APPELLATE CRIMINAL—FULL BENCH.

Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Sadasiva Ayyar and Mr. Justice Coutts Trotter.

PALANI GOUNDAN (APPELLANT),

v.

EMPEROR (RESPONDENT).*

1919, February, 24 and 26, March, 17, and April, 7.

Penal Code, Indian (Act XLV of 1860), ss. 299 and 300—Grievous hurt causing unconsciousness—Hanging an unconscious person believing him to be dead to screen an offence of grievous hurt—Death in consequence, whether culpable homicide.

Where an accused struck his wife a blow on her head with a ploughshare which, though not shown to be a blow likely to cause death, did in fact render her unconscious and, believing her to be dead, in order to lay the foundation of a false defence of suicide by hanging, the accused hanged her on a beam by a rope and thereby caused her death by strangulation;

Held by the Full Bench, that the accused was not guilty of either murder or culpable homicide not amounting to murder.

The Emperor v. *Dalu Sardar* (1914) 18 C.W.N., 1279, followed.

CRIMINAL APPEAL by the prisoner and Trial referred to the High Court for confirmation of the conviction and sentence of death passed on the accused by the Sessions Court of Coimbatore in Case No. 99 of 1918.

The facts are given in the first paragraph of the Opinion of the Full Bench.

The Criminal Appeal came on for hearing in the first instance before SADASIVA AYYAR and NAPIER, JJ., who made the following

ORDER OF REFERENCE TO A FULL BENCH.

NAPIER, J.—The accused has been convicted of the murder of his wife. The evidence shows that on Wednesday, the 23rd of October 1918, at about four or five naligais before sunset she was seen by prosecution witness No. 6 weeping and she said that her husband had beaten her. The witness told her go home, promised to send for her father and then went to the father himself who lived in another hamlet of the same village, a mile away, a little before sunset and told him of the occurrence. After sunset the father, prosecution witness No. 2, sent his son, prosecution witness No. 8, and his son-in-law, prosecution witness

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* Criminal Appeal No. 33 of 1919 and Referred Trial No. 2 of 1919.

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No. 4, to the house where his daughter was living. Their evidence is that they arrived at the house at four or five naligais after sunset and that just outside the door they found the mother and the brother of the accused in the vasal and that the mother was remonstrating with her son inside saying "do not beat a woman." According to their evidence they did not hear any cries inside the house at that time. After they waited a few minutes the accused opened the door and came out. They say they went inside and found Ramayee lying dead on the floor with a ploughshare lying near her. They say they at once went and told Rasa Goundan, who lives two doors off from the accused's house, to go and call their father, prosecution witness No. 2. Rasa Goundan, prosecution witness No. 5, says that he went and informed prosecution witness No. 2 who at once came and found his daughter lying dead at about 10 or 11 o'clock in the night. Prosecution witness No. 2 says that he taxed the accused with the murder of his daughter and the accused said she hanged herself. Prosecution witness No. 2 further says that he went to the monigar and reported, but the monigar was busy with a procession and only promised to report. He thought that the monigar was endeavouring to hush the matter up, so he went to report the matter to the police himself at Kodumudi, three or four miles away, and laid a complaint. This complaint was recorded at 9-15 a.m. the next morning. That the monigar was endeavouring to hush the matter up, there can be no doubt, for it is clear that he sent no report to the police whatsoever as was his duty to do. The accused told a story to the effect that he came back early in the evening to get his meals and found his wife hanging with a rope tied to the roof and he calls two witnesses who say that the accused came and told them that his wife would not let him in and they went in with him and found his wife hanging from a beam. I do not think there can be any doubt that the deceased was hanged, but the evidence of the two defence witnesses is so discrepant that it is impossible to believe their version of the occurrence. The medical evidence shows that the woman had received a severe blow on the side of her head which would probably have rendered her unconscious, and it also shows that she died of strangulation which may have been the effect of hanging. That she hanged herself is impossible because, as pointed out by the

Medical Officer, the blow on the head must have produced unconsciousness and therefore she could not hang herself. I am satisfied on the evidence of the following facts: that the accused struck his wife a violent blow on the head with the ploughshare which rendered her unconscious, that it is not shown that the blow was likely to cause death and I am also satisfied that the accused hanged his wife very soon afterwards under the impression that she was already dead intending to create false evidence as to the cause of the death and to conceal his own crime. The question is whether this is murder.

