

other side has incurred none. The reason why I dismiss this application without going into the merits is because I consider that the learned Judge decided the case sensibly and intelligently and if I go into the merits I shall in effect be granting the applicant exactly what I do not want to grant him—an appeal on a point of law.

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Application dismissed.

APPELLATE CRIMINAL.

*Before Sir Louis Stuart, Knight, Chief Judge, and
 Mr. Justice Muhammad Raza.*

RAM NATH AND OTHERS v. EMPEROR.*

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Murder—Essential elements for a conviction for murder sentence to be inflicted, determination of—No conviction for murder unless death established.

Held, that in a case of murder first of all the court must be satisfied that the murder had been committed and then that the accused had committed it. The question of sentence should then be determined upon the gravity of the offence quite irrespective of the circumstance whether the body has, or has not, been discovered.

When a court is not convinced that a man is dead it is impossible to convict any one of his murder. [23 A.L.J., 821, followed. 22 A.L.J., 340, explained.]

Mr. J. Jackson, for the appellants.

The Government Advocate (Mr. G. H. Thomas).
 for the Crown.

STUART, C. J. :—In the village of Telwa in the Bara Banki district there resided a family of Goshains. Many of the members of the family appear to have been turbulent and, at some time or another.

* Criminal Appeal No. 702 of 1925, against the judgment, dated the 12th of December, 1925, of Shankar Dayal, Sessions Judge of Bara Banki, convicting the appellants.

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had trouble with other inhabitants of the village and in the neighbourhood. One of these Goshains was a man of 50 years of age called Ratan Gir. He had a younger brother, called Prag Gir; and two sons, Hanuman Gir and Ram Dulare. Hanuman Gir is a man of 20. Ram Dulare is about 13. On the 20th of August, 1925, at 2 p.m., Ratan Gir and Hanuman Gir were carried on *charpoys* into the police-station at Mohanmadpur which is said to be 6 to 7 miles distant from Telwa. They were suffering from severe injuries. Ratan Gir had five open wounds on his head, one of which was $3\frac{1}{2}$ " long, $3\frac{1}{4}$ " broad and $\frac{1}{2}$ " deep. Three of his ribs were fractured. One of his fingers was broken. These were not all the injuries he had. Hanuman Gir had also been severely injured although he had not not been as severely injured as Ratan Gir had been. Ratan Gir made the following report :—

“ There is a feud between me and my brother Prag on the one side and Fakir Bakhsh, Gharib Singh and Bahadur Kurmi on the other side. There have been several cases in the courts between us. Yesterday my brother Prag had gone to Rohera to pay what he owed to Ram Saran Avasti when two *gharis* of the day were still remaining. My son, Ram Dulare, had been watching a maize crop which is on a field of mine, and as the day was coming to a close he came home and said : ‘ Gharib Singh and others, some 15 to 20 men in all, are going to the Rohera border carrying *lathis*. It would appear that they mean to surround and beat uncle Prag.’ Then I and my son Hanuman took our *lathis* and went to see for ourselves. At the north of the

village at the corner of Ratan Kurmi's cane-crop Ram Bahadur, Ram Nath, Ram Bharose Brahman, Bhulai Lodh, Gaya Prasad Brahman, Fakir Bakhsh Singh Thakur, Amar Singh Thakur, Gharib Singh Thakur, Adhin Kurmi, Tulsi Ram Kurmi, Dambar Kurmi, Panchu Kurmi, Sardar Kurmi, Ghulam Kurmi, Nathe Kurmi, Ram Nath Kurmi, Jagannath Kurmi, Bahadur Kurmi, Ishurdas Kurmi and Mathura Pasi of Telwa and Bhagwandin Kurmi of Sultanpur were beating my brother with *lathis*. Prag fell down in the cane field. We shouted. They surrounded us and beat us with *lathis*. We both fell down. Then Bahadur and Panchu said: 'Deprive Prag of his life; kill him. He is a troublesome man.' Then Ram Bahadur, Ram Adhin, Panchu Kurmi, Mathura Pasi and Fakir Bakhsh Singh Thakur, compressed the throat of Prag with a *lathi* and killed him and having placed his body on a *charpoy* took it away towards the lake. Bawar Goshain, Ram Adhin Nao, Din Dayal Nao, Behari Ahir, Nanku Kurmi and many other men who were on the field or who were passing on the road saw this attack. My son Hanuman and I have injuries on our heads and our arms. The index finger of my right hand is broken and the nail of the ring finger of my left hand has been smashed. We wish to be sent to the doctor. Our complaint is against all these men. Let an investigation be made."

