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IN THE MAT-
TER OF
BALGESHUN.

require the applicant to pay a further court fee exceeding the amount claimed. If the Act required such applications to be charged with court fees, I think Government would certainly have introduced a graduated scale of fees (as it has done in the case of deposits) in order to avoid the absurdity of charging Rs. 2 on an application for the refund of sums less than Rs. 2.

In my opinion section 19, clause (xx), covers the case and no fee is chargeable on the application.

APPELLATE CRIMINAL.

Before Mr. Justice Kendall.

EMPEROR *v.* SOHAN AND OTHERS.*

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April, 13.

Penal Code, section 201—Whether persons charged with murder can also be charged with and convicted of concealing evidence of the murder—Crowd committing a massacre and throwing the corpses in a river.

It is a matter of grave doubt whether the ruling given in certain decisions that a person who is concerned as a principal cannot be convicted of the secondary offence of concealing evidence of the crime can apply to a case where a number of people are charged with carrying out a massacre in the course of a riot and not with any individual act, or with throwing the assaulted persons, living or dead, into a river in the course of a transaction which otherwise amounted to an offence under section 201 of the Indian Penal Code.

Where it is not established by the evidence on the record that a person is the murderer or one of the murderers, although there are circumstances of grave suspicion that he is such and he was charged as being such, his conviction under section 201, Indian Penal Code, of the offence of causing evidence of the murder to disappear is not vitiated by the existence of such circumstances.

Messrs. *A. Hoon, Saila Nath Mukerji and Basudeva Mukerji*, for the appellants.

*Criminal Appeal No. 908 of 1931, from an order of H. J. Collister, Sessions Judge of Cawnpore, dated the 14th of September, 1931.

The Government Pleader (Mr. *Sankar Saran*), for the Crown.

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KENDALL, J. :—These appeals arise from a case in which 30 Hindus were charged under section 302/149 of the Indian Penal Code with perpetrating a series of massacres in or near the village of Gabraha on the 30th of March, 1931. The village is a few miles away from Cawnpore city, and the incidents took place a few days after the outbreak of communal rioting in Cawnpore. The learned Sessions Judge in the course of the trial added an alternative charge under section 114 against the rest of the appellants and under section 109 against Chaudhri Bahadur Singh. He has convicted eight of the appellants of offences under section 302/115 of the Indian Penal Code and also 201 of the Indian Penal Code, two under section 201 alone, one under section 201/109 and one, Chaudhri Bahadur Singh, under section 147/114 and sentenced them to various terms of imprisonment. No technical objection has been taken to the forms of the charges, but one of the representations made on behalf of the appellants was that the convictions under section 201 of the Indian Penal Code were irregular on account of the fact that the persons convicted have themselves been accused of the major offence of murder.

[Portions of the judgment, not material for the purpose of this report, have been omitted.]

* * * * *

For the earlier events of the riot, although the Judge has accepted the statements of the Muslim witnesses with such corroboration as there is in regard to the main course of the riot up to the time of the consultation at the mukhia's house, he has not been able to rely on the statements of Dilawar Khan, Pir Khan and the two children for the purpose of identifying any individual who took part in the massacres, and I need not therefore go into any detail on this point. The result is that no one has been identified as having actually taken part in those massacres.

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The rest of the charges under section 302/115 must be held not to have been proved for a different reason. What the Judge has found is that there was a consultation at the door of the mukhia, and that the bodies were removed and thrown into the Ganges as described by Maiku and Chhedī. He has accepted the statements of these witnesses as to the identity of the persons who took part in the conspiracy and subsequently removed the bodies. But it has not been proved or even alleged that the conspiracy was to throw live persons into the Ganges, and even if Najju's mother and Kallu's daughter were actually thrown in while they were alive, it has not been shown that that was any part of the intention of the conspirators. Even if the aid of section 34 of the Indian Penal Code is invoked, it will have to be held that as the common intention was to throw dead bodies into the Ganges, the act of throwing live persons in was not done in furtherance of the common intention. However, the Judge has held as a matter of fact that it is not proved that these two persons were alive at the time when the bodies were thrown in.

