CRIMINAL APPELLATE.

Before Mr. Justice Beaman and Mr. Justice Heaton.

1916.
August 24.

EMPEROR v. SARDARKHAN JARIDKHAN.*

Indian Penal Code (Act XLV of 1860), section 300, clause 3—Causing death—Single blow by an iron-shod stick—Culpable homicide not amounting to murder.

The accused and the deceased having quarrelled, the accused took an iron-shod stick, and struck one blow on the head of the deceased which caused his death. The accused having been convicted of murder, appealed to the High Court:

Held, that the offence committed by the accused was not murder but culpable homicide not amounting to murder, because it was possible that the blow he struck exceeded in violence the injury he had in view at the moment of striking it.

APPEAL from conviction and sentence passed by B. C. Kennedy, Sessions Judge of Ahmedabad.

The facts were that the deceased Bana had a quarrel with the father of the accused, as a result of which the former was dismissed from a mill service. After a few days, the deceased went to the accused who was working in weaving shed of the mill; and there insulted or menaced him. The deceased then sat on the verandah talking with another person, with his back turned towards the door. The accused in the meanwhile took out two sticks, one of which he gave to his friend Khermahmad, and the other one, which was shod with iron rings, he kept to himself. The two persons came out of the door and coming from behind the accused dealt with his stick one blow on the head of the deceased, which caused his death.

The accused and Khermahmad were tried for the offence of murder by the Sessions Judge of Ahmedabad

* Criminal Appeal No. 265 of 1916.

1916.

EMPEROR v. SARDAR-KHAN.

who acquitted the latter, but convicted the accused on the following grounds :—

"*The act of the accused appears to me to be murder and nothing else.* Whatever his original intentions may have been, what he did was to inflict this very severe blow on a defenceless man who was not even aware of his presence. The blow was given with such force and with such a weapon and in such circumstances that fracture of the skull and consequent death followed. The accused must clearly be held to have contemplated what naturally happened."

The accused appealed to the High Court.

G. N. Thakor, for the accused.

S. S. Patkar, Government Pleader, for the Crown.

BEAMAN, J. :—The accused's father had a quarrel with the deceased as a result of which the deceased was discharged from the mill. The evidence is that he entered the mill after this and threatened the accused, who is a young man of about seventeen or eighteen. The accused appears to have lost his temper, rushed out and brought two sticks one of which he gave to the accused No. 2, who is seven years older than accused No. 1 and who resides with him and his father. Accused Nos. 1 and 2 immediately went out with the object of driving the deceased off the mill premises as they say, or, as is implied in the finding of the learned Sessions Judge, assaulting him. Unfortunately, the two accused came upon the deceased sitting with his back towards them just outside the weaving shed, and the evidence is that the accused, being armed with a stick about three feet long having iron rings and about an inch in diameter, suddenly struck the deceased a violent blow on the back of the head which, as the medical evidence shows, resulted in death within a few hours.

Mr. Thakor on behalf of the accused has not disputed the substantial fact of the killing, though he has pressed upon us a consideration of the possibility at

least of the fatal blow having been struck by the accused No. 2. We do not see any reason to doubt the correctness of the conclusion reached by the learned Sessions Judge upon this point.

We have, therefore, only to consider whether the killing in such circumstances amounts to murder or can be reduced to the lesser offence of culpable homicide not amounting to murder. If murder, it can only be so under the 3rd clause of section 300 which enacts that culpable homicide is murder if the death is caused by an act done "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." Now where death is caused by a single blow, as is the case here, struck probably under the influence of passion, it must always be a nice and difficult question to determine the precise intention of the offender. Doubtless the learned Sessions Judge has followed what in a majority of cases—we think we must concede—to be the right and logical course. He has inferred the intention, that is to say, from the extent of the injury and the nature of the weapon used. On the other hand, where cases of this kind are tried by Jury, Juries are much more disposed to take a liberal and less logical view and to look at all the surrounding circumstances with the object, if possible, of reducing the offence and so, notwithstanding the character of the injury and the nature of the weapon, imputing a lesser intention to the accused. Where, as we began by saying, death is caused by a single blow, it is always much more difficult to be absolutely certain what degree of bodily injury the offender intended, particularly where the weapon used, although a very dangerous weapon, is one which is in the hands of so many people in that part of the country every day of their lives when they go about their ordinary field business. It is upon this ground—and upon this ground alone—that

1916.

EMPEROR v. SARDAR-KHAN.

we are disposed to take a more lenient view of the offence committed by the accused than that which the learned Sessions Judge took. After all it must, in a case of this kind, be a matter of inference and nothing more, and while admitting that the inferential processes of the learned Judge are in accordance with what we conceive to be the common and best mode of administering this branch of criminal justice, there may be exceptional cases and exceptional circumstances which would warrant us, sitting here as Judges of final appeal, in taking what we have said might be a Jury's rather than Judge's point of view. And if looking at the case thus, we feel that it might not unreasonably be brought within the lesser offence of culpable homicide not amounting to murder, while even in the opinion of the Sessions Judge the actual degree of criminality belongs more properly to that than to the offence of murder, we do not think that we are really stretching the law at all by adopting a less strict mode of inferential reasoning. We feel that this is a case in which the sentence of transportation for life would in any event be out of proportion to the real criminality of the accused's act.

That being so, we find the less difficulty in coming to the conclusion that it is possible the blow he struck exceeded in violence the injury he had in view at the moment of striking it. His mind could not have been very clear and it is hard to say that he could have had any definite intention of any kind at the moment. But in saying this, we do not wish to encourage loose applications of such inferential processes giving too liberal an extension to the provisions of section 300, clause 3. Every case must be dealt with on its own facts, and this case is, we think, one which will allow us so far to agree with the learned pleader of the prisoner as to hold that the killing here can properly and legally be brought under section 304 rather than section 302.

1916.

EMPEROR v. SARDAR-KAAN.

We shall, therefore, alter the conviction from murder to culpable homicide not amounting to murder under the second part of section 304 and direct that the prisoner be sentenced to five years' rigorous imprisonment.

Conviction and sentence altered.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

1916
August 28.

GULABCHAND BALARAM MARWADI (ORIGINAL DEFENDANT No. 1), APPELLANT *v.* NARAYAN BIN RAMA AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANT No. 2), RESPONDENTS. *

Limitation Act (IX of 1908), Schedule I, Article 97—Money due on an existing consideration which afterwards fails—Limitation.

Defendant No. 1 agreed with the plaintiff in September 1908, for a price, to procure from defendant No. 2 a re-conveyance of a house to the plaintiff. In November 1908, defendant No. 2 conveyed the house to V. In 1910, V sued to recover possession of the house from the plaintiff and obtained a decree in July 1911. The plaintiff sued in January 1912 to recover the consideration money. The lower Courts held that the suit was within time under Article 97 of the first schedule to the Indian Limitation Act (IX of 1908). On appeal,

Held, that the suit was time-barred even under Article 97, for after the sale to V defendant No. 1 could not have had anything to do with the house and the possession which the plaintiff was allowed to retain must have been on V's sufferance.

SECOND appeal from the decision of G. K. Kanekar, First Class Subordinate Judge, A. P., at Sholapur, confirming the decree passed by H. V. Kane, Subordinate Judge at Akluj.

Suit to recover a sum of money.

The plaintiff mortgaged his house to the father of defendant No. 1, who sued on the mortgage and

* Second Appeal No. 196 of 1914.