

1908

EMPEROR
v
GUTALL.

been in his company for several hours on the 29th of May and had given him the food, after eating which he became unconscious and his grandson died. No reason is assigned to account for Arjun or the other witnesses falsely identifying the accused. The evidence of the Hospital Assistant and of the Chemical Examiner clearly proves that Girdhari and Hallia were drugged with *dhatura*. The prisoner called evidence to prove an *alibi* which we agree with the learned Judge in considering quite insufficient to shake the strong case for the prosecution. We see no reason to interfere with either conviction. Although death does not always follow from *dhatura* poisoning, yet it does follow in a considerable proportion of cases. Here the accused must have given *dhatura* to Ram Nath in such a large quantity as to result in his death within 3 or 4 hours. We consider therefore that although he may not have intended to kill Ram Nath, he must be held to have known that his act in giving a dangerous substance in such a quantity was at least likely to cause death. We find no reason for interference and dismiss the appeal. [But see *Emperor v. Bhagwan Din*, I. L. R., 30 All., 568—Ed.]

Appeal dismissed.

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December 14.

REVISIONAL CRIMINAL.

Before Mr. Justice Sir George Knox.

JHINGAI SINGH v. RAM PARTAP.*

Criminal Procedure Code, sections 145 and 435—Statute 24 and 25 Vict., Cap.

CIV, section 15—Order under section 145, Criminal Procedure Code—Revision—Powers of High Court.

Where proceedings are in intention, in form and in fact proceedings under Chapter XII of the Code of Criminal Procedure by a Magistrate duly empowered to Act under that chapter, the High Court has no power to send for those proceedings either under the Code or under section 15 of the Indian High Courts Act, 1861. *Daulat Koer v. Rameswari Koeri* (1), *In re Pandurang Govind* (2) and *Baldeo Baksh Singh v. Raj Ballam Singh* (3) referred to. *Maharaj Tewari v. Har Charan Rai* (4) followed.

* Criminal Revision No. 725 of 1908, from an order of D. T. M. Wright, Magistrate 1st Class, of Mirzapur, dated the 24th July 1908.

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| (1) (1899) I. L. R., 26 Cal., 625. | (3) (1903) 2 A. L. J. R., 274. |
| (2) (1900) I. L. R., 24 Bom., 527. | (4) (1903) I. L. R., 26 All., 144. |

On the 7th of August 1901, one Mahadeo Singh executed a usufructuary mortgage of certain property belonging to him in favour of Jhingai Singh whereby he mortgaged his interest as *Malik Adna* in the holding. One Makhan Tiwari claimed to be the occupancy tenant of the same holding, and Ram Partab alleged himself to be the sub-tenant of Makhan. In a litigation between Makhan Tiwari and Jhingai Singh before the Subordinate Judge of Mirzapur, a compromise was filed on May 24th, 1905, whereby, subject to certain terms, Makhan Tiwari agreed to surrender possession of the holding to Jhingai Singh. Jhingai Singh obtained possession and executed a *dakhalnama* on the 28th of June 1905, in pursuance of the compromise decree. Subsequent to this Makhan Singh, on the 2nd of July 1905, executed a lease of the holding in favour of Ram Partap. Ram Partap filed a complaint under section 145 of the Code of Criminal Procedure in the court of the Magistrate of Mirzapur against Jhingai Singh. The Magistrate held that Ram Pratap was in actual possession. He did not refer to the proceedings in the Civil Court. Jhingai Singh made an application for revision to the High Court.

Babu *Durga Charan Banerji*, for the applicant, contended that a Magistrate was not justified in disregarding the decree of the Civil Court. It was his duty to uphold and carry out that decree so far as it lay in his power to do so. To take proceedings which necessarily must have the effect of cancelling such decree, was to assume a jurisdiction which the law did not contemplate. The Magistrate having acted without jurisdiction in going behind the judgment of the Civil Court, the High Court had power to interfere. He relied on *Daulat Koer v. Rameswari Koeri* (1), *Baldeo Baksh Singh v. Raj Ballam Singh* (2) and *In re Pandurang Govind* (3).

Dr. *Tej Bahadur Sapru*, for the opposite party, submitted that where an order under section 145 of the Code of Criminal Procedure existed and the proceedings were in substantial compliance with the requirements of the section, the High Court had no power in revision to interfere. He referred to the proceedings drawn up under section 145, Criminal Procedure Code, and cited

(1) (1899) I. L. R., 26 Cal., 625. (2) (1908) 2 A. L. J., 274.
 (3) (1900) I. L. R., 24 Bom., 527.

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JHINGAI
SINGH9.
RAM PAETAP.

Baban Singh v. Baldeo Singh (1), *Debi Prasad v. Sheodat Rai* (2), *Behari Lal v. Chajju* (3) and *Maharaj Tewari v. Har Charan Rai* (4).

KNOX, J.—This is an application in revision asking this Court to call for the record and to revise an order passed under section 145 of the Code of Criminal Procedure on the ground that the magistrate who passed the order complained of refused to uphold an order passed by the Civil Court and decided the question before him contrary to that order. I have considered the following cases referred to by the learned advocate for the applicant:—*Daulat Koer v. Rameswari Koeri* (5), *In re Pandurang Govind* (6) and *Baldeo Baksh Singh v. Raj Ballam Singh* (7) decided by this Court on 11th December 1903. But it has already been held by a Bench of the Court in *Maharaj Tewari v. Har Charan Rai* (8) that as the law at present stands where the proceedings below are in intention, in form and in fact proceedings under chapter XII of the Code of Criminal Procedure by a magistrate duly empowered to act under that chapter, this Court has no power to send for those proceedings either under the Code or under section 15 of the Indian High Courts Act, 1861. It has not been shown to me that the proceedings before the learned magistrate were not proceedings under chapter XII of the Code or that he was not duly empowered to act under that chapter. According to the contention of the learned advocate it was after being properly seised of the case that the learned magistrate went out of his way, passed an order which he had no jurisdiction to pass, and that by it the learned advocate's client has been debarred from all remedy and deprived of the fruits of the case won by him in the Civil Court. This may or may not be so. The fact remains that section 435 expressly excepts records of proceedings under chapter XII, and I know of no other Act or Statute which confers upon this Court the power of sending for such proceedings. The application is dismissed.

Application dismissed.

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| (1) Weekly Notes, 1907, p. 50. | (5) (1899) I. L. R., 26 Calc., 625. |
| (2) Weekly Notes, 1907, p. 265. | (6) (1900) I. L. R., 24 Bom., 527. |
| (3) Weekly Notes, 1907, p. 49. | (7) (1903) 2 A. L. J. R., 274. |
| (4) (1903) I. L. R., 26 All., 144. | (8) (1903) I. L. R., 26 All., 144. |