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BEACHCROFT J.

the evidence not sufficient at the end of the trial to convict this person, he ought not, in my opinion, to have charged him with this offence. If the evidence was not sufficient at the end of the trial, it was equally insufficient on the 15th of February. The course which the Magistrate ought to have taken was to discharge the accused and to examine him as a witness in the case.

E. H. M.

Appeal allowed; conviction set aside.

APPELLATE CRIMINAL.

Before Teunon and Newbould JJ.

1918

June 28.

TEPRINESSA

v.

EMPEROR.*

False Information—Penal Code (Act XLV of 1860), ss. 201, 203—Circumstances of grave suspicion against the informer of having committed the crime—Insufficient evidence—Legality of conviction under ss. 201, 203 of the Penal Code.

Where, notwithstanding circumstances of grave suspicion, it is impossible on the record, as it stands, to hold that a person is the murderers or one of the murderers, his conviction under ss. 201 and 203 of the Indian Penal Code is not vitiated by the existence of such circumstances.

In the matter of Behala Bibi (1), and *Torap Ali* v. *Queen Empress* (2) distinguished.

Sumanta Dhupi v. *King-Emperor* (3) referred to.

THE facts are shortly these. On the 14th July 1917, the appellant Teprinessa lodged information at the

* Criminal Appeal No. 204 of 1918, against the order of R. R. Garlick Sessions Judge of Jalpaiguri, dated Jan. 16, 1918.

(1) (1881) I. L. R. 6 Calc. 789 (2) (1895) I. L. R. 22 Calc. 638.
(3) (1915) 20 C. W. N. 166.

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Jalpaiguri Police station that on the previous night while she and her husband were sleeping together, one Afiruddin, with whom they were on bad terms entered the hut, accompanied by two other persons, and murdered her husband Sanglu Nasya. She stated in the first information that she was awakened by a touch on her person and cried out; whereupon a man threatened her to be quiet and she recognised him, by his voice, to be Afiruddin.

The Senior Sub-Inspector of Jalpaiguri took up the investigation of the case and found the allegations against Afiruddin false. He further found that the real murderer was one Safiruddin Nasya, the paramour of the appellant and two other persons and that she falsely charged Afiruddin to shield her paramour Safiruddin.

The Sub-Inspector accordingly lodged a complaint against the appellant under ss. 214 and 203 of the Indian Penal Code. She was accordingly put upon her trial and committed to the Court of Sessions under sections 203 and 211 of the Indian Penal Code. In the Court of Sessions she was further charged under s. 201.

Agreeing with one Assessor and disagreeing with the other, the Sessions Judge found the appellant guilty of an offence under section 201 and also found her guilty under s. 203 of the Indian Penal Code and acquitted her of the charge under section 211 of the Indian Penal Code.

Hence this appeal.

Babu Hemendra Nath Bose, for the appellant, contended, *inter alia*, that the accused could not be convicted of an offence charged under ss. 201 and 203 of the Indian Penal Code inasmuch as. the facts pointed to her being an accomplice to the murder. In support of his contention he relied upon *In the*

matter of Behala Bibi (1) and *Torap Ali* v. *Queen-Empress* (2).

The Deputy Legal Remembrancer (*Mr. Orr*), for the Crown, submitted that the material on the record was not sufficient to bar section 201 of the Indian Penal Code. He relied on *Sumanta Dhupi* v. *King-Emperor* (3) where it was held that mere suspicion of being the murderer was no bar to a conviction under section 201 of the Indian Penal Code.

TEUNON AND NEWBOULD J.J. The appellant before us, one Teprinessa, has been convicted under section 201 and section 203 of the Indian Penal Code and sentenced under the first named section to three years' rigorous imprisonment and under the second to two years' rigorous imprisonment, the two sentences to run concurrently. It appears that on the night of the 13th July 1917 the husband of this woman named Sanglu was murdered, it would seem, shortly after midnight. The medical evidence shows that the cause of death was a blow with some cutting weapon such as a *dao* or knife on the right side of the neck cutting the anterior and internal jugular veins and also cutting into the third cervical vertebra and resulting, in the opinion of the medical officer, in instantaneous death. On the following morning the appellant accompanied the village chowkidar one Sohai to the local thana and there with a number of details gave an account of the murder. She charged one Afiruddin her next door neighbour as one of the murderers.

The substantial question in the case before the learned Sessions Judge and in this appeal before us is whether that charge and the account given were false and were known by the appellant to be false.

