PRIVY COUNCIL.

Before Viscount Haldane, Lord Dunedin and Sir John Edge.

1925

Feb. 25.

BEGU AND OTHERS—Appellants,

versus

THE KING-EMPEROR,—Respondent.

Privy Council Appeal No. 151 of 1924.

Criminal Procedure Code, Act V of 1898, section 237—Charge of Murder—Acquittal—Removal of Body—Causing Disappearance of Evidence—Conviction under Indian Penal Code, section 201, without fresh charge.

Five persons were charged under section 302 of the Indian Penal Code with murder, and two of them were convicted. The evidence established that the other three had assisted to remove the body, knowing that a murder had been committed. Without any further charge being made, they were convicted under section 201 of the Penal Code of causing the disappearance of evidence.

Held, that the conviction without a further charge being made was warranted by section 237 of the Code of Criminal Procedure, 1898.

Judgment of the High Court affirmed.

Appeal from the judgment of the High Court (Broadway and Campbell JJ.) in Criminal Appeal No. 59 of 1924, dated 8th April 1924, affirming convictions and sentences pronounced by the Sessions Judge of Montgomery.

The five appellants were charged under section 302 of the Indian Penal Code with murder. Under circumstances which appear from the judgment of the Judicial Committee, the Sessions Judge convicted appellants 2 and 3 of murder and sentenced them to death, and convicted appellants 1, 4 and 5 of an offence under section 201 of the Code, namely, that they knowing that an offence had been committed caused the disappearance of evidence (*viz.*, the body of the murdered

man). He sentenced appellants 1, 4 and 5 to seven years' rigorous imprisonment.

Upon appeal to the High Court it was contended, *inter alia*, that the convictions of appellants 1, 4 and 5 should be set aside, on the grounds (1) that no charge under section 201 had been made, and (2) that the Sessions Judge had not taken the opinion of the assessors orally as required by section 309 of the Code of Criminal Procedure, but had put to them collectively certain questions in writing.

The High Court dismissed the appeal. The learned Judges held that having regard to section 237 of the Code of Criminal Procedure the conviction under section 201 of the Penal Code was valid although no charge had been formally made under that section. They considered that what was alleged to have taken place with regard to the assessors was an irregularity, but in their view it had occasioned no failure of justice, and under section 537 of the Criminal Procedure Code the convictions could not be interfered with.

The appellants petitioned the Judicial Committee for special leave to appeal, relying upon the two grounds proceeded upon before the High Court, more particularly that with regard to the questions alleged to have been put to the assessors.

Special leave to appeal was granted on 2nd July 1924. Subsequently the Registrar of the High Court communicated to the Registrar of the Judicial Committee a statement by the Sessions Judge denying that the alleged irregularity with regard to the assessors had taken place.

WALLACH for the appellants—The conviction of the appellants 1, 4 and 5, under section 201, without a charge under that section, was a serious departure from the procedure laid down by the Code of Criminal Procedure, and entitles those appellants to have their

1925

BEGU
v.
THE KING-EMPEROR.

convictions set aside. By section 233 of the Procedure Code there must be a separate charge for every distinct offence, except in the cases mentioned in sections 234, 235, 236 and 239, none of which apply. A formal charge should have been before the assessors, who under section 268 were an essential part of the tribunal. Section 237, under which the High Court held that the conviction was justified, applies only to cases within section 236. That section does not apply to this case, as the facts relevant to a charge under section 201 of the Penal Code are not the same as those in the case of a charge under section 302. An opportunity should have been given to rebut a charge under section 201.

DUNNE K. C. and KENWORTHY BROWN, for the respondent, were not called upon.

The judgment of their Lordships was delivered by—

VISCOUNT HALDANE—This is an appeal against a judgment of the High Court of Judicature at Lahore in a case which came before it on appeal from the Sessions Judge of Montgomery. By their judgment the High Court affirmed the sentence of death which had been pronounced by the Sessions Judge on two of the appellants and the sentence of seven years' rigorous imprisonment pronounced on the three other appellants.