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The Sub-Inspector Chunnu Lal proceeded to the spot and examined the place where the attack was said to have been committed. He found in one place only traces of blood. It is to be noted that, according to the first report and according to the evidence which has been given in the Sessions Court, Ratan Gir and Hanuman Gir were attacked together in one place and Prag was attacked in another place some 20 paces distant, but there were only traces of blood found in one place. The investigation proceeded. Finally 20 men were put upon their trial. One man, Ram Bharose, whose name had been mentioned in the first report, could not be discovered. The learned Sessions Judge convicted 17 out of 20 men, acquitting three. He found 5 guilty of murder but refused to sentence them to death giving the following reasons:—

“ I think it is a legitimate reason to say that when in a case like this the dead body is not found there is a reasonable case where sentence of transportation may be awarded instead of the heavier sentence.”

Although, as it will be seen, my learned brother and myself do not propose to uphold the convictions against any of the appellants I think it necessary to disassociate myself entirely from the view laid down by the learned Sessions Judge upon this point. I was a party in the Allahabad High Court to the decision of an appeal against convictions from murder—*Bandhu and another v. Emperor* (1), in which the Bench refused to uphold a conviction of murder in a case in which the body had not been found, but apparently my decision in that case has been misunderstood. I do not see why it should have been, for the words appear clear enough. I want to make it

(1) (1924) 22 A.L.J., 340.

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perfectly clear what I meant in that decision. When a court is not convinced that a man is dead it is impossible to convict any one of his murder as I remarked in that case. This proposition is elementary and in that particular case the Bench refused to convict of murder because they were not convinced that the man was dead. They did not base this finding merely on the fact that the body had not been found. They based it on the fact that they were not satisfied that the man was dead. Speaking for myself I wish it to be clearly understood that if I had been convinced in that case that the man was dead I would have, of course, upheld the conviction of murder and I should further have upheld the sentence of death. There are three stages in the matter. (This is elementary but it must be repeated.) First of all the court must be satisfied that the murder has been committed: then it must be satisfied that the appellant has committed the murder. At the third stage the question of sentence should be determined upon the gravity of the offence quite irrespective of the circumstance whether the body has, or has not, been discovered. This was the view taken by the learned CHIEF JUSTICE of the Allahabad High Court and BANERJI J., in a recent decision *Ragha v. Emperor* (1). I agree with the view that they expressed upon the point. Having cleared this preliminary matter which will have nothing to do with the decision of the appeal I now proceed to examine the evidence upon which the appellants have been convicted. Now it is in evidence that Ratan Gir gave the names of five witnesses, Bawar Goshain, Ram Adhin Nao, Din Dayal Nao, Behari Ahir, and Nanku Kurmi. Behari Ahir and Nanku Kurmi have given evidence for the prosecution. Bawar Goshain and Ram Adhin Nao have

(1) (1925) 23 A. L. J., 821.

