seller, are not to be precluded from setting up a plea of ignorance of adulteration.

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MUNICIPAL BOARD, BAREILLY v. RAM GOPAL

Accordingly, in the exercise of our revisional jurisdiction, we set aside the conviction of the opposite party. The fine, if paid, will be refunded.

Before Mr. Justice Bajpai and Mr. Justice Braund

EMPEROR *v.* DHIRAJIA*

1940 *June*, 6

Indian Penal Code, sections 299, 300—*Murder and culpable homicide not amounting to murder—Intention—Knowledge —"Excuse for incurring the risk of causing death"—Jumping down a well in a panic with a baby in her arms—Indian Penal Code, section* 309—*Attempt to commit suicide implies conscious effort to do so.*

A village woman of 20 was ill-treated by her husband. On the particular occasion there was a quarrel between the two, and the husband had threatened that he would beat her. Late that night the woman, taking her six months old baby in her arms, slipped away from the house. After she had gone some distance she heard somebody coming up behind her, and when she turned round and saw her husband was pursuing her she got into a panic and jumped down a well near by with the baby in her arms. The result was that the baby died and the woman recovered. She was charged with murder of the child and with attempt at suicide: *Held* that, on the facts,—

(1) An intention to cause the death of the child could not be attributed to the accused, though she must be attributed with the knowledge—however primitive or frightened she might have been—that such an imminently dangerous act as jumping down the well was likely to cause the child's death; but the culpable homicide did not amount to murder because, considering the state of panic she was in, there was "excuse for incurring the risk of causing death", within the purview of the fourth paragraph of section 300 of the Indian Penal Code.

(2) The accused could not be convicted under section 309 of the Indian Penal Code, of an attempt to commit suicide, for the word "attempt" connotes some conscious endeavour to accomplish the act, and the accused in jumping down the well was not thinking at all of taking her own life but only of escaping from her husband.

*Criminal Reference No. 877 of 1939.

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EMPEROR v. DHIRAJIA

The Government Advocate (Dr. *M. Wali-ullah*), for the Crown.

The opposite party was not represented.

BAJPAI and BRAUND, JJ.:—This is an appeal of some little interest. The appellant is a young woman of 20 who was tried for murder by the Sessions Judge of Benares and who was tried at the same time for attempted suicide by a jury. The result of the trial by the Sessions Judge with the aid of his assessors—who were of course the same people who constituted the jury—was that he convicted the appellant of murder under section 302 of the Indian Penal Code. The result of the trial for attempted suicide by the jury was that she was found not guilty. The learned Judge, as logically he was bound to do, was unable to agree with the verdict of not guilty upon the charge of attempted suicide and he has therefore referred the case to us under section 307 of the Criminal Procedure Code with the recommendation that the jury's verdict should be set aside and that the appellant should be convicted under section 309 of the Indian Penal Code as well as under section 302. In this way we have before us the appellant's own appeal against her conviction and sentence under section 302 of the Indian Penal Code and the learned Sessions Judge's reference recommending us to set aside the verdict of the jury and to substitute a conviction upon the charge of attempted suicide as well.

We need hardly say that this is one of those cases common in these provinces in which a young woman with her baby in her arms had jumped or fallen down a well. The facts of the case are comparatively simple. Mst. Dhirajia is a young woman married to a man named Jhagga. They had a six months old baby. They lived together in the village and we can accept it as a fact from the evidence that the husband did not treat his wife very well. We find as a fact that on the

day in question there had been a quarrel between the husband and wife and that the husband Jhagga had uttered threats against his wife that he would beat her. There is more than a hint in the evidence that the wife desired to go to visit her parents at their village of Bhagatua and that the husband, as husbands sometimes do, objected to his wife going to her parents. Late that night Jhagga woke up and found his wife and the baby missing. He went out in pursuit of them and when he reached a point close to the railway line he saw her making her way along the path. When she heard him coming after her Mst. Dhirajia turned round in a panic, ran a little distance with the baby girl in her arms and then either jumped or fell into an open well which was at some little distance from the path. It is important to observe that obviously she did this in panic because we have the clearest possible evidence that she looked behind her and was evidently running away from her husband. The result was, to put it briefly, that the little child died while the woman was eventually rescued and suffered little or no injury.

Upon these facts Mst. Dhirajia was, as we have said, charged with the murder of her baby and with an attempt to commit suicide herself. At that stage it is desirable that we should look at her own statements. She has put forward her own version of the affair on three separate occasions; first by a statement in the nature of a confession, secondly before the Committing Magistrate, and thirdly in the court of the Sessions Judge. The first two of these are identical and we need only, therefore, actually discuss the one before the Magistrate. She was asked: "Did you on the 9th of August, 1939, at about sunrise jump into the well at Sultanpur in order to commit suicide?" This was her answer: "There had been a quarrel in my house for three or four days. My husband threatened to beat me. Thereupon I fled away. He followed me. When I saw my husband coming after me I through fear

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jumped into the well." And later in another answer she said: "Yes, I jumped into the well. I did not know that she would die (by doing so). I jumped into the well through fear of my husband."

