APPELLATE CRIMINAL.

Before Mr. Justice Mitter, Mr. Justice Macpherson and Mr. Justice Prinsep.

MATUKI MISSER (APPELLANT) *v.* QUEEN-EMPRESS (RESPONDENT.)* 1885 *May* 18.

Causing disappearance of evidence of an offence—Omitting to report a sudden, unnatural or suspicious death.—Indian Penal Code (Act XLV of 1860), ss. 176, 201—Criminal Procedure Code (Act X of 1882), s. 45.

Before an accused can be convicted of an offence under s. 201 of the Indian Penal Code it must be proved that an offence, the evidence of which he is charged with causing to disappear, has actually been committed, and also that the accused knew or had information sufficient to lead him to believe that the offence had been committed.

Empress of India v. *Abdul Kadir* (1), followed.

Held (*per* PRINSEP and MACPHERSON, JJ.)—It is not necessary in order to support a conviction under s. 176 of the Indian Penal Code against a person falling within the provisions of s. 45 of the Criminal Procedure Code, for not giving information of an occurrence falling under clause (*d*) of that section, to show that the death actually occurred on his land, when the circumstances disclosed show that a body has been found under circumstances denoting that the death was sudden, unnatural, or *suspicious*; the finding of the body being a fact from which a Court might reasonably infer, in the absence of evidence to the contrary, that the death took place there.

Held (*per* MITTER, J.)—It is necessary to secure a conviction in the latter case to prove that the death took place or occurred in the village or on the land of the accused, and the finding of a body there does not of itself afford that proof.

IN this case the appellant and one Bhatu Chowkidar were charged with offences under ss. 176 and 201 of the Indian Penal Code.

The facts were as follows:—

On or about November 16th one Mussamut Bhulkia went into a field belonging to one Ghogan, the nephew of the appellant. On Ghogan finding her there it was alleged by the prosecution that he had slapped her twice, and that she fell down and the next day was found lying dead in a field not far from that in

* Criminal Appeal No. 277 of 1885, against the conviction and sentence passed by J. W. Badcock, Esq., Sessions Judge of Bhagulpore, dated the 9th of April 1885.

(1) I. L. R. 3 All., 279.

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which she was, where she was alleged to have been hit. The prosecution further alleged that the death was caused or accelerated by the slaps, and that the appellant, in order to screen his nephew, induced Sangli, the deceased's son, to burn the corpse, and prevented any report being made. As a matter of fact, the corpse was burnt on the night of the day on which it was found, and no report was made to the police till the 25th November, when Bhatu gave information to a Sub-Inspector in a neighbouring village. An enquiry then took place which resulted in Ghogan being put on his trial under s. 304 of the Penal Code and discharged for want of sufficient evidence. Before the Sessions Court, Matuki, the present appellant, took the objection that as Ghogan had been discharged it must be held that no crime had been committed, and that a charge therefore under s. 201 would not lie, and he relied upon the decision in *Empress of India* v. *Abdul Kadir* (1) as an authority for this proposition, but this objection was overruled by the Court following the case of *The Queen* v. *Hurdut Surma* (2).

The nature of the evidence adduced in support of the charges and the finding of the Sessions Judge were as follows:—

Two witnessess women, deposed to the fact of Ghogan assaulting Bhulkia, and their evidence, which had been held untrustworthy in Ghogan's case, was accepted by the Sessions Judge as reliable. Other witnesses deposed that they heard a rumour to the effect that Ghogan had hit Bhulkia, but two witnesses who helped to burn the corpse stated that they had not heard any such rumour. Bhatu stated to the police that on the day the body was burnt he heard that Ghogan had hit Bhulkia. The Sessions Judge came to the conclusion that both charges were proved, being of opinion that the appellant had a strong motive for concealing the death and disposing of the body, and that Bhatu would naturally act under his order as he was a Brahmin and an influential man.

He accordingly, agreeing with one of the assessors as to the charge against Bhatu under s. 201, convicted him and sentenced him to six months' rigorous imprisonment, and agreeing with both assessors has convicted him of the charge under s. 176 and sentenced him to an additional term of one week's simple imprisonment.

(1) I. L. R., 3 All., 279. (2) 3 W. R., Cr., 69.

In the case of the appellant both the assessors found him not guilty on both charges, but the Sessions Judge, disagreeing with them, convicted him and passed similar sentences to those passed on Bhatu.

This appeal was, therefore, preferred by Matuki Misser against the conviction and sentence; no one appeared on either side at the hearing.

The judgments of the High Court (MITTER and MACPHERSON, JJ.) before whom the appeal was heard were as follows:—

MACPHERSON, J.—The appellant has been convicted under ss. 201 and 176 of the Penal Code. Under the former section he has been sentenced to six months' rigorous imprisonment, and under the latter to simple imprisonment for one week. The conviction under s. 201 cannot, I think, stand in the absence of proof that the offence, the evidence of which he caused to disappear, was committed. The evidence of the two women who depose to having seen Ghogan Misser give two slaps to the woman Mussamut Bhulkia is, I think, wholly untrustworthy, and there is no other evidence to denote that any offence was committed; nor is there any proof that the appellant had, at the time when the body was disposed of, any knowledge or information which would lead him to believe that the offence of murder or culpable homicide had been committed.

