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directed the judgment-debtor, appellant, to pay the amount decreed "according to the terms of his written statement;" and in that written statement he had undertaken, if the judgment-debt was not discharged by a particular day, to pay interest upon it. This is all he has now been held bound to do. The appeal is dismissed with costs.

CRIMINAL JURISDICTION.

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Before Mr. Justice Straight.

EMPRESS OF INDIA *v.* IDU BEG.

Murder—Culpable homicide not amounting to murder—Causing death by rash or negligent act—Grievous hurt—Act XLV of 1860 *(Penal Code), ss.* 299, 300, 302, 304A, 325.

Where a person struck another a blow which caused death, without any intention of causing death, or of causing such bodily injury as was likely to cause death, or the knowledge that he was likely by such act to cause death, but with the intention of causing grievous hurt, *held* that the offence of which such person was guilty was not the offence of causing death by a rash act, but the offence of voluntarily causing grievous hurt.

Nidarmarti Nagabhushanam (1); *Queen* v. *Pemkoer* (2); *Queen* v. *Man* (3); *Empress* v. *Ketabdi Mundul* (4); *Empress* v. *Fox* (5); and *Empress* v. *O'Brien* (6) followed.

The offences of murder, culpable homicide not amounting to murder, and causing death by a rash or negligent act distinguished.

THE facts of this case are sufficiently stated for the purposes of this report in the order of the High Court.

STRAIGHT, J.—The record in this case was called for by me on a perusal of the Sessions Statement of the Judge of Cawnpore for the month of June, 1881. The accused, Idu Beg, was convicted upon the 8th June last, under s. 304A of the Penal Code, for having caused the death of his wife Chulki, and was sentenced to four months' rigorous imprisonment. The short circumstances out of which the charge arose are as follows:—On the 10th May last the accused, while engaged in a verbal wrangle with his wife, struck her a blow on the left side with great force, the result of which was that she vomited and bled from the nose, and within little more than an

(1) 7 Mad. H. C. R. 119.
(2) N.-W. P. H. C. Rep., 1873, p. 38.
(3) N.-W. P. H. C. Rep., 1873, p. 235.
(4) I. L. R., 4 Calc., 764.
(5) I. L. R., 2 All., 522.
(6) I. L. R., 2 All. 766.

hour died. Upon the *post mortem* examination it was found that her "spleen was badly ruptured, almost torn across; death was caused by rupture of the spleen; there were no signs of disease of the spleen, though it was a little enlarged; there were bruises on the left side over the spleen and short ribs; there were no signs of a lengthened beating; the injury could have been caused by one severe blow or fall." By these facts it would appear to be established that the accused struck the deceased woman a violent blow, and that the direct consequence resulting from it was the rupture of the spleen, which caused her death. The primary questions in the case therefore to be disposed of were, looking at the character of the act, the instrument with which it was committed, and the extent of injury inflicted, whether (i) the accused intended to cause death or bodily injury likely to cause death? (ii) whether as a reasonable man he must have known that the act was so imminently dangerous that death or injury likely to cause death would be the most probable result? (iii) whether as a reasonable man he must have known that death would be a likely result? If the conduct of the accused fell within either of the first two descriptions, it amounted to murder; if it was covered by the latter, his offence was culpable homicide not amounting to murder. It will be convenient at once to examine the mode in which the Judge dealt with these questions.

At the outset of his judgment he remarks: "The charge against the accused is that in a quarrel with his wife he struck her one or more blows on the left side with a heavy stick, which ruptured her spleen, and caused her death within an hour: he thus caused the death of his wife by a rash act under s. 304A: s. 302 cannot possibly apply, as accused had no intention of causing death, nor can s. 325, as death (much more than grievous hurt) resulted immediately or soon after from the blow." Further on the Judge observes:—"But accused was very angry at the time, and when he struck the blow he had probably not the remotest intention of causing grievous hurt, far less death: still the blows he inflicted must have been severe, and the evidence shows that both Chulki's sides bore marks of the stick: but there is nothing [illegible] that he knew or had reason [illegible]ve that the blows were

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likely to cause death: the surgeon speaks of the spleen being a little enlarged; this might have been the case, and accused know nothing about it: I therefore find that accused caused the death of his wife by the rash act of striking her a sharp blow over the spleen, and that s. 304A. is applicable."

