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one and the same bicycle then the bicycle which Ramzan Ali speaks of was a different bicycle.

In our opinion the charge is not made out against the accused in this case. We agree with the assessors and disagree with the learned Additional Sessions Judge in acquitting the accused. The court's decision should not rest upon suspicion. The gravest suspicion against the accused will not suffice to convict them of a crime unless evidence establishes it beyond doubt.

The result is that we allow this appeal and setting aside the convictions and sentences direct that Hawaldar Singh and Amaldar Singh appellants be acquitted and released.

Appeal allowed.

APPELLATE CRIMINAL.

Before Mr. Justice Bisheshwar Nath Srivastava and Mr. Justice E. M. Nanavutty.

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February, 22.

KING-EMPEROR (COMPLAINANT-APPELLANT) *v.* RATAN (ACCUSED-RESPONDENT).*

Indian Penal Code (Act XLV of 1860), sections 299, 300, 302 and 304—Murder—Culpable homicide—Murder and culpable homicide, difference between—Accused inflicting severe injuries on a weak old man of 50 with the intention of causing death or knowing that they were likely to cause his death—Offence committed, nature of.

Whether an offence is culpable homicide or murder, depends upon the degree of risk to human life. The offence is culpable homicide, if the bodily injury intended to be inflicted is *likely* to cause death; it is murder, if such injury is *sufficient in the ordinary course of nature* to cause death. *Reg* v. *Govinda* (1), relied on.

Where a person inflicted innumerable injuries on an old man of 50 years of age and the act of the accused was done with the intention of causing such bodily injury, as the offender knew to be likely to cause the death of the person

*Criminal Appeal No. 38 of 1932, against the order of S. Asghar Hasan, Sessions Judge of Bara Banki, dated the 9th of November, 1931.

(1) (1876) I.L.R., 1 Bom., 342.

to whom the harm was caused, or the act was done with the intention of causing bodily injury, and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death, and death supervened within a few hours after the infliction of those injuries, the offence fell within clauses 2 and 3 of section 300 of the Indian Penal Code and was punishable under section 302 of the Indian Penal Code.

The Government Advocate (Mr. *G. H. Thomas*), for the Crown.

Dr. *Zafar Husain*, for the accused.

SRIVASTAVA and NANAVUTTY, JJ. :—This appeal has been filed on behalf of the Local Government under section 417 of the Code of Criminal Procedure against the judgment of the Sessions Judge of Bara Banki acquitting the accused Ratan Chamar of an offence under section 302 of the Indian Penal Code but convicting him of the minor offence under section 304 of the Indian Penal Code and sentencing him to seven years' rigorous imprisonment.

The facts out of which this appeal has arisen are as follows :—

The accused Ratan Chamar, aged 25, was married some 3 or 4 years ago to Musammat Chhedana the daughter of the deceased Chhote Chamar. She is a girl of about 12 years of age. She had been to the accused's house three times during the last 3 or 4 years but on each occasion she had run away and come back to her father's house. The last time that she fled from her husband's home and returned to her father's house was about six days before the date of the occurrence. Two days before the commission of the murder the accused asked the deceased Chhote to send his daughter to him. Chhote refused to do so saying that as the girl was still too young he would not send her to her husband's home for another two years at least. The accused threatened to kill Chhote sometime or other. On the night between the 18th and 19th of June, 1931,

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Chhote Chamar was sleeping on a cot at the door of his house under a *nim* tree. There is a jungle to the north and east of Chhote's house. Near the cot of Chote Chamar was sleeping his nephew Nanhu on a separate cot. When Chhote was attacked by his son-in-law, the accused Ratan Chamar, his nephew Nanhu hearing the cry of his uncle woke up and threw himself on the body of his uncle in order to protect the latter from the beating that he was receiving. In doing so the brave nephew himself received injuries. Nanhu's mother, Musammat Janaka, P.W. 4, and Musammat Chhedana, P.W. 7, the wife of the accused, also came out of the house on hearing the cry of Chhote Chamar. All these persons were eye witnesses to the attack on Chhote by his son-in-law Ratan Chamar. They depose that Ratan beat Chhote with *lathi* blows while three other associates of his were standing near by also armed with *lathis*. The injuries on the deceased Chote, an old man of about 50 years of age, were manifold as deposed to by the Civil Surgeon of Bara Banki. They consisted of a compound fracture of the left arm above the elbow. There were three contused wounds on the arm. There was a contused wound on the front of the left leg on the upper part and another contused wound on the same leg. There was a contused wound deep down to the scalp on the back of the top of the head. There was a fracture of the left fourth rib at its junction with the costal cartilage. There were fractures of the left fifth, sixth, seventh, eighth and ninth ribs on the left side between the anterior axillary line and the nipple line; there was also fracture of the front part of the right tenth rib. There was a bruise on the right temple. The brain was slightly congested. Blood was present in both pleuræ. The spleen was torn in two places and the left kidney was also injured. Death, in the opinion of the Civil Surgeon, was due to internal hæmorrhage from the rupture of the spleen and left kidney caused by the

