

APPELLATE CRIMINAL.

Before Young C. J. and Monroe J.

MOHAMMAD DIN AND ANOTHER—Appellants,

versus

THE CROWN—Respondent.

Criminal Appeal No. 1381 of 1936.

Criminal Procedure Code (Act V of 1898) (as amended by Act XVIII of 1923), ss. 164, 533 — Confessions recorded by Magistrate without recording questions and answers — whether admissible — where Magistrate gave evidence that questions were asked and the usual precautions taken.

Held, that the confessions of the accused recorded under section 164 of the Code of Criminal Procedure were admissible in evidence, although the actual questions and answers put by the Magistrate to the confessing accused were not recorded, as the Magistrate gave evidence permitted under the provisions of section 533 and satisfied the Court that questions had been asked and that the usual precautions had been taken by him.

Held also, that the decision of the Privy Council in *Nazir Ahmad v. The King-Emperor* (1), had no bearing on the facts of the case.

Appeal from the order of Mr. G. D. Khosla, Additional Sessions Judge, Lahore, dated 30th November, 1936, convicting the appellants.

DURGA DAS JAIN, and M. M. ASLAM KHAN, for Appellants.

D. R. SAWHNEY, Public Prosecutor, for Respondent.

The judgment of the Court was delivered by—

YOUNG C. J.—Mohammad Din and Wali Mohammad and two others were charged with the murder of one Bashir, a boy eleven years of age. The Additional Sessions Judge of Lahore found Mohammad Din

(1) I. L. R. (1936), 17 Lah. 629 (P. C.).

and Wali Mohammad guilty and sentenced them to death: the other two he acquitted.

The evidence in this case upon which these two boys have been convicted consists of the evidence of a confession by each of them made under section 164, Criminal Procedure Code before a first class Magistrate, the recovery from their bodies of clothes bearing human bloodstains, track evidence proving that they were at the spot where the body of the murdered boy was discovered and also evidence of a motive. If the confessions are believable and admissible no other evidence is in law required. In this case, however, there is the corroboration by the recovery of the bloodstained garments and the track evidence.

It has been argued by counsel that the confessions are not admissible and he attempted to rely upon the latest decision of the Privy Council in *Nazir Ahmad v. The King-Emperor* (1). That decision, however, has no bearing whatever on the facts of this case. The confessions were recorded under section 164 of the Code of Criminal Procedure and, although the actual questions and answers put by the Magistrate to the confessing accused were not recorded, the Magistrate gave evidence as is permitted under section 533 of the Code of Criminal Procedure and he satisfied the Court that questions had been asked and that the usual precautions had been taken by him. The Privy Council ruling *Nazir Ahmad v. The King-Emperor* (1) did not consider the effect of section 533, Criminal Procedure Code and their Lordships themselves said they expressed no opinion on the question of the operation or scope of section 533, Criminal Procedure Code as it had no bearing on the case which was then under discussion before them. In our opinion sections 164 and

1937

MOHAMMAD
DIN
v.
THE CROWN.

(1) I. L. R. (1936) 17 Lah. 629 (P. C.)

1937
MOHAMMAD
DIN
v.
THE CROWN.

533 taken together make it clear that these confessions are admissible in evidence. The learned Honorary Magistrate in Court says: "I questioned him (Wali Mohammad) in order to satisfy myself if he was making his statement voluntarily. I explained to the accused that I was a Magistrate and that any statement which he might make could be used as evidence against him. I explained this by questions and answers." And later on under cross-examination he says: "I asked the accused if he was making the statement under police influence and he replied that he was speaking voluntarily and for the sake of truth." It is not possible to lay down the particular questions in each particular case which ought to be put, but the Magistrate and the High Court have to be satisfied that the confession was in fact voluntary. We cannot see any reason to doubt the voluntary nature of these confessions. These two boys had been in police custody for about a fortnight before the confessions were made and we have no doubt that if the Police had wished illegally to obtain confessions boys of this age would have succumbed to police pressure at a very much earlier date.

The confessions set out the motive, namely, that the wife of Mohammad Din had been abducted by one Dullah, and therefore the accused came to the conclusion that as Dullah was a man it would be easier to murder his small son Bashir in order to obtain revenge: Bashir was caught in a field and these two assisted in the murder. A *pagree*, loin-cloth and a shirt were taken from the body of Mohammad Din shortly after the murder and they were found stained with human blood. A shirt was taken from the person of Wali Mohammad and it was also found to be stained with human blood. The track evidence which appears to

us to be reliable shows that both these appellants were in the company of Bashir at the place where the murder took place. We are satisfied on this evidence that the conclusion of the learned Additional Sessions Judge cannot be attacked.

We disagree, however, with the learned Judge when he thought that he was bound to condemn both these boys to death. Their ages are given in the heading of the judgment as twelve years. The learned Judge, however, comes to the conclusion that they are sixteen and seventeen. We have had the advantage of seeing them here ourselves and we would put their ages in the neighbourhood of 15½. Not only do we think that it would be wholly wrong to hang boys of this age, but in this case there is some evidence contained in the confessions which is, of course, the real evidence against both of them, that there was provocation at the hands of Dullah, the father of Bashir who was murdered. This provocation flowing from Dullah would not, it is true, have affected our minds if these appellants had been of mature age, as Dullah was not murdered, but his son.

Taking into consideration the youth of the appellants which, in any event, we consider to be a sufficiently strong reason, we set aside the sentence of death in both cases and sentence them instead to transportation for life: the Government will probably consider the advisability of keeping these two youths in the Borstal jail.

A. N. C.

*Appeal accepted,
sentence reduced.*

1937

MOHAMMAD
DIN
v.
THE CROWN.