was definitely held that in a case of abatement cross-objections could not be heard. It is, therefore, unnecessary for us to go into all the points which were urged by counsel for defendant-respondent No. 3 as to whether the cross-objections against co-respondents could be urged in the circumstances of this particular case. It is sufficient for us to hold that the appeal has abated in the present case and the cross-objections, therefore, cannot be heard. We, therefore, dismiss the cross-objections and allow Rs. 100 costs to counsel for defendant-respondent No. 3 in the same.

A. N. C.

Appeal abated and dismissed.

Cross-objections dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Agha Haidar.

DITTA—APPELLANT,

versus

THE CROWN—RESPONDENT.

1928

April 26.

Criminal Appeal No. 212 of 1928.

Criminal Procedure Code, Act V of 1898—Charge of murder—Acquittal—causing disappearance of evidence—conviction under section 201, Indian Penal Code, 1860—without fresh charge—legality of.

Where there is clear and independent proof that a person has caused evidence to disappear in order to screen some person or persons unknown, the fact that he had been tried and acquitted of the offence of murder would not, in itself, prevent his conviction under section 201 of the Indian Penal Code.

The mere fact, that the original charge was one under section 302 of the Indian Penale Code and the accused was tried and convicted under section 201 of the Indian Penal Code and no formal charge was framed in respect of an offence under the latter section, would not make his trial and conviction under that section illegal.

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Torap Ali v. *Queen-Empress* (1), *Sumanata Dhapi* v. *King-Emperor* (2), and *Kudaon* v. *Emperor* (3), dissented from.

Nazru v. *Emperor* (4), *Bucha* v. *King-Emperor* (5), *Begu* v. *King-Emperor* (6), followed.

Teprinessa v. *Emperor* (7), *Emperor* v. *Har Piari* (8), *Emperor* versus *Hanmappa* (9), and *Aung Kyaw Zan* v. *Crown* (10), referred to.

Ahmad v. *Emperor* (11), distinguished.

Appeal from the order of H. B. Anderson, Esquire, Sessions Judge, Multan, dated the 17th December 1927, convicting the appellant.

MUHAMMAD ALAM, for Appellant.

MUHAMMAD AKBAR, for GOVERNMENT ADVOCATE, for Respondent.

JUDGMENT.

AGHA HAIDAR J.

AGHA HAIDAR J.—Ditta has been convicted under section 201 of the Indian Penal Code and sentenced to seven years' rigorous imprisonment. He has filed an appeal to this Court. Ditta was charged under section 302 of the Indian Penal Code, but the Sessions Judge has held that the offence under section 302 of the Indian Penal Code has not been proved, and therefore, he acquitted the appellant of the charge of murder. He has, however, convicted him under section 201 of the Indian Penal Code, on the ground that at his instance certain discoveries had been made and that the appellant is, therefore, guilty of having caused the evidence of the commission of the

(1) (1895) I. L. R. 22 Cal. 638.
(2) (1915) 20 Cal. W. N. 166.
(3) (1925) 91 I. C. 236.
(4) 6 P. R. (Cr.) 1902.
(5) 1 P. R. (Cr.) 1904.
(6) (1925) I.L.R. 6 Lah. 226 (P.C.).
(7) (1919) I. L. R. 46 Cal. 427.
(8) (1927) I. L. R. 49 All. 57.
(9) (1923) 25 Bom. L. R. 231.
(10) (1902) 1 L. B. R. 316.
(11) 1926 A. I. R. (Lah.) 209.

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offence of murder to disappear, with the intention of screening the offender.

The learned counsel did not seriously contest the findings arrived at by the learned Judge on the evidence in this case. He made some feeble attempts to throw doubt upon the evidence of the discovery of the articles, namely, the *kuppis* and the knife, but he realised his difficulty and very properly gave up this line of argument. It may, therefore, be taken that so far as the findings of the learned Sessions Judge in regard to the evidence for the prosecution are concerned they have not been challenged. The judgment of the learned Sessions Judge is very full, and therefore, the facts of the case need not be recapitulated at any great length. For the purpose of the present appeal it is only necessary to say that one Khillu Ram left his native village in the morning for the purchase of *ghee*. He did not return in the evening. The accused, Ditta, who had also gone on a similar errand, however, along with another person returned to the village. Khillu Ram had carried two *kuppis* with him which were loaded on a donkey. A search was made for Khillu Ram but no trace of him could be found. On the following day the body of Khillu Ram was discovered at some distance from a certain ravine which he and the accused had crossed the day before. The *kuppis* were discovered in a pond at some distance from its bank at the instance of the appellant. In the same manner a knife with which the murder is alleged to have been committed was also found buried in the house of the accused. The Sessions Judge held that it was quite possible on the evidence produced by the prosecution that the murder was committed either by the accused himself or by the accused and his

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returned with him on the day in question, or it was committed by the accused's companion alone. He, therefore, held that the accused cannot be held guilty of the murder. On the evidence he was, however, satisfied that it was established that the accused produced the *kuppis* belonging to the deceased and the knife with which the murder was committed. He also believed the evidence, and I think rightly, that the accused stated at the time when he produced these articles that it was he who had hidden them in various places from which they were discovered. They were undoubtedly evidence connected with the murder. On these findings the Sessions Judge convicted the accused under section 201, Indian Penal Code.