That was a perfectly clear, and, to our minds, quite straightforward statement of fact and we cannot but regret that in the sessions court her statement was changed. There—possibly on advice—she changed her story and alleged that she did not jump into the well at all but fell into it by accident.

In those circumstances she was tried. The only issue to which the learned Sessions Judge appears to have addressed his mind, either in his own deliberations upon the charge under section 302 or in his charge to the jury under section 309, was whether as a fact Mst. Dhirajia jumped into the well or fell into it. His conclusion as expressed in his own judgment is: "I am, therefore, of opinion that the evidence of Jhagga supported as it is by the two previous statements of the accused clearly shows that the accused had jumped down into the well and had not fallen down accidentally." He then assumes that it is a case of murder. In the same way the whole purport of his charge to the jury was that they had merely to decide whether she had jumped deliberately or fallen by accident into the well.

We ourselves, having read the evidence with considerable care, are satisfied that the story of the falling into the well by accident is not true. We are satisfied upon the facts that the story told by the appellant in her own statement before the Magistrate is in substance the true version or what happened. It is, indeed, supported by the prosecution evidence itself because one cannot read her husband's evidence without coming to the conclusion that the woman was in a panic when she saw her husband coming after her. And we believe that what she did she did in terror for the purpose of escaping from her husband.

Now upon those facts what we have to consider—and what we think the learned Sessions Judge ought to have considered—is whether this satisfies the charges of murder and of attempted suicide, and, if not, what the woman has been guilty of. This raises questions which are not altogether free from difficulty and are of some interest.

To take first the charge of murder; as we all know, according to the scheme of the Indian Penal Code "murder" is merely a particular form of culpable homicide, and one has to look first to see in every murder case whether there was culpable homicide at all. If culpable homicide is present then the next thing to consider is whether it is of that type which under section 300 of the Indian Penal Code is designated "murder" or whether it falls within that residue of cases which are covered by section 304 and are designated "culpable homicide not amounting to murder". In order to ascertain whether the case is one of culpable homicide we have to look at section 299 of the Indian Penal Code, which says: "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." In this case we can say it at once that we do not, on the facts, attribute to Mst. Dhirajia an intention to cause the death of her baby. We are satisfied that no such intention was ever present in her mind. Indeed, we think there was no room in her mind for any such intention having regard to the panic that she was in. But we have to consider whether what she did, she did with the "knowledge" that she was likely by such act to cause death. It has been strongly and very ably argued before us by Mr. *Sankar Saran* that we cannot in this case, having regard to all the circumstances, attribute to this unfortunate woman the "knowledge" of anything at all at

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that particular moment. We desire to pause at this point to say that Mr. *Sankar Saran,* who is holding the brief on behalf of the Government, has very properly and with great ability represented the appellant herself who was not otherwise represented. We are grateful for his argument from which we have derived great assistance. The way he puts it is that we must treat this woman as being in such a state of mind that not only could she have had no "intention" but she could have had no knowledge either. We regret that we are unable to go as far as this. "Intention" appears to us to be one thing and "knowledge" appears to us to be a different thing. In order to possess and to form an intention there must be a capacity for reason. And when by some extraneous force the capacity for reason has been ousted, it seems to us that the capacity to form an intention must have been unseated too. But, to our minds, knowledge stands upon a different footing. Some degree of knowledge must, we think, be attributed to every sane person. Obviously the degree of knowledge which any particular person can be assumed to possess must vary. For instance, we cannot attribute the same degree of knowledge to an uneducated as to an educated person. But we think that to some extent knowledge must be attributed to everyone who is sane. And what we have to consider here is whether it is possible for us—treating Mst. Dhirajia as a sane person, which we are bound to do—to conclude that she could possibly have been ignorant of the fact that the act of jumping into a well with a baby in her arms was likely to cause that baby's death. We do not think we can. We think that however primitive a man or woman may be and however frightened he or she may be, knowledge of the likely consequence of so imminently dangerous an act must be supposed to have remained with him or her. We have been pressed with cases by Mr. *Saran* in which, when blows have been struck, it has been discussed whether knowledge of the likely conse-

quences of those blows can be attributed to the striker. But we venture to think that such cases as these are fundamentally different from the case before us. A blow is not *per sea* necessarily fatal act, especially if the blow be given with the fist or with one of the less lethal weapons. This is a question of degree, a question of force, a question of position and so forth, and therefore in these cases there is ample room for argument as to whether in any particular case, having regard to the manner in which the particular blow or blows in that case was or were delivered, there was behind it knowledge that it was likely to result in death. But in this case the character of the act is, in our opinion, fundamentally different. The act of jumping into a well with a six months old baby in one's arms can, in our opinion, but for a miracle have only one conclusion, and we regret that we have to assume that that consequence must have been within the knowledge, but not within the intention, of Mst. Dhirajia.

