## APPELLATE CRIMINAL.

*Before Mr. Justice Wallace and Mr. Justice Jackson.*

1930, April 8.

*In re* CHINNA GANGAPPA (ACCUSED), APPELLANT.*

*Indian Penal Code, ss.* 201 *to* 203—*Person guilty of main offence—Applicability to—Practice—Accused charged in the alternative with the main offence and under secs.* 201 *and* 203—*Misjoinder—Person charged with murder—Finding by trial Court that accused did not inflict the fatal injuries but knew who had inflicted and gave false story to screen real offender—Conviction of accused under secs.* 201 *and* 203—*Legality of—Calculating of punishment under.*

Sections 201 to 203 of the Indian Penal Code are applicable to a person who is guilty of the main offence, though in practice a Court will not convict an accused both of the main offence and under these sections.

There is no misjoinder in charging an accused in the alternative with the main offence and under sections 201 and 203 of the Indian Penal Code.

For the purpose of calculating the punishment to be awarded under section 201, it is necessary for the Court to decide not so much what offence—the evidence of which has been concealed—has been committed, as what offence the accused knew or had reason to believe had been committed.

Where a person was charged with murder, and the trial Court held that the evidence did not prove that the accused had inflicted the injuries that proved fatal, but that he knew who had inflicted such injuries and gave out a false story intending to screen the real offender, and convicted the accused under sections 201 and 203 of the Indian Penal Code, *held*, by the High Court, on appeal, that the conviction was legal.

APPEAL against the order of the Court of Session of the Bellary Division in Case No. 28 of the Calendar for 1929.

*V. L. Ethiraj* and *M. C. Sridharan* for appellant.

*Public Prosecutor* (*L. H. Bewes*) for the Crown.

* Criminal Appeal No. 640 of 1929.

JUDGMENT.

The appellant has been convicted by the learned Sessions Judge of Bellary under section 201, Indian Penal Code, for giving false evidence about the murder of his wife in order to screen the real offender, and also under section 203 for giving false information about the murder. He was also himself charged with the actual murder of his wife, but was acquitted on that. The facts of the case briefly were:—On the 12th August 1929 at about 10 a.m. the deceased woman took food to her husband. P.W. 4 saw her there. He next saw her being carried in an unconscious state by the accused and his brother towards her house. P.W. 5 saw people in her house applying restoratives to her, while the accused and his brother were giving out that the woman had been stung by a scorpion or bitten by a snake. She died at 4 p.m. The accused himself made the report to the Village Munsif (P.W. 6) saying that he suspected that she had been stung. The woman's father (P.W. 8) was suspicious and reported to the police who sent the body for *post mortem*. The medical officer, P.W. 1, found on the body four contusions, three of them on the skull, and on dissecting he found there had been cerebral haemorrhage. He was of opinion that that was the result of blows by sticks or stones on the head. He found no signs or symptoms of poisonous bite or sting.

The charge of murder was not pressed against the accused in the trial Court, and the learned Sessions Judge held that the evidence did not prove that it was the accused who inflicted the injuries on his wife. He held, however, that he must have known who inflicted them on his wife and that his story to the Village Munsif was a false one, intended to screen the real offender. He therefore, convicted him under sections 201 and 203, Indian Penal Code.

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The learned Counsel for the defence raises a point of fact and a point of law. The point of fact is that as the injuries on the woman were hidden under her hair the accused did not genuinely know that she had been assaulted. But we do not think that there is any substance in this. For, the woman having been assaulted, the accused's story that she cried out she had been stung cannot be true. She must have cried out that she was being beaten and accused must have known that.

