1884

UMA CHURN MUNDLE v. JOSHEIN SHEIKH.

Procedure. One of these five jurors appointed did not act on the jury, and of the remainder two were in favor of the Deputy Magistrate's order being maintained, and two were against it.

The Deputy Magistrate thereupon passed the following order: "Of the five jurors appointed, one has not acted at all. Two report in favor of the order, two against it. As a majority of the jurors do not find the order to be reasonable and proper, no further steps can, under s. 139, be taken. Case struck off." The District Magistrate, at the instance of the complainant, considered that this order was illegal, because (1) the jury were not legally constituted, inasmuch as it consisted of four persons only; and (2), because the proper course for the Deputy Magistrate to have taken was to have appointed another juror in the place of the one who did not act. The Deputy Magistrate, on being called upon for his explanation, did not consider it necessary to offer any explanation in support of the course he had taken, inasmuch as he was of opinion that the case could be revived without any reference to the High Court, and he further considered that ss. 438, 439 of the Code of Criminal Procedure did not apply to a case in which there was no sentence to be revised.

No one appeared for either party on the reference.

The order of the Court (MITTER and NORRIS, JJ.) was as follows:—

We think that the course taken by the Deputy Magistrate was irregular. He must summon a fresh jury and commence the enquiry afresh.

*Order set aside.*

---

*Before Mr. Justice Mitter and Mr. Justice Norris.*

QUEEN EMPRESS *v.* JACQUIET.*

1884
*December* 8.

*Verdict in accordance with charge—Verdict disagreed with by Judge—Reference under s.* 307, *Act X of* 1882.

The Court will not interfere with the finding of a jury, unless their verdict is shown to be manifestly erroneous.

A prisoner was charged under ss. 302 and 304 of the Penal Code, and the Judge at the trial added a further charge under s. 325. The Judge in

* Criminal Reference No. 23 of 1884, made by S. H. C. Taylor, Esq., Sessions Judge of Burdwan, dated 20th November 1884.

1884

QUEEN EMPRESS v. JACQUIET.

his charge to the jury directed them that in the event of their finding the charges under ss. 302 and 304 unsustainable, they might find the prisoner guilty under s. 325.

The jury unanimously acquitted the prisoner under the charge framed under s. 302, and a majority of them acquitted him under the charge framed under s. 304; but a majority of them found him guilty under the charge framed under s. 325.

The Judge disagreed with their finding as regarded the charge framed under s. 304, and referred the case to the High Court under s. 307 of the Criminal Procedure Code.

The High Court refused to interfere with the verdict, on the ground that the verdict could not be said to be manifestly erroneous, the Judge having heard the evidence and having expressed his opinion to the jury that they might find the prisoner guilty under s. 325.

ONE Thomas Jacquiet, a guard in the service of the East Indian Railway Company, was committed to the Court of the Sessions Judge of Burdwan, charged under ss. 302, 304 of the Penal Code with having caused the death of his wife.

The Sessions Judge on his own motion added a further charge under s. 325 of the Penal Code, in order to meet the somewhat doubtful testimony of the medical officer given in the Court below as to the exact cause of the death of the prisoner's wife.

The evidence given at the Sessions Court was to the effect, that on the 2nd October Jacquiet was taken home drunk and incapable at about 11 A.M., and that at that time Mrs. Jacquiet was lying on her bed; and it appeared that the prisoner at 1 P.M., sent his servant with his children out of the house, and was then left alone in the house with his wife. At 6 P.M. the prisoner was again seen, and was then said to have been able to stand, and talk; between the hours of 1 and 6 P.M. Mrs. Jacquiet was murdered; the medical evidence was however a little uncertain as to the exact cause of death itself, though it clearly showed that the wife had been brutally treated.

The Sessions Judge charged the jury as follows:—

"There is hardly a point in this case either for or against the prisoner that has not been fully discussed before you by counsel on both sides, and it has been clearly shown to you that the main question which calls for your most careful consideration is whether the prisoner intended to commit any

1884

QUEEN EMPRESS v. JACQUIET.

