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with that of the Court below. I must add, in reference to the question of law which I have discussed, that I have given expression to what appears to me to be the law as laid down in the books, but that the law so laid down is not, in my opinion, in accordance with the custom of the people of this country.

Appeal dismissed.

CRIMINAL REVISIONAL.

Before Mr. Justice Brodhurst.

QUEEN-EMPRESS v. DUNGAR AND ANOTHER.

Act XLV of 1860 (Penal Code), s. 201.

S. 201 of the Penal Code does not apply to the case of a criminal causing disappearance of evidence of his own crime, but only to the case of a person who screens the principal or actual offender. *Queen v. Ram Soonder Shootar* (1), *Reg. v. Kashinath Dinkar* (2), *Empress v. Kishna* (3), *Empress v. Behala Bibi* (4), and *Queen-Empress v. Lalli* (5), referred to.

THIS was a case the record of which the High Court of its own motion called for in the exercise of its powers of revision. The facts are sufficiently stated in the order of the Court.

BRODHURST, J.—Dungar Singh and his wife Dulari were committed to the sessions under ss. 302, 109-302, and 411, of the Indian Penal Code, *i.e.*, they were committed for the offences of murder, abetment of murder, and dishonestly receiving stolen property.

The Sessions Judge apparently struck out the second charge from the charge-sheet, and in lieu of it entered a charge under s. 201 of the Penal Code, as follows:—"At Sumerwa, knowing that Thakur Singh had been murdered, concealed his body, causing evidence of the offence to disappear, with the intention of screening the murderer from legal punishment."

The Judge, concurring with the assessors, found both of the accused not guilty of murder, but "guilty of concealing the body of Thakur Singh, knowing that he had been murdered, intending to screen the murderer from legal punishment."

(1) 7 W. R., Cr. 52

(3) I. L. R., 2 All. 713.

(2) 8 Bom. H. C. Rep., C. C., 126.

(4) I. L. R., 6 Calc. 789,

(5) I. L. R., 7 All. 749.

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The Judge, concurring with the assessors, found Dungar Singh not guilty of dishonestly receiving stolen property, and, concurring with one assessor, and differing from the other two assessors, he found Dubri guilty of the last-mentioned offence.

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The Judge sentenced Dungar Singh to five years' rigorous imprisonment under s. 201, and he sentenced Dulari to seven years' imprisonment under s. 201, and to three years' similar imprisonment under s. 411, the latter sentence to commence on the expiration of the former one.

The boy who was murdered was a distant relative of the accused. He was missed on the morning of the 17th August last. Search was made for him, and the Judge observes :—"On the morning of the 19th the body was found in the ruin of Hazari Singh, which had been previously searched without the body being found. It appears to have been buried, so the neighbouring houses were searched, and in Dungar Singh's house signs of a body being buried were found, and both accused have throughout the inquiry and trial admitted that the body was actually buried in their house. An armlet worth Rs. 3 was on the body, silver bracelets worth Rs. 25 were missing, and also gold earrings worth Rs. 5-8. Dungar Singh was *challaned* on the 19th August, and on the 21st Dulari, in the presence of the head constable and two respectable witnesses, went to her house, and putting her arm far into a pacca drain, produced the four *karras*, which are recognised as those of the boy."

Dungar Singh "declares that next morning his wife showed him the corpse in the house, and he proposed to produce it before the head constable, then in the village, but on his wife saying that she would be charged with the murder, he buried it in the house, and in the night put it into Hazari's ruin."

Dulari "in her subsequent statements to the Magistrate still states that Girwar Singh killed the boy, but that she did not see him do so, and that she found the corpse lying in her house at dawn, and told her husband, who proposed to show it to the head constable, but that she persuaded him not to do so, as the head constable would accuse her of the crime. She states that only the armlet was on the body and no other ornaments, and that she

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alone buried the body, and subsequently threw it into the ruin. Before this Court she prays that whatever punishment be given may be inflicted on her, as if her husband is punished, he will lose his zemindari share. I am of opinion that the circumstantial evidence proves a murder committed by one or both of the accused persons, but that it does not conclusively prove which of them is guilty of the crime. It may have been committed by the wife in the absence of the husband, or by the husband in the absence of the wife, and hence it cannot be brought home to either of the accused persons."

With regard to the charge under s. 201 of the Penal Code that was added in the Court of Session the Judge has observed:—"It may be urged perhaps that that section does not apply to a criminal concealing the evidence of his own crime. I cannot think there is any force in this argument. Every rational system of jurisprudence is careful to distinguish and punish separately each separate step in crime in order that a criminal may have a motive for stopping short even in the midst of criminal acts. A criminal who obliterates all traces of his crime has distinctly taken one step further against public justice than a criminal who does not do so, and should be punished accordingly. I cannot imagine that any person, merely because he is a criminal, has a vested right to defeat the course of justice, which is withheld from innocent persons; nor can I see that a criminal who has escaped conviction for a major crime, by obliterating all evidence of the crime, should be allowed to do this with impunity. I cannot see that any doctrine of merger is applicable, unless the minor crime is distinctly included in the major, and I do not think that a person accused, *e.g.*, of illegal possession of a weapon, could claim an acquittal on the ground that he had committed a murder with that weapon. I have no doubt that the words of s. 201, Indian Penal Code, construed in the strictest manner, do cover the case of a criminal concealing his own crime. If the Legislature meant otherwise, it could and should have said so, but it has not said so, nor do I think it meant so."

I do not feel called upon to express any opinion as to the way in which s. 201 of the Indian Penal Code should have been drawn.

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All that I conceive I have to do is to decide whether that section does or does not apply to a criminal causing disappearance of evidence of his own crime. The section is contained in Chapter XI, the heading of which is "Of false evidence and offences against public justice." The marginal note of s. 201 is "Causing disappearance of evidence of an offence committed or giving false information touching it to screen the offender." This is a correct abbreviation of the section, and from the wording of the section itself, and for the reasons given by Mr. Justice Lloyd, there is not, in my opinion, any room for doubt that the section applies merely to the person who screens the principal or actual offender. There are several judgments of High Courts in India which support this opinion, and I am not aware of any that are in conflict with it. All of these judgments have not been reported, but it is quite sufficient to refer to the following five rulings—*Queen v. Ram Soonder Shootar* (1), *Reg. v. Kashinath Dinkar* (2), *Empress v. Kishna* (3), *Empress v. Behala Bibi* (4), *Empress v. Lalli* (5). These rulings extend over a period of about nineteen years, and are by nine Judges of three of the High Courts. It is incredible that all of them can have escaped the notice of the Legislature, and it is therefore reasonable to suppose that the section would have been amended had its meaning been misinterpreted by so many Judges of at least three of the High Courts in India. As, in my opinion, the conviction of Dungar Singh and Dulari under s. 201 of the Indian Penal Code is illegal, I am constrained to annul the convictions and sentences under that section, and to direct that Dungar Singh be released.

I see no reason to interfere with the sentence that has been passed upon Dulari under s. 411 of the Indian Penal Code.

(1) 7 W. R., Cr. 52.

(3) I. L. R., 2 All. 718.

(2) 8 Bom. H. C. Rep., C. C., 126.

(4) I. L. R., 6 Calc. 789.

(5) I. L. R., 7 All. 749.