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time as the property is attached under rule 54. I would accordingly answer the reference in these terms.

COURTNEY TERRELL, C. J.—I agree.

APPELLATE CRIMINAL.

Before Fazl Ali and Scroope, JJ.

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May, 16, 19. June, 11.

RUP NARAIN KURMI

v.

KING-EMPEROR*

Penal Code, 1860 (*Act XLV of* 1860), *section* 201, *scope of—section, whether applies to principal offender—accused charged for principal offence—conviction under section* 201, *whether permissible—whether necessary to find that principal offender is some known person—Jury, when can be directed to return a verdict of not guilty—Code of Criminal Procedure* 1898 (*Act V of* 1898), *section* 189(2)*—scintilla of evidence—Jury to decide whether or how far evidence to be believed.*

Section 201, Penal Code, 1860, provides:

"Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine:....."

Held, (*i*) that the section does not relate to the principal offender but to persons other than the actual criminal who, by causing the evidence of the offence to disappear, assist the principal to escape the consequence of his crime.

Queen v. *Ramsundar Shootar*(1), *Reg.* v. *Kashinath Dinkar*(2), *Queen-Empress* v. *Lalli*(3), *Queen-Empress* v. *Dungar*(4), *Torap Ali* v. *Queen-Empress*(5), followed.

* Criminal Appeal no. 37 of 1930, from a decision of F. G. Rowland, Esqr., I.C.S., Sessions Judge of Patna, dated the 14th December, 1929.

(1) (1867) 7 W. R. (Cr.) 52.
(2) (1871) 8 Bom. H. C. R. (Cr.) 126.
(3) (1885) I. L. R. 7 All. 749.
(4) (1886) I. L. R. 8 All 252.
(5) (1895) I. L. R. 22 Cal. 638.

Emperor v. *Harpeary*(1), not followed *quoad hoc*.

(*ii*) that where, however, it is impossible to say definitely that a person has committed the principal offence, he cannot escape conviction under this section merely because he has been charged also with the principal offence or because there are grounds for suspicion that he might be the principal culprit.

Sumanta Dhupi v. *King-Emperor*(2), *Queen* v. *Limbya*(3), *Teprinessa* v. *Emperor*(4), *Begu* v. *King-Emperor*(5), *Umed Sheikh* v. *King-Emperor*(6) and *Emperor* v. *Harpeary*(1), followed.

Torap Ali v. *Queen-Empress*(7), (quoad hoc), not followed.

Held, further, that in order to justify a conviction under section 201, it is not necessary to find that the principal offender is some known person.

It is only in cases falling under section 189(2), Code of Criminal Procedure, 1898, where a Judge can direct the Jury to return a verdict of not guilty.

Where, however, there is some evidence in the case, it is for the Jury to say whether or how far the evidence is to be believed and it is not correct to say that the matter can be left to the Jury only if the evidence relating to it is satisfactory, trustworthy and conclusive.

Begu v. *King-Emperor*(5) and *Ramcharitar Singh* v. *King-Emperor*(8), followed.

Emperor v. *Upendra Nath Das*(9) and *Ryder* v. *Wombwell*(10), referred to.

The facts of the case material to this report are stated in the judgment of Fazl Ali, J.

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(1) (1926) I. L. R. 49 All. 57.
(2) (1915) 20 Cal. W. N. 166.
(3) (1895) Unreported, Cr. Cases, Bom. H. C., 799.
(4) (1918) I. L. R. 46 Cal. 427.
(5) (1925) I. L. R. 6 Lah. 226, P. C.
(6) (1926) 30 Cal. W. N. 816.
(7) (1895) I. L. R. 22 Cal. 688.
(8) (1927) 8 Pat. L. T. 691.
(9) (1914) 19 Cal. W. N. 653.
(10) (1869) 4 Ex. 32.

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Sir Abdur Rahim and *A. A. Syed Ali*, for the appellants.

S. M. Gupta, for the crown.

FAZL ALI, J.—This is an appeal on behalf of six persons who have been convicted under section 201 of the Indian Penal Code and sentenced to seven years' rigorous imprisonment each. They were tried by the Sessions Judge of Patna and a jury on various charges including a charge under section 302 of the Indian Penal Code but the jury acquitted them of the other charges and found them guilty only under section 201 of the Indian Penal Code.

