

1876. Act III of 1865, though repealed, has been held to be still  
December 22. in force in so far as it established a jurisdiction over offences.

(H. C. Proceedings, 29th September 1876) (1).

REG.  
v.  
KANDAKORA.

The sentence was not in excess of what the 2nd-class Magistrate might, in the exercise of his ordinary jurisdiction, have awarded.

## JURISDICTION AS COURT OF REVISION.

*Before Mr. Justice Holloway and Mr. Justice Innes.*

1877.  
January 19.

PROCEEDINGS, 19TH JANUARY 1877.

REG. v. ACHARJYS.

*Penal Code, sec. 304a.*

In the course of a trivial dispute the accused gave the deceased a severe push on the back which caused him to fall to the road below, a distance of two and a half cubits. In falling the deceased sustained an injury from which tetanus resulted, which caused his death on the fifth day after. *Held*, that on these facts the accused was not guilty of the offence described in Sec. 304a of the Penal Code, nor of culpable homicide not amounting to murder, because there was no likelihood of the result following, and *a fortiori*, no designed causing of it.

UPON reading the record in Criminal case No. 86 of 1876, on the calendar of the Assistant 1st-class Magistrate of Ganjam,

(1) In the Proceedings dated 29th September 1876, the High Court [Holloway, Innes, Kernan and Kindersley, JJ.] decided as follows: "The question is whether the repeal of Madras Act III of 1865 by Act XVI of 1874 has deprived Magistrates in the Madras Presidency of jurisdiction over offences created by special and local laws. The answer depends upon the meaning of the last two paragraphs of Clause I.

So far as it applies to the present matter: "This Act, i. e., the repeal of former Acts, shall not affect any established jurisdiction notwithstanding that the same may have been in any manner derived from any enactment hereby repealed."\* The plain meaning of these words seems to a majority of the Court to be that the repeal of any Act shall leave any existent jurisdiction precisely as the repeal found it.

The negative words seem to render this still clearer. This Act (the repeal) shall not restore any restriction, &c., not now existing. The incapacity to deal within the limits of their ordinary powers with an offence under a special or local law, indicating a particular tribunal, was a restriction upon the jurisdiction given by the Procedure Code. That restriction was removed by this repealed Act. It is not by the express words of the repealing Act to be restored by that repeal.

The result is that Acts are repealed, but all the effects which they have produced are to be treated as rooted in the law despite the repeal."

\* See Act XVI of 1874 in Sec. 1.

in which the accused had been convicted under Sec. 304a of the Indian Penal Code, Counsel not appearing—

1877.  
January 19.

The High Court passed the following

REG.  
v.  
ACHARJYS.

**RULING:**—In this case the Assistant Magistrate has convicted the accused of causing death by doing a negligent act not amounting to culpable homicide, and has sentenced him to be rigorously imprisoned for six months.

The facts are that the deceased, after delivering some paddy at the house of the accused, asked the accused for payment of the hire due to him. A dispute arose as to the amount of the hire, and in the course of the dispute the accused gave the deceased a severe push on the back which caused him to fall from the top of accused's steps to the road below, a distance of two and a half cubits. In falling the deceased fractured his big toe, and on the fifth day after the fall the deceased died from tetanus brought on by the fracture.

The High Court are of opinion that the conviction is bad in law. The case is not one of culpable homicide not amounting to murder, because there was no likelihood of the result following, and *a fortiori*, no designed causing of it. It is, however, one of the cases of a type which are culpable homicide or nothing. There is a positive act which directly causes death. If proper circumspection would have shown the doer that his act would cause death, then the act is culpable homicide.

*Ex concessio* it would not, and the case is no more one of causing death by negligence than it is of culpable homicide. It is simply a case of using criminal force as defined in the Penal Code. By the law of England, however, the act would have been treated as manslaughter.

The conviction is hereby annulled. The accused will be forthwith discharged from custody.