

Matuki Misser Vs. Queen-empress

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Court : Kolkata

Decided On : May-13-1885

Reported in : (1885)ILR11Cal619

Judge : Mitter, ;Macpherson and ;Prinsep, JJ.

Appellant : Matuki Misser

Respondent : Queen-empress

Judgement :

Macpherson, J.

1. The appellant has been convicted under Sections 201 and 176 of the Penal Code. Under the former section he has been sentenced to six months rigorous imprisonment, and under the latter to simple imprisonment for one week. The conviction under Section 201 cannot, I think, stand in the absence of proof that the offence, the evidence of which he caused to disappear, was committed. The evidence of the two women who deposed to having seen Ghogan Misser give two slaps to the woman Mussamut Bhulkia is, I think, wholly untrustworthy, and there is no other evidence to denote that any offence was committed; nor is there any proof that the appellant had, at the time when toe body was disposed of, any knowledge or information which would lead him to believe that the offence of murder or culpable homicide had been committed.

2. The conviction under Section 176 is, I think, good. Under Section 45 of the Criminal Procedure Code, every occupier of land is bound to communicate forthwith to the nearest magistrate, or to the officer in charge of the nearest police station, any information which he may obtain respecting the occurrence in the village in which he occupies land [for this is the meaning which I put on the word 'therein' in Clause (d) of that section] of any sudden or unnatural death, or of any death under suspicious circumstances. Section 176 of the Penal Code makes penal any intentional omission to furnish such information. It is proved that the dead body of Mussamut Bhulkia was found in the field of the appellant under circumstances alone consistent with the supposition that the death was sudden, unnatural and suspicious; that the appellant knew it was true; and that so far from giving information he directed the chowkidar and relative of the deceased to dispose of it. There can be no question that he had 'information' within the meaning of Section 45 and that his omission to communicate it was intentional. But there is no proof that death actually occurred in the village, that is to say, in the field where the body was found. The question then arises, is proof of this fact essential to a conviction? Under the circumstances, I think not. If a person finds on his land the dead body of a fellow-villager under circumstances denoting that the death was sudden, unnatural or suspicious, he is, I conceive, in possession of 'some information' respecting the occurrence of a death in his village which he is bound under Section 45 to communicate. The finding of the dead body on his land is a fact from which a Court might reasonably infer, in the absence of any evidence to the contrary, that death took place there. There is no evidence which I can accept in the present case as to the cause of death, but it is beyond question a case of death under suspicious circumstances. The section also provides for a case of sudden death. Assuming that there is proof that a death was sudden and the body is found in the field of A, must the prosecution prove that the deceased did not drop down dead in the adjoining field of B, which is in the next village; and that it was not removed to the field of A after death? Such proof would be impossible in ninety-nine cases out of a hundred.

3. The words 'the occurrence therein' are governed by the general words 'any information which he may obtain respecting,' and the present case seems to me to come well within the section. I would, therefore, uphold the conviction under

Section 176.

Mitter, J.

4. I entirely agree with my learned brother that the conviction under Section 201 of the Indian Penal Code cannot stand. I concur in the reasons given by him for coming to that conclusion.

5. But I regret that I am unable to assent to the proposition that, in order to support the conviction under Section 176 of the Indian Penal Code, the proof of the fact that death actually occurred in the village where the body was found is not essential.

6. Under Clause (d) of Section 45 of the Code of Criminal Procedure, an occupier of land in a village is bound to communicate to the nearest magistrate, etc., the occurrence in it of any sudden or unnatural death or of any death under suspicious circumstances. It seems to me, therefore, essentially necessary for a conviction to prove that the death took place or occurred in the village. The finding of the body in the village, standing by itself, does not in my opinion afford this proof. It seems to me that this circumstance alone does not necessarily lead to the inference that the death took place in the village. It is equally consistent with the death having taken place in another village and the body having been subsequently removed to the appellant's village.

7. Then, again, rejecting, as we do, the evidence of the two women who depose to having seen Ghogan Misser give two slaps to the woman Mussamut Bhulkia as wholly untrustworthy, there is no evidence to prove that her death was sudden. If there were any such evidence it might have been open to us to infer that this sudden death took place in or near the fields where the body was found.

8. I am of opinion, therefore, that there being no proof of the death of Mussamut Bhulkia having taken place in the appellant's village, all the requirements of Section 45 of the Code of Criminal Procedure have not been fulfilled, and consequently the conviction under Section 176 of the Indian Penal Code also should be set aside.

9. The Judges having disagreed upon the question as to whether the conviction under Section 176 was right or not, the question was referred to Mr. Justice PHINSEP, who delivered the following judgment:

Prinsep, J.

10. There is no question that the appellants are persons who fall within the category set forth in Section 45 of the Code of Criminal Procedure, that a body was found on their land showing unmistakeable signs of an unnatural death or a death under suspicious circumstances, and that they have neglected to communicate to the nearest magistrate or nearest police station any information regarding the same.

11. The only question is, whether it has been shown that the death occurred on the lands of the appellants.

12. The object of the law is clearly that the earliest information should be communicated by those who are in the best position to obtain the same, or who, from their connection with the land, are in some authority, and should accordingly be made responsible for this duty, in order that an inquest may be held. The necessity for enforcing strictly the performance of such a duty is too obvious to call for remark. The law requires that the death should have occurred on the land with which the particular person is connected in the manner set forth. I do not understand this to mean that this should be proved by the direct evidence of eye-witnesses, but there must be something amounting to proof of the fact. Thus, if a man were found with his throat cut in a field, it may fairly be presumed that he died there so as to place an obligation on a person in the position of the appellants to give information of the death. In the words of Section 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. It would be for the appellants to rebut such a presumption. They have not only failed to do so, but their conduct in having the body hurriedly burnt so as to destroy all trace of the cause of the unnatural or suspicious death would,

in some degree, tend to confirm this presumption. It would practically defeat the object of the law, viz., to assist public officers, whose duty it is to trace out the cause of suspicious homicides, if there were such difficulties in the way of fixing responsibility on persons connected with land on which the body of a person, to all appearances murdered, were found--If before such a person were convicted for a neglect to perform the duty prescribed by Section 45 of the Code of Criminal Procedure, it were necessary to prove that the murder took place, or that the murdered person actually drew his last breath, on that land. The finding of the body on that land would, in my opinion, ordinarily raise the presumption that death had taken place on that spot so as to impose an obligation on a person occupying one of the positions in relation to the land, described in Section 45, to communicate information regarding the matter. If he neglected to give this information, and was prosecuted for such misconduct, he should be prepared to justify the omission.

13. I would therefore not interfere.

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