Shortly stated the case made out by the prosecution was this. On the night of 15th June 1923, one Bakhsha, the murdered man, was riding home accompanied by a man called Turez, who was the chief witness for the prosecution. The latter parted from him about 9 P.M. to go to a well in one of his fields, and Bakhsha continued on his way. Very shortly after they had parted Turez heard a cry from the direction in which Bakhsha had gone; he ran forward

and saw Bakhsha being assaulted by the five accused, and another man, who has since absconded. It was said in the evidence that friction had existed between the families of Bakhsha and the accused. Turez came sufficiently close to them to see what was happening. Two of the accused, seeing him, threatened him and went towards him; but he ran away to the neighbouring village of Tibbi Hamid Sahu, where he raised an alarm and stated what he had seen. A party from the village at once went to the place where the assault had taken place, but they found no trace of Bakhsha, only signs of a struggle and blood on the ground. There was a certain amount of conflict of evidence. Turez said all the accused fell upon Bakhsha and inflicted on him many wounds with weapons which included a hatchet and other sharp weapons. It was afterwards found that when they had killed him they wrapped up his corpse in a cloth and placed it on a horse and went away with it. That is important in view of what took place at the trial. The horse was identified and trackers were able to trace the footprints of the accused, and the Court was satisfied that each of the appellants was identified.

The appellants were committed for trial at the Sessions Court on a charge of murder, under section 302 of the Indian Penal Code. The case was tried by the learned Judge at the Sessions Court with the aid of three assessors. At the end of the case the assessors gave their opinions, which were recorded, namely, that they were unanimously of opinion that Bakhu and Walia, the accused, had attacked Bakhsha with intent to kill him; that they murdered him; that two of the others who were present took part in the assault, as stated by Turez, the eyewitness; that there might be some doubt as to whether Hamid, one of the accused, was also present and took part in the assault or not; and, finally, that the prosecution case and evidence

1925

BEGU
v.
THE KING-EMPEROR.

appeared generally reliable throughout. That is what the learned Judge regarded as being the opinion of the assessors. The learned Judge, having the evidence and the views of the assessors before him and having considered them, on the 22nd December, delivered his judgment. With regard to Bakhu and Walia he decided that they intended to kill Bakhsha and were guilty of murder and he sentenced them to death. With regard to the other three, he was of opinion that the evidence did not sufficiently or definitely prove that they were present at and had taken part in the murder, but, on the other hand, he convicted each of them of having removed the body, and he sentenced them each to seven years' rigorous imprisonment.

From this judgment the appellants appealed to the High Court, and the appeal was heard by Broadway and Campbell JJ., who dismissed the appeal.

A petition for special leave to appeal from this judgment was presented to their Lordships. Leave was given, and the appeal now comes before the Board for determination.

The substantial question upon the appeal arises upon section 237 of the Criminal Procedure Code, that follows section 236 which provides that :—

"If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences."

That is followed by section 237, which is the vital one in this case :—

"If, in the case mentioned in section 236, the accused is charged with one offence, and it appears

in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

The illustration makes the meaning of these words quite plain. A man may be convicted of an offence, although there has been no charge in respect of it, if the evidence is such as to establish a charge that might have been made. That is what happened here. The three men who were sentenced to rigorous imprisonment were convicted of making away with the evidence of the crime by assisting in taking away the body. They were not charged with that formally, but they were tried on evidence which brings the case under section 237.

Their Lordships entertain no doubt that the procedure was a proper procedure and one warranted by the Code of Criminal Procedure.

The only other point remaining is this. The Code prescribes that the assessors shall give their opinions orally to the Judge. It is said that here they gave them in writing and the Judge dealt with them on that footing. The learned Judge says that is not so, and it is only faintly that this point is persisted in now. No such point was taken at the trial and no such point was raised until the end of the proceedings in the High Court, when the vakil for the prisoners raised it. Not only is it not shown that that aberration from the precise directions of the Code took place but, if it did take place, it has not been shown that it led to any miscarriage of justice at all.

This tribunal is not a Court of Criminal Appeal. When 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

1925

BEGU
v.
THE KING-EMPEROR.

conclusion; they will only interfere in such circumstances as are referred to in the well known case of *Dillet* v. *The Queen* (1), where there has been a gross miscarriage of justice or a gross abuse of the forms of legal process. Here there has been no abuse of that kind, and there is a large amount of evidence on which the Court could come to the conclusion at which they arrived. It is therefore outside the constitutional powers of their Lordships' Board, conforming to the principles which it has laid down, to interfere with the decision of the Court below.

In these circumstances their Lordships are unable to advise His Majesty to take any other course than to dismiss the appeal.

A. M. T.

Appeal dismissed.

Solicitors for appellants: *Ranken Ford & Chester.*
Solicitor for respondent: *Solicitor, India Office.*

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