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given evidence for the defence and if their evidence be believed the appellants are entitled to an acquittal. Ratan Gir subsequently admitted that Din Dayal Nao was not present at the time of the occurrence. The learned Sessions Judge has not laid sufficient stress upon this point. I next come to another point. According to the first report and the evidence in the Sessions Court the attack upon Prag Gir and upon Ratan Gir and Hanuman Gir took place a little before sunset on the 19th of August, 1925, that is to say somewhere about 6 p.m. According to the evidence of the witnesses of Nanku, the *Mukaddam*, who was a friend and associate of the victims of the attack and other people, who bore them no ill-will, were present at the time. Yet we have it in the evidence that Ratan Gir and Hanuman Gir were left lying helpless and friendless upon the place where they had been nearly done to death, that place being only 150 yards from their own home, and that no one made any attempt to take them back to the shelter of their own roof. The story goes that, after the night had advanced considerably, they crawled home. Ram Dulare is only a youth of 13 but he is not an infant. We have it from him that he apparently, though he had every reason to apprehend that his uncle, his father and his brother had fallen into an ambush of desperate men, took not the slightest trouble to ascertain what had become of them, although none of them returned home and that when they did return home instead of attending to their injuries he went to bed. There are many other remarkable points about this remarkable case and a consideration of these points has brought us both to the conclusion that it would be manifestly wrong and improper to uphold the convictions. It would appear to us that the probable explanation of the undoubted disappearance of Prag Gir and the

terrible injuries inflicted upon Ratan Gir and Hanuman Gir combined with the amazing falsity of the evidence which has been adduced to explain the disappearance and the injuries is to be found in the suggestion advanced for the defence that as a matter of fact Prag Gir, Ratan Gir and Hanuman Gir were set on after dark on the night of the 19th of August, 1925, by persons whom Ratan Gir and Hanuman Gir were unable to identify. The scene of the occurrence may well have been the corner of the field where the blood stains were subsequently found, and it would appear to us that what probably happened was that Ratan Gir and Hanuman Gir were hammered into unconsciousness, and, when they regained capacity to crawl back to their house 150 yards away, Prag Gir had disappeared, and that they do not know to this day what had become of him. The long delay in making the first report was necessitated, no doubt, to some extent by the injuries of Ratan Gir and Hanuman Gir, but it is clear enough to our minds that the interval was utilized not only in attending to their hurts but for fabricating a case in which they swept into one net not only every man in the village whom they thought likely to have been one of their unknown assailants of the night before, but also other persons who were not popular with the witnesses who proposed to support their story. In these circumstances there is nothing to do except to accept the appeals of all the appellants, set aside their convictions and sentences and direct them to be set at liberty and we do this accordingly. We have to note, however, that one of these persons convicted has not appealed. We are informed that he is dead. In these circumstances nothing need be done about him. We would, however, point out to the authorities that, in our opinion, pro-

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ceedings should stop against the absconder Ram Bharose.

RAZA, J. :—I agree.

Appeal allowed.

MISCELLANEOUS CIVIL.

Before Mr. Justice Wazir Hasan and Mr. Justice Ashworth.

January, 16.

NATIONAL BANK OF UPPER INDIA, LUCKNOW (IN LIQUIDATION) THROUGH ITS LIQUIDATORS (APPLICANT) v. DINA NATH SAPRU AND OTHERS (OPPOSITE-PARTY).*

Indian Companies Act (VII of 1913), section 235—Directors of the company, liability of, for the actions of the officers or other directors of the bank—“ Wilful neglect or default ” meaning of—“ Misfeasance ” as used in section 235 of the Indian Companies Act, meaning of.

Held, that the directors of a company cannot be held personally liable on the ground that they have trusted the regularly authorized officers of the company and have failed to detect and been misled by misrepresentation or concealment by such officers when there was no reason for doubting their fidelity.

Where the articles of association of a company laid down “ that no director or other officer of a company shall be liable for the acts, receipts, neglects or defaults by any director or officer or for any other loss, unless the same happens through his own wilful act or default ”, *held*, that those provisions were not inconsistent with the provisions of section 235 of the Indian Companies Act of 1913.

Held further, that “ misfeasance ” as used under section 235 of the Indian Companies Act must be misfeasance in the nature of a breach of trust resulting in a loss to the company, and there can be no case of breach of trust against the directors unless it is proved that they were guilty of “ wilful neglect or default ”.

* Miscellaneous Application No. 442 of 1923, under section 235 of the Indian Companies Act (VII of 1913).