The prosecution case is briefly as follows—One Santlal, who is said to have been murdered, was on bad terms with one Parichan with whom the other accused persons are said to be connected. There were two counter cases brought respectively by Parichan and Rachhya, a brother of the deceased, in each of which more than one man of the opposite faction was accused but these cases were compounded on appeal. To celebrate Santlal's acquittal, which followed as a result of the compromise, a dance was arranged on a Monday preceding the day of the occurrence and two performers Nathuni and Titai were invited to dance. This is said to have exasperated Parichan and the other accused persons to such an extent that on the 20th August, 1929, at about midday when Santlal was returning home from his field, these appellants, with the exception of Raghuta, surrounded him near his house and attacked him with ganrasas and lathis with the result that he died then and there. Two witnesses named Titai and Nathuni who came running to the spot were driven away, Nathuni being also beaten with a lathi. The occurrence was witnessed by one Ajodhya, a brother of Santlal, who immediately started for the thana to lodge an information. Meanwhile the dead body was carried by the appellants and certain other persons to the river Poonpoon where

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after it had been cut into pieces it was thrown into the river. The appellants were seen carrying the dead body to the river by Patia (P. W. 5), the mother of the deceased, one Partitwa (P. W. 6), a cowherd aged about ten years, another cowherd named Matia and two other persons, namely, Zalim and Ram Bishun. The last two witnesses say that they saw the accused carrying the dead body when they were in their ijara field in Jamui while the remaining three witnesses allege to have seen the body being carried when they were not far from the scene of the murder. Musammat Patia, the mother of the deceased, further says that when she saw the dead body of her son being carried she screamed and wept, whereupon the accused dropped the dead body in a field and fled away. She then proceeded to take the body into her lap but six of the accused persons returned and forcibly took the dead body from her and carried it away eastward towards the river Poonpoon. Lastly, there is the evidence of one Chhatardhari, a brother of the deceased, who says that he returned to his house at about noon and hearing that his brother had been murdered and his dead body was being carried, he followed the accused to the bank of the river Poonpoon where he saw them cutting up the body and throwing it in pieces into the river which was in flood.

Now, one of the points which was strenuously debated before us and on which the chief arguments addressed to us by Sir Abdur Rahim who appears for the appellants are based, was as to whether section 201 of the Indian Penal Code applies only to persons other than the actual offenders or whether it is comprehensive enough to include those cases also where a person who has himself committed an offence has caused the evidence of his crime to disappear with a view to screen himself from punishment. This point has been discussed in a series of cases and it appears to me that the balance of authority is decidedly in favour of the view that this section does not relate to the principal offender but to persons other than

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the actual criminal who, by causing the evidence of the offence to disappear, assists the principal to escape the consequence of his offence. This view was put forward as early as in 1867 in the case of *Queen* v. *Ramsundar Shootar*(1) and it was adopted in the cases of *Reg.* v. *Kashi Nath Dhinkar*(2), *Queen-Empress* v. *Lalli*(3) and *Queen-Empress* v. *Dungar*(4). It was pointed out in these cases that from the language used in the section as well as having regard to the heading of Chapter XI which contains this section and to the marginal note of the section itself, it was clear that the person who is concerned as principal could not be convicted of the secondary offence of concealing the evidence of his own crime. In *Reg.* v. *Kasinath Dhinkar*(2), Lloyd and Campbell, JJ. further pointed out that looking at the only *Illustration* which is appended to section 201 it would appear that the law was intended to apply exclusively to a person other than the offender himself and, therefore, the conviction of an accused person as an accessory to an offence which was committed by himself was illegal. All these cases were referred to and followed in *Torap Ali* v. *Queen-Empress*(5) by Norris and Beverley, JJ. who observed—

"There are several judgments of High Courts in India which support this opinion and I am not aware of any that are in conflict with it. .....These rulings extend over a period of 19 years and are by nine Judges of three of the High Courts. It is incredible that all of them could have escaped the notice of the Legislature: and it is, therefore, reasonable to suppose that the section would have been amended had its meaning been misinterpreted by so many Judges of at least three of the High Courts in India".

(1) (1867) 7 W. R. (Cr.) 52.
(2) (1871) 8 Bom. H. C. R. (Cr.) 126.
(3) (1885) I. L. R. 7 All. 749.
(4) (1886) I. L. R. 8 All. 252.
(5) (1895) I. L. R. 22 Cal. 638.

