

Sohan and ors. Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/469900

Court : Allahabad

Decided On : Apr-13-1932

Reported in : AIR1933All178a

Appellant : Sohan and ors.

Respondent : Emperor

Judgement :

Kendall, J.

1. Mr. Mukerji for the defence has addressed to me a legal argument on this part of the case, to the effect that the persons who are charged with the principal offence of murder cannot also be charged and convicted of the offence of causing evidence of the murder to disappear and in this connexion he has quoted the cases of *Empress of India v. Kishna* (1879) 2 All. 713, *Queen-Empress v. Lalli* (1885) 7 All 749, *Queen-Empress v. Dungar* (1886) 8 All 252 and *Torap Ali v. Queen-Empress* (1895) 22 Cal 638. Of these cases the most important is *Queen-Empress v. Lalli* (1885) 7 All 749, as that is a Bench decision of this Court in which the finding was that:

The person who is concerned as a principal cannot be convicted of the secondary offence of concealing evidence of the crime.

2. Whether these decisions would apply in a case like the present, where a number of people are charged with carrying out a massacre in the course of a riot, and not with any individual act, or with throwing live persons into a river in the course of a transaction which otherwise amounted to an offence under Section 201, appears to me to be a matter of grave doubt. In a more recent decision of the Calcutta High Court, *Teprinessa v. Emperor* AIR 1919 Cal 679, it has been held by a Bench of two Judges 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 Sections 201 and 203, I.P.C., is not vitiated by the existence of such circumstances. That is precisely the case here. Still more important however is a recent decision of the Lordships of the Privy Council which has been referred to by the learned Sessions Judge. In the case of *Begu v. Emperor* at a trial of five accused persons on a charge of murder, the High Court of Lahore had held that two of the accused intended to kill the deceased and were guilty of murder, and as to the remaining three the evidence was insufficient to prove their participation in the murder, but they had removed the body, and the Court convicted them of that offence. That again is a case the facts of which appear to be closely analogous to those of the present one, and their Lordships held that the convictions were legal. It is true that the matter for decision was whether the accused could be convicted of the offence of removing the body although there had been no separate charge in respect of that offence. Their Lordships however referred to Sections 236 and 237, Criminal P.C., and held that the procedure of the Courts in India had been a proper procedure. I have therefore no doubt whatever that the convictions under Section 201, I.P.C., are not bad in law.