Dr. Muhammad Alam argued that as the accused person was the murderer himself, therefore, he could not be charged under section 201, Indian Penal Code, and convicted of an offcence under it. The fallacy in his argument is that he takes it for granted that the appellant was the murderer of Khillu Ram. As a matter of fact the Sessions Judge has acquitted the appellant of the charge of murder. The learned counsel relied upon the case *Torap Ali* v. *Queen-Empress* (1), in support of his arguments. That case undoubtedly lays down that when certain accused persons are charged with murder, and also with the offence of causing the disappearance of the corpse of the deceased with the intention of screening the murderer from punishment, and they are ultimately acquitted of the charge of murder on the ground that it was impossible upon the evidence to say which of them caused the death of the deceased, their conviction under section 201 was illegal. The case seems

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

to have been followed in *Sumanata Dhupi* v. *King-Emperor* (1). A similar view was taken by a learned Single Judge in a Nagpur case *Kudaon* v. *Emperor* (2). But the current of decision so far as the Punjab Chief Court is concerned is uniform and is decidedly against the contention put forward by the appellant. In *Nazru* v. *Emperor* (3) it was held by a Bench of two learned Judges that where there is clear and independent proof that any person has caused evidence to disappear in order to screen some person or persons unknown, the mere fact that he had been suspected or even tried and acquitted of the principal crime, would not in itself prevent his conviction under section 201 of the Indian Penal Code. In *Bucha* v. *Crown* (4), another bench of learned Judges held after discussing a number of cases on the subject, including the case *Torap Ali* v. *Queen-Empress* (5), that when an accused person has been acquitted of a charge of committing a crime the fact that he had been suspected and tried of the principal offence would not prevent his conviction under section 201, if there is clear proof that he has caused the evidence to disappear in order to screen some unknown offender from legal punishment. With this statement of law I entirely agree. I may further point out that in the case *Teprinessa* v. *Emperor* (6), a bench of two learned Judges held 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 section 201 is not vitiated by the existence of such circumstances. The learned Judges

(1) (1915) 20 Cal. W. N. 166.
(2) (1925) 91 I. C. 236.
(3) 6 P. R. (Cr.) 1902.
(4) 1 P. R. (Cr.) 1904.
(5) (1895) I. L. R. 22 Cal. 638.
(6) (1919) I. L. R. 46 Cal. 427.

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have tried to distinguish the case of *Torap Ali* v. *Queen-Empress* (1). The case of *Emperor* v. *Har Piari* (2) is also against the contention put forward on behalf of the appellant. *Bucha* v. *Crown* (3) was cited with approval by a bench of two learned Judges of the Bombay High Court in *Emperor* v. *Hanmappa Rudrappa* (4). To the same effect is a decision *Aung Kyaw Zan* v. *Crown* (5), where three learned Judges held that though section 201, Indian Penal Code, does not apply to a person who is proved or admitted to be the principal offender, the mere fact that the accused is probably or possibly the principal offender does not prevent his conviction under section 201 of the Indian Penal Code for causing disappearance of the evidence of the offence. The learned counsel relied upon a case of the Lahore High Court, *Ahmad* v. *Emperor* (6). This case, however, has nothing whatever to do with the contention urged by the learned counsel. There it was held that a person who has been found guilty and convicted of an offence under section 302 could not at the same time be charged with and convicted of an offence under section 201. This case, therefore, has no bearing whatsoever upon the point raised by the appellant's counsel.

Lastly, the learned counsel says that the original charge was one under section 302 of the Indian Penal Code and that the trial and conviction of the appellant by the Sessions Judge was illegal as no formal charge had been framed in respect of an offence under section 201 of the Indian Penal Code. Hav-

(1) (1895) I. L. R. 22 Cal. 638.
(2) (1927) I. L. R. 49 All. 57.
(3) 1 P. R. (Cr.) 1904.
(4) (1923) 25 Bom. L. R. 231.
(5) (1902) 1 L. B. R. 316.
(6) (1926) A. I. R. (Lah.) 209.

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ing regard to the Privy Council Ruling in *Begu* v. *King-Emperor* (1), it is too late in the day to raise this contention seriously. I overrule it.

In my opinion the conviction of the appellant under section 201 was appropriate and the sentence of seven years' imprisonment, which the learned Sessions Judge has passed upon him, is by no means excessive and cannot be disturbed. I, therefore, dismiss the appeal.

A. N. C.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Addison.

RAHMAN—PETITIONER

versus

THE CROWN—RESPONDENT.

1928

April 27.

Criminal Revision No. 208 of 1928.

Punjab Laws Act, IV of 1872, section 39-A—Chaukidari Rules Nos. 25, 32, 44—Village Headman—duty of—where a cognisable offence has been committed.

Held, that to establish an offence under rules 25 and 32 of the Chaukidari Rules against a village headman it is necessary to show that, when a cognisable offence has been committed in the village, the headman received information of its commission and that there were certain circumstances existing which rendered it incumbent upon him to report to the police personally, and he omitted so to do. It was not sufficient to support a conviction to prove the bare fact that a cognisable offence was alleged to have been committed and that the headman did not report it at once.

Abas Khan v. *The Empress* (2), followed.

Application for revision of the order of Khan Sahib Sheikh *Ghulam Hussain, Magistrate, 1st class, Sheikhupura, dated the 1st September 1927, affirming*

(1) (1925) I. L. R. 6 Lah. 226 (P.C.). (2) 30 P. R. (Cr.) 1883.