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What had happened in this case was that certain persons who had been charged with murder as well as with an offence under section 201, Penal Code, were acquitted of the charge of murder but convicted of the latter offence and it was held by the High Court on appeal that the conviction could not stand. It has, however, been held in some of the later decisions of the Calcutta High Court that the learned Judges who decided that case went rather too far and Chapman and Roe, JJ., while discussing the scope of section 201 in the case of *Sumanta Dhupi* v. *King-Emperor*(1), referred to the decision of Jardine, C.J. and Ranade, J. in the case of *Queen* v. *Limbya*(2) and observed as follows—

"I accept with confidence the rule laid down in that case that where it is impossible to say definitely, however strongly it might be suspected that an accused was guilty of murder, mere suspicion is no bar to a conviction under section 201. But I am satisfied that if it be accepted as a proved fact that the accused before the Court disposed of a dead body and if the acceptance of that fact completes the chain of circumstantial evidence which proves beyond doubt that the accused were actual principals present at the murder and taking part in the murder, they cannot be convicted of the minor offence of causing the evidence of the murder to disappear even though by an error of the Judge or by a misconception of the position by the Public Prosecutor the charge of murder is subsequently withdrawn".

Following this decision it was held by another Division Bench of the Calcutta High Court in *Teprinessa* v. *Emperor*(3) that where notwithstanding circumstances of great suspicion it is impossible on the record as it stands to hold that a person is a murderer or one of the murderers, his conviction

(1) (1915) 20 Cal. W. N. 166.
(2) (1895) Unreported criminal cases, Bom. H. C. 799.
(3) (1918) I. L. R. 46 Cal. 427.

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under sections 201 and 203 of the Indian Penal Code is not vitiated by the existence of such circumstances. This view seems to me to be indirectly supported by the decision of the Privy Council in *Begu* v. *King-Emperor*(1), where three of the accused persons though charged under section 302 only were acquitted of the offence under that section and convicted under section 201; and the Privy Council held that the course adopted by the Court was permissible under sections 236 and 237 of the Criminal Procedure Code. On the basis of this decision it was pointed out by a Division Bench of the Calcutta High Court in *Umed Sheikh* v. *King-Emperor*(2) that an alternative charge under sections 302 and 201 was not illegal.

Thus on a consideration of all these decisions it appears to me that it is now too late to contend that section 201 applies even to those cases where a person having himself committed an offence causes the evidence of that offence to disappear with the intention of screening himself from punishment. So far as I am aware this view has been put forward only in a recent case of the Allahabad High Court—*Emperor* v. *Harpeary*(3). That case was decided by Walsh and Pullan, JJ. and the material passage in their judgment runs as follows—

"The first point, namely, whether section 201 applies to the actual culprit in a case of murder is obviously academic. Nonetheless 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

(1) (1925) I. L. R. 6 Lah. 226, P. C.
(2) (1926) 30 Cal. W. N. 816.
(3) (1926) I. L. R. 49 All. 57.

case of *Queen-Empress* v. *Dungar*(1) and we hold definitely that it was wrongly decided."

With great respect to the learned Judges who decided the case I would point out in the first place that the observations made by them do not appear to have been absolutely necessary for the decision of the case and in the second place that these observations are not entitled to so great a weight as they would have been if the decisions of the other High Courts had been considered and the reasonings upon which they are based had been met. At the same time I am inclined to accept the restricted interpretation of section 201 which has been adopted in some of the recent decisions and according to which a person cannot escape conviction under this section merely because he has been charged also with the principal offence or because there are some grounds for suspicion that he might be the principal culprit. In my opinion it is also not necessary that in order to justify a conviction under section 201 it must be found that the principal offender is some known person, because there do arise cases where the principal offender may be unknown or untraced.

I will now proceed to deal with the principal argument advanced by Sir Abdur Rahim to attack the conviction of the appellants. It was contended by him that as the entire evidence adduced on behalf of the prosecution was directed to show that the accused persons were the actual murderers, the learned Sessions Judge should have pointed out to the jury that only one view was possible on the evidence if believed and it was that these persons were the actual murderers and so they could not be convicted under section 201 of the Indian Penal Code at all. According to Sir Abdur Rahim, this was not a case in which the evidence of any particular witness could or should have been divorced from the rest of the evidence or

(1) (1886) I. L. R. 8 All. 252.