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fracture of the ribs due to violent *lathi* blows. After giving this merciless beating to his father-in-law, the accused Ratan, left the place with his three companions informing the women of the household that if Chhote survived this beating he would come back again and kill him outright. The prosecution witnesses depose that they recognized the accused by his voice also besides recognizing him by his figure in the dark. Bhawani, P.W. 5 and Gokul, P.W. 6 also came on the scene shortly after Ratan had left the place. Shortly after the occurrence the deceased Chhote as well as Musammat Janaka and Nanhu told these witnesses that Ratan Chamar had beaten his father-in-law. The report of the occurrence was made in Thana Kursi, ten miles from the scene of occurrence by chaukidar Ram Dayal, at 10 a.m. on the morning of the 19th of June, 1931. P. W. 8, Lochan afterwards went to make a report at the thana that Chhote had passed away. Chaukidar Ram Dayal on his return from the thana hearing the news of the death of Chhote proceeded to the village to keep watch over the dead body. Head constable Abdul Rashid prepared the inquest report and sent the body of Chhote Chamar to headquarters for *post mortem* examination. The accused Ratan was arrested on the following day, the 20th of June, 1931, in his own village.

The accused alleged in his statement before the Sessions Judge that he was at his own house on the night of the occurrence and was arrested at his own house and that he had been falsely implicated by the relations of his father-in-law. He has examined no witnesses in his defence.

The learned Sessions Judge has, in the main, accepted the evidence of the prosecution witnesses and has convicted the accused Ratan of an offence under section 304 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years. The accused has filed no appeal against his conviction and

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sentence for an offence under section 304 of the Indian Penal Code. We have examined the evidence of the prosecution witnesses and are satisfied that the charge of causing the death of his father-in-law Chhote by beating him with a *lathi* has been fully proved against the accused Ratan Chamar.

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The only question for determination in this appeal is as to the nature of the offence committed by the accused. The learned Sessions Judge has treated this matter in a very casual manner at the end of his judgment and has merely stated, without giving any sufficient reason, that the case does not appear to fall within any of the four clauses to section 300 of the Indian Penal Code, and that the intention of the accused was nothing more than to cause such bodily injury as was likely to cause death within the meaning of section 304 of the Indian Penal Code. For the guidance of subordinate courts we propose to deal with this matter at some length. The distinction between culpable homicide punishable under section 304 of the Indian Penal Code and murder punishable under section 302 of the Indian Penal Code has been very ably set forth by MELVILL, J. in *Reg.* v. *Govinda* (1). In that case the learned Judge said :— "For convenience of comparison, the provisions of sections 299 and 300 of the Indian Penal Code. . . may be stated thus :—

Section 299.	*Section* 300.
A person commits culpable homicide, if the act by which the death is caused is done.	Subject to certain exceptions, culpable homicide is murder, if the act by which the death is caused is done.
(*a*) With the intention of causing death;	(1) With the intention of causing death;
	(2) With the intention of causing such bodily injury as the offender *knows to be likely* to cause the death of *the person to whom the harm is caused*;

(1) (1876) I.L.R., 1 Bom., 342 (344-46).

(*b*) With the intention of causing such bodily injury as is *likely* to cause death;	(3) With the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted *is sufficient in the ordinary course of nature to cause death*;
(*c*) With the knowledge that . . . the act is *likely* to cause death.	(4) With the knowledge that the act is so *imminently dangerous that it must in all probability cause death, or such bodily injury as is* likely to cause death.

"I have italicized the words which appear to me to mark the differences between the two offences. (*a*) and (1) show that where there is an intention to kill, the offence is always murder.

"(*c*) and (4) appear to me intended to apply (I do not say that they are necessarily limited) to cases in which there is no intention to cause death or bodily injury. Furious driving, firing at a mark near a public road, would be cases of this description. Whether the offence is culpable homicide or murder, depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder.

"The essence of (2) appears to me to to be found in the words which I have italicised. The offence is murder, if the offender knows that the *particular person injured* is likely, either from peculiarity of constitution, or immature age, or other special circumstances, to be killed by an injury which would not ordinarily cause death.

"There remains to be considered (*b*) and (3), and it is on a comparison of these two clauses that the decision of doubtful cases . . . must generally depend. The offence is culpable homicide, if the bodily injury intended to be inflicted is *likely* to cause death; it is murder, if such injury is *sufficient in the ordinary course of nature* to cause death. The distinction is fine, but appreciable.

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It is much the same distinction as that between (*c*) and (4), already noticed. It is a question of the degree of probability."

