

1892

MAQBUL
AHMED
CHOWDHRY
v.
GIRISH
CHUNDER
KUNDU.

manager is registered, there is no person to whom the tenants are liable to pay their rents.

In this view of the law, it appears to us that the decisions of both the lower Courts are erroneous, and must be set aside, and this suit dismissed with costs in all the Courts.

J. v. W.

Appeal allowed.

APPELLATE CRIMINAL.

Before Mr. Justice Norris and Mr. Justice Beverley.

TORAP ALI AND ANOTHER v. QUEEN-EMPRESS.*

1895

June 3.

Penal Code (Act XLV of 1860), section 201—Causing disappearance of evidence of supposed murder—Want of proof of commission of offence.

Section 201 of the Penal Code applies merely to the person who screens the principal or actual offender and not to the principal or actual offender himself.

The accused were charged with murder, and also with causing the disappearance of the corpse of the deceased with the intention of screening the murderer from punishment under section 201 of the Penal Code. The evidence for the prosecution pointed conclusively to one or other of them being the actual murderer; but it was impossible upon the evidence to say which of them caused the death. They were acquitted on the charge of murder, but convicted on the charge under section 201. *Held* that the conviction could not stand.

THE appellants were charged with murder and also with the offence under section 201 of the Penal Code. They were acquitted of murder, as there was no evidence to show which of the accused committed the murder, but were convicted on the charge under section 201 of the Penal Code. They appealed against the order of conviction.

Babu *Chandra Kanto Sen* appeared on behalf of the appellants. The *Deputy Legal Remembrancer* (Mr. *Kilby*) on behalf of the Crown.

Babu *Chandra Kanto Sen*.—There is no evidence that the deceased was murdered. All that has been proved by the medical

* Criminal Appeal No. 909 of 1894 against the Order of A. E. Staley, Esq., Sessions Judge of Backergunge, dated the 22nd of November 1894.

evidence is that he was killed. Therefore it was not proved that any offence had actually been committed, nor has it been proved that the accused knew or had information sufficient to lead them to believe that any offence had been committed : See *Queen-Empress v. Abdul Kadir* (1), *Queen-Empress v. Fateh Singh* (2), *Queen-Empress v. Matuki Misser* (3). Then it has been laid down in several cases that a person cannot be convicted under section 201 of the Penal Code if he himself is the principal offender : See *Queen v. Ramsoondar Shootar* (4), *Reg. v. Kashinath Dinkar* (5), *Queen-Empress v. Krishna* (6), *Queen-Empress v. Lalli* (7), *Queen-Empress v. Dungar* (8).

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The *Deputy Legal Remembrancer* did not argue the case on behalf of the Crown.

The judgment of the Court (NORRIS and BEVERLEY, JJ.) was as follows :—

The two accused were charged with the murder of one Moizuddeen, and also with causing the disappearance of his corpse with intent to screen the murderer from punishment under section 201 of the Indian Penal Code.

The Judge found that there was no evidence to show which of the accused committed the murder, and he acquitted them both on that charge. He convicted them, however, on the charge under section 201, and sentenced each of them to five years' rigorous imprisonment.

There was no pretence for implicating any one except the accused in the murder of Moizuddeen, and the evidence for the prosecution pointed conclusively to one or other of them being the actual murderer ; but it was impossible, upon the evidence, to say which of them caused the death.

The accused have appealed against the conviction under section 201, and their learned *Vakil* contends that it cannot stand.

We think this contention must prevail. In *Queen v. Ramsoondar Shootar* (4), *Kemp and Glover, JJ.*, said : " That section " (201)

(1) I. L. R., 3 All., 279.

(2) I. L. R., 12 All., 432.

(3) I. L. R., 11 Calc., 619.

(4) 7 W. R., Cr., 52.

(5) 8 Bom. H. C., Cr., 126.

(6) I. L. R., 2 All., 713.

(7) I. L. R., 7 All., 749.

