APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Tyabji.

Re MANDRU GADABA (PRISONER), APPELLANT.* 1914. August 17.

Indian Penal Code (Act XLV of 1860), sec. 86, interpretation of—Drunkenness—Knowledge and intent.

Per AYLING, J.—Ordinary drunkenness makes no difference to the knowledge with which a man is credited and if an accused knew what the natural consequences of his act were he must be presumed to have *intended* to cause them.

Per TYABJI, J.—Section 86, Indian Penal Code, must be construed strictly. It provides that the intoxicated person shall be dealt with as if he had the same *knowledge* as he would have had if he had not been intoxicated, but it does not provide that he shall be dealt with as if he had the same *intent*.

APPEAL against the order of L. T. HARRIS, the Agent to the Governor, Agency Division, Vizagapatam District, in Calendar Case No. 12 of 1914.

The facts of the case appear from the judgment of TYABJI, J.

K. Govinda Marar for the prisoner.

Nugent Grant for *the Public Prosecutor* for the Crown.

AYLING, J.—It is clearly proved that the accused in this case hacked the deceased Dinni to death with a *tangi*. The lower Court convicted him of culpable homicide not amounting to murder. Against this conviction he appeals and at the same time the case has been taken up by this Court in revision and the accused has been called on to show cause why the conviction should not be altered to one under section 302 of the Indian Penal Code and the sentence enhanced. AYLING, J.

I have no hesitation whatever in rejecting the appeal as the evidence leaves no doubt that the deceased was killed by the accused and by no one else.

As regards the nature of the offence *it seems to* me that it certainly amounts to murder. The nature of the wounds and of the weapon used are such that a sober man would undoubtedly be presumed to know that the wounds were likely to prove fatal. Section 86 of the Indian Penal Code makes it clear that ordinary drunkenness (appellant is said to have been drunk) makes no difference to the knowledge with which a man is credited. If

* Criminal Appeal No. 286 of 1914 (Criminal Revision Case No. 369 of 1914).

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the accused knew what the natural consequences of his act were, he must be presumed to have intended to cause them. The offence therefore comes within the substantive portion of section 300 of the Indian Penal Code. It is pleaded on behalf of the accused that it also comes within exception 4 to the same section. This is for him to show. It may be conceded that the offence was committed "without *premeditation* in a sudden fight in the heat of passion upon a sudden quarrel," but the accused has also to show that he took no undue advantage and did not act in a cruel or unusual manner. The evidence makes it perfectly clear that the deceased had only a small stick like a cane, while the accused fell upon him with a *tangi*, a sort of battle axe ordinarily carried by these hill-men. To my mind it is clear that in so doing the accused did take an undue advantage and acted in a cruel and unusual manner, and that he is precluded from availing himself of this exception. My learned brother however takes a different view: and while I myself with great deference think that the accused should have been charged with and convicted of murder, I am not sure that the case is one in which the interests of justice imperatively require the interference of this Court in revision.

I would therefore simply confirm the conviction and the sentence passed by the Lower Court and dismiss the appeal.

TYABJI, J.

TYABJI, J.—The accused was charged under section 304 of the Indian Penal Code of having committed culpable homicide not amounting to murder, and sentenced to ten years' rigorous imprisonment.

The facts proved at the trial were that the accused and the deceased were drunk, and quarrelled. Then the accused struck the deceased eleven times with his *tangi* which severed the arteries, and caused the death of the deceased. The Sessions Judge found the accused guilty, and sentenced him to ten years' rigorous imprisonment.

I agree with my learned brother that the appeal should be dismissed for the reasons mentioned by him.

With reference to the revisional proceedings, the question is whether the accused was guilty not only of culpable homicide but of murder, and whether we ought to convict him under section 302 instead of section 304 of the Indian Penal Code enhancing the sentence.

It is true that section 86 of the Indian Penal Code lays down that in certain cases an intoxicated person shall be liable to be dealt with "as if he had the same knowledge as he would have had if he had not been intoxicated." But it does not provide that the intoxicated person shall be dealt with as if he had the same *intent*. It seems to me that the word "intent" was advisedly omitted as "knowledge" and "intent" are both referred to in the earlier portion of the section. On the other hand it must be noted that section 86 expressly deals with "cases where an act [is] done . . . with a particular knowledge or intent." It may therefore be (as was contended by the Public Prosecutor) that section 86 implies that intent should be inferred from knowledge though knowledge alone is expressly imputed to the intoxicated person. The section should in my opinion be construed strictly. But it is unnecessary to express any final opinion on this aspect of the case and on the effect of the necessary inferences to be drawn from the knowledge which section 86 imputes to an accused person. For even taking the restricted interpretation of section 86 that is contended for as being the correct one on behalf of the accused, he comes within the fourthly mentioned case in section 300.

The question then is whether the facts entitle the accused to the benefit of the fourth exception to section 300. It is clear on the facts as they appear from the evidence that the case does come within the exception unless it is shown that the offender took undue advantage or acted in a cruel or unusual manner. It is in this connection that the Public Prosecutor has not satisfied my doubts. The accused was not put to his trial under this section. He would therefore not be concerned with proving that which would make exception 4 to section 300 available to him. The question therefore of the onus of proof as laid down in section 105 of the Indian Evidence Act cannot in fairness be pressed against the accused. Apart from it, I am not satisfied on the facts as they now appear on the evidence, that the accused took any undue advantage, or acted in a cruel or unusual manner. For, in this connection, I do not think that section 86 requires us to disregard the fact that the accused was intoxicated; section 86 is a section which creates an artificial rule for the effect of evidence, and the significance of facts. The section must be read as it is. It does not provide that in all

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criminal matters, and for deciding all questions under the Indian Penal Code "a person who is intoxicated shall be dealt with in the same way as if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will." I therefore think that it is very doubtful, even if the charge had been under section 302, and the case had to be decided on the materials before us, whether the accused should not be considered to have come under exception 4 to section 300. But remembering that the trial was under section 304 and not under section 302, I feel no doubt in giving expression to the opinion that the conviction ought not now to be altered to one under section 302, and that the sentence ought not to be enhanced.

My learned brother's view is different from mine on the question involved in the revision case; and I need hardly say that I cannot feel entire confidence in the correctness of my opinion on learning of his views. But whether my views are right or wrong I feel no doubt as to them. I am clearly of opinion that we should not interfere in revision and that the sentence should be confirmed.

APPELLATE CIVIL.

Before Sir Charles Arnold White, Kt., Chief Justice, Mr. Justice Ayling and Mr. Justice Oldfield.

1913. July 28, 29 and 30 and August 19.

R. P. KONETI NAICKER AND TWO OTHERS (APPELLANTS IN SECOND APPEAL No. 103 OF 1911 ON THE FILE OF THE HIGH COURT—DEFENDANTS NOS. 3 TO 5), APPELLANTS,

v.

J. GOPALA AYYAR AND ANOTHER (RESPONDENTS IN THE ABOVE SAID SECOND APPEAL—PLAINTIFFS), RESPONDENTS.*

Negotiable Instruments Act (XVI of 1881), sec. 28—Promissory note by agent, without any indication of execution as agent—Personal liability of executant.

Unless an executant of a promissory note clearly indicates therein either by an addition to his signature or otherwise, that he executes it as agent of another or that he does not intend thereby to incur personal responsibility, he is liable personally on the promissory note according to section 28 of the Negotiable Instruments Act.

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* Letters Patent Appeal No. 167 of 1912.