We, therefore, allow this appeal, set aside the decree of the lower appellate court, and restore that of the court of first instance with costs in all courts.

Appeal allowed.

APPELLATE CRIMINAL.

Before Mr. Justice Walsh and Mr. Justice Pullan.

EMPEROR *v.* HAR PIARI AND OTHERS.*

1926 *June*, 30.

Act No. XLV of 1860 *(Indian Penal Code), section* 201—*Section not inapplicable to principal offender—Unexplained death by poison of member of a family—Presumption as to complicity of other members—Act No. I of* 1872 *(Indian Evidence Act), section* 24—*Confession made to a* mukhia, *admissibility of.*

A violent presumption arises when a man dies in his own house surrounded by his own family, and poisoned, shortly after eating food which must have been prepared for him by his wife, and no explanation is forthcoming from the members of the household as to what had happened to him to cause his death. And where, in addition to such violent presumption, the persons accused are proved to have been guilty of persistent lying in an attempt to account for the absence of the deceased and are also shown to have hidden the corpse to save themselves, the presumption becomes a certainty.

A person who has actually committed a crime himself—whether murder or any other crime—is none the less guilty of removing traces thereof, if it is proved against him that he has done so, because he was the person who actually committed the offence. *Empress* v. *Kishna* (1) and *Queen-Empress* v. *Dungar* (2), overruled.

The mere removal of a body from one place to another so as to remove traces of the place where the murder took place, or indications which implicate a particular individual, even though such removal does not remove undoubted evidence

* Criminal Appeal No. 342 of 1926, by the Local Government, from an order of Gopal Das Mukerji, Sessions Judge of Mainpuri, dated the 26th of March, 1926.

(1) (1880) I.L.R., 2 All., 713. (2) (1886) I.L.R., 8 All., 252.

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that a murder has taken place, is within section 201 of the Indian Penal Code. *Emperor* v. *Autar* (1), followed.

Where one of the accused volunteered to make a confession to a *mukhia*, if he could get some assurance from him (the *mukhia*) that he would do his best to help the accused. *Held*, that such confession was not precluded from being received as evidence by reason of section 24 of the Indian Evidence Act, 1872.

THE facts of this case were as follows :—

Beni Singh, the deceased person, lived with his wife and her parents in the same house. On the evening of the 5th of December, 1925, the wife gave Beni Singh his dinner, and he felt ill soon after eating it and became unconscious. Next morning the wife informed people that Beni Singh had left the house at night and gone away. When three or four days went by, he began to be missed and inquiries made about him were fruitless. Ultimately his corpse was found on digging up the floor of the room. *Dhatura* was found in the viscera. The wife and her parents were placed under trial, the former being charged under section 302 of the Indian Penal Code and the two latter under sections 302/114 and 201. The Sessions Judge found all the accused not guilty and acquitted them. The Local Government appealed to the High Court against the acquittal.

The Government Advocate (Mr. *G. W. Dillon*), for the Crown.

Babu *Harendra Krishna Mukerji*, for the accused.

WALSH and PULLAN, JJ. :—This is an appeal by Government against an acquittal of a family of three persons, namely, Balwant Singh, his wife Musammat Durga, and their married daughter Musammat Har Piari, who were acquitted by the Sessions Judge of Mainpuri on a charge of having poisoned Har

(1) (1924) I.L.R., 47 All., 306.

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Piari's husband. If it were not that the learned Judge has expended upon this quite short case more than seven solid printed pages of matter we should have said that the case was free from any difficulty, and we have no hesitation in agreeing with all the assessors in finding that the wife administered the *dhatura* poison of which her husband undoubtedly died.

Before turning to the express findings of the learned Judge, which we shall have to mention in a moment, we may say broadly what is really elementary in connection with cases of circumstantial evidence, that a violent presumption arises, perhaps one of the strongest presumptions known to the law, when a man dies in his own house surrounded by his own family, and poisoned shortly after eating food which must have been prepared for him by his wife, and no explanation is forthcoming from the occupants of the household as to what had happened to him to cause his death. It is not too much to say that there is hardly one of us, if our own wife or close relation living under our roof suddenly died, and the corpse were found buried in our house, who would not expect to be immediately called upon by the authorities for a clear explanation of the occurrence, and who would be surprised, in the event of our being unable to give it, if we were charged with having caused the death. Where, in addition to such violent presumption, the persons accused are proved to have been guilty of persistent lying in an attempt to account for the absence of the deceased, and are also shown to have hidden the corpse to save themselves, the presumption becomes a certainty. The learned Judge has set out more or less correctly, though framed in verbiage, which sometimes detracts from the value of the fundamental facts, six items of circumstantial evidence which were disclosed by the evidence at the trial