Section 299 of the Indian Penal Code provides

"Whoever causes death by doing an act with the intention of causing . . . such bodily injury as is likely to cause death . . commits the offence of culpable homicide";

and section 300, clause (3), provides that

"if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death,"

then in such cases culpable homicide is murder. Now, the hanging of a woman who dies from the effect of the hanging is on the face of it causing bodily injury which is sufficient in the ordinary course of nature to cause death and the section only requires that there should be homicide, namely the causing of death, to make this murder. It cannot, I think, be disputed that the accused intended to cause bodily injury for he intended to hang and did hang whether the body was alive or dead. If he had stabbed her or shot her intending it to be believed that she had stabbed or shot herself I cannot see that he would have done otherwise than intended to cause the wounds which he did cause. In this case the bodily injury was strangulation by hanging. It is, however, suggested that there is a necessary limitation, namely, that the person on whom the bodily injury is inflicted must be a person who is to *the knowledge of the accused* capable of being killed and that therefore if the accused thinks that the person is dead already he cannot be convicted of culpable homicide. One objection to this theory is that it is not necessary that the person who is killed should be a person to whom the offender intends to cause the bodily injury and that therefore his knowledge of the condition of the person killed is not a necessary element for conviction for murder. If *A* shoots

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at *B* with intent to kill *B* but misses *B* and kills *C*, then he has committed the murder of *C* although he did not even know that *C* was there. This point has been the subject of an express decision of this Court in a case (*The Public Prosecutor* v. *Mushunooru Suryanarayanamoorti*)(1), where the accused attempted to poison one person and the poison was taken by another. There is no doubt that such is the law and it seems to me to follow that the opinion of the person who inflicts the injury as to the condition of the person who actually suffers the injury is immaterial. There is a general exception in the Penal Code which saves persons acting innocently, viz., section 79. So the burying of a person wrongly believed to be dead would be protected from the scope of section 299.

The Public Prosecutor, therefore, suggested that the proper limitation will be found by introducing the word 'unlawfully'. That would perhaps leave one class of persons unprotected as in the following instance. Suppose that in this case the accused, having struck his wife a blow on the head that made her unconscious and believing her to be dead, had gone to his relatives and told them of the occurrence and they having sent him away themselves hanged the body of the woman believing her to be dead for the purpose of concealing his crime. They would be undoubtedly acting unlawfully, for they would be guilty of an offence under section 201, namely, causing evidence of the commission of an offence to disappear with the intention of screening the offender from legal punishment, and yet it seems a strong proposition to say that they have committed murder. Of course the position of the accused in this case is far worse, for he has committed the offence of grievous hurt; and speaking for myself I see no reason why he should not have to bear the consequences of his subsequent act in killing the woman. Still it does appear that there should be some limitation of the strict words of the section and the difficulty is to say what that limitation is to be.

The protection would seem to be found in English Law by the application of the doctrine of *mens rea* though this might again be affected by the doctrine of malice in law which makes the killing in the course of a felony homicide. This doctrine of

(1) (1912) 11 M.L.T., 127.

mens rea, though extremely difficult of definition, operates to protect persons who have no wrongful intention or other blameworthy condition of mind. To what extent it would operate to protect persons who knew that they were committing a criminal offence, namely concealment of murder, is a question which I do not propose to consider though the decision in *The Queen* v. *Prince*(1) referred to by the Public Prosecutor would seem to apply the *mens rea* to a person who intended to do an unlawful act but not the unlawful act which he in fact did. This is in fact the argument of the Public Prosecutor who asks us to apply this doctrine. I do not think, however, that it arises for consideration.

Mr. Mayne is quite clear that under the Penal Code the maxim is wholly out of place. He says that every offence is defined and the definition states not only what the accused must have done but his state of mind in regard to his act when he was doing it. The whole of his discussion in sections 8, 9 and 10 on *mens rea* and knowledge is worthy of very close consideration and he seems to be quite clear that all the protections found in the English Criminal Law are reproduced in the Chapter of General Exceptions in the Penal Code. Sections 79, 80 and 81 would seem to cover all cases where a person is not acting with a criminal intent. Now, it seems to me that the particular clauses in sections 299 and 300 which we have to interpret do create what I am tempted to call constructive murder. The first clause of section 299 requires the intention of causing death; the third clause requires a knowledge that he is likely by such act to cause death. In the same way the first clause of section 300 requires an intention to cause death; the second clause requires an intention to cause such bodily injury as the offender knows to be likely to cause death; and the fourth clause requires the knowledge that the act is so imminently dangerous that it must, in all probability, cause death or is likely to cause death and the act is committed without any excuse for incurring the risk. In all these we have intention, knowledge and recklessness directed towards the causing of death. On the other hand, in the second clause to section 299 the intention is directed towards the bodily injury and in the third clause to section 300 the

(1) (1875) L.R., 2, Crown Cases Reserved, 154.