It is matter for regret that the Judge has not applied his mind with greater care to the provisions of the Penal Code bearing upon this case. It is strange also that he should apparently be ignorant of the numerous decisions that have been given with reference to s. 304A, notably those in *Nidurmarti Nagabhushanam* (1); *Queen* v. *Pemkoor* (2); *Queen* v. *Man* (3); *Empress* v. *Ketabdi Mundul* (4); *Empress* v. *Fox* (5); *Empress* v. *O'Brien* (6). The view he takes of s. 304A is directly at variance with the judgments of three High Courts, and is an erroneous one. The category of intentional acts of killing, or of acts of killing committed with the knowledge that death, or injury likely to cause death, will be the most probable result, or with the knowledge that death will be a likely result, is contained in the provisions of ss. 299 and 300 of the Penal Code. S. 304 creates no offence, but provides the punishment for culpable homicide not amounting to murder, and draws a distinction in the penalty to be inflicted, where, an intention to kill being present, the act would have amounted to murder, but for its having fallen within one of the *Exceptions* to s. 300, and those cases in which the crime is culpable homicide not amounting to murder, that is to say, where there is knowledge that death will be a likely result, but intention to cause death or bodily injury likely to cause death is absent. Putting it shortly, all acts of killing done with the intention to kill, or to inflict bodily injury likely to cause death, or with the knowledge that death must be the most probable result, are *primâ facie* murder, while those committed with the knowledge that death will be a likely result are culpable homicide not amounting to murder. Now it is to be observed that s. 304A is directed at offences outside the range of ss. 299 and 300, and obviously contemplates those cases into which neither intention nor knowledge of the kind already mentioned

(1) 7 Mad. H. C. R. 119.
(2) N.-W. P. H. C. Rep., 1873.
(3) N.-W. P. H. C. Rep. 18[illegible]
(4) I. L. R., 4 Calc., 764.
(5) I. L. R., 2 All., 522.
(6) I. L. R., 2 All., 766.

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enters. For the rash or negligent act which is declared to be a crime is one "not amounting to culpable homicide," and it must therefore be taken that intentionally or knowingly inflicted violence, directly and wilfully caused, is excluded. S. 304A does not say every unjustifiable or inexcusable act of killing not hereinbefore mentioned shall be punishable under the provisions of this section, but it specifically and in terms limits itself to those rash or negligent acts which cause death but fall short of culpable homicide of either description. According to English law, offences of this kind would come within the category of manslaughter, but the authors of our Penal Code appear to have thought it more convenient to give them a separate *status* in a section to themselves, with a narrower range of punishment proportioned to their culpability. It appears to me impossible to hold that cases of direct violence, wilfully inflicted, can be regarded as either rash or negligent acts. There may be in the act an absence of intention to kill, to cause such bodily injury as is likely to cause death, or of knowledge that death will be the most probable result, or even of intention to cause grievous hurt, or of knowledge that grievous hurt is likely to be caused. But the inference seems irresistible that hurt at the very least must be presumed to have been intended, or to have been known to be likely to be caused. If such intention or knowledge is present, it is a misapplication of terms to say that the act itself, which is the real test of the criminality, amounts to no more than rashness or negligence. In the present case the evidence is clear that the blow was wilfully and consciously given to the deceased woman by the accused, and he obviously therefore committed an assault at the very least. The consequences that resulted from it could not change a wilful and conscious act into a rash or negligent one, but their relevancy and importance, as indicating the amount of violence used, bore upon the question as to the character of the intention or knowledge to be presumed against the accused. Although I do not pretend for a moment to exhaust the category of cases that fall within s. 304A., I may remark that criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be

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caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted. The substantial point to be determined in the case now under consideration was as to the intention or knowledge with which the act was done. That the violence was knowingly and wilfully inflicted is abundantly clear, but as found by the Judge it may well be that the accused neither intended to kill, or to cause bodily injury likely to cause death, and that he had not the knowledge that death would be the most probable result. The other questions that remain, namely, must he have known that death was likely to ensue, or did he intend to cause grievous hurt or hurt, or must he have known that grievous hurt or hurt were likely to be caused, are not so easily disposed of. The evidence of the Civil Surgeon establishes beyond a doubt that great violence, even though confined to one blow, must have been used to the deceased woman by the accused man. And looking to this circumstance, and the nature of the weapon employed, I should certainly not have disturbed the order of the Judge, had he convicted of culpable homicide not amounting to murder, on the ground that there must have been knowledge that death would be a likely result. At the same time I am willing to accept his conclusion that there was no such knowledge, though further than this I cannot adopt his view. If a man deals another person so ferocious a blow with a heavy stick upon a dangerous part of the body as that which was inflicted by the accused upon his wife, he cannot complain of the inference being drawn that at the very least he must have known that grievous hurt was likely to be caused. The conviction of Idu Beg under s. 304A., for the reasons I have given, is quashed, and it must be recorded under s. 325. I further order that notice be served upon him to show cause why the sentence already passed upon him should not be enhanced. (The sentence was ultimately enhanced to three years' rigorous imprisonment).