Applying the tests set forth above to the facts of the present case we hold that it is clear from the innumerable injuries inflicted on an old man of 50 years of age that the offence of Ratan Chamar falls within clauses (2) and (3) of section 300 of the Indian Penal Code, namely, that the act of the accused Ratan was done with the intention of causing such bodily injury, as the offender knew to be likely to cause the death of the person to whom the harm was caused, or that the act was done with the intention of causing bodily injury, and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. In fact from the remark made by the accused himself before he left the scene of occurrence it was clear that he himself thought that he had done for his father-in-law and that if somehow or other he survived this thrashing he would come again to kill him outright. Six ribs of the deceased were fractured. The spleen was torn in two places. The left kidney was also injured. There was a wound on the back of the head and there was a compound fracture of the forearm besides other bruises and injuries; death supervened within a few hours after the infliction of these injuries. This case therefore clearly falls under section 302 of the Indian Penal Code.

The learned Counsel for the accused has failed to bring the acts of the accused within any of the five exceptions to section 300 of the Indian Penal Code which would reduce the offence of the accused from murder to culpable homicide not amounting to murder. The first exception lays down that culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of any person by mistake or accident. The facts of the present case do not fit in with this exception. The accused may have been offended with his

father-in-law for not sending his wife Musammat Chhedana to his house. There is no allegation that the accused had any altercation with his father-in-law about the sending of his wife to his house. The accused, in his own statements before the Magistrate and Judge, has alleged that he never went to his father-in-law's house to ask for the return of his wife. The prosecution evidence shows that the accused went at midnight to the house of his father-in-law accompanied by three other persons armed with *lathis* and that he belaboured his aged father-in-law whilst the latter was asleep outside and lying helpless on his cot. Exceptions (2) and (3) of section 300 of the Indian Penal Code relate to offences committed in the exercise of the right of private defence or by a public servant acting for the advancement of public justice. These exceptions have absolutely no applicability to the facts of the present case. Equally inapplicable is exception (4) to section 300 of the Indian Penal Code because in this case nobody alleges that there was a sudden fight between the father-in-law and the son-in-law and in the heat of passion upon a sudden quarrel the death of the father-in-law was caused. Exception (5) is also inapplicable to the present case.

In our opinion this was a clear case of murder punishable under section 302 of the Indian Penal Code, and the learned Sessions Judge of Bara Banki was clearly in the wrong in acquitting Ratan Chamar of that offence and convicting him only of the lesser offence under section 304 of the Indian Penal Code.

We therefore allow this appeal, set aside the acquittal of the accused under section 302 of the Indian Penal Code as also his conviction and sentence under section 304 of the Indian Penal Code, and in lieu thereof convict him of an offence under section 302 of the Indian Penal Code, and taking into account all the circumstances of the case we think that the ends of justice will be met if we inflict the lesser of the two punishments that can be legally inflicted for an offence under section

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302 of the Indian Penal Code. We accordingly sentence Ratan Chamar for an offence under section 302 of the Indian Penal Code to transportation for life.

Appeal allowed.

REVISIONAL CIVIL.

Before Mr. Justice Muhammad Raza and Mr. Justice Bisheshwar Nath Srivastava.

1932 *January*, 25.

BALDEO SAHAI AND ANOTHER (PLAINTIFFS-APPLICANTS) *v.* ABDUR RAHIM AND ANOTHER (DEFENDANTS-OPPOSITE PARTY).*

Civil Procedure Code (Act V of 1908), schedule II, paragraphs 15 and 16 and section 115—Arbitration—Award—Reference to arbitration by court with consent of parties—Decree passed in terms of award—Objection that court's permission for reference to arbitration on behalf of a minor plaintiff was not obtained—Objection overruled—Decree, if subject to appeal or revision—Revision—High Court's power to interfere in revision.

The intention of paragraph 16 of the 2nd schedule of the Code of Civil Procedure (Act V of 1908) clearly is to give finality to a decree passed in accordance with the decision of the arbitrator. According to clause (*c*) of paragraph 15 even in the case of an invalid award, if the party concerned fails to impeach it before the court making the reference or if his objection on the ground of the invalidity of the award is disallowed and a decree is passed in accordance therewith, the award becomes final and the decree passed upon it is not open to appeal.

Where, therefore, after the framing of issues the plaintiff agreed for himself and guardian of his minor son to refer the case to arbitration and the court made an order of reference and after the filing of the award decided the suit in terms of it and an objection to the validity of the award on the ground that one of the plaintiffs was a minor and leave of the court had not been taken by the next friend for referring the suit to arbitration was dismissed, *held*, that the decree passed in terms of the award was final and was not open to appeal or revision. *Ghulam Jilani* v. *Muhammad Hussan.*

*Section 115 Application No. 68 of 1931, against the order of Babu Mahesh Prasad Asthana, Munsif Sadar, Sultanpur, dated the 24th of July, 1931.