

Sumanta Dhupi and ors. Vs. Emperor

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Court : Kolkata

Decided On : Aug-31-1915

Reported in : 32Ind.Cas.132

Judge : Chapman and ;Roe, JJ.

Appellant : Sumanta Dhupi and ors.

Respondent : Emperor

Judgement :

Roe, J.

1. The facts of this case as set forth in the judgment of the learned Sessions Judge are as follows: On the 3rd February one Girish Kahar disappeared and was never seen again alive. On the 12th February a dead body was found in a pond which appears to be an overflow from a tidal river. The body was lying under three feet of mud and on it was a heavy ladder. It was so far decomposed that the Medical Officer who held the post mortem examination was unable to give any cause of death: but from its clothing it was identified as the body of Girish by his relations. As soon as the body was discovered, a first information was lodged before the Police in which it was stated that the undoubted cause of the killing of Girish Kahar was that his cousin was an idiot and that his wife Nandarani was an immoral woman, her chief visitors being Sumanta Dhupi and Bhagwan Dhupi, two of the accused now before us, and that Girish was an obstacle to these intrigues.

After investigation two other Dhupies, Bharat Dhupi and Pyari Dhupi, were arrested by the Police and were brought before the Deputy Magistrate for the recording of statements which for the purpose of the present case it is not necessary to consider. It is sufficient to say that they are not admissible in evidence against the two accused Sumanta and Bhagwan. Evidence was placed before the Committing Magistrate to the effect that from the condition of the rice in the stomach of the deceased he must have died three or four hours after his last meal, which was taken at 6 p.m. A number of witnesses gave evidence that they saw Sumanta and Bhagwan, Pyari and Bharat between 6 and 8 p.m. loitering near the house of Girish and two boatmen saw Sumanta the same night at 11 P.M. with two other men at a spot a short distance from the place where the body was found. The men that they saw were muddied to the waist. Other witnesses saw Sumanta and Bhagwan about midnight returning to their homes with mud upon their legs. Upon this evidence the four accused Sumanta, Bhagwan, Bharat and Pyari were committed to the Sessions Court under Sections 302 and 201, Indian Penal Code.

2. On the case coming on for trial it was at once evident that it would be illegal to try both these offences together. Accordingly the charge under Section 201, Indian Penal Code, was first investigated, the charge under Section 302 being postponed for future consideration.

3. The facts as found by the Sessions Judge amount to this, that the Medical Officer is wrong in his deductions from the digestion of the food in the stomach of the deceased as to the exact hour of his death. That hour would more rightly be fixed at between 7 and 8 p.m. The Sessions Judge finds on the evidence that it is conclusively proved that Bhagwan and Sumanta disposed of the body of Girish by sinking it in the pond. He finds that it is conclusively proved that Girish was murdered between 7 and 8 P. m. on the night of the 3rd February. He is satisfied that Sumanta and Bhagwan had a sufficient motive for killing him. He finds that they were loitering near the house of Girish at the exact hour of the murder. On these facts he has convicted them under Section 201.

4. Section 201 is an attempt to define the position known in England as that of an accessory after the fact. It is settled law that a principal cannot be convicted as an accessory after the fact. The learned Judge recognises this. His argument is that the evidence on the record is insufficient to justify him in saying definitely that either Sumanta or Bhagwan was actually guilty of the murder and that therefore, there is no bar to their trial under Section 201. I have considered carefully the opinion of many learned Judges upon this section, particularly the opinion of Jardine, C.J., and Ranade, J., in the case of *Queen-Empress v. Limbya* Unreported Cr. Case Bom. H.C.R., 1895 at p. 790. I accept with confidence the rule laid down in that case that, where it is impossible to say definitely, however strongly it might be suspected, that an accused was guilty of murder, mere suspicion is no bar to a conviction under Section 201. But I am satisfied that if it be accepted as a proved fact that the accused before the Court disposed of a dead body and if the acceptance of that fact completes the chain of circumstantial evidence which proves beyond doubt that the accused were actual principals present at the murder and taking part in the murder they cannot be convicted of the minor offence of causing evidence of the murder to disappear, even though by an error of the Judge or by a misconception of the position by the Public Prosecutor the charge of murder is subsequently withdrawn.

5. We must take it as a fact conclusively proved that the accused on the night of the murder of Girish disposed of his dead body. We must take it that before any investigation had been made by the Police Sumanta and Bhagwan were clothed with a motive for the murder. We must take it as proved beyond dispute that the murder was committed between 7 and 8 p.m. and that between 7 and 8 v.a. Sumanta and Bhagwan were seen by numerous witnesses loitering near the house of the deceased. If all these facts are accepted as being conclusively proved, it is beyond question that they amount to a chain of circumstantial evidence amply sufficient to justify the conviction of the accused as principals. If we accept the facts found the appellants were certainly principals. If we do not accept the facts found they are on the merits of the case not guilty. There is in this case no escape from that position. The appellants Sumanta Dhupi and Bhagwan must be acquitted.

6. With regard to Pyari Dhupi there are two flaws in his conviction. In the first place on the facts found by the Sessions Judge all, that he did was to tie the body of Girish to a ladder. In one part of his judgment he says that it is not shown for certain whether Girish was, dead when he was tied to the ladder In another part of his judgment he says that Payari helped to tie the body to the ladder because he was abused. Accepting these findings of fact it is clear, in the first place, that when Pyari lent his assistance it is not certain that the offence of murder had been committed. In the second place, if indeed he only tied the ladder to the body of the deceased to avoid being abused it cannot be said that he assisted in disposing of the body with the intention of screening the murderers.

7. For these reasons I am of Opinion that the three appellants should be acquitted and released.

Chapman, J.

8. I agree that the appellants must be acquitted and released. I desire however, to guard myself from saying what my opinion would be if this case were one of first impression. I consider that I am bound by the decision of *Torap Ali v. Queen-Empress* 22 C. 638. I am unable to distinguish the facts of the present case from the facts of that case. The Crown might well consider in a case of this kind which charge to prove and proceed upon that charge alone. It is unsatisfactory to have an alternative indictment, one count charging the accused as principal and the other as accessory after the fact.

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