[APPELLATE CRIMINAL JURISDICTION.]

1876.
July 18.

REG. *v.* GOVINDA.

Murder—Culpable homicide—Indian Penal Code (Act XLV. of 1860), Sections 299 and 300.

Where the prisoner knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the closed fist, producing extravasation of blood on the brain, and she died in consequence, either on the spot, or very shortly afterwards,

Held, that there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death, the offence committed by the prisoner was not murder, but culpable homicide not amounting to murder.

THIS case was sent up for the confirmation, by the High Court, of the sentence of death passed on the prisoner by R. F. Mactier, Session Judge of Satara, on a conviction of murder.

The first issue raised by Mr. Mactier was "whether Bálái, the prisoner's wife, died from violence or not?" and he determined it in the affirmative, saying:—

"The medical evidence is clear on this point. The hospital assistant says that Bálái died from effusion of blood on the brain, arising from a blow just above, and towards the inner corner of the left eye, and at this place, rather towards the corner of the eye, there is said to have been the external mark of a blow; the inquest juryman, Ravji, says that there were ten marks of beating on the back in several places as well as the contusion on the eye, and the bleeding at the nose was probably caused by the blow in this neighbourhood. It is not very easy to say how far the beating extended to which the deceased was subjected, but it is clear that it was very severe, and possibly more injuries may have been inflicted than are spoken of; the hospital assistant, however, is clear on one point, that death arose in this case from effusion of blood on the brain."

The second issue raised was "whether this violence was inflicted by the prisoner;" and this, too, was decided in the affirmative for

reasons which it is unnecessary for the purposes of this report to state.

The third issue was "whether this was 'murder' or the minor offence of culpable homicide?" In determining this, the Judge said:—

"I must hold that it was the more serious offence. There was no grave and sudden provocation, but this last beating seems to have been the conclusion of a long-continued series of beatings and the violence committed was such that the prisoner in committing it, took on himself the risk of causing death thereby * * *."

The case came on for hearing before KEMBALL and NA'NA'BHA' HARIDA'S, JJ,

Dhirájlál Mathurádás, Government Pleader, appeared for the Crown.

Their Lordships at the outset intimated to the Government Pleader that there was a difference of opinion between them as to what offence the prisoner had committed, and that the case should accordingly be referred to MELVILL, J., for his opinion.

In reviewing the case, Mr. Justice KEMBALL minuted thus:—

"That the prisoner was exceedingly cruel to his wife, and that he was legally guilty of her murder, I have no doubt; but having regard to the circumstances, the age of the prisoner, and the manifest state of doubt of the Judge as to what would be the appropriate sentence, make me hesitate to confirm the sentence of death, and I am disposed to alter it to transportation for life."

Mr. Justice NA'NA'BHA'I HARIDA'S' minute ran thus:—

"I am not satisfied that the prisoner intended to murder his wife. There is hardly evidence sufficient to prove the 'intention' or 'knowledge' requisite under Section 300, Indian Penal Code.

"That the prisoner acted cruelly, is quite clear. Still there is no evidence that he beat her otherwise than with his fist on the face, the blow or blows on the nose causing effusion of blood on the brain which proved fatal. The kicks on the back and the

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blows on the chest were not the cause of death according to the doctor's evidence. It is quite possible—by no means improbable—that he may have, as he says, only intended to chastise her, though rather severely. I am disposed to think his act was culpable homicide not amounting to murder, and that it is punishable under Section 304, Indian Penal Code.

"No apparent motive is shown for taking her life.

"People often survive such blows, and the prisoner may have only intended to cause hurt, though aware that hurt might prove dangerous."

MELVILL, J.:—I understand that these proceedings have been referred to me under Section 271-B of the Code of Criminal Procedure, in order that I may decide whether the offence committed by the prisoner was murder, or culpable homicide not amounting to murder.

For convenience of comparison, the provisions of Sections 299 and 300 of the Indian Penal Code may be stated thus:—

Section 299.	Section 300.
A person commits culpable homicide, if the act by which the death is caused is done	Subject to certain exceptions, culpable homicide is murder, if the act by which the death is caused is done
(*a*) With the intention of causing death;	(1) With the intention of causing death;
(*b*) With the intention of causing such bodily injury as is *likely* to cause death;	(2) With the intention of causing such bodily injury as the offender *knows to be likely* to cause the death of *the person to whom the harm is caused*;
	(3) With the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is *sufficient in the ordinary course of nature* to cause death;

(*c*) With the knowledge that * * * the act is *likely* to cause death.	(4) With the knowledge that the act is *so imminently dangerous that it must in all probability cause death,* or such bodily injury as is likely to cause death.

I have underlined the words which appear to me to mark the differences between the two offences.

(*a*) and (1) show that where there is an intention to kill, the offence is always murder.

(*c*) and (4) appear to me intended to apply (I do not say that they are necessarily limited) to cases in which there is no intention to cause death or bodily injury. Furious driving, firing at a mark near a public road, would be cases of this description. Whether the offence is culpable homicide or murder, depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder.

The essence of (2) appears to me to be found in the words which I have underlined. The offence is murder, if the offender *knows* that the *particular person injured* is likely, either from peculiarity of constitution, or immature age, or other special circumstance, to be killed by an injury which would not ordinarily cause death. The illustration given in the section is the following:—

"A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health."

There remain to be considered (*b*) and (3), and it is on a comparison of these two clauses that the decision of doubtful cases like the present must generally depend. The offence is culpable homicide, if the bodily injury intended to be inflicted is *likely* to cause death; it is murder, if such injury is *sufficient in the ordinary course of nature* to cause death. The distinction is fine, but appreciable. It is much the same distinction as that between (*c*) and (4), already noticed. It is a question of degree of probabi-

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lity. Practically, I think, it will generally resolve itself into a consideration of the nature of the weapon used. A blow from the fist or a stick on a vital part may be likely to cause death; a wound from a sword in a vital part is sufficient in the ordinary course of nature to cause death.

In the present case the prisoner, a young man of 18, appears to have kicked his wife (a girl of 15) and to have struck her several times with his fist on the back. These blows seem to have caused her no serious injury. She, however, fell on the ground, and I think that the evidence shows that the prisoner then put one knee on her chest, and struck her two or three times on the face. One or two of these blows, which, from the medical evidence, I believe to have been violent and to have been delivered with the closed fist, took effect on the girl's left eye, producing contusion and discoloration. The skull was not fractured, but the blow caused an extravasation of blood on the brain, and the girl died in consequence either on the spot, or very shortly afterwards. On this state of facts the Sessions Judge and the assessors have found the prisoner guilty of murder, and he has been sentenced to death. I am myself of opinion that the offence is culpable homicide, and not murder. I do not think there was an intention to cause death; nor do I think that the bodily injury was sufficient in the ordinary course of nature to cause death. Ordinarily, I think, it would not cause death. But a violent blow in the eye from a man's fist, while the person struck is lying with his or her head on the ground, is certainly likely to cause death, either by producing concussion or extravasation of blood on the surface or in the substance of the brain. A reference to Taylor's Medical Jurisprudence (Fourth Edition, page 294) will show how easily life may be destroyed by a blow on the head producing extravasation of blood.

For these reasons I am of opinion that the prisoner should be convicted of culpable homicide not amounting to murder, and I would sentence him to transportation for seven years.

This order was accordingly passed by the Court.