

Qabul and ors. Vs. Emperor

Qabul and ors. Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/464326

Court : Allahabad

Decided On : Sep-16-1932

Reported in : AIR1933All30

Appellant : Qabul and ors.

Respondent : Emperor

Judgement :

Pullan, J.

1. Six persons were charged in the Court of the Sessions Judge of Muzaffarnagar with the murder of one Ganga. No other charge was preferred against them, except the charge under Section 302, I.P.C. Two of these persons were acquitted, but four of them although acquitted of the charge of murder, were convicted of offences under Sections 194 and 201, I.P.C., and sentenced to 7 years' rigorous imprisonment on each charge. The facts of this case are somewhat unusual. A report was made by one of the present appellants, Jai Singh, at the police station of Shamli at 7 A.M. on 25th August 1931 that his father Ganga was missing and that he was probably confined in the house of one Pirthi. There is nothing in the report to suggest that Ganga was murdered but it is said that on the way to the village Jai Singh informed the police of his suspicion that Ganga had actually been murdered. Pirthi's house was searched and the body of Ganga was found in an inner room. It was subsequently ascertained that Ganga had been hanged, and

the police officer who investigated the case discovered marks on the roof of the adjoining house suggesting to his mind that the body had been carried over that roof from outside and deposited in the place where it was found. Prithi, it may be observed,, was discovered smoking at the door of his house, and there can be little doubt that he was entirely unaware of the fact that the body was in his house. In spite of this, Pirthi and three other were arrested; but very soon suspicion was turned on Jai Singh and his relations. The police enquiry was conclusive, but ultimately Pirthi brought a complaint charging these six men with murder, and it is on this complaint that the case was committed to the Sessions and decided in the manner described above.

2. Evidence was called to show that Ganga was on bad terms with Jai Singh and Qabul Singh, his two sons but it is by no means clear that there j was any acute enmity, between them at the time. Ganga went to Muzaffarnagar and presented a petition on 24th August and the Judge has not believed any of the evidence which has been called to show that he was seen alive after that The medical officer, who conducted the post-mortem examination at 9.45 a.m. on 26th August was under the impression that the man had been dead for more than two days, but probably the medical officer failed to note the rapid progress of decomposition in the month of August, for certainly the man's death cannot have been caused till late in the afternoon on 24th August. It is, however, probable that it took place on that day, as the medical opinion is not likely to be so far out as to find that the corpse has been dead for more than 48 hours when actually it has been dead for less than 36 hours. The Judge has disbelieved all the evidence which goes to suggest that Jai Singh, his brother, Qabul Singh, his cousin, Sant Lal, and Qadam Singh, who is not related to the family, were seen with Ganga on the evening of the 24th August, and he has not found it proved that Ganga was hanged in the house of Hoshiara, who is the father of the accused Sant Lal. Indeed there is no evidence as to where the man was hanged or who hanged him.

3. The facts that are proved are simply these. Ganga was hanged, his body was found in Pirtvi Singh's house and apparently it had been carried in from outside. Jai Singh made a report at the police station suggesting that Ganga would be found in confinement in the house of Pirthi Singh. It appears to me that there was

no evidence on which Qabul Singh or Qadam Singh could have been convicted. As to Sant Lal, he has been convicted because the body is said to have been dragged over his roof. His brother Manphul was also charged, but was acquitted because he did not live in the house. But there is no evidence that Sant Lal was present in his house when the body was taken over the roof, and even if he was, that is no reason for supposing that he was an accomplice. As to Qadam Singh all that can be said is that he Went with Jai Singh when the latter made the report at the police station. It is not an offence to accompany another person to the police station, even when the latter makes a false report, and in my opinion Qadam Singh also cannot be convicted. There remains only the case of Jai Singh. There is certainly in his case the presumption that he must have known both that his father was dead and that his body would be found in the house of Pirthi Singh, and as a corollary it may be presumed also that he knew that Pirthi Singh was not responsible for his father's death. But the question whether Jai Singh should on these presumptions only be convicted of an offence under Sections 194 or 201, Penal Code, is far from clear. In the first place, it is not known for certain that Ganga was murdered. All that is known is that he was hanged, and he may have hanged himself or he may have been hanged by accident. It is also not certain that Jai Singh know how the man came by his death or how he was removed and placed in the house of Pirthi Singh. All that can be said is that he came to know in some way that Ganga would be found in the house of Pirthi Singh and reported that fact. I cannot see how in any case he could be guilty of an offence under Section 201, I.P.C. because the story believed by the Judge is not that he caused evidence of the crime to disappear but that he tried to fasten the crime on to some other person.

4. I Confess that I also find some difficulty in supporting a conviction of an offence under Section 194, I.P.C, with which this man was never charged and to which no reference is made either in the charge-sheet or in his examination. I have been referred in this connection to the case of *Begu v. Emperor* , in which their Lordships of the Privy Council dealt with the meaning of Sections 236 and 237, Criminal P.O. Their Lordships sum up the meaning of these sections read together in the following words:

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.

5. In that case persons acquitted of an offence under Section 302, I.P.C, were convicted of an offence under Section 201, I.P.C. It may be that an offence under Section 194 stands on the same footing as an offence under Section 201, I.P.C. But an offence under Section 194, I.P.C., brings into the field an entirely different set of circumstances' and' involves the fabrication of a false charge against a third party, which is in no way involved in a case of murder or in. a case of causing the evidence of murder to disappear. I am not prepared to say that the conviction of Jai Singh under Section 194 is, in view of the words of Section 236 and 237, illegal, but I certainly consider that this is a case in which such a conviction should not have been passed where the accused person has not in any way been asked to plead to the charge of fabricating false evidence. In these circumstances I am of opinion that all these persons should be acquitted. I accordingly allow these appeals, set aside the conviction and sentence and declare all the appellants to be acquitted. Qabul Single and Sant Lal, who are on bail, need not surrender to their bail.