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considered regardless of the alleged time and place of murder and the condition in which the dead body was said to have been found by those who witnessed it being carried towards the river. I am, however, unable to agree with this argument. There is no doubt that it was possible for the jury to have convicted the appellants of the charge of murder on the evidence adduced on behalf of the prosecution but it was not for the Sessions Judge to dictate to them how much of the evidence they were to believe and how much they were to disbelieve, nor was it right for him to say that they were not competent to base their verdict merely on the evidence of one or more of the witnesses if they believed those witnesses only and disbelieved the rest. In this case the evidence adduced by the prosecution naturally falls into two classes, (*1*) the direct testimony of Ajodhya who witnessed the murder and of Titai and Nathu who are alleged to have arrived on the scene of occurrence immediately after the assault on Santlal and (*2*) the evidence of those who saw the dead body being carried. It is true that some of the witnesses belonging to the latter class say that they saw the dead body being carried soon after the murder at a place which is not very far from the scene of occurrence. It is also true that the evidence of these witnesses tends to strongly support the charge of murder. At the same time there is the evidence of men who saw the body at some distance from the scene of murder and there is further the evidence of Chhatardhari who saw the body being cut into pieces and thrown into the river. It was open to the jury to believe the evidence of these witnesses only and to disbelieve the evidence of the others and if they did so and, therefore, found the appellants guilty under section 201, I do not think a Court of appeal can interfere with their verdict in such a case. It is only in those cases which fall under section 189, sub-section (*2*), of Criminal Procedure Code that the Judge can direct the jury to return a verdict of not guilty. The scope of this provision was

fully discussed in *Ramcharitar Singh* v. *King-Emperor*(1) and the observations of Jenkins, C.J. in *Emperor* v. *Upendra Nath Das*(2) as well as what was said in *Ryder* v. *Wombell*(3) as to the limitation of the rule that wherever there was a scintilla of evidence it was sufficient to leave the question to the jury, were also considered. It was held in that case that where there was *some* evidence in the case it was for the jury to say whether or how far the evidence was to be believed and it was not correct to say that the matter could be left to the jury only if the evidence relating to it was satisfactory, trustworthy and conclusive. The argument of Sir Abdur Rahim may be further met by reference to what happened in the case of *Begu* v. *King-Emperor*(4). In that case one Baksha, the murdered man, was riding home accompanied by a man called Turez who was the chief witness for the prosecution. At about 9 P.M. the latter left him to go to a well while Baksha proceeded. Very shortly after they had parted, Turez heard a cry and as he ran forward he saw Baksha being assaulted by six persons one of whom absconded and the other five were placed on their trial. Turez though sufficiently close to the accused to see what was happening had to run away because two of them threatened to attack him also and the party of villagers who went to the place shortly after the assault found that the dead body of the person murdered had been removed and there were only signs of blood and struggle on the ground. It was afterwards found that the corpse had been wrapped in a cloth and the accused had gone away with it. The Sessions Judge who tried the case convicted two of the accused persons of murder and the other three under section 201 though apparently the evidence of Turez strongly pointed to all of them

(1) (1927) 8 Pat. L. T. 691.
(2) (1914) 19 Cal. W. N. 653.
(3) (1869) 4 Ex. 32.
(4) (1925) I. L. R. 6 Lah. 226, P. C.

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having taken part in the murder. From this decision special leave to appeal was granted by the Privy Council but the appeal was ultimately dismissed by the Privy Council with these observations:

"Where there has been evidence before the Court below and the Court below has come to a conclusion upon that evidence, their Lordships will not disturb that conclusion; they will interfere in such circumstances as are referred to in the well known case of *Dillet* v. *Queen*(1), where there has been a gross miscarriage of justice or a gross abuse in the form of legal process. There has been no gross abuse of that kind and there is a large amount of evidence on which the Court could come to a conclusion at which they arrived."

In my opinion in this case also there was a fair amount of evidence before the jury on which the latter could have convicted the accused persons under section 201 and their verdict, therefore, cannot be challenged in appeal.

Sir Abdur Rahim has also contended that the jurors have been misdirected by the learned Judge in certain respects, the most important misdirection according to him consisting in the learned Judge not explaining the law as to section 201 to the jury and not telling them that this section does not apply to the person who has himself committed the crime, the evidence whereof has been removed. On the other hand, says Sir Abdur Rahim, the only passage in the charge which relates to this matter implies that according to the learned Judge it was possible for the murderers themselves to be convicted under section 201.

This passage runs as follows—

"Thus to establish the charge under section 201, that is to say, before you can find the accused guilty on this charge, you are to be

(1) (1887) 12 Ap. Cas. 459.

satisfied not necessarily that these people have murdered Santlal but that Santlal has been murdered and they knew this and that they deliberately made away with the body."

