Allahabad High Court
Ajog Narain And Ors. vs Emperor on 17 September, 1936
Equivalent citations: AIR 1937 All 14, 166 Ind Cas 369
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JUDGMENT Allsop, J.

1. This is an appeal by Ajog Narain and 7 others who have been found guilty of an offence under Section 201, I.P.C., i.e., of concealing evidence of a crime. Ajog Narain has also been convicted of an offence under Section 325, I.P.C., i.e., the offence of voluntarily causing grievous hurt. He has been sentenced to rigorous imprisonment for a period of three years under that section. All the appellants have been sentenced to rigorous imprisonment for a period of one year under Section 201, I.P.C. The sentences passed upon Ajog Narain are to be concurrent. The case for the prosecution is that Ajog Narain hit a man called Sudma Chamar with a lathi because he refused to go to plough Ajog Narain's field, that Sudma died as the result of the attack made upon him and that the appellants took his body to the burning ghat and cremated it so as to prevent the crime from coming to light. The trial under Section 201, I.P.C., was with the aid of a jury which found the appellants guilty. The learned Counsel for the appellants can point to no misdirection in the charge. The charge is perfectly fair and there is no ground upon which the finding of the jury can be 'set aside. The result is that the appeal of the appellants under that section cannot succeed except in so far as it has been argued that Ajog Narain could not legally be convicted both of an offence under Section 325, I.P.C., and of an offence under Section 201, I.P.C., a matter which I shall presently discuss.

2. The offence under Section 325, I.P.C., was one which was triable by the learned Judge with the aid of assessors. The offence is alleged to have been committed on the morning of 29th September 1935. A report was made at the police station about midday on the same day by one Jog Narain, a zamindar in the village. He gave the facts upon which the prosecution still rely. Later in the day, at about 4 o'clock in the afternoon, the chaukidar went to the police station and stated that the body had been cremated. Jog Narain has been called as a witness for the prosecution and has deposed that he was at a tank early in the morning when he saw Ajog Narain attacking Sudma in the manner which has been described. The defence is that the charge is absolutely false, that Sudma had died a natural death and that Jog Narain owing to enmity against Ajog Narain had fabricated the case. The witness denied that he had any enmity with Ajog Narain. All that the defence were able to establish was that there had been a case under Section 107, Criminal P.C., about 11 years before the occurrence and that Jog Narain and Ajog Narain had been on opposite sides in that case. The learned Sessions Judge has pointed out that the matter at that time ended in a compromise.

3. It seems incredible that Jog Narain without any immediate provocation should suddenly have decided after the expiry of 11 years to fabricate a false case of this kind against Ajog Narain. As the learned Sessions Judge has said, there must have been many deaths in the village in the intervening period and if Jog Narain had wished to make a charge against Ajog Narain he might have taken advantage of any of these deaths. It is also difficult to see how he could have got the other witnesses to support him. Sudma's wife Gilli has given evidence in the case and so also have Bhuar and Dubri. These witnesses all depose that the death of Sudma was due to injuries caused by Ajog Narain. There are three witnesses for the defence who say that Sudma had been suffering from diarrhoea for

about seven or eight days before his death. Two of them have admitted that they had no personal knowledge and that they had heard the facts from others. Their evidence is hearsay and inadmissible in the case. The third witness is the zamindar of a village called Shahpur. The deceased and the appellants live in Nevada. It does not appear how far Shahpur is from Nevada. This defence witness says that Sudma came to him sometime before his death and asked for a drink saying that he had been suffering from diarrhoea for about seven days. It is obvious that the evidence of this witness is worth nothing at all.

4. Some of the witnesses for the prosecution, according to the Sessions Judge, displayed an unsatisfactory demeanour during parts of their statements, but the learned Sessions Judge has eventually believed what they said. Jog Narain apparently had something to conceal about his relations with his son and brother, but I do not see that that fact had any relevancy in considering the value of his evidence in the present case. He also did not admit that there had been a case under Section 107, Criminal P.C., several years before. It may be that he was not quite frank about this matter, but that would not be sufficient to discredit the whole of his evidence, especially as it is impossible to believe that the case could have been fabricated in the manner alleged by the defence. It is very likely that the other witnesses were at one time over-persuaded by Ajog Narain to overlook his offence and that they gave evidence eventually only because Jog Narain had brought the matter to the notice of the police. If that was so, it was not unnatural that there should have been some discrepancies in their statements and some hesitation about what they said. I have not the slightest doubt that the facts are such as have been believed by the learned Sessions Judge. There was of course no medical evidence in the circumstances of the case as the body had been completely cremated. The learned Sessions Judge thought that Sudma's death may have been due to the fact that he had an enlarged spleen. It is possible that this may be so. I have been asked to reduce the sentence, but I do not think that a sentence of rigorous imprisonment for a period of three years is excessive for a man who has caused the death of another by hitting him with a lathi, especially as it appears that Sudma was not armed and that there was nothing in the nature of a fight.

5. There remains the legal argument that Ajog Narain could not have been convicted both of an offence under Section 325, I. P. C., and an offence under Section 201, I.P.C. The case in Emperor v. Har Plari A.I.R. 737 is clear authority against the argument put forward by the defence. The case in Queen-Empress v. Dungar (1886) 8 All. 252, which has been relied upon was definitely held to have been wrongly decided. It may be that a principal in England cannot be convicted also as an accessory after the fact, but that rule can have no effect on the Indian law which is contained in definite Acts. Section 201, I.P.C., makes it punishable' to remove evidence of the commission of a crime and it is nowhere said either in the Indian Penal Code or in the Criminal Procedure Code that a man who commits an offence, say of murder, and then conceals the evidence, cannot be convicted both of the murder and of concealing the evidence. I dismiss the appeal.