

## APPELLATE CRIMINAL.

1885  
April 11.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Brodhurst.

QUREN-EMPRESS v. LALLI.

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

In a trial upon a charge under s. 201 of the Penal Code, the accused made a statement to the effect that he was present at the commission of a murder by two other persons, that he himself took no part in the act, that before the murder was committed, one of the persons named pulled off a *razai* from the bed on which the deceased was sleeping, and that, in his presence, the *razai* was subsequently concealed in a stack. It was proved that the *razai* belonged to the deceased, that it was found concealed in a stack, and that it was pointed out by the accused to the police. The accused was convicted of concealing evidence of the murder, with the intention of screening the offender from legal punishment, under s. 201 of the Penal Code.

Held that the conviction must be quashed, inasmuch as if the *razai* had not been concealed or destroyed, its presence or existence would have been no evidence of the murder.

A person who is concerned as a principal in the commission of a crime cannot be convicted of the secondary offence of concealing evidence of the crime.

THIS was an appeal from a conviction by Mr. H. A. Harrison, Sessions Judge of Meerut, dated the 17th February, 1885. The appellant was charged before the Court of Session with offences under ss. 201 and 202 of the Penal Code, and was convicted under the former section. The facts of this case are stated in the judgment of the Sessions Judge, which was as follows:—

“Salik, the brother of Dalli, was in his field when he was murdered. His brother Dalli found his corpse in the morning. The neck was between a wooden pitchfork: there were wounds on the head. The medical evidence shows that the skull was extensively fractured. The left jaw and eye were also injured. There were also abrasions on the nose and linear contusion on the neck, the latter caused evidently by the pitchfork.

“It appears that, at first, suspicion attached to no one; afterwards the accused was suspected, because the deceased had on two or three occasions found fault with him for joking with his sister-in-law, the wife of his brother Dalli.”

“The evidence of Dalli shows that the deceased had with him a *razai*. The recovery of this *razai* is the principal evidence in this case. The accused made two statements—one on the 20th

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November, before Umrao Singh, Honorary Magistrate, and a second one before the committing Magistrate.

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“ His statements were—that Ganga Sahai and deceased were at feud, the former having been fined on the complaint of deceased ; that while he (accused) was sleeping at Ram Dayal Bania’s, he was awakened by Mari and Mathura, nephew and son of Ganga Sahai, and asked by them to come with them and inspect the fields ; that he went, and after Mathura and Mari had inspected their own fields, they went to the field of the deceased, where deceased was sleeping on a bed ; that Mathura asked him (accused) to pull the *razai* off deceased, which he refused to do ; that Mari pulled the *razai* off and asked him to stand aside ; that he did so, when Mathura and Mari killed Salik with a *darati* ; that they then left Mathura, carrying the *razai* which he had taken from deceased ; that he (accused) went to sleep, and the others went to their home ; that next evening Mathura asked him to come with him to conceal the *razai* ; that Mari joined them, and that they all three went to Ram Ratan’s field, where Mathura put the *razai* into a stack of *jāwar* ; that he (accused) was to keep silence ; that when the darogah came he first denied all knowledge of the murder, and afterwards told him what had occurred, and pointed out the *razai*. Before this Court the accused pleaded not guilty, but when asked if the two statements made before the Magistrate were his, and were true, he stated that they were, and it was not till after the assessors had given their opinion in writing after the judgment had commenced, that accused retracted his statement, saying it was made under compulsion.

“ The fact that the accused pointed out the *razai*, which was well concealed in a *jāwar* stack, is proved by the evidence of two witnesses. The fact that the *razai* belonged to Salik is fully established.

“ There can be no doubt that the statements made by the accused were voluntarily made. The second was made thirteen days after the first ; they are lengthy, with much detail in them, and in this Court the accused admitted that they were true.

