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the spot whence the voice came, saw the prisoner strike the girl on the head with an axe, which caused her death.

It appears that two wounds were inflicted, but that the Pársi witness only saw one actually struck. After striking the blow the prisoner dropped the axe on the spot, struck his own head violently against a neighbouring door, so as to cause the blood to flow, rushed off, mounted a pony and rode away. The Pársi and the girl's father then went up to the spot, and the father cried over the corpse.

The Pársi's evidence is corroborated by that of two men who were close by, engaged in pounding *chunám*. Their attention was called by hearing some one exclaim "Why kill me?" or some like expression, and hurrying into the street were in time to see the second blow struck.

These three witnesses were cross-examined, but their evidence was not shaken, and, as above stated, it was believed by both the Session Judge and the assessors, and we see no reason for arriving at any other conclusion.

The defence set up by the prisoner before the committing Magistrate, but in proof of which no evidence was offered, was that a quarrel had occurred, regarding the building of a wall opposite his house, with Husan A'manji and Bápu A'manji, and that they came with others, armed with picks and axes and killed his sister. Before the Session Court he for the first time added that the case against him had been got up by Kávashá, the inspector of police, who at the time the prisoner made this statement was under suspension on some charges of bribery; but the manner in which the statement was made, and the absence of any evidence offered to support it, renders it unworthy of further notice.

We, therefore, are unable to arrive at any other conclusion than that the prisoner was his sister's murderer: and, such being our opinion, we cannot do otherwise than confirm the capital sentence, which should be carried out into execution at the scene of the murder.

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26th Sept. 1871. GIBBS, J.—*In this case, the prisoners have been convicted of attempt to commit murder, and have been sentenced—No. 1 to transportation for life, and No. 2 to transportation for ten years.*

The evidence certainly is quite insufficient to maintain the conviction against prisoner No. 2, Husan. There is nothing against him as regards the assault on his mother; he remained outside the front of the house, and whatever was done to the old woman in the yard at the back was done by prisoner No. 1, Muhammad, and it is this which requires particular attention.

The evidence shows that a murder had been committed in the village of Karmár on the morning of the 5th of May (*Reg. v. Muhammad Valli*), and from cases which have lately come before the court it appears that there are two factions in this village, and that murders have been committed on each side—not, as would be naturally expected, by members of one faction on a member of the other, but by members of one faction on

a helpless female of their own, so as to throw either the guilt of blood or the blame of the crime on the other party.

Such a state of things is hardly credible, but this is an instance of truth being stranger than fiction, as will be seen by the following statement of facts, derived from three cases lately before the court.

From *Reg. v. Alibhái Mithá* it appeared that some members of the two factions in this village had a fight, or rather scuffle. On one side was Alibhái, his wife, mother, daughter, and others; on the other side the police pátil and his wife, one Jivá Alibaksh and his sons and another. The result of this scuffle, which arose from a quarrel between Alibhái's daughter and Jivá's son, was that on the side of the latter one of the men got a blow on the head and was taken into Broach. The evidence then shows clearly, and the prisoner admitted, that a consultation was held by his party, and it was determined to break or bruise the head of the old mother and take her into Broach, as a sort of make-weight against the broken head on Jivá's side.

The old mother was apparently a consenting party, and by a heavy clod of earth thrown at her head the desired effect was obtained, and she was carried in due form to the Broach Hospital, and a complaint laid against the police pátil and Jivá's party.

Now comes the most extraordinary step. While the old woman was in the hospital, the leaders of her son's party and her son determined that it was necessary to have a death to score on their side,—why is not clear, but one of the two causes above mentioned seems to have led them to this determination. The son and the others then, it is said, prepared some food with arsenic, which was given to the old woman at her evening meal by one or more of these persons. She ate it, went to sleep, and in about half an hour woke up and vomited violently—so violently as to bring on rupture of the spleen, from which she at once died. The *post-mortem* examination and the chemical analysis proved the cause of death.

The evidence was, unfortunately, insufficient to bring home the guilt to all the parties, but the son was on his own statement convicted of murder, and the High Court upheld the conviction.

The next step which occurs is that which is treated of in the case of Muhammad Valli for the murder of his sister Fattá. The evidence showed that the brother brought his sister out of the house, and as she was leaning against the wall struck her twice with an axe and killed her. She is said to have exclaimed, "Why do you kill me for other people?" The brother then dashed his own head against the wall, wounding it severely, and mounting a pony rode off. His brother then went to the Magistrate's camp and gave information that his sister had been killed by the opposite faction. The Session Judge and assessors convicted the prisoner, and he has been sentenced to death, and this court has confirmed the sentence.

Immediately after the poor girl's murder the prisoners in this case, who apparently belong to the opposite faction, came out calling for justice, and saying their house had been attacked. The Pársi cloth-seller, the only independent witness, told them not to attack the pátil's house, as he would

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depose to how the girl was killed. But it appears they became frightfully excited, and prisoner No. 1, Muhammad, expressed his intention, evidently as a set-off against the girl Fattá's death, to kill himself. On this his old mother begs that she might be the victim instead. Now comes the assault. It appears the mother and her son prisoner No. 1 went through their house to a back-yard, and presently the prisoner No. 1 rushed out of the house calling for the police páñl, who, it appears, had just returned to the village, to come and take his mother's deposition, and at the same time, showing a wound on his chest. Some little delay occurred, and when the police went inside they found the old woman senseless on a cot, and the prisoner, lying wounded in the chest, on another.

They were taken to Broach Hospital, and the evidence of the Civil Surgeon (the late Dr. Glen) shows that the wounds of the old woman were considered by him slight. She stayed in hospital fifteen days and then returned to her village, whence her corpse was brought back to the hospital about six days after. Dr. Glen certified that "these wounds did not bring about the death of the woman: she died of old age;" and in his deposition before the Session Court he maintains the same view. The old woman herself also stated in her deposition that her wounds were not severe.

Under these circumstances it is impossible to uphold the conviction for attempt to murder, nor can the court record a conviction of grievous hurt, for the facts do not bear out the necessary definition in the Indian Penal Code. All we can do is to say the evidence proves a charge of causing hurt, but, as the same evidence shows that what was done was done with the old woman's consent, the provisions of Sec. 87 of the Indian Penal Code prevent the act from being regarded as an offence.

In two out of the three cases mentioned in this minute, the conduct of Dr. Glen, the late Civil Surgeon of Broach, was such as would have rendered it necessary for the court to bring it to the notice of Government. The great delay and carelessness in forwarding the contents of the stomach and the vomit in the case of Alibháí Mithá, together with the imperfect manner in which he appears to have examined the bodies, and the unsatisfactory nature of his evidence regarding the wounds, were such that we had determined to recommend to Government his removal from his appointment, when the newspapers announced his death on his way to England. No further notice, therefore, need now be taken of this portion of the case.

Convictions and sentences reversed.