

APPELLATE CRIMINAL—FULL BENCH.

Before Mr. Justice Shephard, Mr. Justice Subramania Ayyar,
Mr. Justice Davies and Mr. Justice Boddam.

1897.
June 12.
November
5, 18, 30.

YALLA GANGULU

*.

MAMIDI DALI.*

Criminal Procedure Code, s. 545—Death caused by negligence—Compensation to widow.

A Magistrate imposed a fine in addition to a sentence of imprisonment on a conviction for the offence of causing death by a rash and negligent act and gave compensation to the widow of the deceased out of the fine imposed:

Held, that compensation could not be given to the widow under Criminal Procedure Code, section 545.

CASE of which the records were sent for by the High Court under section 435.

The Head-Quarter Deputy Magistrate of Godávári convicted a person charged before him in Calendar Case No. 16 of 1897 of an offence under the Indian Penal Code, section 304-A, and he directed compensation to be given to the widow of the deceased man out of a fine imposed by him on the prisoner.

The prisoner appealed to the Sessions Judge who affirmed the conviction, but set aside the order of compensation as being illegal.

The records were called for by the High Court as above.

The matter having come for disposal before Benson and Boddam, JJ., they referred to the Full Bench the question stated by Benson, J., as follows:—

BENSON, J.—I find much difficulty in accepting *In re Lutchmaka*(1), as correct. No doubt it follows earlier rulings *In re Roop Lall Singh*(2), *Reg. v. Shiobasapa*(3), but they proceeded on the words of section 44 of Act XXV of 1861 which differ most materially from section 545 of the present Criminal Procedure Code. In section 44 the words are “the loss appearing to be caused to the person who has suffered by such offence, and any special damage of a pecuniary nature that may have resulted to such person by such offence.” The words “the person,” not “any

* Criminal Revision Case No. 218 of 1897.

(1) I.L.R., 12 Mad., 352. (2) 10 W.R., C.R., 39. (3) 7 Bom. H.C.R., CrL., 73.

“person” clearly indicate that that section had in view only the person primarily injured by the offence; but in section 545 the language is wholly different. It is “in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.” I think the word “where” means “in cases in which, and by persons by whom,” compensation is recoverable.

Now under Act XIII of 1855 (founded on Lord Campbell’s Act) compensation in such cases is, recoverable by the “wife, husband, parent and child, if any” of the deceased.

Section 545 (b) seems to me to have been framed so as to admit of compensation being given in cases where it is recoverable under Act XIII of 1855, and on principle I should think it very desirable that the Courts should have such power. Why should a poor widow be driven to a civil suit in a case like this?

The case of *In re Lutchmaka*(1) was not argued, and I do not know if the learned Judges considered the remarkable change in the language of the present section.

My view seems to receive support from the corresponding section 308 of the Criminal Procedure Code (Act X of 1872) which was intermediate between the Code of 1861 and the present Code. It provides for payment of compensation “for the offence complained of, where such offence can, in the opinion of the Court, be compensated by money,” and allows the payment to be made to or for the benefit of the complainant or the person injured or both. This allowed compensation to be given to a person other than the person primarily injured provided he or she complained. This, however, went far beyond Act XIII of 1855, since it allowed compensation to be given to any person who complained, however remote the injury to him. The present wording seems to me to have been adopted in order to restrict compensation to those cases where it could be claimed under Act XIII of 1855, *i.e.*, to the husband, wife, parent or child, except, of course, where death was not caused, in which case the injured person alone could claim. I would refer the matter to a Full Bench.

[The case then came on for hearing before a Full Bench constituted as above.

The parties were not represented.]

YALLA
GANGELU
2.
MAMIDI
DALI.

(1) I.L.R., 12 Mad., 352.

YALLA
GANGULU
v.
MAMIDI
DAJI.

SHEPARD, J.—The question is whether, out of the fine imposed on a man convicted under section 304-A of the Penal Code, compensation can be given by the Magistrate to the widow of the person whose death by drowning was brought about by the prisoner's act.

The question turns on the construction of section 545 of the Criminal Procedure Code. To render clause (b) of that section applicable it must appear that an "injury caused by the offence committed" has been suffered, and further that the injury is one for which substantial compensation might be given in a civil suit. The term "injury" is defined in the Penal Code as follows:—"The word denotes any harm whatever illegally caused to any person in body, mind, reputation or property;" and this definition holds good for the interpretation of the Criminal Procedure Code, section 4.

