

(1931) 08 AHC CK 0007

Allahabad High Court

Case No: None

Sawanta and Another

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Aug. 17, 1931**Hon'ble Judges:** Sulaiman, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Sulaiman, J.

This is an appeal from a conviction u/s 201, I.P.C. According to the prosecution evidence there was enmity between the deceased Zalim, who was an occupancy tenant, and Moharman and others, zamindars, as well as Sawanta, a partner of Zalim in the tenancy. Zalim had complained to the Deputy Collector that the Kamindar had realized rents but had not given the receipts for them, and a case under the Tenancy Act was registered against Moharman. It is alleged that there was some settlement, and receipts were given to Sawanta by the zamindars, but Sawanta colluded with them and returned the receipts, and then the crops of Zalim were again attached. A report was made by Sawanta against Zalim, who was arrested and kept in the thana for the night, and was let off the next morning. Zalim then filed a complaint in the Court of the Sub-divisional Magistrate against the zamindars, Sawanta, as well as the local police. His allegation was that a bribe had been demanded from him by the Sub-Inspector. Nonbailable warrants against the zamindars and Sawanta were issued by the Magistrate. Though the Sub-Inspector was in the village on 20th April 1930, he did not arrest the accused before the 22nd. The accused were subsequently let off on bail,

2. Indarjit, son of Zalim, deposed that Moharman and others wanted to compromise the case and had come to his father's house, but he refused to do, so; that next day when he returned, he was informed by his mother that Sawanta had taken his father to the zamindar's house, and when Indarjit went there he found the door closed. Zalim was not found during the day, although search was made for him. After sunset it is alleged that

Narayan and Bhika were going along when they saw Sawanta and Narsinghbhan, the two appellants, carrying a heavy bundle with them. When questioned, Sawanta and Narsinghbhan threw down the bundle and ran away. An alarm was raised, and many people arrived on the scene, and when the bundle was opened, the dead body of Zalim was discovered in it. It had numerous marks of injuries on it.

3. According to Indarjit, he went to Tikam Singh, the mukhia, who is a relation of Moharman, and reported the matter to him, but no notice appears to have been taken by the mukhia. Deojit was sent next day to the thana to make a report which he did. The police made an investigation, and the matter dragged on for a number of months and nothing was done. On 23rd August 1930, a complaint was filed by Indarjit against Sawanta, Narsinghbhan, as well as the three zamindars. Mt. Sundar, the wife of Zalim, stated that Sawanta and Narsinghbhan came on the next day and had taken her husband away with them, but he did not return. The evidence of Narayan and Bhikam was that they saw Sawanta and Narsinghbhan, accused, carrying a bundle on their shoulders by means of lathis, and when they were questioned they threw it down and ran away. Ramlal deposes that an alarm was raised by Narayan and Bhikam that the two accused had thrown down something, and when he, along with other villagers, went to the place, they discovered the dead body of Zalim. The other three accused were discharged by the committing Magistrate, but Sawanta and Narsinghbhan were committed to the Sessions Court. The learned Judge added a charge u/s 201, I.P.C. The learned Judge came to the conclusion that there was not sufficient evidence to connect the two accused with the murder of Zalim, and has accordingly acquitted them of that charge. He has found them guilty u/s 201, and has sentenced them to three years" rigorous imprisonment each.

4. A legal objection is taken that there was a misjoinder of charges, and the accused should not have been tried both under Sections 302 and 201, I.P.C. This contention, in my opinion, has no force. When the evidence was found to be insufficient to convict the accused of the murder of Zalim and they were acquitted, the presumption is that they were not guilty of the murder at all. There was therefore no difficulty in the way of convicting them u/s 201, if the evidence as to their being seen with the dead body of the deceased at night were to be believed. This point is covered by the authority of [Emperor Vs. Mt. Har Piari and Others](#) As a matter of fact in one case their Lordships of the Privy Council upheld a conviction u/s 201 although the charge against the accused was only u/s 302, I.P.C. AIR 1925 130 (Privy Council)

5. The evidence for the prosecution was both definite and direct. There is no doubt that Zalim was murdered. There" is also no doubt that there was enmity between Zalim and Sawanta as well as Moharman. There is also no doubt that Zalim had made a complaint against the local police. It is also clear that his dead body was found after sunset when an alarm was raised. Witnesses prove that Narayan and Bhikam at that very time announced that they had seen Sawanta and Narsinghbhan throwing the bundle on the ground. Ramlal corroborates their evidence. The learned Sessions Judge has believed it, and I see no reason why this evidence should not be believed. It is not necessary to discuss

the other evidence relating to the enticing away of Zalim in the morning by Sawanta and Narsinehbhan. That evidence had relation to the charge of murder, and although there seems to be no reason to disbelieve it, it is not necessary to emphasize that circumstance.

6. The only point that can be said in favour of the accused is that the full story was not disclosed in the information report which was made on the morning of the 20th April, and that there are some discrepancies between the statements made by the witnesses before the Sub-Inspector and the statements made in Court. The learned Sessions Judge however has come to the conclusion that the conduct of the Sub-Inspector who investigated the case has been very suspicious, and hardly any value could be placed on the entries in his diary or on the first information report.

7. There is no doubt that if the investigation had been conducted with care and in a proper manner and searches made promptly, the murder would not have gone unavenged. The enmity between the deceased and certain persons was well known to the police, and even in the first information report a suspicion had been thrown out against Sawanta and the Thakurs. Zalim had undoubtedly made a complaint against the police and Sawanta, and there is reason to suspect that there was reluctance and hesitation on the part of the police to proceed promptly against the persons suspected of the offence. As already mentioned, the Sub-Inspector had delayed the arrest of the Thakurs on 20th April. The mukhia of the village also happened to be a relation of Moharman. It is improbable that if the Sub-Inspector had made a thorough investigation he would not have discovered that there was some evidence to suggest that the deceased had been taken to the house of the zamindar by Sawanta and Narsinghbhan. He admittedly made no efforts to search the houses of the Thakurs or to record their statements. The post mortem report showed that the stomach of the deceased was entirely empty, which corroborated the story that he had been enticed away and murdered before he had taken his breakfast. For months the matter remained pending and nothing was done by the police. It was only after the deceased's son filed a complaint that the case was started and properly inquired into. So the conduct of the police in this case has been rightly held by the learned Sessions Judge to be highly suspicious. In the circumstances he was perfectly justified in not placing too much reliance on the brevity of the first information report or the discrepancies in the statements recorded in the police diary. In my opinion the evidence is amply sufficient to bring home to the accused their guilt u/s 201, I.P.C. I accordingly dismiss the appeal.

8. Let a copy of this judgment be forwarded to the Inspector-General of Police for information.

9. The accused must surrender to the bail.