

**(2000) 04 AHC CK 0144**

**Allahabad High Court**

**Case No:** Criminal Revision No. 887 of 1983

Taiyab Ali Khan

APPELLANT

Vs

Anwar Javed and Others

RESPONDENT

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**Date of Decision:** April 24, 2000

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 201, 302, 377

**Citation:** (2001) 1 ACR 464

**Hon'ble Judges:** J.C. Mishra, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

J.C. Mishra, J.

Notices sent to the accused at the addresses given in the memo could not be served as none of them were available. From the office report it appears that the accused Bhurey alias Wasiullah had sold his properties movable and immovable and has gone to Delhi. His place of residence could not be found. Similarly Mohd. Furkan has also left place of his residence after selling his property and has shifted to some unknown place.

2. Anwar Javed and Sarwar Javed were residing in mohalla Shahabad Churi Wali Gali, police station Prem Nagar, district Bareilly, and they have left the place after selling their properties. Thus, none of the opposite parties could be found and, therefore, it is not possible to serve the notice to them.

3. The complainant has filed this revision challenging the order of discharge recorded by II Ird Additional Sessions Judge for offence under Sections 302/201 and 377, I.P.C. From the order it appears that the prosecution had collected two types of evidence. First evidence was that the deceased was last seen in the company of the accused. The other evidence is of extra-judicial confession made by Bhurey alias Wasiullah before two witnesses namely, Ifrayat Khan and Wasi Ullah alias Ghaseete.

4. It is true that the evidence of the deceased having last seen in the company of the accused is a weak type of evidence but it cannot be said that it is no evidence at all. At the stage of framing charge the prosecution is not required to prove its case and the charges can be framed if there is evidence on which the Court can presume that the accused committed the crime complained.

5. On consideration of the entire facts and circumstances I find that the judgment suffers from perversity. At the stage of framing charge the Court had no jurisdiction to weigh the evidence.

6. The revision is allowed. The impugned order discharging the accused opposite parties is set aside. The trial court is directed to secure the attendance of the accused persons if necessary by adopting coercive measures and then proceed to decide the trial after framing charges.