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against the accused. He has discarded at least two on grounds which to our minds are quite inadequate. We refer to the motive, which we think is clearly established, that this young woman was of a loose disposition and quite prepared to get rid of her husband, and the other the evidence of Hoti Lal, who said quite casually that he had seen the wife picking *dhatura* seed from some shrub outside the village and had naturally remarked upon it at the time and against whom there is really nothing except what one may describe as a fanciful suggestion, or even, as my brother said during the argument, the mere fact that he is appearing as a witness for the prosecution. We see no reason whatever for recklessly charging this man, who is an independent person and a Brahman, with deliberate invention of what is after all a small piece of evidence. The learned Judge has omitted from his list one significant fact, which is no reproach to him, because it is one of those facts which require training and experience in criminal investigation to appreciate at its true value, but it is a significant fact that the stomach at the *post mortem* examination was found to contain about 1 lb. of partly digested rice. The Government Advocate has drawn our attention to a statement in Lyon's Medical Jurisprudence that rice has been shown by experiment to be digested in about an hour. We have no medical testimony to assist us, and therefore we can only speculate. It is possible that if a doctor were asked, he would agree that in a person suffering from *dhatura* poisoning, which undoubtedly affects the nervous system, the blood is thrown into such a condition that the process of digestion is much retarded, and therefore it is necessary that one should make a substantial addition to the period of an hour in dealing with a person suffering from *dhatura* poisoning. But the presumption is irresistible that he died within a very short time—and

by that we mean at the most two hours—of his last evening meal. Under the circumstances we have no hesitation in holding that the appeal succeeds, and that all the three persons are guilty of having caused the death of Beni Singh.

We now come to consider the legal question involved in that finding, and with due respect to this very able Judge with great experience, particularly in sessions work, we cannot but express our surprise at the maze of logical fallacies in which, by a superabundance of technical considerations he has drifted, throwing common-sense to the winds. He says that if there had been only one person in the house instead of three, it would not have been at all difficult to fix the guilt. It is consoling to be assured by him that in such a case he would have experienced no difficulty. But inasmuch as fixing the guilt is merely another way of applying what the law calls a violent presumption, which justifies conviction in the absence of any explanation, he overlooks the fact that the same logical process applied to one applies to all, except those who are prepared with an instant explanation of their conduct consistent with innocence. It might at least have occurred to the learned Judge, as he felt himself in a difficulty, that there was another violent presumption drawn from one's knowledge of human nature, and of Indian village life, which it is the duty of a tribunal in such a case to apply, namely, that the food partaken at the evening meal by a husband in an ordinary constituted house is prepared for him and served to him by his wife. The learned Judge in this case had the advantage of the fact that the wife has never denied, if indeed she has not admitted, that she did in fact serve, if not prepare, the evening meal. The most that she suggests—and this seems to be the only point urged on her behalf by Mr. *H. K. Mukerji*, her vakil, which I was able to follow—is that the curd came

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from the nephew Pokhi. But unless the whole dish of which the mixture was composed were prepared by Pokhi, that fact raises no presumption against him, and indeed, if anything, raises a presumption in his favour, because the natural property of *dhatura* being bitterness and curd being itself sour, *gur*, or something equivalent, is required as a vehicle for the poison if its presence is to be sufficiently concealed from the victim to induce him to consume it. The learned Judge seems to have drifted into a logical impasse, so far as we can follow him, in the following way, that inasmuch as there are three persons, one of whom undoubtedly administered the poison, and as nobody else was present, it is impossible for any human being to say which of them did it; and assuming that there was one principal and two abettors, it is impossible to convict either of the three of abetting, because it is impossible to say which of them abetted the third, and inasmuch as one is unable to say which was the principal and which was the abettor, although you are quite certain that the three contained both the principal and the abettor, the law compels you to say that the three contain neither. Such a method of reasoning would, especially in cases of murder at night by armed gangs of dacoits, render conviction in a great number of cases a practical impossibility, and would leave large portions of the population at the mercy of armed dacoits. It ignores the well-established principle that if two men go out at night to waylay a third and to rob him, and undoubtedly rob him because both are found with portions of his property afterwards in their possession, and the third man's corpse is also found in the neighbourhood, although both of them undoubtedly were engaged in the murder, no one of them can be convicted of murder, because no human being can say which of them did it. That fallacy has

been destroyed both by the principles of English Criminal Law as laid down for generations, and also by the appropriate section in the Penal Code, if it were worth while to refer to it.

