APPELLATE CRIMINAL.

Before Mr. Justice Mockett and Mr. Justice Horwill.

1937, March 18.

KING-EMPEROR, APPELLANT,

v.

BANDI PEDDA VENKATA NARI (FIRST ACCUSED), RESPONDENT.*

Indian Penal Code (Act XLV of 1860), sec. 300—Intention and knowledge referred to in—Guides to the decision as to the existence of—Nature of material object and force used, if—Offence, if murder under sec. 302 or grievous hurt under sec. 326.

The accused was bathing in the street in front of his house causing "slush" in the road. P.W. 1 who was living in a house opposite protested and in the course of the quarrel the water-pot of the accused was broken. The accused then went into his house shouting abuse and brought out a rice pounder, which was a very heavy piece of wood, two yards long and between 2" and 3" in diameter. He struck P.W. 1 with it on the head causing a contused wound and he became unconscious. Then the aunt of P.W. 1 intervened. The first accused struck her also on the head with the rice pounder. She fell down unconscious and bleeding and died seven days later. Her skull was fractured. The Sessions Judge convicted the accused of an offence under section 326, Indian Penal Code, so far as the attack on the woman was concerned. On appeal by the Crown,

held that the case came within section 300, illustration (*c*), Indian Penal Code, and that the accused was guilty of murder under section 302.

The nature of the material object used and the force used are useful guides to the trial Court in arriving at a decision as to whether the intention and knowledge referred to in section 300, Indian Penal Code, can be attributed to the accused.

Emperor v. *Sardar Khan*, (1916) I.L.R. 41 Bom. 27, and Referred Trial No. 72 of 1931 and Criminal Appeal No. 263 of 1931, discussed and doubted.

* Criminal Appeal No. 697 of 1936.

Referred Trial No. 132 of 1930 and Criminal Appeal No. 557 of 1930, followed.

APPEAL under section 417 of the Code of Criminal Procedure, 1898, against the acquittal of the aforesaid respondent (first accused) under section 302, Indian Penal Code, by the Sessions Judge of Cuddapah Division in Sessions Case No. 30 of 1936 on his file.

A. Narasimha Ayyar for *Public Prosecutor* (*L. H. Bewes*) for appellant.

C. R. Pattabhiraman for respondent.

The JUDGMENT of the Court was delivered by MOCKETT J.—This is an appeal by the Crown against the acquittal of the first accused of murder. He was in fact convicted of an offence under section 326, Indian Penal Code, and sentenced to rigorous imprisonment for three years. On another charge in relation to an offence committed against another person (P.W. 1) he was convicted under section 324, Indian Penal Code, and sentenced to rigorous imprisonment for one year, the sentences to run consecutively. MOCKETT J.

Now, with all respect to Mr. C. R. Pattabhiraman's arguments, we do not think there is any room for doubt with regard to the facts of this case which are simple enough. There is a wealth of evidence to establish them and we only propose to set out shortly what they amount to. The first accused lives opposite to P.W. 1 as will be seen in the plan. The first accused was bathing in the street opposite to his house, thereby causing "slush" in the road. P.W. 1 protested and asked him to go and bathe in his backyard. It seems to us a not unreasonable request. The accused said that he proposed to go on bathing where he

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was, whereupon P.W. 1 caught hold of his water-pot. So did the first accused and in the process the pot broke. Accused then went to his house shouting abuse and brought out M.O. 1, a rice pounder which is two yards long and between 2″ and 3″ in diameter. We have compared it with one of the maces carried by the chobdars of this Court. It is about 6″ longer and slightly thinner than the top of one of those maces. It is a very heavy piece of wood and would appear to require the use of two hands by an ordinary man. With this rice pounder, the accused struck P.W. 1 on the head, and P.W. 1 is not able to tell us very much more because he stated that he did not recover consciousness until about an hour later. P.W. 1 was fortunate. He had "a contused transverse wound 1 inch by $\frac{1}{4}$ inch skin deep, on right parietal eminence $4\frac{1}{2}$ inches above right ear" described in Exhibit F as not of a serious nature. The next thing that happened was that the deceased woman, the aunt of P.W. 1, ran up crying out that her nephew was being killed, whereupon the first accused struck her on the head also with M.O. 1. She fell down unconscious and bleeding and died on 6th May 1936, this occurrence being on 29th April. In her case, her skull was fractured. The fracture is described as follows in Exhibit E:

"There is fissured stillat fracture of the frontal bone commencing from coronal section $1\frac{1}{2}$ inches to right of middle line, runs obliquely down to left orbital foramen passes through orbital plate ends at ethmoid bone. Measures $5\frac{1}{2}$ inches. From the middle of frontal part there was a fissured fracture goes transversely to the right $1\frac{1}{2}$ inches and then down to orbital ridge $1\frac{1}{2}$ inches and on right orbital roof $1\frac{1}{2}$ inches ends at ethmoid bone."