The conviction under s. 176 is, I think, good. Under s. 45 of the Criminal Procedure Code, every occupier of land is bound to communicate forthwith to the nearest magistrate, or to the officer in charge of the nearest police station, any information which he may obtain respecting the occurrence in the village in which he occupies land (for this is the meaning which I put on the word "therein" in clause *(d)* of that section) of any sudden or unnatural death, or of any death under suspicious circumstances. Section 176 of the Penal Code makes penal any *intentional* omission to furnish such information. It is proved that the dead body of Mussamut Bhulkia was found in the field of the appellant under circumstances alone consistent with the supposition that the death was sudden, unnatural and suspicious; that the appellant knew it was true;

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and that so far from giving information he directed the Chowkidar and relative of the deceased to dispose of it. There can be no question that he had "information" within the meaning of s. 45, and that his omission to communicate it was intentional. But there is no proof that death actually occurred in the village, that is to say, in the field where the body was found. The question then arises, is proof of this fact essential to a conviction? Under the circumstances I think not. If a person finds on his land the dead body of a fellow-villager under circumstances denoting that the death was sudden, unnatural or suspicious, he is, I conceive, in possession of "some information" respecting the occurrence of a death in his village which he is bound under s. 45 to communicate. The finding of the dead body on his land is a fact from which a Court might reasonably infer, in the absence of any evidence to the contrary, that death took place there. There is no evidence which I can accept in the present case as to the cause of death, but it is beyond question a case of death under suspicious circumstances. The section also provides for a case of sudden death. Assuming that there is proof that a death was sudden and the body is found in the field of A, must the prosecution prove that the deceased did not drop down dead in the adjoining field of *B* which is in the next village; and that it was not removed to the field of *A* after death? Such proof would be impossible in ninety-nine cases out of a hundred.

The words "the occurrence therein" are governed by the general words "any information which he may obtain respecting," and the present case seems to me to come well within the section. I would therefore uphold the conviction under s. 176.

MITTER J.—I entirely agree with my learned brother that the conviction under s. 201 of Indian Penal Code cannot stand. I concur in the reasons given by him for coming to that conclusion.

But I regret that I am unable to assent to the proposition that, in order to support the conviction under s. 176 of the Indian Penal Code, the proof of the fact that death actually occurred in the village where the body was found is not essential.

Under clause (*d*) of s. 45 of the Code of Criminal Procedure, an occupier of land in a village is bound to communicate

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to the nearest magistrate, &c., the occurrence in it of any sudden or unnatural death or of any death under suspicious circumstances. It seems to me, therefore, essentially necessary for a conviction to prove that the death *took place or occurred* in the village. The finding of the body in the village, standing by itself, does not in my opinion afford this proof. It seems to me that this circumstance alone does not *necessarily* lead to the inference that the death took place in the village. It is equally consistent with the death having taken place in another village and the body having been subsequently removed to the appellant's village.

Then, again, rejecting, as we do, the evidence of the two women who depose to having seen Ghogan Misser give two slaps to the woman Mussamut Bhulkia, as wholly untrustworthy, there is no evidence to prove that her death was sudden. If there were any such evidence, it might have been open to us to infer that this sudden death took place in or near the fields where the body was found.

I am of opinion, therefore, that there being no proof of the death of Mussamut Bhulkia having taken place in the appellant's village, all the requirements of s. 45 of the Code of Criminal Procedure have not been fulfilled, and consequently the conviction under s. 176 of the Indian Penal Code also should be set aside.

The Judges having disagreed upon the question as to whether the conviction under s. 176 was right or not, the question was referred to Mr. Justice *Prinsep*, who delivered the following judgment.

PRINSEP, J.—There is no question that the appellants are persons who fall within the category set forth in s. 45 of the Code of Criminal Procedure, that a body was found on their land showing unmistakeable signs of an unnatural death or a death under suspicious circumstances, and that they have neglected to communicate to the nearest magistrate or nearest police station any information regarding the same.

The only question is, whether it has been shown that the death occurred on the lands of the appellants.

The object of the law is clearly that the earliest information should be communicated by those who are in the best position to obtain the same, or who from their connection with the land are

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in some authority, and should accordingly be made responsible for this duty, in order that an inquest may be held. The necessity for enforcing strictly the performance of such a duty is too obvious to call for remark. The law requires that the death should have occurred on the land with which the particular person is connected in the manner set forth. I do not understand this to mean that this should be proved by the direct evidence of eye-witnesses, but there must be something amounting to proof of the fact. Thus, if a man were found with his throat cut in a field, it may fairly be presumed that he died there so as to place an obligation on a person in the position of the appellants to give information of the death. In the words of s. 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. It would be for the appellants to rebut such a presumption. They have not only failed to do so, but their conduct in having the body hurriedly burnt so as to destroy all trace of the cause of the unnatural or suspicious death would, in some degree, tend to confirm this presumption. It would practically defeat the object of the law, *viz.*, to assist public officers, whose duty it is to trace out the cause of suspicious homicides, if there were such difficulties in the way of fixing responsibility on persons connected with land on which the body of a person, to all appearances murdered, were found—if before such a person were convicted for a neglect to perform the duty prescribed by s. 45 of the Code of Criminal Procedure, it were necessary to prove that the murder took place or that the murdered person actually drew his last breath on that land. The finding of the body on that land would, in my opinion, ordinarily raise the presumption that death had taken place on that spot so as to impose an obligation on a person occupying one of the positions in relation to the land, described in s. 45, to communicate information regarding the matter. If he neglected to give this information, and was prosecuted for such misconduct, he should be prepared to justify the omission.

I would therefore not interfere.

Appeal allowed in part.