offence, and if so what was the offence he intended to and did commit. I need hardly say that there cannot be a shadow of a doubt that the prisoner did take the life of his wife, for it would be simply preposterous to hold that the injuries which Mrs. Jacquiet received were either self-inflicted, or the result of accident. Some person must have caused them, and as the prisoner was admittedly alone with his wife that day, none but he could have killed her. I may furthermore observe that no attempt whatever has been made to shift the act on to any one else's shoulders, while the whole argument of prisoner's counsel has been directed solely to endeavouring to bring the case under s. 325 of the Penal Code. Looking at the several charges you will see that intention or knowledge forms an essential element therein. If, after considering all the facts disclosed, you are of opinion that the prisoner really did intend to take his wife's life under any of the conditions enumerated under s. 300 of the Penal Code, you must find him guilty of a most atrocious murder. If, however, the circumstances disclosed lead you to think that his case falls short of murder, there is the charge under s. 304 of the Penal Code against the prisoner, and if for any good reason you hold that s. 304 of the Penal Code will not apply to his case, there is the third (and alternative) charge under s. 325, under which it would be very difficult not to bring his case, if the other charges fail. You have been rightly told that intoxication cannot be pleaded as an excuse for the commission of an offence. But where intention or knowledge are facts which bear directly upon the guilt or innocence of a person charged with so serious an offence as the prisoner is, it has always been the practice of our Courts to consider such plea when determining such question of knowledge or intention. And here it seems to me that it is all the more necessary to take that plea into consideration, inasmuch as we are left considerably in the dark as to much that took place from the hour of 1 P.M. to the time Mrs. Jacquiet's dead body was seen by the prisoner's neighbours. You have the fact that the prisoner was helplessly drunk on the morning of the day the deceased lost her life, and also that his wife was tipsy. You have been told that there was a bottle of brandy which, though nearly full in the morning, was found nearly empty in the evening. None but these two persons apparently had access to this bottle, and it may be assumed I think that either one or both drank of its contents some time during the day. On the other hand you have been told that at a later hour in the day the prisoner had sufficiently recovered to know at all events what he was about, and I think it would be hard to hold that after 1 P.M. of that day the prisoner was incapable from drink of knowing what he was about. Up to this stage in the case nothing of a complicated nature presents itself. From this point, however, we have difficulties to contend with, and here too your best consideration to all the surrounding circumstances must be given. There are two points especially to which I would draw your attention, as it appears to me that a correct appreciation thereof will go far to help you to a

1884

QUEEN EMPRESS v. JACQUIET.

right determination on the question of intention or knowledge. It has been urged in the first place, that in sending his servant away with his children the prisoner must have premeditated murder; and, secondly, that in changing his clothes and concealing them, he was merely carrying out a preconceived plot. As to the second assertion it is not quite correct, for the prisoner did not conceal his blood stained clothes, but put them with his other soiled linen in the dirty clothes basket, and he did not change his clothes till he went to the station to despatch two telegrams to his relations announcing the death of his wife. This he did publicly when his neighbours were viewing the corpse, and after he had been in his blood stained clothes to call Mr. Rome to see his wife. So far then from there being any concealment, the man acted in a most open and public manner. Indeed, if you look to his whole conduct, it savours rather of a man partially stunned by the consequences of his own desperate acts, than of one who had preconceived a deliberate murder and afterwards tried to conceal the fact. If you agree with me in this, will you be prepared to hold that the sending away his servant with his two children, at a time when he was evidently still under the influence of his morning's libations, must show that he had planned a murder? I confess I cannot think so. You must consider whether or not you think so. But apart from all this, there is another very important circumstance which you have to consider in connexion with this question of intention. You have heard that the prisoner, though sometimes the worse for liquor, was generally a well conducted inoffensive man, devoted to his wife, and against whom the most that only one witness could say was that he had at times slapped his wife. There is absolutely not an *iota* of evidence to show, or lead to the inference, that anything whatever had occurred, between husband and wife, on the day the latter lost her life, that was calculated to make the prisoner even annoyed or displeased with his wife. Such being the case, are you prepared to say that the prisoner intended to take the life of his wife? If, while caring for his wife, and having no cause for complaint against her, the man unprovoked committed a deliberate murder, I do not see how one could avoid looking on the act as that of an insane person. But the prisoner is not insane, and we must form some other and reasonable opinion on the case. In so doing, however, we are left absolutely to conjecture. For hours during the day in question husband and wife were alone, not an eye to see, not an ear to hear what passed between them. We know only the result—and if you agree with me in thinking it highly improbable that murder could have been contemplated by any sane person under the circumstances, we are forced to the conclusion that something must have taken place between the two which actuated the prisoner to the deed—and it seems to me that there is nothing more probable than that both (being probably still under the influence of their morning's drinking) had words, and that in the course of a quarrel the prisoner, unable to control himself, made what must have been

a savage attack on his wife. If there were evidence to show what was the provocation, if any was given, it could be without much difficulty seen whether it was of that grave and sudden nature as would under the law reduce the offence from murder to culpable homicide not amounting to murder. But there is no such evidence, and we have to do the best we can to fill up the gap. Where a doubt exists the prisoner is entitled to the benefit thereof, and here an intention to commit murder as defined under s. 300 of the Penal Code seems to me to be left unproved. If you are doubtful on the point you must give the prisoner the benefit of such doubt. As to the charge under s. 304 I am bound to tell you that the facts, if credited, certainly establish that charge, for the prisoner was not so drunk that he did not know what he was about, and the attack was so savage and the wounds inflicted so severe, that he must have known what the consequences were likely to be. As to the charge under s. 325, I need hardly tell you that it is a very minor one, and was added in order to meet the doubtful testimony of the medical officer as to the cause of death when he was deposing in the Court below. If for any good reasons you can say that the case does not come under either s. 302 or 304, and you hold that a minor offence was committed, there is ample evidence to show that grievous hurt was voluntarily caused. Your best attention is solicited to all the facts disclosed in this case."