There was a clot under the fracture, the membranes were congested, and the doctor states that she died of meningitis due to the injuries received. There was a slight depression of the brain under the clot.

Now, the only question that can arise in this case—because, as we have already said, we are quite satisfied about the facts to which several witnesses have spoken—is what offence has the first accused committed? The learned Sessions Judge deals with that in paragraph 7 of his judgment. The following are some of the observations he makes in that paragraph; "From the lie of the case according to the showing of the prosecution itself, it is manifestly clear that there was no intention on the part of the first accused to cause Yerikalamma's death." Why such an absence of intention should be so manifestly clear is not wholly apparent. But it is to be observed that the Judge states that the Public Prosecutor "very fairly admitted this". The Judge goes on to say that it is not clear from the evidence that there was any deliberate aim at the head. "It was not a premeditated act. It is a case of total absence of motive of any kind whatsoever. It was in a sudden fit of temper, infuriated by the sight of his broken pot, that the first accused in a momentary flash went into his house and came out with a rice pounder and dealt a blow with it." One may pick up a rice pounder "in a momentary flash", but it is difficult to understand how one can so describe going into a house, picking up an object and bringing it out. A point was made that the rice pounder was not fetched by the accused for the purpose of striking the deceased. That appears to be true. He fetched it for the

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purpose of striking P.W. 1 and, having struck P.W. 1, one might have expected that his temper would have abated. What did this woman do? All she did apparently was to object to her nephew being felled to the ground. For that, she received a blow on her head which killed her. But says the learned Judge: "The circumstances very clearly indicate to my mind both in respect of the intention and the knowledge on the part of the first accused nothing but an idea to chastise P.W. 1 and when Yerikalamma *eo instanti* intervened, in the same fit of temper, he chastised her also in order apparently to drive her away." Such is the learned Judge's description of two blows from a weapon, because that is an accurate description of M.O. 1, which has only to be seen for one to appreciate that chastisement is a singularly inappropriate phrase to apply to any use of it. The Judge considers that "it is a fairly heavy weapon which, used as a weapon of offence, can surely cause death", and then surprisingly enough, after his observations about the chastisement, goes on to say, "it is undoubtedly a deadly weapon". The learned Judge ultimately finds that "it would not be a violent inference from the circumstances of the case that the first accused must have been aware that the act would result in grievous injury to Yerikalamma". The result of his conclusions is that he feels convinced that the facts proved established an offence under section 326 so far as the attack upon Yerikalamma was concerned. We are wholly unable to agree with either the reasons or the conclusions above set out. Under section 300, Indian Penal Code, it is, except in cases set out in that section, murder

(i) if the act by which the death is caused is done with the intention of causing death, or (ii) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or (iii) 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, or (iv) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. Now, it seems to us that when a man using great violence hits a woman, or indeed any one, with an object such as M.O. 1, it is not unreasonable for the Court to infer that he did so with the intention of causing death. But even if the Court is not prepared to draw that conclusion, can there be any doubt that the use of such a weapon must show an intention to cause such bodily injury as the offender knows to be likely to cause death? If neither of these inferences appealed to the trial Court, it must surely be that that act was done with the intention of causing bodily injury to any person. With what intention was the blow on the head struck with such a weapon as M.O. 1? Can it possibly be less than with the intention of causing such bodily injury as ensued? If that is so, it is in evidence by the doctor that the external injury was by itself sufficient in the ordinary course of nature to lead to death. He says: "As a matter of fact, it caused

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by itself death in this case, without any other supervening cause or factor." There was a hard clot already found under the fracture pressing against the brain causing "depression" in the words of the doctor. "This was what caused the inflammation of the membrane leading to meningitis. It should have formed immediately after the injury and should have caused unconsciousness." We have therefore no doubt whatever on the evidence that the lower Court could have found that the intention of the accused was to cause the death of this woman. Alternatively, it must be that one or the other of the intentions set out in section 300 is proved. In view of the nature of M.O. 1 which can properly and accurately be described as a "club", illustration (c) to section 300 exactly applied if the trial Judge found as he did that the accused had no intention to cause death. Illustration (c) reads as follows :

> "A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death."

