

that in the case of a wife, who under some systems of law may be the sole heir, she is necessarily an undesirable person to be appointed, and indeed we can but endorse the established principle in English Law that a wife has the first claim, and when the section is carefully looked at, it would appear almost tautologous, because no appointment ought to be made by the court which the court does not consider to be for the benefit of the lunatic. We think what the section means is that it is a kind of warning that particular care should be exercised by the court where a person is entitled to inherit a part of the property of the lunatic, and is therefore benefited by his death, to see that his appointment is a beneficial one. The case of *Fuzal Rab v. Khatun Bibi* (1) was decided under section 10 of Act No. XXXV of 1858, which left the court no discretion, and it is therefore distinguishable. We are satisfied that this appointment will be for the benefit of the lunatic. The appeal No. 152, which is actually before us, must be allowed in part to the extent which we have already declared, and we make the appointment of the two persons, the father-in-law and the daughter, jointly while they reside together. In the other appeals the decree must be drawn up so as to correspond with that order.

[The rest of the judgement deals with a question as to the Collector taking over charge of the property.]

Order modified.

APPELLATE CRIMINAL.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

EMPEROR v. JEOLI.*

Act No. XLV of 1860 (*Indian Penal Code*), sections 299 and 301—Murder—
Intention to kill one person, but death of another actually caused.

Where a person intending to kill one person kills another person by mistake, he is as much guilty of murder as if he had killed the person whom he intended to kill. *Public Prosecutor v. Mushunooru Suryanarayana Moorty* (2) and *Agnes Go'e's Case* (3) referred to.

* Criminal Appeal No. 848 of 1916, from an order of W. D. Burkitt, Sessions Judge of Kumaun, dated the 7th of October, 1916.

(1) (1892) I. L. R., 15 All., 29. (2) (1912) 13 Indian Cases, 833.

(3) 77 English Rep., 853.

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THE facts of this case were shortly as follows :—

Musammat Jeoli, the wife of Harwa, had an intrigue with one Ganna, a Lodh. Wishing to get rid of Harwa, Jeoli appears to have obtained some poison from Ganna which she mixed with some *halwa*. Of this *halwa* Harwa and other persons, amongst them one Madhania, partook. All who had eaten of the *halwa* were taken seriously ill, but only Madhania died. Harwa and the others recovered. Jeoli was thereupon committed to the court of the Sessions Judge of Kumaun; was tried, convicted and sentenced to death. Against her conviction and sentence she appealed to the High Court.

Mr. *Shammath Mushran*, for the appellant.

The Government Advocate (Mr. *A. E. Ryves*), for the Crown.

RICHARDS, C. J., and BANERJI J. :—Musammat Jeoli has been convicted of the murder of one Madhania and sentenced to death. She was also convicted of an attempt to murder Harwa (her husband). She has also been sentenced to 10 years' rigorous imprisonment for an offence under section 328. The sentences were directed by the learned Sessions Judge to run concurrently. The evidence establishes beyond all possible doubt that Madhania died as the result of eating *halwa* which had been prepared by the accused. The accused has all along, even in her petition of appeal to this Court, admitted that she prepared the *halwa* and put into it a certain drug. Besides the husband Harwa and Madhania two other brothers of Harwa and a cousin also partook of the *halwa* and suffered considerably. Madhania, however, was the only person who died. Some time previous to the commission of the alleged crime an intrigue had been going on between the accused Musammat Jeoli and a Lodh of the name of Ganna. The accused has all along stated that the poison which she put into the *halwa* was given to her by Ganna for the purpose of administering it to her husband. Ganna was tried at the same time but acquitted by the learned Judge. He considered that the only evidence against Ganna was the fact that there had previously been an intrigue between him and Jeoli and the statement made by the Musammat herself. He did not consider this sufficient to justify a conviction. Mr. *Mushran*, who appears on behalf of the appellant, has raised three points on behalf of the accused. First, he contends that it

is necessary that it should be proved that she knew that the stuff which she put into the *halwa* was poisonous. Secondly, that the evidence and circumstances clearly show (even assuming that she intended to murder her husband) that she never intended to murder the others. On the contrary she tried to prevent their taking the poisoned sweets. He contends that on these facts the accused is not guilty of murder at all. Lastly, he appeals to us to change the sentence to a sentence of transportation for life, first, because the accused did not intend to murder Madhania, secondly, because she is less guilty than the person who gave her the poison, and lastly because she is a young woman aged only about 20 years.

We are quite satisfied that the woman knew that what she was putting into the sweets would cause the death of her husband. She has admitted this herself before Mr. Harper though now she says it was an innocent medicine. We think that Mr. *Mushran* is correct in his contention as to the inference to be drawn from the facts. We do not believe that the accused intended to murder Madhania or any one else except her husband, and we believe that she would, if she could, have prevented any one excepting her husband partaking of the poisoned food. Nevertheless we are of opinion that the accused is guilty in law of the murder of Madhania. Section 299 of the Indian Penal Code defines the offence of culpable homicide in the following terms:—"Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide." It has been pointed out before now that the intention of causing death is not the intention of causing death to any particular person. The first illustration shows that a person can be guilty of culpable homicide of a person whose death he did not intend to cause. Section 301 is as follows:—"If a person by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause." It seems to us

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that the accused was guilty of the culpable homicide of Madhania, having regard to the definition of that offence in section 299, and we think that section 301 clearly makes the culpable homicide murder notwithstanding that there was no intention actually to murder Madhania. The matter was fully discussed in the case of the *Public Prosecutor v. Mushunooru Suryanarayana Moorty* (1). The case is very similar to the present, and we agree with the view taken by the majority of the learned Judges. *Agnes Gore's* case (2) was referred to. In that case the accused intending to murder her husband mixed poison with his medicine. The husband, not liking the taste, would not take the medicine. The apothecary in order to vindicate his reputation and insisting that the medicine had been properly prepared drank it himself and died. The Judges were unanimously of opinion that the accused was guilty of murder.

With regard to the sentence which should be passed upon the accused, we can see no extenuating circumstance in the fact that Madhania was her victim instead of her husband. It is true that she is quite young. Nevertheless poisoning cases are very prevalent and extremely difficult to detect. Notwithstanding that Ganna has been acquitted, there is no doubt considerable probability that the woman's story is true that it was he who gave her the poison to administer to her husband. We have taken all these circumstances into consideration, but we are unable to see any sufficient reason for altering the sentence imposed by the learned Sessions Judge.

We dismiss the appeal, confirm the conviction and sentence and direct that the latter be carried into execution according to law.

Appeal dismissed.

(1) (1912) 13 Indian Cases, 833.

(2) 77 English Rep., 853.