

suits such as in Section 12\* of the new Code, neither was there such provision as Section 371 of the new Code. The plaintiff's right to bring a new suit is not, therefore, taken away. The former suit abated and the records most probably are gone.

We do not see any objection to the present suit on the grounds presented.

We dismiss the appeal with costs.

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[33] APPELLATE CRIMINAL.

*The 20th April, 1881.*

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

Boya Munigadu.....(Prisoner) Appellant

*versus*

The Queen.\*

*Murder—Culpable homicide not amounting to—Grave and sudden provocation.*

On a certain evening M, a common workman, saw N committing adultery with his (M's) wife, and on the following morning, while labouring under the excitement provoked by their misconduct, came upon them eating food together while his wife had neglected to provide food for M. M took up a bill-hook and killed N on the spot.

*Held*, that if M connected the subsequent conduct of N and his wife with their misconduct of the preceding evening and regarded it as implying an open avowal of their criminal relations, which under the circumstances he might have done, the provocation was sufficiently grave and sudden to deprive him of self-control, and to reduce the offence from murder to culpable homicide not amounting to murder.

IN this case the prisoner was convicted of murder of one Kavali Narasimudu in October 1880 and sentenced to transportation for life, the Court finding that there were extenuating circumstances in the case owing to the provocation received by the prisoner, but that such provocation was not sufficiently grave to constitute the offence culpable homicide not amounting to murder.

The prisoner made a full confession before the committing Magistrate which was accepted by the Sessions Judge as a true narrative of the facts. The deceased, the prisoner, and his wife lived together in one house for five years. The confession was as follows :—“I will truly relate the facts because God has induced me to do so. Kavali Narasimudu of my village brought shame upon

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\* Appeal No. 51 of 1881 against the sentence passed by C. G. Plumer, Sessions Judge of North Arcot, on 6th January 1881.

† [Sec. 12 :—Except where a suit has been stayed under Section 20, the Court shall not try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India having jurisdiction to grant such relief, or in any Court beyond the limits of British India established by the Governor-General in Council and having like jurisdiction, or before Her Majesty in Council.

*Explanation.*—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.]

me. He was a bitter enemy of mine. He had intimacy with my wife in my house alone. When they were in cohabitation I saw them without interfering with them. I remained in the house; that night I had no meals; I fasted. I went to the ryots to get my wages from them; my wife prepared 'sankaty'; she and Narasimudu were eating; I became very angry because I saw the strange occurrence on the previous night and because my stomach was pinched with hunger especially when I saw both of them eat together; in view to kill both [34] of them I seized the bill-hook suspended to a peg; they were then eating; my wife, seeing me armed with the bill-hook, ran away. Narasimudu was present in front of me. I struck him once with the bill-hook. I became mad when I repeated two or three blows. I was quite unconscious to say as to how many blows I administered and in what portion of the body. As soon as he had dropped down I went away. This is all I know, Sir. No one threatened me. I relate the fact with free will. Nobody taught me to say so. It is true that I did murder Narasimudu. The second blow I hit was on the head."

The medical evidence showed that death was instantaneous.

The prisoner retracted his confession at the trial and subsequently appealed to the High Court, but was not represented by Counsel.

The Government Pleader (Mr. *Handley*) was heard in support of the conviction.

The Court (INNES and MUTTUSAMI AYYAR, JJ.) delivered the following

**Judgment:**—The conviction depends mainly upon what the prisoner disclosed in his confession, and the Sessions Judge has given credit to the prisoner's statement as to the motive assigned by him for the act charged. The disappearance of the wife ever since the death of Narasimudu is strongly in support of the statement of the prisoner as to the circumstances which induced him to kill Narasimudu, and we think the Judge was well-founded in attaching credit to this part of his statement. It follows then that, on the evening preceding the commission of the act charged, the prisoner saw the deceased having connection with his wife, and was intensely moved by what he saw. He did not, however, then interfere; though, from what he states, it is not to be inferred that any feeling of indifference supervened upon the first ebullition of anger.

In the morning he saw his wife eating with the deceased and giving him food while she left her husband without it. If he had *not* been a witness to what had occurred on the previous evening, this conduct would have a special significance, indicative of improper relations between the deceased and the wife; and, if having witnessed the act of adultery, he connected this subsequent conduct, as he could not fail to connect it, with that act, [35] it would be conduct of a character highly exasperating to him, implying, as it must, that all concealment of their criminal relations and all regard for his feelings were abandoned and that they purposed continuing their course of misconduct in his house. This, we think, amounted to provocation, grave enough and sudden enough to deprive him of his self-control, and reduced the offence from murder to culpable homicide not amounting to murder.

We shall set aside the conviction of murder and convict the prisoner of culpable homicide not amounting to murder.

The punishment must be determined by the first part of Section 304, and we shall sentence the prisoner to transportation for 10 years.