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pious and religious ceremony not restricted solely to the Shia sect. It may be that the mode of observing the ceremony differs in the case of each sect, but we are satisfied that in the present case the intention of the donor was to continue and perpetuate the religious ceremonies and charitable works in which she had been engaged during her life. The remaining Rs. 200 is appropriated to the death anniversaries (*barsi ammat*) and to the repairs of the Imambara. The latter is admittedly a legitimate object of waqf. The contention of the respondents is that the death anniversaries (*barsi ammat*) should be understood as meaning the death anniversaries of the members of Najiban's family, and we think that this is a reasonable interpretation to be put on the words. We have come to the conclusion, after considering the evidence and the arguments, that the waqfuama was not illusory and there was an intention of creating a substantial waqf for pious and charitable purposes, and we hold that the objects for which the waqf was created were valid. We therefore dismiss this appeal with costs.

Appeal dismissed.

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December 14.

APPELLATE CRIMINAL.

Before Mr. Justice Aikman and Mr. Justice Karamat Husain.

EMPEROR v. GUTALI.*

Act No. XLV of 1865 (Indian Penal Code), section 302—Murder—Poisoning by dhatura—Intention—Knowledge.

Dhatura was administered with the usual object of facilitating robbery, but in such quantity that the person to whom it was given died in the course of a few hours.

Held that the person so administering dhatura was rightly convicted under section 302 of the Indian Penal Code.

THE facts of this case are fully stated in the judgment of the Court.

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

AIKMAN and KARAMAT HUSAIN, JJ.—The appellant Gutali, *alias* Ajudhia, has been convicted of an offence punishable under section 302 of the Indian Penal Code and sentenced to transportation for life. He has also been convicted of an offence punishable

* Criminal Appeal No. 332 of 1903, from an order of S. R. Daniels, Sessions Judge of Banda, dated the 7th of September 1903.

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under section 328 of the Indian Penal Code and sentenced to 10 years' rigorous imprisonment. The sentences have been ordered to run concurrently. We have read through the whole of the evidence and we see no reason whatever to doubt the prisoner's guilt. On the 29th of May last he attached himself to an old man Arjun and his grandson Ram Nath, who had gone to Mahaban to purchase an ox. He was previously unknown to them. He said that he was a Thakur of Chilikipurwa and that he too had come to buy an ox. He remained in their company from 2 or 3 gharis after sunrise until after noon. Both Arjun and his grandson partook of the food which the accused had procured. The accused pressed them to go to the village Karahra where he said he had seen some bullocks for sale. After going a short distance Arjun became ill and fell to the ground unconscious. He and his grandson were seen lying on the road that same evening. The grandson was dead. Arjun and the grandson were seen by the Hospital Assistant, who found in each case the pupils of the eyes dilated. When Arjun was found, he was seen to be plucking at the ground with his hands. The brain of Ram Nath was congested and in the opinion of the Hospital Assistant the congestion was probably caused by poison. Although no poison was found by the Chemical Examiner in the portion of the viscera of Ram Nath sent to him, we think that there can be little doubt that *dhatura* had been administered. When Arjun came to himself, he found that he had been robbed of his money and his grandson's ear-rings had been taken away.

The *dhotis* of both had also been taken away. At that time no trace was found of the person who had been in the company of Arjun and the deceased.

On the 19th of June two more men, Girdhari and Hallia, were joined by an utter stranger, who persuaded them to partake of food which he gave them. They both became unconscious. Before the accused could make off, some residents of Nathupura came up and had their suspicions aroused by what they saw. They arrested the accused as he was attempting to make off. He was taken to the police station and sent to the Hamirpur jail. There on the 1st of July he was picked out by Arjun from amongst a number of under trial prisoners as the man who had

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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 *dhatūra*. 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 *dhatūra* poisoning, yet it does follow in a considerable proportion of cases. Here the accused must have given *dhatūra* 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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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. Ramaswari 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.

(1) (1899) I. L. R., 26 Cal., 625.

(2) (1900) I. L. R., 24 Bom., 527.

(3) (1903) 2 A. L. J. R., 274.

(4) (1903) I. L. R., 26 All., 144.