“ That the statements are wholly true, no one can for a moment believe. There can be but little doubt that the accused was

the actual murderer, but there is no evidence to convict him upon, except his own statement and the recovery of the *razai*. In his statements he does not admit that he had any hand in the murder. He denies knowing that any murder was contemplated; all that he does admit is, that the murder and concealing of the *razai* took place before him; that he knew not that any murder was intended, but that he did know that the *razai* was to be concealed. His statements that Mathura and Mari killed deceased are doubtless false; but at the same time the probability is, that more than one were engaged in the murder. The reason assigned for the murder by accused seems to the Court altogether insufficient; others no doubt were engaged in it: who they were, and by what motive actuated, is not known.

“ In the face of the double statements of the accused, and the admission in this Court that those statements were true, the Court must find the accused guilty of the charge under s. 201, for by his own admission he formed one of the party who went expressly to conceal the *razai*, and the evidence proves that he himself pointed out where it was.

“ The assessors find the accused guilty of the charge under s. 201. The second charge is included in the first; for if a man conceals evidence, he does not report the crime which he tries to conceal.

“ The Court finds that Lalli is guilty of the charge—that he, knowing an offence punishable with death had been committed, concealed a *razai* taken from the murdered person, that evidence of the commission of the offence might disappear, with the intention of screening the offender from legal punishment, and has thereby committed an offence punishable under s. 201, Indian Penal Code.”

The appellant was not represented.

The *Junior Government Pleader* (Babu *Dwarika Nath Banarji*), for the Crown.

PETHERAM, C. J., and BRODHURST, J.—In our opinion this conviction must be quashed on the ground that s. 201, Indian Penal Code, contemplates concealment or destruction of evidence

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of a crime. In this case, if the *razai* had not been concealed or destroyed, its presence or existence would have been no evidence of the murder. Again, in our opinion, on the construction of the section, the person who is concerned as a principal cannot be convicted of the secondary offence of concealing evidence of the crime. The conviction must be quashed and the prisoner released.

*Conviction quashed.*

## APPELLATE CIVIL.

*Before Mr. Justice Oldfield and Mr. Justice Tyrrell.*

KASHI PRASAD AND ANOTHER (DECREE-HOLDERS) v. MILLER (JUDGMENT-DEBTOR).\*

*Execution of decree—Attachment of property—Judgment-debtor declared an insolvent—Claim by official assignee to attached property—Appeal from order disallowing claim—Statute 11 & 12 Vic., c. 21, ss. 7, 49—Civil Procedure Code, ss. 244, 278—"Representative" of judgment-debtor.*

A decree-holder, having attached the property of his judgment-debtors in execution of the decree, obtained an order for sale of the attached property. Prior to sale, the judgment-debtors made an application to be declared insolvents, and obtained an order under Stat. 11 and 12 Vic, c. 21, s. 7, by which their property was vested in the Official Assignee. An application was then made by the Official Assignee to the Court in which the execution of the decree was pending, for the release of the property from attachment, and that the property might be made over to him. The Court dismissed the application. On appeal, the District Judge reversed the first Court's order.

*Held* that the matter did not come before the Court of first instance under s. 49 of Stat. 11 and 12 Vic., c. 21, inasmuch as that section refers to cases where the insolvent's schedule has been filed, and to debts or demands admitted therein and, in the present case, no schedule had been filed at the time of the Official Assignee's application; and the Court could therefore only entertain the application under the provisions of the Civil Procedure Code relating to the execution of decrees.

*Held* that the Official Assignee could not be held to be a representative of the judgment-debtors within the meaning of s. 244 of the Civil Procedure Code, and his application was not one relating to the execution, discharge, or satisfaction of the decree.

*Held* that the Court of first instance had only jurisdiction in the matter under s. 278 of the Code, and disposed of it under that section, and that the District Judge had no jurisdiction to entertain the appeal.

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\* Second Appeal No. 69 of 1884, from an order of A. Sells, Esq., District Judge of Cawnpore, dated the 10th March, 1884, reversing an order of Maulvi Farid-ud-din, Ahmad, Subordinate Judge of Cawnpore dated the 6th September, 1883.