I agree with Sir Abdur Rahim that the charge might have been a little more explicit and the exact scope of section 201 should have been clearly pointed out by the learned Judge to the jury, but I am satisfied that there has been no failure of justice occasioned by the learned Judge not having done so as is evidenced by the fact that the jurors have found the accused not guilty of murder and have convicted them only of the offence under section 201. As I have already pointed out, such a course is permissible under the law and the mere fact that the accused persons have been found not guilty under section 302 is sufficient to show that they have not been proved to be the murderers and, therefore, there was no bar to their conviction under section 201. Beyond what I have said on this point I do not agree with Sir Abdur Rahim that there has been any misdirection in the case occasioning a failure of justice. Besides, Sir Abdur Rahim has told us in the course of his argument that he does not want a re-trial of the case and all that he wants is that if we agree with his contention on the first point, we should hold that the appellants should not have been convicted under section 201 and we should acquit them altogether. I have already said that I do not agree with him on the first point and, therefore, the appeal must fail and is dismissed.

FAZL ALI, J.

SCROOPE, J.—Sir Abdur Rahim for the appellants contends that the learned Sessions Judge misdirected the jury on the charge under section 201 of the Indian Penal Code. This portion of the charge runs as follows—

"thus to establish the charge under section 201, that is to say, before you can find the accused guilty on this charge, you are to be satisfied not necessarily that these people have murdered Santlal, but that Santlal has been murdered and they knew this and that they deliberately made away with the body".

Sir Abdur Rahim contends, relying on the cases which have been cited in the judgment of my learned

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brother, that section 201 cannot apply to the actual murderer and that the learned Sessions Judge should have told the jury that they could not convict the appellants under section 201 unless they were satisfied that they were not the actual murderers. Sir Abdur Rahim would even challenge as a misdirection a charge couched in the following terms—

> "Suppose you feel doubtful that these accused committed the murder and think that it is not proved that they did, then you should consider if they are guilty under section 201, which is the alternative charge, and to hold them guilty under that section, you must find that (*a*) they knew Santlal had been murdered, and that (*b*) they deliberately concealed the body so as to hush up the murder".

The only case that in effect really goes the length of the learned Counsel's extreme proposition, that before convicting under section 201, Penal Code, a Court must be satisfied that the accused person is not himself the murderer or one of them, is the case of *Torap Ali* v. *Queen-Empress*(1). The full implication of that case, however, has not been accepted in later decisions as my learned brother has shown. Chapman and Roe, JJ. accepted with confidence the rule laid down by Jardine, C.J. and Ranada, J. in the case of *Queen* v. *Limbya*(2) that where it is impossible to say definitely, however strongly it might be suspected that an accused was guilty of murder, mere suspicion is no bar to a conviction under section 201 [*Sumanta Dhupi* v. *King-Emperor*(3)]; and any authority that case might have had has been shattered by the recent decision of the Privy Council in *Begu* v. *King-Emperor*(4). Three other cases which are also against Sir Abdur Rahim's extreme view are cited in the judgment of my learned brother, namely, *Teprinessa* v. *Emperor*(5), *Umed Sheikh* v. *King-Emperor*(6) and

(1) (1895) I. L. R. 22 Cal. 638.

(2) (1895) Unreported criminal cases, Bom. H. C. 799.

(3) (1915) 20 Cal. W. N. 166.

(4) (1925) I. L. R. 6 Lah. 226, P. C.

(5) (1918) I. L. R. 46 Cal. 427.

(6) (1926) 30 Cal. W. N. 816.

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SCROOPE, J.

Emperor v. *Harpeary*(1). The contention of the learned Counsel for the appellants would bring us to this illogical position: a Court may find it proved that a person is guilty under section 201 but because it was not proved that he was not also the murderer it could not convict him under section 201. I see no answer to the simple argument of Walsh and Pullan, JJ. in the case of *Emperor* v. *Harpeary*(1) which amounts to this: 'why should a person who has actually committed a crime himself (whether murder or any other crime) be 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 crime." In my view, therefore, the charge of the learned Sessions Judge contained no misdirection and as has been pointed out by my learned brother, there was evidence justifying the verdict of the jury under section 201, Indian Penal Code.

I would, therefore, dismiss this appeal.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Fazl Ali and Scroope, JJ.

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May, 26, 27, June, 13.

SONARAM MAHTON

v.

KING-EMPEROR.*

Evidence Act, 1872 (*Act 1 of 1872*), *section 27—"information" meaning of—admissibility of evidence, principle governing—statement to Police by prisoner that he had hid the corpse in the mine—discovery of body and clothes in*

* Death Reference no. 15 of 1930, made by the Sessions Judge of Manbhum in his letter no. 899, dated the 16th April, 1930, and Criminal Appeal no. 106 of 1930, from an order of H. R. Meredith, Esq., I.C.S., Sessions Judge of Manbhum-Sambalpur, dated the 15th April, 1930.

(1) (1926) I. L. R. 49 All. 57