Unfortunately we are compelled to deal with one or two legal fallacies contained in the learned Judge's judgement. Having arrived by a series of fallacies at the paradox that, although he was satisfied that the three accused before him were the only ones who could be possibly guilty of the offence with which they were charged, it was impossible to convict any of them, he seems to have been somewhat startled by the consequence of his own reasoning, and he sought to apply, as a kind of subsidiary refuge from an illogical position, section 201, which makes the concealment of the corpse or the removal of traces of the crime punishable *per se*. But here again, owing to two decisions which he cites with accuracy in his judgement, he was confronted with the paradox, which pursued him as a kind of spectre of his own previous decision, that all three contained the murderer though he could not convict anyone of murder; and he found himself unable to convict any of them for concealing the corpse, although they undoubtedly did so, because by his own finding any of them might be the murderer, and the Allahabad High Court had told him that the section could not apply to a murderer. He also found that, if he used section 201 at all, he might by accident be applying it to a murderer when the Allahabad High Court has told him not to. We do not agree with this reasoning. We think that it lacks both logic and common-sense, but as a matter of fact we think it right to deal with the decisions referred to, namely, the case of *Empress* v. *Kishna* (1) and the case of *Queen-Empress* v. *Dungar* (2). They have been seriously questioned and

(1) (1880) I.L.R., 2 All., 713. (2) (1886) I.L.R., 8 All., 252.

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dissented from, if not absolutely overruled by two Benches, of which one member of this Bench happened to have been a member on both occasions. The matter seems to come up with such frequency that we think it desirable to express our opinion definitely upon it. It is necessary for the purpose of our decision because the Government have appealed on section 201, and the appeal therefore involves the question whether if the Judge were right in acquitting under section 302, he was justified in acquitting under section 201. We hold definitely that both these cases, or at any rate the dicta about to be referred to which are found therein, cannot be accepted as good law.

The first point, namely, whether section 201 applies to the actual culprit in a case of murder, is obviously academic. None the less we are unable to agree with the view that a person who has actually committed a crime himself—whether murder or any other crime—is any the less guilty of removing traces thereof, if it is proved against him that he has done so, because he was the person who actually committed the offence. If the Legislature intended to provide such an exception, they would undoubtedly have said so in express language. This was the point decided in the case of *Queen-Empress* v. *Dungar* (1) and we hold definitely that it was wrongly decided. Further we agree with the decision in the case of *Emperor* v. *Autar* (2) in holding that the mere removal of a body from one place to another so as to remove traces of the place where the murder took place, or indications which might implicate a particular individual, even though such removal does not remove undoubted evidence that a murder has taken place, is within the section.

We are further bound to disagree with the learned Judge in his holding that the confession in this case

(1) (1886) I.L.R., 8 All., 252. (2) (1924) I.L.R., 47 All., 306.

was inadmissible and irrelevant. We say nothing to throw doubt on the proposition that a confession made to another person in the presence of a police officer, who has asked or instructed that other person to take the confession in such a way as to be his agent, where the confession takes place under circumstances that the police officer is in such proximity as to make his presence likely to affect the mind of the confessing person, is in substance a confession to a police officer. That is not this case. The confession was made to the *mukhia*. Why the learned Judge holds it to be inadmissible we do not know. It certainly was not induced by any promise, because, although the *mukhia* is undoubtedly a man in authority, and would appeal to a villager as a person who was able, or likely to be able, to promise him a pardon or some other inducement, in this case Balwant Singh, who made the statement, volunteered to make the statement if he could get some assurance from the *mukhia* that he (the *mukhia*) would do his best to help him. In our view that is not an inducement proceeding from the person in authority within the meaning of the section so as to make the confession either inadmissible or irrelevant.

We have, therefore, to allow the appeal, and the further question arises what we ought to do. We come definitely to the conclusion on this evidence that the wife was guilty of poisoning her husband and must be convicted under section 302, Indian Penal Code. Whether her parents were parties to her act as principals is not so clear, although there is evidence upon which any jury might find that they were. Upon that we give them the benefit of the doubt, but we hold, upon their subsequent conduct, the lies which Balwant Singh told, the undoubted fact that they concealed the death, buried the corpse and showed great signs of fear and uneasiness when the constable spent

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the night in their house, that they must be taken to have abetted the crime under section 302 and to be guilty as abettors. We, therefore, convict them under section 114 read with section 302.

With regard to the sentence, we feel that we have no alternative in this matter. We have reason to think that murders by poisoning of husbands by their wives in Indian villages are much too common and more frequent than the criminal statistics in the provinces indicate. We see no reason to apply the lessor alternative in the case of any woman who cruelly and cold-bloodedly administers poison to the man whom it is her duty to assist, protect and serve.

We, therefore, order Musammat Har Piari to be hanged by the neck until she be dead. The other two, Balwant Singh and Musammat Durga, we sentence to transportation for life.

On the question of section 201 we are bound to record a conviction, although, having regard to the sentence already passed, this matter does not appear to be of any immediate importance. If occasion should arise the case must be put up before us again for sentence.

Appeal allowed.