For these reasons we think that this was a case of culpable homicide. We must now proceed to consider whether or not it was murder. We do not propose to set out verbatim the whole of section 300 of the Indian Penal Code because it is so well known. It provides that in four cases culpable homicide is always murder, subject to certain specified exceptions. The first three cases in which culpable homicide is designated as murder are all cases in which there is found a positive "intention" in the doer of the act. We need not waste time on these because, as we have already said, we do not think that in the circumstances of this case it is possible to attribute to Mst. Dhirajia any positive or active intention at all. The only case we need discuss is the fourth which is in these words: "If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of

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causing death or such injury as aforesaid." That is the fourth case in which culpable homicide is murder. We have already found that Mst. Dhirajia must be taken to have known that what she did must in all probability cause the death of her baby. But this is qualified by the further requirement that "such act" must be "without any excuse for incurring the risk of causing death . . ." The construction of this particular passage of section 300 is well settled. It is well settled that it is not murder merely to cause death by doing an act with the knowledge that it is so imminently dangerous that it must in all probability cause death. In order that an act done with such knowledge should constitute murder it is necessary that it should be committed without any excuse for incurring the risk of causing the death or bodily injury. An act done with the knowledge of its consequence is not *prima facie* murder. It becomes murder only if it can be positively affirmed that there was no excuse. The requirements of the section are not satisfied by the act of homicide being one of extreme recklessness. It must in addition be wholly inexcusable. When a risk is incurred—even a risk of the gravest possible character which must normally result in death—the taking of that risk is not murder unless it was inexcusable to take it. That, as we understand it, in terms of this case, is the meaning of this passage of section 300 of the Indian Penal Code. Now looking at the facts of this case which we need not repeat again, we think that it is not possible to say that Mst. Dhirajia in jumping into the well did so without excuse. We must consider in assessing what is excuse or is not excuse the state of mind she was in. She feared her husband and she had reason to fear her husband. She was endeavouring to escape from him at dawn and in the panic into which she was thrown when she saw him behind her she jumped into the well. We think she had excuse and that that excuse was panic or fright

or whatever you like to call it. For these reasons we do not think that Mst. Dhirajia is guilty of murder.

Upon this reasoning, however, we cannot escape from section 304. It must inevitably follow, for reasons which are obvious, that Mst. Dhirajia is guilty of culpable homicide not amounting to murder and that, in our judgment, is the charge upon which she should have been convicted and not upon the charge of murder.

Before we leave this part of the case we desire to refer to one more authority to which our attention has been called by Mr. *Saran*. That is the case of *Supadi Lukadu* v. *Emperor* (1). The case was a curious one in which a girl of 17 years of age, who too was ill-treated by her husband, jumped with her baby into a well when she found that her husband prevented her from returning to her parents. In that case she was carrying the baby on her back and the learned Judges who tried it in the Bombay High Court on appeal came to the conclusion that on the facts of that case she was not aware at all that she even had a baby with her. No doubt upon the facts of that particular case that conclusion was justified. But we desire to say that we are not ourselves prepared to apply it to the case before us. The facts in the case before us are different and we should not be justified, we think, in looking for evidence which does not exist in order to enable us to come to a conclusion which the facts do not warrant. There is nothing upon this record which could enable us, upon any reasonable view of the matter, to assume that Mst. Dhirajia was not aware that she had her baby with her. We have found it necessary to resist the temptation in this case to adapt the facts to what our own desires might be, because we think that such a course must necessarily be dangerous and wrong.

As regards the charge of attempted suicide we think that upon that Mst. Dhirajia was rightly acquitted. To our minds the word "attempts" connotes some conscious endeavour to do the act which is the subject of the parti-

(1) A.I.R. 1925 Bom. 310

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cular section. In this case the act was the act of committing suicide. We ask ourselves whether, when Mst. Dhirajia jumped into the well, she did so in a conscious effort to take her own life. We do not think she did. She did so in an effort to escape from her husband. The taking of her own life was not, we think, for one moment present to her mind. For that reason we think that Mst. Dhirajia was rightly acquitted under section 309 of the Indian Penal Code.

So far as the convictions are concerned, therefore, the result of the appeal is that the appellant's conviction under section 302 of the Indian Penal Code is set aside and there is substituted for it a conviction under section 304 of the Indian Penal Code. So far as the learned Judge's reference to us is concerned, we are unable to accept it and the verdict of "not guilty" passed by the jury must stand.

There only remains the question of sentence upon the conviction under section 304 which we have substituted for the conviction under section 302 of the Indian Penal Code. It is obvious that this is not a case deserving of a severe punishment. The unfortunate woman has already been in prison for a period of eight months and we think the proper sentence is that she should be sentenced to undergo six months' rigorous imprisonment, which in effect means that she will be at once released unless she is required upon some other charge.