not entitled to pursue the summary remedy under the Act for recovery of rent due to him, and I quoted the Privy Council in *Forbes* v. *Maharaj Bahadur Singh*(1) in support of that *dictum*. Having further considered the matter in this case, I consider that opinion unsound as I think that I failed to give sufficient weight to the differences both in language and policy found on a comparison of the provisions of the Bengal Tenancy Act and the Madras Estates Land Act.

M.H.H.

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Krishnan.

THE PUBLIC PROSECUTOR (PETITIONER),

v.

PARAMANDI (RESPONDENT).*

1921, February 10.

Murder—Circumstantial evidence—No ground for imposing lesser sentence.

If the Court is satisfied beyond reasonable doubt that the accused is guilty of murder and the circumstances require the imposition of the death penalty, the fact that the conviction is based on circumstantial evidence is not a reason for passing the lesser sentence allowed by law.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to enhance the sentence of transportation for life passed on the accused by P. SUBBAYYA MUDALIYAR, Additional Sessions Judge of Coimbatore, in Sessions Case No. 61 of 1920.

The facts are set out in the judgment.

The Public Prosecutor for the Crown.

P. G. Krishna Ayyar for accused.

The Court delivered the following JUDGMENT:—

Accused in this case was convicted of the murder of a boy of 8 years of age for the sake of the latter's jewels and sentenced to transportation for life. There is evidence to show that

(1) (1914) I.L.R., 41 Calc., 926 (P.C.).

* Cr. R.C. No. 694 of 1920 and Cr. R.P. No. 580 of 1920.

PUBLIC PROSECUTOR v. PARAMANDI.

the boy left his village shortly before sunset on Thursday, April 22nd, in the company of accused; that his body was found two days later in a well near the village with a stone tied to it and all the jewels missing; that death was the result of strangulation; and that accused on the day after the disappearance sold articles similar to or identical with the missing jewels in a village 3 or 4 miles away. It is also in evidence that when questioned by the boy's mother accused denied that he had taken the boy —a denial which is certainly false if the evidence of prosecution witnesses 2 to 5 is true.

We can find no ground for discrediting any of this evidence. The medical and other evidence leaves no doubt that the child was murdered by some one for the sake of his jewels; and although the evidence of prosecution witnesses 2 to 5 as to seeing him depart in company with accused is inconclusive, on the other hand the evidence of prosecution witnesses 7 to 10, as to the disposal of the jewels seems to place his guilt beyond doubt. Two bangles and a waist cord M.Os. IV, IV (*a*) and IV (*b*) are actually identified both as among the jewels worn by the child and as part of the property sold by accused, and although the other articles were melted down before the arrival of the police, yet the fact that accused offered for sale five different articles corresponding with the five articles worn by the boy, even although some of them may now be unidentifiable, is sufficient. These witnesses identified accused at a parade held only three days later, and we see no reason to distrust their identification and truthfulness.

Accused's only defence is a blank denial and he cites no witnesses.

We agree with the Sessions Judge and assessors that the guilt of the accused has been proved beyond all reasonable doubt and we have no hesitation in confirming the conviction.

As regards sentence we have a Revision Petition filed by the Public Prosecutor asking for the enhancement of the sentence to one of death.

We have given most careful consideration to the facts and circumstances of this case; and are forced to the conclusion that only a death sentence would be adequate and that however loath we may be to use our powers of Revision to such an end, it

is our duty to do so in this case. The murder in this case was a most brutal and sordid one—and one of a type unfortunately only too common. The evidence leaves no room for doubt that accused enticed away a child of eight, and deliberately murdered him for the sake of his petty trinkets. Absolutely no extenuating circumstances are indicated either by the Additional Sessions Judge or by the learned vakil who argued the case before us for accused. The sole ground assigned by the Sessions Judge for passing the lesser sentence allowed by law is that the conviction is based on circumstantial evidence. It has been repeatedly pointed out by this Court that this should be no factor in determining the sentence to be imposed. Provided the Court is satisfied beyond reasonable doubt that the accused is guilty of murder and that the circumstances of the case require the imposition of a death sentence, it is absolutely immaterial whether the conviction is based on direct or circumstantial evidence. It is only where the evidence leaves room for reasonable doubt on either point that the accused is entitled to the benefit of it. That is not so here.

We confirm the conviction, but in place of the sentence of transportation for life imposed by the lower Court, we direct that accused be hanged by the neck till he be dead.

M.H.H.