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As regards the offence under section 201, it is clearly proved if the statements of Maiku and Chhedī are believed. Mr. *Mukerji* for the defence has addressed to me a legal argument on this part of the case, to the effect that persons who are charged with the principal offence of murder cannot also be charged and convicted of the offence of causing evidence of the murder to disappear, and in this connection he has quoted the cases of *Empress of India v. Kishna* (1), *Queen-Empress v. Lalli* (2), *Queen-Empress v. Dungan* (3), and *Torap Ali v. Queen-Empress* (4). Of these cases the most important is *Queen-Empress v. Lalli*, as that is a Bench decision of this Court in which the finding was that "the person who is concerned as a principal

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

(3) (1886) I.L.R., 8 All., 252.

(2) (1885) I.L.R., 7 All., 749.

(4) (1895) I.L.R., 22 Cal., 538.

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cannot be convicted of the secondary offence of concealing evidence of the crime". Whether these decisions would apply in a case like the present, where a number of people are charged with carrying out a massacre in the course of a riot, and not with any individual act, or with throwing live persons into a river in the course of a transaction which otherwise amounted to an offence under section 201, appears to me to be a matter of grave doubt. In a more recent decision of the Calcutta High Court, *Teprinessa v. Emperor* (1), it has been held by a Bench of two Judges that where, notwithstanding circumstances of grave suspicion, it is impossible on the record, as it stands, to hold that a person is the murderer or one of the murderers, his conviction under sections 201 and 203 of the Indian Penal Code is not vitiated by the existence of such circumstances. That is precisely the case here. Still more important, however, is a recent decision of their Lordships of the Privy Council which has been referred to by the learned Sessions Judge. In the case of *Begu v. King-Emperor* (2), at a trial of five accused persons on a charge of murder, the High Court of Lahore had held that two of the accused intended to kill the deceased and were guilty of murder, and as to the remaining three the evidence was insufficient to prove their participation in the murder, but they had removed the body, and the court convicted them of that offence. That again is a case the facts of which appear to be closely analogous to those of the present one, and their Lordships held that the convictions were legal. It is true that the matter for decision was whether the accused could be convicted of the offence of removing the body although there had been no separate charge in respect of that offence. Their Lordships, however, referred to sections 236 and 237 of the Code of Criminal Procedure and held that the procedure of the courts in India had been a proper procedure. I have therefore no doubt whatever

(1) (1918) I.L.R., 46 Cal., 427.

(2) (1925) I.L.R., 6 Lah., 226.

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that the convictions under section 201 of the Indian Penal Code are not bad in law.

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In the light of these findings I hereby set aside the convictions and sentences of Sohan, Murli, Pyare Lal, Laltu, Panwa, Gulab, Mahadeo and Kallu Kurmi under section 302/115. I also set aside the conviction and sentence of Kallu Kurmi under section 307 of the Indian Penal Code. The convictions and sentences passed on all the appellants except Bahadur Singh under sections 201 and 201/109 are upheld, and the conviction and sentence passed on Bahadur Singh under section 147 is also upheld.

REVISIONAL CIVIL.

Before Mr. Justice King and Mr. Justice Thom.

RAM CHARAN LAL (PLAINTIFF) v. HANIFA KHATUN
AND ANOTHER (DEFENDANTS).*

1932
April, 14.

Muhammadian law—Succession—Liability of heirs for debt due by deceased person—Whether joint and several, or proportionate to their respective shares in the inheritance—Creditor exempting one of the heirs—Effect of—Civil Procedure Code, section 2(11)—“Legal representative.”

A creditor of a deceased Muhammadan sued his three heirs for recovery of the debt. One of the three heirs was a minor, and there being some difficulty about the appointment of a guardian *ad litem*, the plaintiff exempted this heir from the suit. The debt was proved and the question was whether a decree could be passed against the two remaining heirs for the whole debt or only a part of the debt proportionate to their shares of inheritance in the property of the deceased, the decree being in each case realisable only from the assets of the deceased in their hands. *Held* that the decree could be passed only for the proportionate part of the debt. The two remaining heirs had not, by sharing in the estate, rendered themselves liable for the whole of the debt,