

CRIMINAL REFERENCE.

Before Mallik and Patterson JJ.

1931

July 21 ;
Aug. 18.

EMPEROR

v.

LAKHI SAHU.*

*Jurisdiction—Culpable homicide, if can be tried by the Children's Court—
Code of Criminal Procedure (Act V of 1898), ss. 29B, 177.*

An offence under section 304 of the Indian Penal Code is not triable by the magistrate in charge of the Central Children Court.

Such offence shall be tried by the court of sessions within the local limits of whose jurisdiction it was committed.

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The facts appear sufficiently from the judgment. *Barwell* and *Manindranath Mukherji* for the accused.

The Deputy Legal Remembrancer, Khundkar, and *Nirmalchandra Chakrabarti* for the Crown.

Cur. adv. vult.

MALLIK J. This is a Reference under section 432 of the Code of Criminal Procedure. It has been made by Mr. B. K. Mukherji, who was appointed a Presidency Magistrate to preside over the Central Children Court, Calcutta, established under Notification No. 9524J., dated the 18th November, 1929, for the town of Calcutta, the suburbs of Calcutta and some other areas near about Calcutta, including the municipality of Howrah.

One Lakhi Sahu *alias* Kanu, a boy of 13 or 14, was produced before Mr. Mukherji on a charge of culpable homicide under section 304 of the Indian Penal Code

*Criminal Reference, No. 1 of 1931, made by B. K. Mukherji, Presidency Magistrate, Central Children Court, Calcutta, dated June 23, 1931.

(an offence which is exclusively triable by a court of sessions) alleged to have been committed in Howrah.

The two points, which have been referred to us for opinion, are: (i) is the court, over which Mr. Mukherji was appointed to preside, competent to try cases exclusively triable by the court of sessions? and, (ii) if that court is not competent to try the charge, then to which court of sessions should it commit the case, *i.e.*, whether to the court of sessions at Howrah or the High Court Sessions?

As regards the first point, section 29 B of the Criminal Procedure Code, which came into force on the 1st of September, 1923, seems to me to afford a sufficient answer. Section 29B says

“ Any offence, other than one punishable with death or transportation for life, committed by any person who at the date when he appears or is brought before the court, is under the age of fifteen years, may be tried by a District Magistrate or a Chief Presidency Magistrate, or by any magistrate specially empowered by the Local Government to exercise the powers conferred by section 8, sub-section (1) of the Reformatory Schools Act, 1897, or in any area in which the said Act has been wholly or in part repealed by any other law providing for the custody, trial or punishment of youthful offenders, by any magistrate empowered by or under such law to exercise all or any of the powers conferred thereby.”

This section authorises the magistrate in charge of the Central Children Court to try all offences, other than an offence punishable with death or transportation for life, and it, therefore, in my opinion, clearly lays down, by implication, that an offence under section 304 of the Indian Penal Code, which is punishable with transportation for life, and which is exclusively triable by the court of sessions, is not to be tried by the magistrate in charge of the Central Children Court. The answer to the first point referred to us must, therefore, be in the negative.

As regards the second point referred to us, the answer is to be found from section 177 of the Code. Section 177 of the Criminal Procedure Code lays down that every offence shall be tried by a court within the local limits of whose jurisdiction it was committed. The offence, in the present case, was committed within

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the local limits of the jurisdiction of the sessions court of Howrah and that being so, it must be tried by that court under the provisions of that section. The answer to the second point referred to us will, therefore, be that the commitment, if it is to be made, should be made not to the High Court Sessions but to the Sessions Court at Howrah.

PATTERSON J. I agree.

A.C.R.C.