

that case that the offence committed by the accused was that punishable under section 304A of the Penal Code, her act not amounting to culpable homicide but being a rash act and having caused the death of her husband. It was further held in that case that "where the accused knew that the substance came from her paramour and was to operate on her husband as a charm it became her duty to ascertain that it was innocuous before she administered it to her husband and culpability was imputable for the absence of that caution and circumspection which ought to have been exercised in ordinary prudence under the circumstances stated." In my opinion the law has been correctly stated in the decision above quoted. Applying the law to the facts of the present case, the accused has in my opinion been properly convicted of an offence under section 304 A of the Indian Penal Code. She took the powder on her own admission from an acknowledged enemy of Lal Singh. She took no precaution whatever to ascertain whether it was noxious or not. Her conduct was wanting in that prudence or circumspection which every human being is supposed to exercise. By her rash and thoughtless act she has made herself responsible for the death of four persons. I dismiss her appeal.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Griffin.

EMPEROR v. PANNA LAL.*

Act No. XII of 1896 (Excise Act), section 21—Sale—Not for profit.

P, who held no license under the Excise Act, obtained some methylated spirits from a shop for the secretary of the Jhansi Club, sent it from there to the club, but made no profit on the transaction: *Held* that the transaction did not amount to a sale within the meaning of section 21 of the Excise Act (XII of 1896).

THE material facts of the case appear from the judgment of the Court.

Mr. C. Dillon (with whom Babu Sital Prasad Ghosh)* for the applicant.

* Criminal Revision No. 872 of 1908 from an order of H. E. Holme, Sessions Judge of Jhansi, dated the 24th of October 1908, confirming an order of J. H. Christie, Magistrate of Jhansi, dated the 7th of September 1908.

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EMPEROR
v.
JAMNA.

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EMPEROR
v.
PANNA LAL.

The Assistant Government Advocate (Mr. W. K. Porter), for the Crown.

GRIFFIN, J.—This is an application for revision of an order of the Cantonment Magistrate of Jhansi convicting the applicant Panna Lal on two charges under the Excise Act, one under section 21 and the other under section 51.

The facts which form the basis of the first charge are that Panna Lal who holds no license under the Excise Act, had received an order from the secretary of the Jhansi Club, for some methylated spirits. Panna Lal obtained the methylated spirits from another shop and sent it from there on to the club, without making any profit in the transaction. Under the particular circumstances of the case it is difficult to call this transaction a sale. I therefore set aside the conviction and sentence under the first charge.

The second charge against the applicant, which was amply proved, was that he had purchased at a court sale a quantity of wines and spirits knowing that he had no license for possession or sale of such liquor. I am unable to interfere with the order on the second charge.

I allow the application to the extent above indicated and set aside the conviction and sentence under section 21 of the Excise Act. The fine of Rs. 30, if realized, will be refunded. The application is otherwise dismissed.

Order modified.

MISCELLANEOUS CIVIL.

1909
February 6.

Before Mr. Justice Aikman.

IN THE MATTER OF SHEIKH MAQBUL AHMAD (APPLICANT) *
*Act No. VII of 1870 (Court-fees Act), Schedule 1, section 5, articles 4, 5—
Court-fee—Application for review affecting only portion of decree.*

Held that the proper fee leviable on an application for review of judgment when it refers only to a portion of the decree is the fee leviable on the plaint or memorandum of appeal, in which the judgment, review of which is asked for, is passed—*Proceedings, Jan. 16, 1872* (1), *In re Manohar Tambekar* (2), not followed. *Nobin Chundra v. Uzir Ali* (3), and *Imdad Hasan v. Badri Prasad* (4), followed.

* Stamp Reference in review of Judgment filed in first appeal No. 291 of 1901.

(1) (1872) 7. Mad., H. C. R., app. 1. (3) (1898) 3 C. W. N., 292.
(2) (1879) I. L. R., 4, Bom., 26. (4) Weekly Notes, 1898, 212.