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intention is the same. What makes the offence murder is that the bodily injury should *in fact* be likely to cause death entirely apart from intention or knowledge. The legislature has thought fit to make the offence murder without proof of intention or knowledge directed towards death on the principle, of course, that a person must be deemed to intend the natural result of the injury which he inflicts; that is to say, if he inflicts an injury which is likely to cause death and that person dies, he must take the consequences of his action. But the intention provided for is confined to the bodily injury and not to the death. That is the law which we have to apply, and unless a person can be protected by one of the general exceptions, I cannot see for myself how he is to escape from the language of the section. Apart from the actual offence of concealing a murder, it is the grossest violation of natural rights to stab, shoot or hang a person without absolute knowledge that that person is dead unless of course it is done innocently, and I see no reason why the offender should not suffer the consequences of his act.

I shall now refer to the cases. The first is *Gour Gobindo Thakoor and another*(1). The facts are very similar. There one Gour Gobindo struck the deceased, Dil Muhammad, a blow which knocked him down and then he and others without inquiry as to whether he was dead or not, in haste hung him up to a tree so as to make it appear that he committed suicide. The accused were all convicted of hurt, but the High Court quashed the proceedings and directed the accused to be re-tried on charges of murder, culpable homicide not amounting to murder and hurt. Mr. Justice SETON-KARR says:

"If however, the deceased was not actually killed by the blow, but was killed by the suspension, then Gour Gobindo himself, and also all the other Thakoors who took part in hanging him up to the tree, would be clearly liable to a charge of culpable homicide amounting to murder; for, without having ascertained that he was actually dead, and under the impression that he was only stunned, they must have done the act with the intention of causing death, or bodily injury likely to cause death, and without the exceptions provided by the law, or they might have been committed for culpable homicide *not* amounting to murder."

(1) (1866) 6 W.R. (Cr. R.) 55.

Mr. Justice NORMAN says:

"Suppose, secondly, that the Thakoors had no intention of killing the deceased, but, finding him insensible, without enquiry whether he was dead or alive, or giving him time to recover, under an impression that he was dead, hung him to the tree, and thereby killed him. It appears to me that they might all have been put on their trial, under section 304, for culpable homicide not amounting to murder. I think a jury might fairly presume against them that they must have known that they were *likely by that act to cause death*."

The difficulty in this case is that the learned Judges did not wish to decide the case, and therefore their language is hypothetical. Mr. Justice NORMAN says that a jury might fairly presume knowledge that they were likely to cause death, hereby introducing a limitation which is not to be found in the clauses we have under consideration. Certainly SETON-KARR, J., thinks the offence to be culpable homicide.

The next case is *Queen-Empress* v. *Khandu*(1). In that case it was found that the accused struck the deceased three blows on the head with a stick with the intention of killing him. The accused, believing him to be dead, set fire to the hut in which he was lying with a view to remove all evidence of the crime. The medical evidence showed that the blows were not likely to cause death and did not cause death and that death was really caused by injuries from burning. Mr. Justice BIRDWOOD states the provisions of section 299 and says:

"it is not as if the accused had intended, by setting fire to the shed, to make the deceased's death certain,"

and therefore acquits him of murder though he convicts him of an attempt to commit murder because of the accused's own admission that he intended by the blow to kill. With great deference the learned Judge gives no reason for the view he takes. Mr. Justice PARSONS took the view that the whole transaction, the blow and the burning, must be treated as one and that therefore the original intention to cause death applied to the act of burning which did cause death. The Chief Justice disagreed with Mr. Justice PARSONS as to the transaction being one and without giving any other reason acquitted. With the greatest deference to the learned Judges I do not find any

(1) (1891) I.L.R., 15 Bom., 194.

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assistance from the manner in which they disposed of the case. Mr. Mayne deals with this case in section 414 of his notes and is inclined to agree with the dissenting Judge that the intention should be treated as continuing up to the burning.

