

continue proceedings under the previous application. The present application is not barred by section 230 of the Code of Civil Procedure. I concur in the order proposed.

By the Court.

The order of the Court will be that this appeal is dismissed with costs.

Appeal dismissed.

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BAHIM ALI
KHAN
v.
PHUL CHAND.

APPELLATE CRIMINAL.

1896
July 24.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.

QUEEN-EMPRESS v. CHUNNI.

Act No. XLV of 1860 (Indian Penal Code), section 304—Culpable homicide not amounting to murder—Grave and sudden provocation.

A person accused of murder under section 302 of the Indian Penal Code pleaded in defence that he had found his sister having illicit connection with a man named Thakuri and had in a fit of passion killed them both on the spot. The statement being accepted was held to be a good plea of grave and sudden provocation so as to reduce the offence to one of culpable homicide not amounting to murder.

THE facts of this case sufficiently appear from the judgment of the Court.

The Public Prosecutor (for whom *Ryves*) for the Crown.

The appellant was not represented.

EDGE, C. J., and BLENNERHASSETT, J.—The Sessions Judge accepted Chunni's statement, and so do we, that he caught his sister and a man, Thakuri, having illicit connection. In a case of this kind it would have been advisable for the Sessions Judge to recommend the prisoner to plead "not guilty," so that the evidence, showing what the real offence was, might come on the record of the Sessions Court.

Chunni came home at night and found his sister and Thakuri having connection. He heard some rumours about their misconduct before, but did not believe them. In his sudden passion he seized upon a *gamlasa* with which he killed Thakuri and then he killed his sister. Of course there is a difference between the

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provocation which a man receives when he finds another man committing adultery with his wife and the provocation which he receives when he finds his sister dishonoring his family by having illicit intercourse with a man ; still the latter provocation cannot, in common sense and in one's experience of the world, be looked upon as a light one. The law of England is no doubt very strict in these matters.

In our opinion Chunni received very grave and sudden provocation that night, and quite sufficient to reduce the case from one of murder to one of culpable homicide not amounting to murder. We, under our powers of revision, set aside the conviction and sentence under section 302 of the Indian Penal Code ; and convicting Chunni under section 304 of the Indian Penal Code, sentence him to five years' rigorous imprisonment, which will be counted from the date of his conviction in the Sessions Court.

Formally the appeal is dismissed, and it did not lie after a plea of guilty, when the sentence passed was the minimum which the law allowed.
