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DHARUP NATH v. GOBIND SARAN.

disturb in second appeal. And this being so, the plaintiff is entitled to all that his vendor conveyed to him, and for these reasons I would dismiss this appeal No. 1622 with costs.

The cross-appeal No. 1750 of 1885 relates to the property which has been found, as a question of fact, by the lower appellate Court not to have belonged to the estate of Hanuman Dat; and that being so, it could not devolve upon the plaintiff's vendor, Gopal Saran, and the latter had no title to convey. The finding being one of fact, cannot be disturbed in second appeal, being open to no legal objection, and for this reason I would also dismiss the plaintiff's appeal No. 1750 with costs.

BRODHURST, J.—I concur in dismissing these two appeals with costs.

Appeals dismissed.

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June 26.

APPELLATE CRIMINAL.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Brodhurst.

QUEEN-EMPRESS *v.* MOHAN.

Murder— Culpable homicide not amounting to murder—Grave and sudden provocation—Act XLV of 1860 *(Penal Code), ss.* 300, *Exception* 1, 302, 304.

Upon the trial of a person charged with the murder of his wife, it was proved that the accused had entertained well-founded suspicions that his wife had formed a criminal intimacy with another person; that one night the deceased, thinking that her husband was asleep, stealthily left his side; that the accused took up an axe and followed her, found her in conversation with her paramour in a public place, and immediately killed her.

Held that the act of the accused constituted the crime of murder, the facts not showing "grave and sudden provocation" within the meaning of s 300, *Exception* 1 of the Penal Code, so as to reduce the offence to culpable homicide not amounting to murder.

Queen-Empress v. *Damarua* (1) distinguished by STRAIGHT, Offg. C. J.

THIS was an appeal from a judgment and order of Mr. H. P. Mulock, Sessions Judge of Sháhjahánpur, dated the 4th January, 1886, convicting the appellant of murder and sentencing him to transportation for life. The facts of this case are stated in the judgment of Brodhurst, J.

The appellant was not represented.

(1) Weekly Notes, 1885, p. 197.

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QUEEN-EMPRESS v. MOHAN.

The *Public Prosecutor* (Mr. *C. H. Hill*), for the Crown.

BRODHURST, J.—The prisoner, Mohan, was committed to the Sessions on alternate charges under ss. 302 and 304 of the Indian Penal Code; that is, for the offences of murder and culpable homicide not amounting to murder. The assessors, for reasons stated by them, were of opinion that Mohan was guilty of culpable homicide not amounting to murder. The Sessions Judge convicted Mohan of the offence of murder, and sentenced him to transportation for life. From this conviction and sentence Mohan preferred an appeal which came before me for disposal, and I referred it to a Bench of two Judges for consideration of two points of law; first, whether the confession of the accused before the Assistant Magistrate was, owing to certain defects in recording it, inadmissible in evidence; secondly, whether the offence committed was murder or culpable homicide not amounting to murder. The case then came before the Officiating Chief Justice and myself, and we remanded it for certain evidence under s. 533 of the Criminal Procedure Code. That evidence has now been received, the confession is duly proved, and is, I consider, true. The second point of law remains to be disposed of.

The facts of this case are briefly as follows:—

The accused suspected that his wife had, during his absence, formed a criminal intimacy with one Fakruddin, and the latter person has admitted that the accused's suspicions were well-founded. It appears that on the night in question the deceased woman, thinking that her husband was asleep, stealthily left his side with the intention of going to her paramour; that the accused took up an axe and followed her, found her in conversation with Fakruddin, and immediately killed her. Fakruddin meanwhile had run away to the room he occupied in his employer's compound; the accused followed him there, entered the room, and struck him, but without seriously injuring him. Fakruddin effected his escape from the room, and the accused then fastened the door and made a desperate attempt on his own life by cutting his throat. Two of the assessors were of opinion that accused found his wife in the act of criminal intercourse with Fakruddin. Were that proved, Mohan's offence would be reduced to culpable homicide not amount-

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ing to murder, but even Mohan did not in his confession urge as much in his own favour. He alleged that he had reason to believe that his wife had an intrigue with Fakruddin, that seeing her stealthily leave his bed at night, he armed himself, followed her, and found her sitting and conversing with Fakruddin, and he therefore immediately killed her. I have now had the advantage of consulting the learned Officiating Chief Justice and of referring to certain English and American cases bearing on this point of law.

