

KUNHAMMAD
v.
KUTTI.

We must allow the appeal, reverse the decree of the Lower Appellate Court, and restore that of the Court of first instance. The appellants will be entitled to their costs in this and in the Lower Appellate Court.

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Muttusami Ayyar.*

QUEEN-EMPRESS

against

ACHUTHA.*

1888.
Oct. 22.

Criminal-Procedure Code, s. 45—Duty to report sudden death—Owner of house distinguished from owner of land.

Under s. 45 of the Code of Criminal Procedure, every owner or occupier of land is bound to report the occurrence therein of any sudden death.

The head of a Nayar family was convicted and fined under s. 176 of the Penal Code for not reporting a sudden death in the family house :

Held, following former decisions of the Court, that the conviction was illegal, because s. 45 of the Code of Criminal Procedure does not apply to the owner of a house.

CASE referred under s. 438 of the Code of Criminal Procedure by J. W. F. Dumergue, Acting District Magistrate of Malabar, as follows :—

“In this case the accused, a karnavan (senior member) of a Nayar tarwad, has been convicted and fined Rs. 3 under s. 176 of the Indian Penal Code for omitting to give information touching the death of his anandravan (junior member) from the effects of a snake-bite.

“The facts are identical with those dealt with in High Court Proceedings, No. 1225, dated 31st July 1880, pages 60 and 61 of the Weir’s Code, third edition, and the conviction appears accordingly illegal.

“I do not think that s. 45 of the Code of Criminal Procedure was intended to be applied to such cases as this, but with regard

* Criminal Revision Case No. 469 of 1888.

to the distinction drawn between the owner of land and the owner of a house, I submit that the exemption in favor of the latter is dangerous. The owner or occupier of a house must be the owner or occupier of the land on which the house stands, and the circumstances of a sudden or unnatural death in a house are more easily concealed than in the case of open land."

The Acting Government Pleader (*Subramanya Ayyar*) in support of the conviction.

The Court (Collins, C.J., and Muttusami Ayyar, J.) delivered the following

JUDGMENT.—The accused in this case is the karnavan of a Nayar tarwad, and he omitted to give information touching the death of a member of his family in his house from snake-bite. The sub-magistrate considered that he was the owner of land within the meaning of s. 45 of the Code of Criminal Procedure and fined him Rs. 3 under s. 176, Indian Penal Code. It was held in criminal revision cases Nos. 221, 271, 284, and 311 of 1887 that the owner or occupier of a house within a village was not an occupier or owner of land within the meaning of s. 45. Mr. Justice Kernan made a similar order in criminal revision case No. 136 of 1880 under the corresponding section of the former Code of Criminal Procedure. Though another Divisional Bench considered the acquittal of the accused to be illegal in criminal revision case No. 479 of 1887, the decision proceeded on the ground that the accused was the occupier of land as contradistinguished from the owner or occupier of a house. Having regard to the fact that under the old Regulations in this Presidency, an obligation such as is created by s. 45 was imposed upon zamindars and owners of proprietary estates, we are not prepared to hold that the construction hitherto placed on s. 45 is not correct.

We agree with the District Magistrate that the conviction and the sentence referred to us for revision are illegal, and, setting them aside, direct that the fine, if levied, be refunded.