

1892 The plaintiff, however, must pay the costs of this appeal, in which
 the appellants have obtained a substantial success.

SARAT
 CHUNDER
 DEY
 v.
 GOPAL
 CHUNDER
 LAHA.

Appeal allowed. Decree varied.

Solicitors for the appellants : Messrs. *Barrow and Rogers.*

Solicitors for the respondent Gopal Chunder Laha : Messrs.
T. L. Wilson & Co.

C. B.

CRIMINAL REFERENCE.

Before Mr. Justice Pigot and Mr. Justice Rampini.

1892
 August 24.

THE QUEEN-EMPRESS v. GOPAL SINGH AND OTHERS.*

Criminal Procedure Code (Act X of 1882), section 45—Penal Code (Act XLV of 1860), section 176—Omission to give information to Police of offence.

Where one of several persons bound to give information to the police under section 45 of the Criminal Procedure Code gave such information as to the commission of a murder, in consequence of which a police officer arrived in the village shortly after the occurrence, *held*, that the fact that other persons who might possibly also be bound to give that information had omitted to do so was no ground for their prosecution and conviction of an offence under s. 176 of the Penal Code.

In the matter of the petition of Sashi Bhusan Chuckerbutty (1) relied on.

THIS was a reference made by the Sessions Judge of Saran, under the provisions of section 438 of the Criminal Procedure Code, the facts of which were stated in his letter of reference as follows:—

“Shortly before dawn on the 8th March last, one Rocha Kuer was murdered in the village of Sarai Bukhsh by her nephew Rit Lal Thakur. Sheo chunkidar of Raipura (a village adjacent to Sarai Bukhsh), in whose jurisdiction the murder was committed, gave information of the murder at the nearest police-station Gurkha, at 8 o'clock on the morning of the 8th

* Criminal Reference No. 218 of 1892, made by H. W. Gordon, Esq., Sessions Judge of Saran, dated the 30th July 1892, against the order passed by the Deputy Magistrate of Chapra, dated the 12th May 1892.

March, and the head-constable proceeded to the spot at once, arriving about 9 A.M. The Sub-Inspector of Police followed him and reached the spot at 7 P.M. on the same date. On the next day, while the Sub-Inspector was investigating the case, Narayan Dut Lal, putwari of some of the proprietors of Sarai Bukhsh, who lived at Sripal Basant, four miles distant from the scene of the murder, appeared before him and submitted a written report of the murder on his employers' behalf. The Sub-Inspector of Police subsequently submitted a report to the District Magistrate, giving the names of 16 persons who he considered were under a legal obligation to give information of the murder, and the Magistrate thereupon ordered those persons to be prosecuted for an offence under section 176, Penal Code. Of these two are village chaukidars, three are *zurpeshgidars* occupiers of the village, eight are proprietors, and three are members of the village punchayet constituted under Bengal Act VI of 1870. On the 12th May 1892, six of these persons were acquitted and ten were convicted and sentenced, seven of them (*zurpeshgidars* and proprietors) to pay a fine of Rs. 20 each, and the three members of the punchayet to pay a fine of Rs. 10 each, or in default all to undergo one month's rigorous imprisonment."

1892

THE
QUEEN-
EMPRESS
v.
GOPAL
SINGH.

Of the persons convicted, four proprietors and two *zurpeshgidars*, Achyat Singh and Gopal Singh, petitioned the Sessions Judge for revision, and he being of opinion that the order of the Magistrate was illegal referred the matter to the High Court with the recommendation that the convictions should be set aside on the following grounds:—

"I consider that the order is wrong in law, and also that under the circumstances of the case it is an improper order.

"The four proprietors, Ram Dut Singh, Sant Bux Singh, Chakrapan Singh, and Surja Pershad Singh, live at Sripal Basant, which is four miles from Sarai Bukhsh, the scene of the murder. There is no evidence on the side of the Crown that those persons were aware on the 8th March that a murder had been committed in Sarai Bukhsh on that date, and I do not think it can be conclusively presumed that they had obtained information merely because they were present in the village of Basant on the day of the murder, a village too four miles distant. I think it lay on the Crown to show that they had obtained this information, otherwise it cannot be held that they were under a legal obligation to report the murder as required by section 45, Criminal Procedure Code. Besides, on the side of these four petitioners there is the evidence of two witnesses, Narayan Dut Lal and Ram Khelavee Rai (which the Deputy Magistrate does not say he disbelieves), which proves that they did not obtain information of the murder until the next day, viz., the 9th March, and that Narayan Dut then went to the spot and reported the matter to the Sub-Inspector on their behalf. In these circumstances

1892
 THE
 QUEEN-
 EMPRESS
 v.
 GOPAL
 SINGH.

I think these four accused sufficiently discharged the obligation imposed upon them by section 45, Criminal Procedure Code, and should therefore on this ground alone have been acquitted. As regards the *zurpeshgidars*, Gopal Singh and Achyat Singh, the case is different. They reside in Sarai Bukhsh, a short distance from the spot where the murder was committed. The evidence shows that Achyat was in his threshing floor at the time; there is no evidence on the record that Gopal Singh was in the village at all on that particular day, and I think it was for the Crown to prove this, and not for him to prove an *alibi*. Admitting, however, that he was there, and as well as Achyat was aware of the murder, can it be safely said that both he and Achyat intentionally omitted to give information to the police. Presuming they knew of the murder shortly after it was committed, it is only fair to presume that they also knew that the village *chaukidars* had gone to inform the police, and they must have known this positively when the head-constable arrived in the village at 9 A.M. If this be so, then they may well have thought that it was not necessary for them to give the police information they were already in possession of. Moreover, I would invite the attention of the Honourable Court to the judgment of AINSLIE and BROUGHTON, JJ., in the case of *Sashi Bhusan Chuckerabutty* (1).

That judgment was given with reference to the provisions of section 90, Act X of 1872, but the principle laid down is equally applicable to section 45 of the present Code. The learned Judges held "that when information is conveyed to the nearest Magistrate or police officer by one of the parties bound to give such information, it is not reasonable that every other person who may possibly be bound to give information should be prosecuted for not having done so." The present case is in many respects similar to the one reported, and therefore, I think, the prosecution was unreasonable and improper, and that the High Court can set aside the proceeding on this ground."

The reference came on to be heard on the 24th August, before a Bench consisting of PIGOT and RAMPINI, JJ.

No one appeared on the reference.

The following judgment was delivered:—

For the reasons mentioned in the letter of the Sessions Judge we set aside the conviction and sentence, and order that the fine if paid, or any part of it which may have been paid, be refunded.

Conviction set aside.

A. F. M. A. R.

(1) I. L. R., 4 Calc., 623.