

be carried out, it would obviate the delay and expense which arise from the exercise of the privilege thus given to the accused by law. But the power of a District Magistrate to allocate work is confined to the allocation of work amongst magistrates who are for the time being his subordinates. If the effect of a Government order is to transfer a magistrate from a district, the District Magistrate of that district has no longer any authority to make any arrangement in regard to the work of the magistrate so transferred. Whilst there can only be one District Magistrate, the number of other magistrates in a district is only limited by the discretion of the Local Government, inasmuch as it may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates in a district. There would be a difficulty in providing that any magistrate subordinate to the District Magistrate should be transferred on his making over charge of his office inasmuch as there is no particular office of which he can make over charge. If, as suggested by my brother Banerji, the notification of Government were to run—"on being relieved of his duties"—the difficulty would, I think, be obviated, and the object which the Local Government had in view in issuing the letter of the 23rd of April 1896, would be capable of being attained. I concur in thinking that the order made by Babu Dila Ram on the 9th of June must be quashed.

By THE COURT.

The order of the Court is that the order of Babu Dila Ram, dated the 9th of June 1896, is set aside.

## APPELLATE CRIMINAL.

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

QUEEN-EMPRESS v. BHADU.\*

*Practice—Pleading—Qualified plea of guilty—Evidence to be taken.*

In capital cases where there is any doubt as to whether an accused person fully understands the meaning and effect of a plea of guilty it is advisable for the Court to take evidence and not to convict solely on the plea of the accused.

1896

BALWANT  
v.  
KISHEN.

1896

November 10.

\* Criminal Appeal No. 1078 of 1896.

1896

QUEEN-  
EMPRESS  
v.  
BHADU.

The facts of this case were as follows:—

The appellant Bhadu was a young man of about 20 years of age who had a wife about the same age as or a little older than himself. (The Civil Surgeon in the report of his *post mortem* examination, states that “the body was that of a well developed woman aged about 22 years.”) The wife had been living in her father’s house, and refused to live with Bhadu: Bhadu at last came himself to fetch her, but his wife declined to return with him. According to Bhadu’s own statement made before the Magistrate, she refused to go and then said to him:—“*Chal ware, tum kahan rahe?*” On this Bhadu got angry and struck his wife with a *kulhári*, inflicting wounds which resulted in her death. At his trial in the Court of Session Bhadu pleaded:—“I killed my wife. She abused me. Called me *ware*. No one was present. I killed her with a *kulhári*.” On this plea, as on a plea of guilty, Bhadu was convicted without evidence being taken. He appealed to the High Court.

The Public Prosecutor (Mr. *E. Charrier*) for the Crown.

EDGE, C. J., and BLENNERHASSETT, J.—Bhadu was convicted on his own plea without evidence being recorded in the Sessions Court. He was charged with the offence punishable under section 302 of the Indian Penal Code. The case against him was that he had murdered his wife. His plea as recorded is as follows:—“Guilty. I killed my wife. She had abused me. Called me ‘*ware*.’ No one was present. I killed her with a *kulhari*.” We are not clear whether the word “guilty” in the plea was Bhadu’s or was the interpretation of the Judge of the meaning of Bhadu’s plea. In any event it was not an unqualified plea of guilty; and although the words of abuse which Bhadu said had been used might not have effect to take the case out of section 302 of the Indian Penal Code, they put a qualification on his admission and made it necessary in our opinion that the trial should proceed and evidence should be taken. In this country it is dangerous to assume that a prisoner of this class understands what are the ingredients of the offence under section 302 of the Indian Penal Code, and what are

the matters which might reduce the act committed to an offence under section 304. Even in England it used to be the practice of some judges, and probably is still, although they were not bound to do so, to advise persons pleading guilty to a capital offence to plead not guilty and stand their trial. One of us has known that course followed in numerous cases. We set aside the conviction and sentence, and send this case back to the court of Session with direction to the Judge to take the evidence in the case and proceed on the basis of the plea not being an unqualified plea of guilty.

1896

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 QUEEN-  
EMPERESS  
v.  
BHADU.

[The case was subsequently tried on evidence taken before the same Sessions Judge, and Bhadu was again convicted and sentenced to death, the conviction and sentence being upheld by the High Court on the 4th of February 1897.]

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 REVISIONAL CRIMINAL.
 

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1896

November 28.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Banerji and Mr. Justice Aikman.

SHANKAR DIAL (APPLICANT) v. A. M. VENABLES (OPPOSITE PARTY),\*

*Criminal Procedure Code, section 195—Sanction to prosecute—“Court to which appeals ordinarily lie”—Collector—District Judge.*

For the purpose of granting or revoking a sanction to prosecute refused or granted under section 195 of the Code of Criminal Procedure, an Assistant Collector of the first class is subordinate to the District Judge. *Hari Prasad v. Debi Dial* (1) followed, *Queen-Empress v. Ajudhia Prasad* (2) considered.

One Shankar Dial in a suit which was being tried before an Assistant Collector of the first class was alleged to have made use of a forged document. The Assistant Collector was asked to sanction the prosecution of Shankar Dial, but refused. The order refusing sanction was passed on the 1st of August 1895. Subsequently, on the 21st of August 1895, the Assistant Collector cancelled his order of the 1st of August and granted sanction for the prosecution of Shankar Dial. On application under section 195 of the Code of Criminal Procedure to the High Court this second order of the

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 \* Criminal Revision No. 622 of 1896.

(1) I. L. R., 10 All., 582.

(2) Weekly Notes, 1895, p. 121.