

APPELLATE CRIMINAL.

Before Mr. Justice Innes and Mr. Justice Muttusami Ayyar.

THE EMPRESS *v.* KHOGAYI (FIRST PRISONER) APPELLANT.*

1879.

January 22.

THE EMPRESS

v.

KHOGAYI.

Indian Penal Code, Section 300—Provocation necessary—Evidence as to the condition of mind of the offender, admissible.

The provocation contemplated by Section 300 of the Indian Penal Code should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation.

THE appellant (first prisoner) was charged with the murder of one Saradi, and a second accused (Budi) was charged with abetment of the murder.

The two prisoners were in their field strengthening the bund. Tataya and another (shepherds) drove their flock of sheep past the field. Some of the sheep went over the bund and the prisoners, annoyed at their bund being damaged, abused and struck the shepherds. At this time Tataya's father (the deceased) and another came up. Deceased caught hold of his son, asking why the prisoners were beating him and abused them. First prisoner then struck deceased one blow on the side of the head with a heavy stick that was in his hands and killed him.

The Sessions Judge convicted the first prisoner (appellant) of murder, and sentenced him to be transported for life. The second prisoner was acquitted.

On appeal by the first prisoner, Counsel not appearing for him, having heard the *Government Pleader* in support of the conviction, the High Court (INNES, J., and MUTTUSAMI AYYAR, J.) delivered the following

JUDGMENT.—It was argued by the *Government Pleader*, who appeared in support of the conviction, that in determining what was the provocation which induced the act of the prisoner, all that took place before deceased arrived on the scene must be left out of account, because there is nothing to show that he had any part in the trespass and assault and other aggravating

* Appeal No. 561 of 1878, against the sentence of J. R. Daniel, Sessions Judge of Ganjam, dated 9th September 1878.

conduct of his son. Assuming it to be the law that the provocation which is contemplated by Section 300 must have proceeded from the person whose death is the subject of the enquiry either by his own acts or by acts of others which he instigated or otherwise abetted, and confining the provocation in this case therefore to the abusive language used by the deceased, we still think that it was grave enough and sudden enough to bring it within the character of that contemplated by the section.

What is required is that it should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation. In the present case the abusive language used was of the foulest kind and was addressed to a man already justly enraged by the conduct of the deceased's son. In the circumstances we think the provocation was sufficient to deprive him of his self-control, and shall set aside the conviction of murder and substitute a conviction of culpable homicide not amounting to murder, and sentence prisoner to seven years rigorous imprisonment.

THE EMPRESS
v.
KHOGAYI.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Forbes.

SUBBRAMANYAN, PLAINTIFF v. GANAPATHI AND ANOTHER,
DEFENDANTS.*

1879.
January 22.

Suit in District Munsif's Court, suit filed in Small Cause Court on same day. Election.

A suit brought in a District Munsif's Court, filed on the same day as a suit for the same amount brought in the same cause of action in the Small Cause Court is not a bar to the maintenance of the Small Cause Suit; but the Plaintiff must elect which suit he will proceed with.

THIS was a case stated by the Judge of the Court of Small Causes at Kumbakonam under Section 617 of Act X of 1877.

The question in this case was whether a suit brought in a District Munsif's Court, filed on the same day as a suit for the

* Case No. 6 of 1879, stated under Section 617 of Act X of 1877 by the Judge of the Court of Small Causes at Kumbakonam in Small Cause Suit No. 18 of 1879.