Privy Council Appeal No. 151 *of* 1924.

Begu and others - - - - - - - - *Appellants*

v.

The King-Emperor - - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 25TH FEBRUARY, 1925.

Present at the Hearing:

VISCOUNT HALDANE.
LORD DUNEDIN.
SIR JOHN EDGE.

[*Delivered by* VISCOUNT HALDANE.]

This is an appeal against a judgment of the High Court of Judicature at Lahore in a case which came before it on appeal from the Sessions Judge of Montgomery. By their judgment the High Court affirmed the sentence of death which had been pronounced by the Sessions Judge on two of the appellants and the sentence of seven years rigorous imprisonment pronounced on the three other appellants.

Shortly stated the case made out by the prosecution was this. On the night of 15th June, 1923, one Bakhsha, the murdered man, was riding home accompanied by a man called Turez, who was the chief witness for the prosecution. The latter parted from him about 9 p.m. to go to a well in one of his fields, and Bakhsha continued on his way. Very shortly after they had parted Turez heard a cry from the direction in which Bakhsha had gone; he ran forward and saw Bakhsha being assaulted by the five accused, and another man, who has since absconded. It was said in the evidence that friction had existed between the families of Bakhsha and the accused. Turez came sufficiently close to them to see what was happening. Two of the accused, seeing him, threatened him and went towards him; but he ran away to the neighbouring village of Tibbi Hamid Sahu, where he

raised an alarm and stated what he had seen. A party from the village at once went to the place where the assault had taken place, but they found no trace of Bakhsha, only signs of a struggle and blood on the ground. There was a certain amount of conflict of evidence. Turez said all the accused fell upon Bakhsha and inflicted on him many wounds with weapons which included a hatchet and other sharp weapons. It was afterwards found that when they had killed him they wrapped up his corpse in a cloth and placed it on a horse and went away with it. That is important in view of what took place at the trial. The horse was identified and trackers were able to trace the footprints of the accused, and the Court was satisfied that each of the appellants was identified.

The appellants were committed for trial at the Sessions Court on a charge of murder, under section 302 of the Indian Penal Code. The case was tried by the learned Judge at the Sessions Court with the aid of three assessors, and at the end of the case the assessors gave their opinions, which were recorded; that they were unanimously of opinion that Bakhu and Walia, the accused, had attacked Bakhsha with intent to kill him; that they murdered him; that two of the others who were present took part in the assault, as stated by Turez, the eyewitness; that there might be some doubt as to whether Hamid, one of the accused, was also present and took part in the assault or not; and, finally, that the prosecution case and evidence appeared generally reliable throughout. That is what the learned Judge regarded as being the opinion of the assessors. The learned Judge, having the evidence and the views of the assessors before him and having considered them, on the 22nd December delivered his judgment. With regard to Bakhu and Walia he decided that they intended to kill Bakhsha and were guilty of murder and he sentenced them to death. With regard to the other three, he was of opinion that the evidence did not sufficiently or definitely prove that they were present at and had taken part in the murder, but, on the other hand, he convicted each of them of having removed the body, and he sentenced them each to seven years rigorous imprisonment.

From this judgment the appellants appealed to the High Court, and the appeal was heard by Mr. Justice Broadway and Mr. Justice Campbell, who dismissed the appeal.

A petition for special leave to appeal from this judgment was presented to their Lordships. Leave was given, and the appeal now comes before the Board for determination.

The substantial question upon the appeal arises upon section 237 of the Criminal Procedure Code that follows section 236, which provides that:

> "If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute the accused may be charged with having committed all or any of such offences,

> and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences."

That is followed by section 237, which is the vital one in this case :—

> " If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

The illustration makes the meaning of these words quite plain. 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. That is what happened here. The three men who were sentenced to rigorous imprisonment were convicted of making away with the evidence of the crime by assisting in taking away the body. They were not charged with that formally, but they were tried on evidence which brings the case under Section 237.

Their Lordships entertain no doubt that the procedure was a proper procedure and one warranted by the Code of Criminal Procedure.

The only other point remaining is this. The Code prescribes that the assessors shall give their opinions orally to the Judge. It is said that here they gave them in writing and the Judge dealt with them on that footing. The learned Judge says that is not so, and it is only faintly that this point is persisted in now. No such point was taken at the trial and no such point was raised until the end of the proceedings in the High Court, when the vakil for the prisoners raised it. Not only is it not shown that that aberration from the precise directions of the Code took place but, if it did take place, it has not been shown that it led to any miscarriage of justice at all.

This tribunal is not a Court of Criminal Appeal. When there has been evidence before the Court below and the Court below has come to a conclusion upon that evidence, their Lordships will not disturb that conclusion; they will only interfere in such circumstances as are referred to in the well known case of *Dillet* v. *The Queen*, (12 App. Cas. 459), where there has been a gross miscarriage of justice or a gross abuse of the forms of legal process. Here there has been no abuse of that kind, and there is a large amount of evidence on which the Court could come to the conclusion at which they arrived. It is therefore outside the constitutional powers of their Lordships' Board, conforming to the principles which it has laid down, to interfere with the decision of the Court below.

In these circumstances their Lordships are unable to advise His Majesty to take any other course than to dismiss the appeal.

In the Privy Council.

BEGU AND OTHERS

v.

THE KING-EMPEROR.

DELIVERED BY VISCOUNT HALDANE

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