The jury unanimously found the prisoner not guilty under the charge framed under s. 302; and in the proportion of three to two found him not guilty under the charge framed under s. 304; but in the proportion of three to two found him guilty under the charge framed under s. 325.

The Sessions Judge, however, disagreed with the verdict of the jury as to their finding on the charge under s. 304 of the Penal Code, and as in his opinion the sentence which he was capable of passing under s. 325 was wholly inadequate to the offence committed, he referred the case to the High Court for orders under s. 307 of the Code of Criminal Procedure.

On the case coming up before the High Court—

The *Officiating Deputy Legal Remembrancer* (Mr. *Leith*) appeared for the Crown.

Baboo *Khetter Mohun Gangooli* for the prisoner.

The following order was passed by the Court (MITTER and NORRIS, JJ.):—

NORRIS, J.—This case has been referred to us by the Sessions Judge of Burdwan under the provisions of s. 307 of the Code

1884

QUEEN EMPRESS v. JACQUIET.

of Criminal Procedure. The facts are briefly these: The prisoner was committed for trial under ss. 302 and 304 of the Penal Code. At the trial the Sessions Judge of his own motion added a charge under s. 325 of the Penal Code. Evidence was adduced in support of all three charges, and at the close of the case for the prosecution and the speeches for the prosecution and defence, the Judge proceeded to charge the jury. He began his charge by telling the jury that the counsel for the defence had endeavoured to bring the case within s. 325, in other words, had endeavoured to save his client's life. The Judge then goes on to point out to the jury what evidence there is in favor of the charge under s. 302, and what evidence there is against it. Similarly the Judge points out what evidence there is for and against the charge under s. 304. Then the Judge goes on to say: "As to the charge under s. 325, I need hardly tell you that it is a very minor one, and was added in order to meet the doubtful testimony of the medical officer as to the cause of death when he was deposing in the Court below. If for any good reasons you can say that the case does not come under either s. 302 or s. 304, and you hold that a minor offence was committed, there is ample evidence to show that grievous hurt was voluntarily caused." Now, if the Judge in the Court below was of opinion, as he appears to be according to his letter of reference, that this case resolved itself simply into the question whether the prisoner was guilty of murder, or of culpable homicide not amounting to murder, instead of directing the jury, as he has done, that they might convict under s. 325, he should have struck out the charge under this section, even if the prisoner had been originally charged thereunder. He should have said: "Gentlemen, there was a charge under s. 325, I have taken it upon myself to strike out that charge, as the crime of the prisoner cannot possibly be brought under that section." Instead of doing that, the learned Judge invites the jury, if they fail to find a verdict either under s. 302 or 304, to return a verdict under s. 325. This being the way that he has charged the jury, it is unreasonable for the Judge to complain of the verdict that the jury have returned and throw upon us the responsibility of dealing with the case under s. 307 of the Code of Criminal Procedure. We decline to interfere with the verdict of the jury.

1884

QUEEN EMPRESS v. JACQUIET.

We convict the prisoner of the offence charged under s. 325, and sentence him to be rigorously imprisoned for seven years.

MITTER, J.—I concur. It is clear upon the authority of decided cases that this Court will not interfere unless the verdict of the jury be found to be manifestly erroneous. In his charge to the jury the Sessions Judge directed that in the event they found the other charges unsustainable, they might find the accused person guilty under s. 325, if that offence in their opinion has been established upon the evidence. The Sessions Judge heard the evidence, and after recording it, he expressed his opinion in his charge to the jury that they might upon that evidence find the accused person guilty under s. 325. That being so, I am not prepared to say, upon the bare perusal of the recorded evidence, that the verdict of the jury is manifestly erroneous.

*Verdict affirmed.*

## CRIMINAL MOTION.

*Before Mr. Justice Wilson and Mr. Justice Macpherson.*

RAJNARAIN KOONWAR (PETITIONER) *v.* LALA TAMOLI RAUT (OPPOSITE PARTY.)*

1884

*November 6.*

*Joinder of charges—Summons and Warrant cases—Criminal Procedure Code, ss. 247 and 253.*

In the investigation of a complaint, which forms the subject of two distinct charges arising out of the same transaction, one of which is a summons and the other a warrant case, the procedure should be that prescribed for warrant cases.

THIS case arose out of a dispute in regard to a certain field. It was alleged that, in the course of the dispute, one Lala Tamoli had been severely assaulted and his crops taken away. The charge laid was one of theft, as well as of voluntarily causing hurt. The Deputy Magistrate, seeing that the complainant

* Criminal Revision No. 366 of 1884, against the order of J. C. Price, Esq., Officiating Magistrate of Durbhangah, dated the 17th October 1884, setting aside the order of Baboo Gowhur Ali, Deputy Magistrate of Durbhangah, dated the 30th June 1884.