It is sufficient for the purpose of our conclusion if we say that we find on the evidence that this case comes within section 300, illustration (c). If that is so, the accused is *prima facie* guilty of murder. Can the case be brought within any of the exceptions to that section? No attempt has been made to do so. It is not necessary to set out those exceptions. It is enough to say that none of the circumstances in this case bring the accused within the benefit of any of them. The only one that could possibly be urged is Exception 4, but

there was no sudden fight with the deceased nor was there a sudden quarrel with her. All that happened was that she endeavoured to intervene between the accused and P.W. 1 and was struck down with M.O. 1 the use of which on an unarmed woman obviously constitutes "taking undue advantage" and "acting in a cruel or unusual manner".

Now, the case law on this subject has been dealt with by the learned Counsel who have argued this case, and our attention has been drawn to certain decisions. The first to be noticed is the decision of the Bombay High Court reported as *Emperor* v. *Sardar Khan*(1). With regard to that decision, a careful perusal of the judgment shows that the learned Judges conceded that the Sessions Judge had followed what in a majority of cases had been held to be the right and logical course. He had inferred the intention from the extent of the injury and the nature of the weapon used which in that case was an iron-shod stick. The learned Judges then pointed out that juries are disposed to take a liberal and less logical view and to look at all the surrounding circumstances with the object if possible of reducing the offence. The learned Judges go on to say that they were disposed to take a more lenient view of the offence committed because death was caused by a single blow, and so it was more difficult to be absolutely certain what degree of bodily injury the offender intended. And they ultimately came to the conclusion that exceptional cases and circumstances warranted them, sitting as Judges, in taking what

(1) (1916) I.L.R. 41 Bom. 27.

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might be a jury's view rather than a Judge's point of view. In the result, the conviction for murder was altered to one for culpable homicide not amounting to murder. If the head-note of this decision correctly represents the finding of the learned Judges, it might well be said that this is a decision on the special facts of that case and lays down no general proposition of law. If it is intended, as it was cited before us, to establish the proposition that in the case of a single blow, whatever the weapon, the accused should not be convicted of murder, then we must record our respectful dissent. We still, however, consider that that was a special decision with regard to the special facts. So far as this High Court is concerned, our attention has been drawn to a decision in *Kesava* v. *Emperor*(1) in which the CHIEF JUSTICE and SUNDARAM CHETTI J. held that to strike a man on the skull using considerable force is an act so imminently dangerous that it must in all probability cause death and constituted the offence of murder under section 302. In the judgment occur the following words :

> " We are satisfied that the appellant struck this very severe blow on the head of the deceased and caused his death. He must be taken to have known that to strike a man on his skull with a stick using considerable force was an act so imminently dangerous that it must in all probability cause death and that he did so without any possible excuse. This therefore is the offence of murder and nothing short of it."

We respectfully agree with that decision. There is however another decision, *Muthu Goundan* v. *Emperor*(2) in which JACKSON and CORNISH JJ. held that in a case where a son hit his father with

(1) A.I.R. 1931 Mad. 420. (2) 1931 M.W.N 765.

a crowbar on the head on small provocation, he had committed an offence under section 324 and not the offence of murder. My learned brother HORWILL and myself have already expressed our view about that decision in Criminal Appeals Nos. 590 and 591 of 1936. We there stated :

"We only desire to say a word about that case, because it has been referred to us as an authority. The learned Judges held that an accused person who hit the deceased on the head with a crowbar which fractured his skull did not commit an offence graver than the one under section 324, Indian Penal Code. There might have been special circumstances in that case which induced the learned Judges to arrive at the decision which they did. We only desire to say that if, as is suggested to us, it is an authority for the proposition that a man who hits somebody else on the head with a crowbar causing death is guilty of nothing more than an offence under section 324, then we must record our respectful dissent."

It seems to us that the proper way in which to decide whether an offence has or has not been committed under section 300 read with section 302 is to apply the words of the section to the facts and to see how the facts satisfy the essentials of the section. But it is obvious that the nature of the material object used and the force used must be useful guides to the trial Court in arriving at a decision as to whether the intention and knowledge referred to in section 300, Indian Penal Code, can be attributed to the accused. With great respect to the learned Judges in the Bombay case to which we have referred, we think that it is a somewhat perilous course instead to call in aid the somewhat nebulous considerations which influence the conclusions of a jury.

The result of these conclusions is that this appeal will be allowed, and for the conviction

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under section 326 there will instead be a conviction under section 302. Many of the observations of the learned Sessions Judge are distinctly relevant on the question of sentence. This offence was committed without any long premeditation and certainly in a rage, and we do not consider that the capital sentence is called for. The accused will be sentenced to transportation for life. This sentence will run concurrently with the sentence of one year's rigorous imprisonment under section 324, Indian Penal Code, already imposed on him.

V.V.C.