance with the provisions of the Code. The point arises in this way. The Magistrate was a Magistrate having local jurisdiction in Jhansi in these Provinces, but he took down the statement of the accused under Section 164 of the Criminal Procedure Code in the State of Gwalior. The learned Sessions Judge has expressed the opinion that the fact that the Magistrate took down the confession outside British India does not make the confession any the less recorded according to law under Section 164 of the Criminal Procedure Code. The point is not really necessary for the decision of this appeal, inasmuch as the Magistrate was sworn and gave sworn testimony as to the statements made by the accused which, as a Magistrate, he took down. That would be evidence against the accused in any event, whether it was a formally recorded confession or not, as the Magistrate himself identified the accused as the person who made the statement. Therefore, the point of law strictly does not arise. In my opinion it is very doubtful whether a Magistrate taking down a confession outside British India is recording a confession within the meaning of Section 164 of the Criminal Procedure Code. My reason for thinking so is that the status of a Magistrate is provided in Sections 10, 11 and 12 (amongst others) of the Criminal Procedure Code and these sections make provision for the Local Government appointing Subordinate Magistrates and defining areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code, and except as otherwise provided by such definition made by the Local Government, 'The jurisdiction and powers of such persons shall extend throughout such district.' My view is that the jurisdiction and powers of such a person are limited to the district in which he is appointed and that this is a power which can be exercised in such a district only. It so happens that the act of a Magistrate in recording a confession under Section 164 of the Criminal Procedure Code is described in the marginal note to Section 164 as a power to record statements or confessions,' were it not for this, I should have said

it was an act which could have been exercised at any time or place.

2. The appeal is dismissed.

Ryves, J.

3. I agree generally. The only difficulty is whether a Magistrate of the First Class with jurisdiction in the Lalitpur district could record a confession under Section 164 of the Criminal Procedure Code, with all the formalities required by that section in a place outside British India. It seems to us very doubtful. The Code, after all only runs throughout British India and the power, of a Magistrate under Section 12 of the Criminal Procedure Code seems to be limited to the particular territory in which he has been appointed. The point, however, is of no great importance in this case, because the Magistrate was examined as a witness and stated that the accused was the person who made the statements before him, the record of which is clearly proved, and, therefore, it was clearly admissible under Section 26 of the Indian Evidence Act.

4. By the Court.--The appeal is dismissed.

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