The question then is whether the widow of a man who has been drowned by the criminal act of another can be said to have suffered an injury in that sense of the word. In my opinion it is impossible to answer that question in the affirmative. She has certainly not suffered in body, or reputation, nor has she suffered any injury in mind for which an action would lie, and I do not think it can be said she has suffered in property. I take it that the term "property" means something in existence and that it cannot, with any propriety, be applied to the reasonable expectation of pecuniary benefit for the loss of which an action is maintainable by the representative of a deceased person. Such a claim on behalf of a widow is analogous to that which may be made by a master in respect of wrongful acts done to his servant. He is entitled in such case to recover damages for the loss of service. There is no question of loss of property. If the claim of the widow in such a case as the present is maintainable, it must follow that the master of a servant, who has been disabled or put in wrongful confinement, may equally apply for compensation to be paid out of the fine inflicted on the offender. In my opinion it would be putting an undue strain on the language of the section to hold that it refers to and includes actions which may be brought on account of loss of service. It appears to me very unlikely that the Legislature should have intended claims of this sort involving somewhat difficult questions to be adjudicated upon by a Magistrate. But if there had been such intention, involving as I shall show,

an alteration of the law, surely some plain language would have been used to express the intention. There can be no doubt that under the Code of 1861, the claim of a widow could not have been entertained. In this respect I do not think any change was made in the Code of 1872. The "person injured" in section 308 of that Code must, I think, as in the Code of 1861, mean the person against whose body, reputation or property the offence has been committed. To that person only, according to section 308, could any sum be paid in the way of compensation, while to the complainant payment could be made on account of his costs.

The only difference in the language of the section now in force consists in the insertion of the words "the injury caused by." Instead of directing that compensation be given for the offence, the law now directs that compensation be given for the injury caused by the offence. From a change of language which was so obviously required to make the sentence correct, I cannot conceive how any change of intention on the part of the Legislature can be inferred.

I think the decision in *In re Lutchmaha*(1) is right and would answer the question referred accordingly.

SUBRAMANIA AYYAR, J.—I concur.

DAVIES, J.—I agree with Shephard, J. It seems to me clear from the definition of the word "injury" as used in section 545 (b) of the Code of Criminal Procedure that it can apply only to the case of the man whose death was caused. And in Act XIII of 1855 it is the deceased man, and the deceased man alone, who is described as the "party injured." As through his death, he cannot sue for the injury done to himself, that Act allows a suit of another character to be brought on behalf of his widow and other near relatives for compensation—not, be it noted, for the injury caused to the dead man—but for "the loss resulting from such death" to themselves. In other words it is not for the injury caused to the deceased, but for the loss occasioned to the near relatives in consequence of such injury that the action lies. The loss is one quite independent of the injury to the deceased, although it arises out of it, and cannot therefore, in my opinion, be included in the term "injury" as used in a limited sense in the section 545, for it is not "caused by the offence committed," except indirectly.

(1) I.L.R., 12 Mad., 352.

YALLA
GANGULU
v.
MAMIDI
DALL.

BODDAM, J.—I agree.

[The case came on for final disposal before Collins, C.J. and Benson, J., who delivered judgment as follows:—]

JUDGMENT.—Under section 413, Criminal Procedure Code, the Sessions Judge was precluded from entertaining the appeal.

We set aside his proceedings.

In exercise of our powers of revision we set aside so much of the Deputy Magistrate's order as awards compensation to the deceased man's widow.

APPELLATE CRIMINAL.

Mr. Justice Shephard and Mr. Justice Subramania Ayyar.

QUEEN-EMPRESS,

v.

TIRUCHITTAMBALA PATHAN.*

1896.
October 16,
29.

Penal Code, s. 183--Resistance to the taking of property—Attachment of goods not being property of judgment-debtor.

A decree having been passed against the assets of a deceased debtor, execution was taken out and the officer of Court proceeded to seize certain goods. The accused successfully resisted the seizure asserting that the goods seized were his own. He was thereupon charged with having committed an offence under the Penal Code, section 183, but he was acquitted for want of proof by the prosecution that the goods were assets of the deceased:

Held, that the acquittal was wrong and should be set aside.

APPEAL on behalf of the Crown under Criminal Procedure Code, section 417, against the judgment of M. Agnisami, Second-class Magistrate of Mannargudi, in Calendar Case No. 22 of 1896.

A decree having been passed against the assets of a deceased debtor, execution was taken out, and the Amin of the Court attempted to attach and seize a brass plate in the possession of the accused as forming part of the assets of the deceased. The accused wrested it from the hands of the attaching officer stating that it belonged to him and not to the deceased. He was thereupon charged with the offence of offering resistance to the taking of property by lawful authority under Indian Penal Code, section 183, and was tried by the Second-class Magistrate who acquitted him

* Criminal Appeal No. 258 of 1896.