The point of law is that, unless the Court is satisfied beyond reasonable doubt that accused was not himself the murderer, he cannot be convicted under sections 201 and 203. This rests upon a proposition, affirmed in several rulings of various High Courts, that sections 201 to 203, Indian Penal Code, have no application to the person who actually committed the main offence mentioned in the sections, and that the person who committed the main offence cannot be himself found guilty of causing evidence of that offence to disappear or of giving false information about it. The earliest pronouncement on this point was in 1871 in *Reg.* v. *Kashinath Dinkar et al*(1) and this ruling has been followed, mostly without discussion or comment as if the proposition were self-evident, in various other cases [cf. *Empress of India* v. *Kishna*(2), *Queen-Empress* v. *Dungar*(3), *Torap Ali* v. *Queen-Empress*(4) and *Emperor* v. *Ghanasham*(5)]. The only pronouncement of this High Court on this subject which has been traced, is in a parenthesis and *obiter dictum* at page 277 of *Ramaswami Gounden* v. *Emperor*(6). Nowhere is the *ratio decidendi* of *Reg.* v. *Kashinath Dinkar et al*(1),

(1) (1871) 8 B.H. C.R. 126.
(2) (1880) I.L.R. 2 All. 713.
(3) (1886) I.L.R. 8 All. 252.
(4) (1895) I.L.R. 22 Calc. 638.
(5) (1906) 8 Bom. L.R. 538.
(6) (1903) I.L.R. 27 Mad. 271.

examined. It seems to us to rest on a *petitio principii*. The reason given is that "as there is no law now which obliges a criminal to give information which would convict himself, it is evident that sections 201 and 203 could not apply to a person who committed that offence, that is, the offence which he knew had been committed." Obviously, if there is no law to that effect, then sections 202 and 203 will not apply. The question rather is whether sections 201 to 203 do not embody such a law. On the face of them there is nothing to show that they do not apply to the main offender himself. Section 44 of the Code of Criminal Procedure, which is the generic section relating to the duty of persons to give information about grave offences including murder, and section 45 (*d*) of that Code which lays on any owner or occupier of land the duty of giving information regarding the occurrence in his village of any sudden or unnatural death, do not in terms exclude the offender himself. These sections of the Code of Criminal Procedure would be relevant in a case under section 202, Indian Penal Code, where it is necessary that the accused should be legally bound to give information regarding the offence; but even this qualification does not appear under section 201 or section 203. What is required there is merely that there should have been an offence and that the accused has given false information about it, with the added intention in the case of section 201, Indian Penal Code, of screening the offender. We cannot, therefore, see wherefrom comes the proposition which is the foundation of *Reg.* v. *Kashinath Dinkar et al*(1) that there is no law which obliges a criminal to give information which would convict himself. There is such a law in the case of grave offences and sudden

(1) (1871) 8 B.H.C.R. 126.

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deaths, and in theory the offender himself could be convicted for breach of that law under sections 201 to 203, Indian Penal Code. In practice, no doubt, if he has been convicted of the offence itself, no Court will think it worth while to convict him also under sections 201 to 203, Indian Penal Code. If the proposition laid down in *Reg.* v. *Kashinath Dinkar et al*(1) is carried to its logical conclusion, it would appear that it is improper to try an accused person, as the present accused has been tried, in the same trial under both sections 302 and 201, Indian Penal Code, because a perfect defence to section 201 would be a plea and proof that he himself was the murderer, and an accused would be entitled to say that the plea he proposes to make to the charge under section 201 will depend on whether he is acquitted or convicted of the principal offence; and that to call upon him to plead to the charge under section 201, before and until he knows what the verdict on the murder charge is, would be to deprive him of his legitimate defence. It would also in a case where the Court regards proof of his complicity in the actual offence as insufficient to establish his guilt compel the Court to let him go free, even though it is satisfied that he gained his acquittal on the main offence by his own concealment of the traces of the crime. This was exactly what happened in *Reg.* v. *Kashinath Dinkar et al*(1) and it is hardly compatible with justice that the actual offender should escape conviction under sections 201 to 203, because he is the actual offender in the main crime, while those who merely witnessed it but gave false information about it are punishable under sections 201 and 203. This means that the more successful a criminal is in concealing his own offence, the more the

(1) (1871) 8 B.H.C.R. 126.

law will assist him in escaping justice altogether, and, unless the Court holds without reasonable doubt that the accused did not take part in the murder, the Court is bound to give him the benefit of the doubt and acquit him of offences under sections 201 to 203. The case reported in *Torap Ali* v. *Queen-Empress*(1) is another practical example of how justice is defeated by such a theory of the law.