The last case is *The Emperor* v. *Dalu Sardar*(1). In that case, the accused assaulted his wife by kicking her below the navel. She fell down and became unconscious. In order to create an appearance that the woman had committed suicide, he took up the unconscious body and, thinking it to be a dead body, hung it by a rope. The post-mortem examination showed that death was due to hanging. The Court, I think, assumed that at the time he struck her he was not intending to cause death, and, I think, we may also take it that the injury was not in fact likely to cause death. The learned Judges say that as he thought it to be a dead body he could not have intended to kill her if he thought that the woman was dead and seem to assume that the intention to cause death is a necessary element in the offence of murder. With very great deference to the learned Judges they seem to have ignored the language of sections 299 and 300 and accordingly I can find no assistance from this case. That being the state of the authorities, it seems to me to be advisable to get a definite pronouncement from this Court and I would therefore refer to a Full Bench the question whether on the facts found by us in this case the offence of murder has been committed.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—I agree in referring the question to a Full Bench as proposed by my learned brother. I shall however give my own opinion shortly on the matter referred. I do not think that the case of *The Queen* v. *Prince*(2) relied on strongly by Mr. Osborne has much relevancy in the consideration of the question before us. In that case the decision mainly depended upon the wording of the Statute 24 & 25 Vict., c. 100, s. 55, which made the taking unlawfully of an unmarried girl, being under the age of 16 years, out of the possession of the father a misdemeanour. The majority held in that case that there was no lawful excuse for taking her away, and the accused's ignorance of her age did not make it not unlawful.

(1) (1914) 18 C.W.N., 1279.
(2) (1875) L.R., 2, Crown Cases Reserved, 154.

We have simply to construe the definition of culpable homicide in section 299. The intention "to cause such bodily injury as is likely to cause death" cannot, in my opinion, mean anything except "bodily injury" to a *living human body*. If this is not so, then, according to the strict letter of the definition, the relatives who burn the body of a man believing it to be dead would be guilty of culpable homicide; I may even say that it is remarkable that the words "of a human being" are not added in the body of the definition after 'death' and, as the definition stands, the causing of the death of anything with intention will be culpable homicide, which of course is a contradiction in terms. I think after the words "bodily injury" the following words must be understood, namely, "to some living human body or other" [it need not be a particular person's body according to illustration (*a*) and it may even be the body of another living person than the one intended actually that received the injury]. The case of *The Emperor* v. *Dalu Sardar*(1) is almost exactly a similar case to the present. Though (as my learned brother points out) the Judges refer only to the intention to kill and not the intention to cause bodily injury likely to cause death, the two stand clearly on the same footing.

As regards Mr. Osborne's argument that a person who does an unlawful act, such as trying to conceal a murder, should take the consequences of the same if the act done in furtherance of that unlawful intention results unintentionally in homicide, I need refer only to illustration (*c*) to section 299 which indicates that the Indian legislature did not wish to import the artificial rules of the English Law of felony into the Indian Criminal Law.

A similar case in *Queen-Empress* v. *Khandu*(2) contains observations by SARGEANT, C.J., and BIRDWOOD, J., that "what occurred from first to last cannot be regarded as one continuous act done with the intention of killing the deceased" and I agree with them respectfully. As regards the case, *Gour Gobindo Thakoor*(3), no final opinion was expressed, and the fact that the accused hastily and recklessly came to the conclusion that the woman was dead might make him liable for punishment under

(1) (1914) 18 C., W.N., 1279. (2) (1891) I.L.R., 15 Bom., 194
(3) (1866) 6 W.R. (Cr.R.), 55.

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section 304-A (causing death by doing rash or negligent act) but not under culpable homicide, sections 300 and 304 having the same relation to each other as section 325 and section 338 relating to grievous hurt.

ON THIS REFERENCE:

Public Prosecutor (*E. R Osborne*) for the Crown.—On the facts as now found by the learned Judges who have referred the case to the Full Bench, the acts of the accused do not amount either to culpable homicide or murder. Reference was made to sections 299 and 300, Indian Penal Code, and to *The Emperor* v. *Dalu Sardar*(1), *Queen-Empress* v. *Khandu*(2) and *Gour Gobindo Thakoor and another* v. *Emperor*(3).

V. R. Ponnusamy Ayyangar for the accused was not called upon.

The OPINION of the Full Bench was delivered by

WALLIS, C.J.

