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register of applications and to proceed to determine it according to law. Costs of this appeal to be costs in the case and to follow the event. Fees in this Court will include fees on the higher scale.

Appeal decreed.

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 January 30.

APPELLATE CRIMINAL.

Before Mr. Justice Griffen.

EMPEROR v. JAMNA.

Penal Code (Act XLV of 1860), section 304A—Administering poison believing it to be a charm—Rash and negligent act—Liability.

Where the accused received a powder from an enemy of her relative, took no precaution to ascertain whether it was noxious and mixed it with his food believing that by doing so she would become rich. *Held* that her conduct was wanting in that prudence and circumspection which every human being is supposed to exercise, and as by her rash and thoughtless act she caused death she was guilty of an offence under section 304A., Indian Penal Code. *Emperor v. Nagawa* (1) distinguished. *Q.-F. v. Bhakhan* (2), followed.

The facts of this case are as follows :—

The accused was a poor relative of one Lal Singh and lived near his house. On the 25th March 1908, Lal Singh's household became ill after taking food, and four of them died on the next day. The accused was suspected of having administered poison and made a confession that she had received a powder from an enemy of Lal Singh who had told her that if she administered it to Lal Singh she would become rich and Lal Singh would become poor. She mixed that powder with Lal Singh's food. She retracted this confession, but the court below believed it and convicted her under section 304A, Indian Penal Code, and sentenced her to two years' rigorous imprisonment. The prisoner appealed to the High Court.

Babu Satya Chandra Mukerji, for the appellant, contended that on the findings of fact arrived at by the learned Sessions Judge there was no case against the accused either under section 304 or 304A. The accused did not know the nature of the substance which she mixed up with the flour. That being so there

* Criminal Appeal No. 1082 of 1908 from an order of H. J. Bell, Sessions Judge of Aligarh, dated the 17th September 1908.

(1) (1902) 4 Bom., L. R., 425.

(2) (1887) P. R., 60.

was no intention to cause death or hurt and there was no rash or negligent act. He relied on *Emperor v. Nagawa* (1).

The Assistant Government Advocate (Mr. W. K. Porter) for the Crown, submitted that the Bombay case was no doubt in favour of the appellants' contention, but the Punjab Chief Court has consistently maintained the contrary view. He cited *Q.-E. v. Musammat Bhakhan* (2), *Q.-E. v. Khema* (3), *Q.-E. v. Musammat Sultan* (4). He asked the Court to accept the Punjab view.

GRIFFIN, J.—Musammat Jamna has been convicted of an offence under section 304A of the Indian Penal Code and has been sentenced to two years' rigorous imprisonment. She appeals against her conviction. The learned vakil, who appears for her, has taken me through all the material evidence in the case. His contention is that the evidence on which the conviction mainly rests and the confession of the accused are not sufficient to warrant the conviction. The case has been tried by the learned Sessions Judge of Aligarh with extreme thoroughness and care. His judgment contains an accurate summary of all the evidence in the case, and in it every aspect of the case has been fully considered. On the 25th of March last some food was prepared at the house of one Lal Singh Brahman of village Mahugua. A number of people of Lal Singh's household partook of the food on that and the following day with the result that four persons died and several others became seriously ill. The report of the chemical examiner shows that arsenic was detected in the viscera sent for examination and also in a portion of the food. It is clear then that poison was administered in the food prepared in Lal Singh's house on the 25th March last. It is clear that the poison must have been introduced into the food by some one who had access to the place where the food was prepared. The learned Sessions Judge has shown, in my opinion, correctly that no one in the immediate household of Lal Singh can be suspected of any concern in this poisoning. The accused's own conduct in the course of the investigation directed suspicion towards her. On the 4th April she made a confession before

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(1) (1902) 4 Rom., L. R., 425.

(2) (1887) P. R., 60.

(3) (1839) P. R., 8.

(4) (1884) P. R., 35.

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the Magistrate in which she admitted that one Badri Prashad, who, to her knowledge, was an enemy of Lal Singh, had given her some white powder telling her to mix it in Lal Singh's food. She said that Badri Prashad told her that if she gave Lal Singh this stuff she would become wealthy and Lal Singh would become poor, and that Badri Prashad also added that if any harm did result, she ought not to mention it to any one. She took the white powder and taking advantage of the temporary absence of Musammat Kundania, who was cooking the food, she mixed the powder with the flour. This confession she afterwards retracted but it was corroborated in material particulars by the evidence of the accused's two daughters, both young girls, whose evidence has impressed the learned Sessions Judge very favourably. I agree with the court below that it is proved that Musammat Jamna did mix the powder with the flour. It is, however, not proved that she knew that the powder was arsenic or any other deleterious substance. The Court below has found her guilty of an offence under section 304A of the Indian Penal Code. It is contended on behalf of the appellant that even on the facts found Musammat Jamna has committed no offence punishable by law. I am referred to a decision—*Emperor v. Naqwa* (1) in which the facts were that the accused administered arsenic to the deceased, her lover, in sweetmeat balls given to him to eat in the belief that it was a charm which would revive love for her, but she did not know that the substance was a deadly poison. In this case it was held that as the evidence did not establish the necessary guilty mind, the accused must be acquitted. The question whether the act of the accused in that case did not come under section 304A was not considered. There is a case much more in point, *Q.-E. v. Musammat Bhakhan* (2), in which the facts were that "the accused having an intrigue with a paramour, received poison from her paramour to administer to her husband as a charm, and administered it with the result that death ensued; that the death of the husband was caused by the substance administered to him, the substance being arsenic; but that the accused did not know the substance given to her to be noxious till she had seen its effect." It was held in

(1) (1902) I. L. R., 4 Bom., 425.

(2) (1887) P. R., Cr. Judgment, 60

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)^b 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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February 5.