The true principle seems to be that there is no law preventing the main offender being convicted under sections 201 to 203, but in practice no Court will convict an accused both of the main offence and under these sections. But, if the commission of the main offence is not brought home to him, then he can be convicted under sections 201 to 203. Therefore, there is no misjoinder in charging an accused in the alternative with the main offence and under sections 201 and 203, Indian Penal Code, nor is there anything irregular or improper in a Judge holding, as the learned Sessions Judge has done in this case, that, while the accused is himself not free from the suspicion of being the actual murderer, he can be none the less convicted under sections 201 or 203. This position is not without authority, though as noted above most of the reported cases have followed *Reg.* v. *Kashinath Dinkar et al*(2). Most of these rulings have been considered in a judgment of the Punjab Chief Court in 1903, in *Bucha and another* v. *King-Emperor of India*(3) wherein it was held that an accused acquitted of the charge of committing a crime can be convicted under section 201 in respect of the offence "of the commission of which he is no longer himself charged or liable to be charged"; and the mere suspicion that an individual is the actual

(1) (1895) I.L.R. 22 Calc. 638.
(2) (1871) 8 B.H.C.R. 126. (3) (1903) 39 P.R.J.C.J. 1.

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murderer or the facts that he has even had his trial and been acquitted of the offence of murder will not prevent his conviction under section 201. A mere suspect or an acquitted accused is not in the eyes of the law an offender within the meaning of section 201. The reported ruling in *Teprinessa* v. *Emperor*(1) is practically to the same effect, and also the ruling of a Bench of the Bombay High Court in *Hanmappa Rudrappa* v. *Emperor*(2). Therefore, there is no illegality in the conviction under sections 201 and 203.

This does not, however, conclude the case. It is clear that for the purpose of calculating the punishment to be awarded under section 201, it is necessary for the Court to decide, not so much what offence—the evidence of which has been concealed—has been committed, as what offence the accused knew or had reason to believe had been committed. So it was necessary to decide, on the assumption that the accused did not commit the main offence because he has not been convicted of that, what offence he believed or knew to have been committed. The Court must treat him as a stranger to the crime, as one who had merely witnessed it.

From that point of view we cannot on the evidence say that more is proved than that the accused knew that some one had hit his wife and that she had died in consequence. We are unable to conclude that he knew that the person who struck her had the criminal intention of killing her. It must have been clear however to the accused that his wife had died as a result of the blows given and that she at least suffered grievous hurt, and that is punishable under section 325, Indian Penal Code, with imprisonment for seven years. Under section 201 the accused is then liable to be sentenced

(1) (1918) I.L.R. 46 Calc. 427. (2) (1923) 82 I.C. 709.

to a maximum of one-fourth of that seven years. The learned Sessions Judge has sentenced the accused to rigorous imprisonment for five years. At the most he can be sentenced to one year and three-fourths. We think that it will be sufficient if he undergoes rigorous imprisonment for one year and we reduce the sentence accordingly.

B.C.S.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Waller and Mr. Justice Reilly.*

*In re* PERIYASWAMI MOOPAN AND ANOTHER (PRISONERS) APPELLANTS.* 1930, July 14.

*Indian Evidence Act (I of 1872)—Sec. 30—Confession—Meaning of.*

"Confession" in section 30 of the Indian Evidence Act means confession of the very offence for which the accused persons are being tried—"offence" always including under the explanation to the section abetments of and attempts to commit the offence: *Shivabhai* v. *Emperor*, (1926) I.L.R. 50 Bom. 683, dissented from.

TRIAL referred by the Court of Session of the Madura Division for confirmation of the sentences of death passed upon the said prisoners in Case No. 17 of the Calendar for 1930.

The facts necessary for this report appear in the judgment of REILLY J.

*E. Antony Lobo* for first accused.

*K. W. Rama Rao* for second accused.

*Ag. Public Prosecutor* (*K. N. Ganpati*) for the Crown.

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* Referred Trial No. 62 of 1930 and Criminal Appeal No. 232 of 1930.