WALLIS, C.J.—The accused was convicted of murder by the Sessions Judge of Coimbatore. He appealed to this Court, which took a different view of the facts from that taken by the learned Sessions Judge and has referred to us the question whether, on the facts as found by the learned Judges who composed it, the accused has in law committed the offence of murder. NAPIER, J., inclined to the view that he had: SADASIVA AYYAR, J., thought he had not. The facts as found are these: the accused struck his wife a blow on the head with a ploughshare, which knocked her senseless. He believed her to be dead and in order to lay the foundation for a false defence of suicide by hanging, which he afterwards set up, proceeded to hang her on a beam by a rope. In fact the first blow was not a fatal one and the cause of death was asphyxiation by hanging which was the act of the accused.

When the case came before us, Mr. Osborne, the Public Prosecutor, at once intimated that he did not propose to contend that the facts as found by the learned referring Judges constituted the crime of murder or even culpable homicide. We think that he was right in doing so: but as doubts have been entertained on the subject, we think it proper to state shortly the grounds for our opinion. By English Law this would

(1) (1914) 18 C.W.N., 1272. (2) (1891) I.L.R., 15 Bom., 194.
(3) (1866) 6 W.R., (Cri R.), 55.

clearly not be murder but man-slaughter on the general principles of the Common Law. In India every offence is defined both as to what must be done and with what intention it must be done by the section of the Penal Code which creates it a crime. There are certain general exceptions laid down in chapter IV, but none of them fits the present case. We must therefore turn to the defining section 299. Section 299 defines culpable homicide as the act of causing death with one of three intentions :

(*a*) of causing death,

(*b*) of causing such bodily injury as is likely to cause death,

(*c*) of doing something which the accused knows to be likely to cause death.

It is not necessary that any intention should exist with regard to the particular person whose death is caused, as in the familiar example of a shot aimed at one person killing another, or poison intended for one being taken by another. "Causing death" may be paraphrased as putting an end to human life : and thus all three intentions must be directed either deliberately to putting an end to a human life or to some act which to the knowledge of the accused is likely to eventuate in the putting an end to human life. The knowledge must have reference to the particular circumstances in which the accused is placed. No doubt if a man cuts the head off from a human body, he does an act which he knows will put an end to life, *if it exists*. But we think that the intention demanded by the section must stand in some relation to a person who either is alive, or who is believed by the accused to be alive. If a man kills another by shooting at what he believes to be a third person whom he intends to kill, but which is in fact the stump of a tree, it is clear that he would be guilty of culpable homicide. This is because though he had no criminal intention towards any human being actually in existence, he had such an intention towards what he believed to be a living human being. The conclusion is irresistible that the intention of the accused must be judged not in the light of the actual circumstances, but in the light of what he supposed to be the circumstances. It follows that a man is not guilty of culpable homicide if his intention was

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directed only to what he believed to be a lifeless body. Complications may arise when it is arguable that the two acts of the accused should be treated as being really one transaction as in *Queen-Empress* v. *Khandu*(1) or when the facts suggest a doubt whether there may not be imputed to the accused a reckless indifference and ignorance as to whether the body he handled was alive or dead, as in *Gour Gobindo's case*(2). The facts as found here eliminate both these possibilities, and are practically the same as those found in *The Emperor* v. *Dalu Sardar*(3). We agree with the decision of the learned Judges in that case and with clear intimation of opinion by SERGEANT, C.J., in *Queen-Empress* v. *Khandu*(1).

Though in our opinion, on the facts as found, the accused cannot be convicted either of murder or culpable homicide, he can of course be punished both for his original assault on his wife and for his attempt to create false evidence by hanging her. These, however, are matters for the consideration and determination of the referring Bench.

[When the case came on again for hearing before the Division Bench, their Lordships convicted the accused of grievous hurt under section 326, Indian Penal Code.—Ed.]

N.R.

APPELLATE CRIMINAL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

1918, November 11, and 1919, January, 7.

KAMATCHINATHA PILLAI (ACCUSED), APPELLANT,

v.

*EMPEROR.**

Penal Code, Indian (Act XLV of 1860)—Forgery, sec. 464—Document made to screen a previous offence, whether made fraudulently.

An attakshi made by a process-server with false signatures in order to defraud a District Munsif into excusing his delay in returning processes and his absence from duty is made fraudulently and is a forged document within section 464 of the Indian Penal Code.

(1) (1891) I.L.R., 5 Bom., 194. (2) (1866) 6 W.R. (Cr.R.), 55.
(3) (1914) 18 C.W.N., 1279.

* Criminal Appeal No. 707 of 1918.