1918
January, 28.

APPELLATE CRIMINAL.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Piggott.

EMPEROR *v.* GAURI SHANKAR.*

Act No. XLV of 1860 (*Indian Penal Code*), *section* 302—*Murder—Poisoning by arsenic—Intention—Knowledge.*

A person who administers a well-known poison like arsenic to another must be taken to know that his act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and, if death ensue, he is guilty of murder, notwithstanding that his intention may not have been to cause death. *Queen-Empress* v. *Tulsha* (1), *King-Emperor* v. *Bhagwan Din* (2) and *King-Emperor* v. *Gutali* (3) referred to.

THIS was an appeal from a conviction of murder and a sentence of death passed upon one Gauri Shankar Bhat by the Sessions Judge of Cawnpore. The facts of the case are fully stated in the judgement of the Court.

Mr. *E. A. Howard*, for the appellant.

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

BANERJI and PIGGOTT, JJ. :—In this case Gauri Shankar Bhat, aged 58 years, has been found guilty by the learned Sessions Judge of Cawnpore on a charge framed under section 302 of the Indian Penal Code, the case against him being that he caused the death of a little boy named Parmanand by arsenical poisoning. The record is before us for confirmation of the sentence of death and a petition of appeal has been presented by Gauri Shankar through the Superintendent of the Jail in which he is confined. We have also had the advantage of hearing the case argued on behalf of the appellant by a learned advocate of this Court. The story for the prosecution is that, on the 23rd of September last, in the course of the forenoon, the accused asked two little boys, Parmanand and Durga, the sons of his neighbours Lala and Jawahir Kurmis, to come to him at a certain temple in order to study. The accused's own boys were there studying their books just outside the temple. It is alleged that Gauri Shankar offered some sugar to the boys, Parmanand and Durga, taking precautions at the same time that his own sons should not receive any share

* Criminal Appeal No. 41 of 1918, from an order of E. H. Ashworth, Sessions Judge of Cawnpore, dated the 2nd of January, 1918.

(1) (1897) I. L. R., 20 All., 143. (2) (1903) I. L. R., 30 All., 568.

(3) (1909) I. L. R., 31 All., 143.

of it. The boys ate the sugar on the spot and, after some time, they were both taken ill with vomiting and purging. They were carried to the hospital, and the first report was made at the police station of Derapur on the 24th of September at 1 p.m., that is to say, within about 24 hours of the occurrence. In this report Lala, the father of the boy Parmanand, plainly accused Gauri Shankar of having given the two boys some poisonous substance in sugar. He did this on the strength of the statements made to him by the boys themselves. The boys were treated at the hospital, and it was apparent that the case of the younger of the two, Parmanand, who was only about nine years of age, was the more serious, and on the 24th of September, the statement of Parmanand was recorded by the Tahsildar Magistrate. It is to the effect already explained. It alleges that Durga and Parmanand had been sent to the temple by their mother at Gauri Shankar's instance, that they were given sugar to eat, that they complained at the time that it had a curious taste, but were encouraged by the accused to eat it, and that they were taken ill shortly afterwards. The parents of the two boys removed them from the hospital on the morning of the 25th of September, perhaps injudiciously so far as regards Parmanand. The result was that, while Durga recovered, Parmanand died on the 26th of September. The subsequent autopsy, taken in connection with the report of the Chemical Examiner, puts it beyond doubt that death was the result of arsenical poisoning. The hospital assistant, who treated both the boys, gives evidence to the same effect. The symptoms observed by him were those of arsenical poisoning and he suspected arsenic from the first.

The evidence on the record is not voluminous, but it seems straightforward and reliable as far as it goes. Musammat Jasoda is able to prove that Parmanand was sent to Gauri Shankar at the temple, at the latter's express request, and that when he returned home about noon he was vomiting and soon became seriously ill. The most important evidence in the case is the statement of the boy Durga. He says that he was given sugar by the accused at the temple along with Parmanand, that they both complained of the sugar tasting bitter, but the accused re-assured them, saying that there was pepper in it. There is one slight discrepancy

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between his statement and the dying declaration of Parmanand. According to the latter the boys were taken ill at the temple and had both of them vomited before they eft it. According to Durga he was able to go away and visit his house and another place, and had also eaten two *puris*, before he was taken ill. On a consideration of the evidence given by Lala, the father of Parmanand, and by Jawahir, the father of Durga, it seems probable that some confusion of memory on the part of the boy Durga is responsible for the discrepancy. The evidence of Lala as to what he was told by Parmanand clearly supports the version in the dying declaration. The point, however, does not seem of material importance, whatever the explanation of the discrepancy may be.

There is clear evidence of motive, although it may fairly be argued on the accused's behalf that the motive is not a strong one for the commission of such an offence as murder. There was a criminal prosecution pending against Gauri Shankar and the case was down for hearing before the Tahsildar Magistrate on the 24th of September. Lala had been active in arranging for the prosecution and was the most important witness in the case. Jawahir, father of Durga, had also been summoned as a witness. In the result Lala was unable to attend because he was waiting upon his sick son, and the complaint was dismissed without any regular trial, the Magistrate apparently accepting a statement made to him by Gauri Shankar and not considering himself called upon to make further inquiry in the absence of the principal witness for the prosecution.