(1) (1881) I. L. R. 6 Calc. 789. (2) (1895) I. L. R. 22 Calc. 638.
(3) (1915) 20 C. W. N. 166.

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Afiruddin has been examined as a witness in this case and he has denied the commission of this murder or being any party thereto. His denial is corroborated by the absence, as the Judge finds, of any motive on his part to commit this murder and by all his subsequent conduct. We have no doubt therefore that in so far as she charged this man with murder that charge was not true.

The further question is whether she knew that it was a false charge that she was making. The circumstances on which the Judge relies as showing that the woman was in fact an accomplice in the murder, though not sufficient to enable him or us to come to such a finding, are yet sufficient to show that in naming Afiruddin as one of the murderers she knew that she was stating what was not true. These circumstances shortly stated are these: The fact that to the neighbours whom she saw in the morning following the occurrence she named no one; that she named Afiruddin for the first time on her way with the chowkidar to the thana; that on the next following day she made to the investigating Sub-Inspector an entirely different statement implicating three others and that on the 26th July she submitted from jail a petition in which she combines her two stories. That the charge was intentionally false is also clear by the delay that the woman made in giving the alarm or in arousing her neighbours, by the fact that at an earlier stage of the night she sought to call out one of her neighbours on a false pretext, by the fact that on the clothes she was wearing there were no stains of blood and by the absence of any signs of use of force or violence in the house in which she and her husband went to bed for the night. All these circumstances go to show that she knows far more about this murder than she was prepared to admit, either at

the time when she gave the first information or now. The reasonable inference from all this is that she in fact knew who the murderers were and that from some motive best known to her, possibly because of her quarrel some days before with Afiruddin's wife, she chose intentionally to implicate him.

There can be no doubt therefore that the conviction under section 201 has been properly arrived at and indeed we are unable to understand the process of reasoning by which the Judge was led to acquit the woman of the charge under section 211 of the Indian Penal Code. We can only suppose that he has overlooked the distinction between motive and intention. Not content with screening the real offenders, the woman proceeded further falsely to implicate an innocent person. It cannot be supposed that a person who falsely brings such a grave charge against another does not know that the inevitable result will be injury to that person, and on general principles it should have been held that she intended that injury.

Lastly, it has been argued in law that as the circumstances point to this woman being an accomplice in the murder she could not in law be convicted of the offence charged under the section 201 and section 203, and in support of this contention reliance is placed upon the cases of *In the matter of Behala Bibi* (1) and *Torap Ali* v. *Queen-Empress* (2). We have, however, pointed out that though there are circumstances of grave suspicion against this woman it would be impossible on the record as it stands to hold that she was the murderer or one of the murderers. That being so, even assuming that the cases of *In the matter of Behala Bibi* (1) and *Torap Ali* v. *Queen-Empress* (2) were properly decided on their own facts, still the present case may be distinguished and in this connection

(1) (1881) I. L. R. 6 Calc. 789. (2) (1895) I. L. R. 22 Calc. 638.

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we may refer to the case of *Sumanta Dhupi* v. *King-Emperor* (1) as we have said, in the present case the conviction in our opinion is legal and proper.

For these reasons we dismiss this appeal.

Before concluding we desire to say that we do not agree with the Sessions Judge in his criticisms on the action of the Magistrate before whom the woman Teprinessa was produced on the 17th July. Though it might have been more happily worded, the caution given by the Magistrate to the woman was in substance sound and proper.

S. K. B. *Appeal dismissed.*

(1) (1915) 20 C. W. N. 166.

CRIMINAL REVISION.

Before Chitty and Beachcroft JJ.

1918

May 27.

SANTOK CHAND

v.

EMPEROR.*

Receiver—Prosecution of Receiver for criminal breach of trust without leave of the Court—Criminal breach of trust—Person not entrusted with property—Removal of labels from bales of jute whether such offence in respect of the jute—Penal Code (Act XLV of 1860), s. 406.

A receiver appointed by the High Court, who has, under its order, taken possession of property, to wit, certain bales of jute, cannot be prosecuted for criminal breach of trust in respect of the same without first obtaining the leave of the Court.

If the owner has any cause of complaint as to the delivery by the receiver of such property under a subsequent order of the Court, it is his duty to bring the matter to its notice for decision as to the proper course to

* Criminal Revision, No. 315 of 1918, against the order of A. T. Mukerjee, Fifth Presidency Magistrate, Calcutta, dated March 15, 1918.