

## APPELLATE CRIMINAL.

*Before Mr. Justice Pontifex and Mr. Justice Field.*

IN THE MATTER OF THE PETITION OF BEHALA BIBI.  
THE EMPRESS *v.* BEHALA BIBI.

1881  
March 7.

*Penal Code (Act XLV of 1860), s. 201—False Information.*

A woman who, with her infant child, eloped from her husband's house, was afterwards arrested on a charge of murdering the child, which was missing. She made three different statements: (1) that she had left it with her husband; (2) that she had been enticed away by one R., who had taken the child from her; (3) that one H. had drowned the child. The Sessions Judge believed the last statement, and convicted her under s. 201 of the Penal Code.

*Held*, that the conviction was wrong, and must be set aside.

Section 201 of the Penal Code does not apply to a case where the person, who is the probable or possible offender, makes statements exculpating himself by inculpating another.

THE facts of this case are set forth in the judgment of Mr. Justice PONTIFEX.

No one appeared for the appellant or respondent.

PONTIFEX, J.—We think that the conviction in this case cannot be sustained.

The facts are as follows:—Behala, the appellant, with her infant, was sleeping in the same room with her husband. Her husband, on awaking about dawn, found her and her child missing. After some search, she was found at a relation's house, but without the child. As to what had become of the child she then, and subsequently, made contradictory statements. She said at one time that she had left it in the room with her husband. At another time she said that she had been enticed away by one Rakhai; that the child had cried, and Rakhai had said "let me go and leave it with its father;" that he then took the child away and quickly returned, upon which she and Rakhai went away together.

\* Criminal Appeal, No. 86 of 1881, against the order of F. W. V. Peterson, Esq., Sessions Judge of Jessore, dated the 14th January 1881.

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Before the Magistrate she said that one Herasatula had enticed her away, and that he had thrown the child into the river.

The Sessions Judge has believed the last story, and has convicted the woman under s. 201 of the Penal Code of giving false information respecting the murder of Ujjala, her infant, with the intention of screening the murderer from legal punishment, *i. e.*, with the intention of screening Herasatula. The information said to be false is that contained in her statement as to Rakhai. Now there is no evidence to show that the story about Herasatula is more true than that about Rakhai, and there is no good reason why the Judge should adopt one story rather than the other.

As to what the woman stated about Rakhai, the evidence is very meagre as to the exact language and the exact occasion upon which this language was used; and the statement as given by the Police Officer Bereshur is certainly not information respecting the *murder of Ujjala*, for she said merely that Rakhai had taken the child away after expressing an intention of leaving it with its father.

The unfortunate woman appears to have disappeared by night from her husband's side, and there is much reason to suppose that she took her infant with her. She was found some time after without her infant, which was of too tender an age to take care of itself. Under these circumstances, grave suspicion attached to the woman. When she was arrested, she made contradictory statements as to what she had done with the child. Her manifest object in making these statements was to exculpate herself. We think that s. 201 of the Penal Code was not intended to apply to such a case—a case, that is, in which the person, who is the possible or probable offender, makes statements exculpating himself by inculpating another.

That Herasatula murdered the child, and that Behala knowing this gave information respecting the murder, with the intention of screening Herasatula from punishment, rest upon no evidence. We reverse the conviction and direct the release of the appellant Behala.

*Conviction set aside.*