In "Bishop's Commentaries on the Criminal Law," Vol. II, 6th ed. p. 711, is the following:—"A man suspecting adultery followed his wife, and found her talking with her paramour; she ran off, but the latter remained. He fell on him with a stone and knife, inflicting wounds which produced death, and it was held that the offence was murder—*The State* v. *Avery*, 64 N. C. 608;" and in *Kelly's Case* referred to on page 786, Vol. I, 4th ed., "Russell on Crimes and Misdemeanours," Rolfe, B., in summing up, observed:—"It is said that if a man find his wife in the act of committing adultery and kill her, that would be only manslaughter, because he would be supposed to be acting under an impulse so violent that he could not resist it. But I state it to you without the least fear or doubt, that to take away the life of a woman, even your own wife, because you suspect that she has been engaged in some illicit intrigue, would be murder: however strongly you may suspect it, it would most unquestionably be murder; and if I were to direct you, or you were to find otherwise, I am bound to tell you, either you or I would be most grievously swerving from our duty." I am now satisfied that Mohan is guilty of murder, and I concur in dismissing his appeal.

At the same time I think that, with reference to the circumstances of the case, transportation for life is too severe a sentence. Natives of this country, in cases of this description, appear to be generally unable to exercise that control over themselves that Europeans usually succeed in doing. The prisoner, moreover, is an ignorant man, and, in my opinion, he received provocation, though not such as to bring his case within *Exception* I, s. 300 of the Indian Penal Code. I therefore concur with the learned Chief Justice

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in recommending that his sentence be commuted to ten years' rigorous imprisonment.

STRAIGHT, Offg. C. J.—I have had an opportunity of reading the observations of my brother Brodhurst in reference to the case of this appellant, and it is unnecessary for me to recapitulate the facts which are clearly and fully set out in his judgment. I entirely approve of the order he proposes, and from the moment that I had an opportunity of perusing the evidence against the appellant, I never entertained any doubt that the Judge of Shâhjahânpur was right in law in the view he took as to the legal quality of the act committed by the appellant. That act was most undoubtedly one that constituted the crime of murder, and I think that had the learned Judge countenanced the view that, looking to the facts, there was enough by reason of grave and sudden provocation, to reduce the offence to that of culpable homicide not amounting to murder, he would have been improperly construing and applying the law applicable to such cases. I have already, in the case of *Damarua* (1), gone to the extreme limit that I am prepared to go in cases of this description, in holding upon the facts there disclosed, that the husband's offence in killing his wife or her paramour, or both, was, by reason of grave and sudden provocation, reduced from murder to manslaughter. In that case the circumstances were of such a character and description that there were reasonable grounds for the accused man believing or imagining that an act of adultery had been committed immediately before he saw his wife with her paramour; and I therefore, though not without doubt and with some elasticity, applied the principle which has been sanctioned in cases of this description by the rulings of the most eminent English Judges. In the present instance, none of those circumstances exist. On the contrary, it is clear that the appellant, having first armed himself with a weapon, followed his wife some distance, and all that he saw taking place before his attack upon her, was a meeting between her and the man with whom she had had improper relations, and some conversation passing between them. That state of things was wholly inadequate to the resentment with which it was met on the part of the appellant, and his act was altogether out of proportion

(1) Weekly Notes, 1885, p. 197.

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to the provocation given. The law does not sanction or approve a man taking into his own hands the duty of punishing his wife in the mode adopted by the prisoner, and it would be most dangerous to society if the Courts of this country were to adopt the doctrine that he might. "No man under the protection of the law is to be the avenger of his own wrongs. If they are of the nature for which the laws of society will give him an adequate remedy, thither he ought to resort"—"Russell on Crimes and Misdemeanours," Vol. I, 4th ed. p. 725. The conduct of the deceased woman in meeting her paramour was no doubt most improper; but the meeting took place in a public place and under circumstances that, while they might arouse the appellant's anger, they cannot be regarded of such a character that they can properly be held to have deprived him of his self-control to the extent and degree required by the law, before the nature of his crime can be reduced from murder to culpable homicide.

I approve of the order of my brother Brodhurst that this appeal should be dismissed, and I also agree in the recommendation that he proposes. While it is essential that in cases of this kind the true legal nature of the act, of which the person has been guilty, should be recorded against him, the question of punishment may, I think, with propriety, be brought to the notice of His Honor the Lieutenant-Governor, in whose hands resides the exercise of the prerogative of mercy. I agree with my brother Brodhurst that there are circumstances in this case which show it to be of a somewhat exceptional character, and I therefore concur in his recommendation.

Appeal dismissed.

APPELLATE CIVIL.

1886
August 2.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Mahmood.

BAHORI LAL (APPELLANT) *v.* GAURI SAHAI (RESPONDENT).*

Civil Procedure Code, ss, 244 (*c*), 278-283 *—Question for Court executing decree—Separate suit—"Representative" of judgment-debtor.*

The decree-holder under a decree for enforcement of lien against the zamindari rights and interests of *K*, applied for execution by attachment and sale of

* First Appeal No. 112 of 1886, from an order of Mirza Abid Ali Khan, Subordinate Judge of Shâhjahânpur, dated the 7th December, 1885.