

Emperor Vs. Autar

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Court : Allahabad

Decided On : Nov-20-1924

Reported in : AIR1925All315

Appellant : Emperor

Respondent : Autar

Judgement :

Walsh, J.

1. This is an appeal by-Government from a judgment of the Additional Sessions Judge of Gorakhpur, who clearly had a very difficult case to deal with. Ganesh was undoubtedly murdered. Suspicions arose that he had been murdered at night on the premises, if not actually in the house, of his masters under circumstances which made the murder not very surprising. The investigation was highly unsatisfactory and another appeal is pending in regard to it which makes it undesirable to say anything more about it.

2. The present accused named Autar, a chamer and ploughman and quite illiterate, made a statement under section 164 of the Code of Criminal Procedure before a Deputy Magistrate, which has been treated as a confession. According to that statement his masters murdered this man inside the house by strangling him with a lathi under strong provocation. He himself was called in and was ordered to assist them in removing the corpse. He refused and they ran at him using

language, which the Judge has interpreted as meaning, either that they were threatening to kill him, or that they were threatening to beat him, - the difference in the accused's mind at the moment probably not being very great. Thereupon he submitted and assisted them in removing the corpse from the house, to the deceased's own field where it was found the next morning by the widow. The learned Judge believed this statement or confession to be true. We are inclined to agree with him. We summoned the accused and put various questions to him with the view of seeing whether he was not prepared to confirm this statement which he has since obstinately and without any very convincing statement to support him denied altogether. His attitude rather tended to make one doubt his denial, but in the view we take of the case, it is not necessary that we should decide this question. The ordinary inference to be drawn from the conduct of persons who have been concerned in a murder in a house, and who have removed the body to another place, is that they do so with the intention of causing at any rate the true evidence about the locality in which the murder took place to disappear, and in most cases with the object of screening the occupier of the house, and on this point we agree with the view submitted to us by the Government Advocate. We doubt whether the section can be limited to the mere act of causing the body, for example in a case of death, to disappear, but rather whether it was not intended to apply to the disappearance of any sort of evidence leading to establish the truth about the commission of the offence, the removal of such particular piece of evidence being done with the intention of screening some particular person. Taking a broad view of this matter we need only say that an appeal by Government must be considered on its merits just as any other appeal always must be. The onus is on the appellant and this onus is all the heavier if the judgment appealed from is one which approaches the consideration, of the question from a correct point of view and gives the accused the benefit of a reasonable doubt which exists in the mind of the Judge, In this case we cannot say that the judgment does not correctly weigh the matter from the correct legal standpoint. The Judge was right in following the case of *Empress of India v Kishna* (1818) 2 All. 713 and also in saying that it had not been dissented from, at any rate, in Allahabad. On this point that case, it is true, consists really of mere dicta, but if these are to be taken as having decided that removal of the corpse from the

place where it is originally found, to another place, is not within the section, we definitely hold that that is not the law. But on the question of the intention to screen the offender, the Judge has reasonably held that taking the confession as a whole and as the sole test of guilt, he entertains a real doubt whether the accused did not do what he did out of fear of instant death. The accused had just seen a fellow creature done to death quietly and expeditiously - according to his own statement - and his own death, unless he complied with his masters' order, was not unlikely to follow. We, therefore, hold that while what he did would have been an offence under Section 201 of the Indian Penal Code if he had acted without over-powering compulsion, he is entitled to the benefit of the doubt whether within the meaning of Section 94 of the Indian Penal Code he was not compelled by threats which reasonably caused his apprehension of instant death. The appeal must be dismissed.

Sulaiman, J.

3. I should like to add that in order to see whether an offence under Section 201 of the Indian Penal Code has been committed it is necessary to find that (1) the accused knowing or having reason to believe that an offence has been committed, (2) causes any evidence of the commission of that offence to disappear, (3) with the intention of screening the offender from legal punishment.

4. Believing his confession there can be no doubt that he was fully aware of the offence of murder having been committed by his masters. When a dead body is discovered in a house there is a strong circumstantial evidence connecting the owners of the house with the murder. Removal of the body from the house to a distant place does in my opinion amount to causing an evidence of the commission of that offence to disappear. I agree that that section cannot be confined to the destruction of the evidence of the murder itself. The words 'any evidence of the commission of that offence' clearly include any evidence of the commission by the offender of that offence.

5. When help is offered in removing a body from a house, it must be presumed that the intention is to screen the murderer from punishment.

6. I agree that the learned Judge in the case of *Empress of India v. Krishna* (1818) 2 All. 713 rather stated the law too broadly. That case, however, should be distinguished on two grounds. In the first place, the accused persons had actually been convicted of the offence of culpable homicide. The learned Judge took the view that under those circumstances they could not again be convicted under Section 201 of the Indian Penal Code inasmuch as they had tried to screen themselves from punishment and not other offenders. In the second place, in that case the body had been removed from one field to another. The discovery of it in the field of the accused was a very remote piece of evidence to connect them with the guilt. That fact may well have influenced the learned Judge in thinking that the act did not come within Section 201 of the Indian Penal Code.

7. In this case I agree there must have been a reasonable apprehension in the mind of the accused Autar that instant death to him be caused if he did not carry out the orders of his masters. The case, therefore, does fall under Section 94 of the Indian Penal Code and the conviction cannot be justified.

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