

Ghurbln Bind Vs. Queen-empress

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Court : Kolkata

Decided On : Sep-19-1884

Reported in : (1884)ILR10Cal1097

Judge : Wilson and ;Macpherson, JJ.

Appellant : Ghurbln Bind

Respondent : Queen-empress

Judgement :

Macpherson, J.

1. The prisoner, Ghurbin Bind, has been convicted on a charge of dacoity, and sentenced to rigorous imprisonment for five years. The dacoity was committed in August 1880. Several persons were shortly afterwards charged with being concerned in it, and were tried and convicted, but the prisoner, who is said to have absconded, has only recently been arrested. The only proof against the prisoner is the deposition of one Jogeshur Bind, who was made an approver-witness in the original trial, and who is now dead, coupled with some evidence as to his absence from the village at the time of the dacoity, and as to his absconding therefrom afterwards. The Judge considers that Jogeshur's deposition is evidence against the prisoner under Section 33 of the Evidence Act, and also under Section 512 of the Criminal Procedure Code. It is clearly not admissible under the former Act, as it was not recorded in the presence of the prisoner; and it would only be

admissible under the latter if the provisions of Section 512 were complied with. This section requires, we consider, that the absconding should be alleged, tried, and established, before the deposition is recorded. In point of fact, the deposition does not appear to have been recorded under that section at all; it was recorded in the ordinary course of proceedings against other persons, and is, therefore, inadmissible against the prisoner.

2. Even assuming that it is admissible, there is, we think, an absence of any sufficient corroborative evidence. Proof of his absconding is not sufficient. He belonged to a suspected class of persons, and when several of that class were implicated in the case, it is quite possible that he thought it advisable to leave the village. The evidence shows that he has been living honestly ever since. The conviction must be set aside and the prisoner released.

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