(8) I. L. R., 8 All., 252.

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“refers to persons other than the actual criminals, who, by their causing evidence to disappear, assist the principals to escape the consequences of their offence.” In *Reg. v. Kashinath Dinkar* (1) Lloyd and Kembell, JJ., said: “Section 201 and the two following sections commence with precisely the same words thus: ‘Whoever knowing or having reason to believe that an offence has been committed.’ Now as there is no law which obliges a criminal to give information which would convict himself, it is evident that sections 202 and 203 could not apply to the person who committed that offence, *i. e.*, ‘the offence which he knew had been committed;’ and section 201 should, we think, be construed in a similar manner. And looking at the only illustration which follows section 201, it would appear that the law was intended to apply exclusively to ‘another,’ and we are, therefore, of opinion that the conviction of the accused as accessories to an offence, known or believed to have been committed by themselves, is illegal.” In *Queen-Empress v. Lalli* (2) Potheram, C.J., and Brodhurst, J., said: “In our opinion on the construction of the section the person who is concerned as a principal cannot be convicted of the secondary offence of concealing evidence of the crime.”

In *Queen-Empress v. Dungan* (3) Brodhurst, J., said: “I do not feel called upon to express any opinion as to the way in which section 201 of the Indian Penal Code should have been drawn. All that I conceive I have to do is to decide whether that section does or does not apply to a criminal causing disappearance of evidence of his own crime. The section is contained in Chapter XI, the heading of which is ‘Of false evidence and offences against public justice.’ The marginal note of section 201 is ‘causing disappearance of evidence of an offence committed for giving false information touching it to screen the offender.’ This is a correct abbreviation of the section, and from the wording of the section itself, and for the reasons given by Mr. Justice Lloyd, there is not, in my opinion, any room for doubt that the section applies merely to the person who screens the principal or actual offender. There are several judgments of High Courts in India which

(1) 8 Bom. H. C. Cr., 126.

(2) I. L. R., 7 All., 749.

(3) I. L. R., 8 All., 252.

support this opinion, and I am not aware of any that are in conflict with it. All of these judgments have not been reported, but it is quite sufficient to refer to the following five rulings : *Queen v. Ramsoondar Shootar* (1), *Reg. v. Kashinath Dinkar* (2), *Queen-Empress v. Krishna* (3), *Empress v. Bahala Bibi* (4), *Queen-Empress v. Lalli* (5). These rulings extend over a period of about nineteen years, and are by nine Judges of three of the High Courts. It is incredible that all of them can 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."

There are other cases to the same effect to which it is not necessary to refer.

The convictions must be set aside and the appellants acquitted and discharged.

S. C. B.

Conviction set aside.

APPELLATE CIVIL.

Before Mr. Justice Pigot and Mr. Justice Stevens.

DEBI DAS CHOWDHURI (PLAINTIFF) v. BIPRO CHARAN GHOSAL
AND OTHERS (DEFENDANTS).^c

1895

April 2 & 3.

Sale for arrears of revenue—Sale of share of Hindu widow—Act XI of 1859, section 54—On the sale of a share in an estate for arrears of revenue the reversion is lost.

Where a share of an estate held by a Hindu widow was sold for arrears of revenue it was contended that, under section 54 of Act XI of 1859, the estate acquired by the purchaser lasted only during the lifetime of the widow.

Held, that the purchaser did not take any interest limited to the life of the widow, but that the entire share passed by the sale.

SATANMANI, a Hindu widow, had a life interest in a share of a zemindari called Chandpara. Her share having been sold by the

^c Appeal from Original Decree No. 264 of 1892, against the decree of J. Whitmore, Esq., District Judge of Beerbhoom, dated the 8th of July 1892.

(1) 7 W. R., Cr., 52.

(2) 8 Bom. H. C., Cr., 126.

(3) I. L. R., 2 All., 713.

(4) I. L. R., 6 Calc., 789.

(5) I. L. R., 7 All., 749.