

1929  
 BA YIN  
 v.  
 KING-  
 EMPEROR.  
 BROWN, J.

It has been suggested that the confession cannot be used as against Ba Yin, because Ba Yin is assigned the leading part in the crime in the confession. It seems to me clear, however, that the confession does implicate Ba Kin himself in the murder and therefore can be considered as against Ba Yin also. The murder was of the most brutal kind and in spite of the youth of the appellant Ba Kin, I do not consider there is any reason for not passing the death sentence on both the appellants.

I agree that both appeals must be dismissed and the sentence of death confirmed in each case.

## APPELLATE CIVIL.

*Before Mr. Justice Baguley.*

1929  
 July 24.

MA E SE

v.

MA BOK SON.\*

*Agriculturist's house—Exemption from attachment—Situation of house immaterial so long as occupied by agriculturist and belonging to him—Civil Procedure Code (Act V of 1908), s. 60 (c).*

A house belonging to an agriculturist and occupied by him is exempt from attachment and sale under the provisions of s. 60 (c) of the Civil Procedure Code. The fact that such a house is situate in a village and not in the field makes no difference.

*Iwan Bhaga v. Hira Baiji, 12 Bom. 363—distinguished.*

*Day for the appellant.*

*Tambe for the respondent.*

BAGULEY, J.—This is an application in revision of an order passed by the Township Judge, Pakôkku, in his execution case No. 9 of 1929.

\* Civil Revision No. 52 of 1929 (at Mandalay) from the order of the Township Court of Pakôkku in Civil Execution No. 9 of 1929.

In this case the respondent attached a house belonging to the judgment-debtor in execution of an ordinary money decree. Objection was raised that the house was the property of a cultivator and occupied by him, and, therefore, was free from attachment under section 60 (c) of the Civil Procedure Code. It is described as a house with bamboo flooring, bamboo-mat walling and bamboo roofing, and therefore, presumably, is not of great value.

The order of the trial Court is short. The fact that the judgment-debtor was a cultivator does not seem to have been disputed; but it was stated that this house was in the village and during the cultivation season the cultivators lived in a hut put up on his *ya* land. The trial Judge quoted the case of *Jivan Bhaga v. Hira Bhaiji* (1), and stated that it was held therein that only the house occupied by an agriculturist *bonâ fide* for the purpose of cultivation is exempted. The first comment I make on this ruling is that it was not under the existing Code of Civil Procedure, and section 60 (c) of the present Code differs in its wording from the old section 266. In the second place, it was held that the judgment-debtor in that case was not really an agriculturist: he was something which is described as a *bhagdar*, and it is stated that his character as a *bhagdar* predominates over his other character as an agriculturist; so I deduce that this judgment-debtor was not mainly an agriculturist: he had some other form of occupation. It is also mentioned on page 365, that there is in Bombay the Bhagdari Act dealing with this very special and very limited class of property.

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(1) (1888) 12 Bom. 363.

1929

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BAGULEY, J.

Section 60 (c) of the Civil Procedure Code states that "houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him" are exempt from attachment and sale. In the present case, the property attached is a house which belongs to an agriculturist and is occupied by him; and giving their plain meaning to the words of the section, I entirely fail to see how it can be said that the house is liable to attachment. The trial Judge says that if this meaning is given to the section, most of the houses in Burma cannot be attached, which would be very absurd. This may be the case, but it is not for him to say whether the law is absurd or not; it is his duty to enforce the law as it is. It is rather strange that there has been no published ruling on the point up to date, because to my personal knowledge such cases have come up many times in lower Courts.

I hold that an agriculturist's house, occupied by him, is exempt from attachment: and this would apply both to his house in the village and also to his hut in the field if he has one.

I consider the refusal of the trial Judge to give effect to the plain meaning of the wording of the section can only be described as perverse, and I am therefore of opinion that this Court can interfere in revision.

I set aside the order of the lower Court and direct that the attachment of the house in question be removed. The respondent to pay the appellant's costs in both Courts; advocate's fee in this Court two gold mohurs.