The accused sets up no defence worthy of consideration, either in the court below or in the petition of appeal which he has addressed to us. He denies all the facts alleged against him. He says he was not in the village at all on the 23rd of September and that the boys never came to him at the temple. In his petition of appeal to this Court he goes so far as to suggest that the parents of the two boys were so seriously at enmity with him that they administered poison to their own children in order to get him into trouble. A defence of the sort certainly does not help the accused. The assessors, as well as the learned Sessions Judge, were satisfied that the prosecution evidence was reliable and that Gauri Shankar had certainly administered arsenic to

these two boys with the intention to make them ill. We have felt called upon to consider carefully the question as to the precise nature of the offence thereby committed by the accused. The learned Sessions Judge passes over the point somewhat lightly, with the remark that the accused must have known that he was likely to cause the death of Parmanand by giving him arsenic. The question requires to be considered somewhat more carefully with reference to the provisions of sections 299 and 300 of the Indian Penal Code. With regard to the former of these sections, we think there can be no doubt that Gauri Shankar intended to cause bodily injury to the two boys and that the bodily injury which he intended to cause by the administration of arsenic was of a kind likely to result in death, specially in the case of a little boy about nine years of age. Further, we are quite prepared to hold that in administering arsenic to these boys he knew that he was likely thereby to cause death. When we come to consider the provisions of section 300, clause (2), it becomes evident that the present case is one which lies very much on the boundary line. Somewhat similar questions have had to be considered by this Court in cases of *dhatura* poisoning and there has been some conflict of authority, as may be seen from the following cases:— *Queen-Empress* v. *Tulsha* (1), *King-Emperor* v. *Bhagwan Din* (2) and *King-Emperor* v. *Gutali* (3).

Each case must of course be decided upon its own facts, but it seems a grave matter to hold that a man of the accused's age, administering a substance like arsenic, with the effects of which the agriculturist population of Northern India is well acquainted, to a boy of Parmanand's age, and actually causing his death thereby, is to be found guilty of any offence short of murder, even though his intention at the time may not have been (and probably was not) to cause the death of the child. Taking the provisions of the section in question as applicable to the facts of the case, we think we are bound to hold that Gauri Shankar, in committing the act proved against him, knew it to be so imminently dangerous that it must in all probability cause to the boys such bodily injury as is likely to cause death. The case therefore just falls within the definition of the offence of murder.

(1) (1897) I. L. R., 20 All., 143. (2) (1908) I. L. R., 30 All.
(3) (1908) I L. R., 31 All., 148.

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Regarding it, however, as a case standing very much upon the border line, and accepting, as we do, the conclusion that the intention was not to cause the death of either of the boys, we do not think it necessary in this case to pass the severer sentence provided by law. We so far accept the appeal of Gauri Shankar that we set aside the sentence of death passed upon him, but affirm his conviction. We direct that he undergo transportation for life with effect from the 2nd of January, 1918, the date of his conviction in the Sessions Court.

Sentence modified.

REVISIONAL CRIMINAL.

1918
January, 28.

Before Mr. Justice Walsh.

SUNDAR NATH *v.* BARANA NATH.*

Criminal Procedure Code, section 145—*Government of India Act*, 1915, *section* 107—*Order under section* 145 *of the Code of Criminal Procedure made by a magistrate duly empowered to act under Chapter XII of the Code—Revision—Jurisdiction of High Court.*

When proceedings are in intention, in form and in fact proceedings under Chapter XII of the Code of Criminal Procedure, and are taken by a magistrate duly empowered to act under that chapter, the High Court has no power to send for the record of those proceedings, either under the Code of Criminal Procedure or under the Government of India Act, 1915. *Matukdhari Singh* v. *Jaisri* (1) followed. It is, however, open to a party in such a case to satisfy the High Court that property of which he is entitled to possession has been dealt with by an order which has no legal authority at all, and he may do so by an affidavit or in any other reliable manner, and thereby invoke the superintending power of the court.

THIS was an application in revision from an order passed under chapter XII of the Code of Criminal Procedure by a magistrate of the first class. The magistrate found that a dispute likely to cause a breach of the peace existed in respect of certain immovable property belonging to a *math*, between two rival claimants to the *gaddi*, Sundar Nath and Barana Nath. After a lengthy inquiry he came to the following finding :—

"After considering all the evidence on the record, I am unable to satisfy myself whether any and which of them (the claimants) was in possession of the whole subject of dispute, and it has

* Criminal Revision No. 83 of 1918, from an order of Bisheshwari Prasad, Magistrate, First Class, of Gorakhpur, dated the 2nd of January, 1918.

(1) (1917) I. L. R., 39 All., 612.