

the Subordinate Judge as directed the case to be struck off, as the attached property cannot be sold in this execution proceeding. As, however, section 99 does not provide that the mortgaged property shall not be attached, we do not restore so much of his order as directs that the property be released from attachment.

1895

CHUNDR
NATH DEY
v.
BURRODA
SROONDARY
GHOSE.

Appeal allowed.

S. C. G.

APPELLATE CRIMINAL.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

QUEEN-EMPRESS v. RAZAI MIA. ^o

1895
July 1.

Confession—Criminal Procedure Code (Act X of 1892), section 364—Confession not recorded in language in which it is given, Admissibility of in evidence—Unsoundness of mind—Penal Code (Act XLV of 1860), section 84.

The confession of an accused person made in Bengali, the language in which the accused was examined, was recorded in English. The committing Magistrate, in his evidence in Court, said that he could not write Bengali well, and that there was no *mohurrir* with him at the time when the confession was recorded.

Held, the provisions of section 364 of the Criminal Procedure Code had been sufficiently complied with.

Jai Narayan Rai v. Queen-Empress (1) distinguished.

Where the unsoundness of mind deposed to was not such as would make the accused incapable of knowing the nature of the act, or that he was doing what was contrary to law, it was held to be insufficient to exonerate him from responsibility for crime under section 84 of the Penal Code.

THE accused was charged with having murdered his wife. He made a statement to Mr. Halliday, the Assistant Commissioner of Sylhet, in the following terms: "I was ill, I struck my wife with a *dao* on the head in the verandah of my house yesterday and killed her." The statement was made in Bengali, but recorded in English. The accused made his mark on the

^o Criminal Appeal No. 371 of 1895, against the order passed by R. H. Graves, Esq., Sessions Judge of Sylhet, dated the 2nd of May 1895.

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record. It was not proved that any question was put to the accused. Mr. Halliday, who was examined in Court, said that he could not write Bengali well, and that there was no *mohurrir* with him at the time when the confession was recorded. It was alleged that the accused was not sane at the time when he committed the offence. The hospital assistant, who had seen the accused frequently during some weeks, deposed that he could find no sign of insanity, but remarked that the accused did not talk much. The facts which might give rise to doubts about the sanity of the accused were as follows: It did not appear that there was any motive for the act. The accused struck several blows, although one was sufficient to cause death. He did not attempt to escape or conceal what he had done. His behaviour, according to the evidence for the prosecution, had been very peculiar for some months. He had been silent, and had not eaten regularly, nor done any work. The witnesses said he was mad.

From the above facts, as found by the Sessions Judge, he came to the conclusion that they did not prove that the accused was insane, though they did show that he was disturbed, unsettled and peculiar, and also held that the accused did know the nature of the act done by him; but having regard to the peculiar state of mind of the accused, he sentenced him to transportation for life.

The accused appealed against the above finding and sentence from the Sylhet jail.

The judgment of the Court (MACPHERSON and BANERJEE, JJ.) was as follows:—

Two questions arise for consideration in this case:

First, whether the confession of the prisoner recorded by the committing Magistrate on the 7th of March 1895, which is the only important evidence against him, was recorded in the manner provided by section 364 of the Code of Criminal Procedure and was a true and voluntary confession; and

Second, whether, if the murder is proved to have been committed by the prisoner, he is not exempted from criminal responsibility by reason of unsoundness of mind.

Upon the first point, the only objection that can be raised against the admissibility of the confession is that it was not recorded in Bengali, the language in which the accused was examined, but was recorded in English. But the evidence of the committing Magistrate, who says that there was no *mohurrir* with him at the time when the confession was recorded, and that he cannot write Bengali well, shows that the provisions of section 364 of the Criminal Procedure Code have been sufficiently complied with ; and this distinguishes the present case from that of *Jai Narayan Rai v. Queen-Empress* (1). We, therefore, see no objection to the admissibility of the confession. We are also of opinion that it is a true and voluntary admission of guilt, and that taken along with the medical evidence, it is sufficient to shew that the act of the prisoner, if it is an offence at all, amounts to the offence of murder.

This brings us to the consideration of the second question. Now, though some of the witnesses for the prosecution say that the accused had before the murder been of unsound mind for some months and after the murder also he was not quite of sound mind, we agree with the learned Sessions Judge in holding that the kind of unsoundness of mind deposed to was not sufficient to exonerate the accused from responsibility for crime under section 84 of the Indian Penal Code, which requires that the unsoundness of mind must be such as would make the accused incapable of knowing the nature of the act, or that he was doing what was contrary to law. It is for the defence to make out this ground of non-liability, and we do not think that it has been made out.

Under the circumstances of the case, we think the learned Sessions Judge was quite right in not passing the sentence of death.

We, therefore, see no reason for our interference in this case, and we must dismiss the appeal.

Appeal dismissed.

S. C. B.

(1) I. L. R., 17 Calc., 362.

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