Lordships must not be taken as expressing any views upon the conclusions reached on this matter in the Courts below.

A number of minor issues were considered and dealt with in the Courts below but were not debated before their Lordships' Board.

In the result therefore both appeals fail and should be dismissed, and their Lordships will humbly advise His Majesty accordingly. There will be no costs on either side except that as regards K. B. Sardar Mohammad Ali Khan's petition for the discharge of a receiver. K. B. Sardar Mohammad Ali Khan will pay to Sardar Nisar Ali Khan his costs of that petition as directed by Order in Council of the 23rd of July, 1931.

P. C.

Solicitor for defendants : *H. S. L. Polak.*

Solicitor for plaintiffs : *H. S. L. Polak.*

APPELLATE CRIMINAL.

Before Mr. Justice Muhammad Raza and Mr. Justice H. G. Smith.

RAM ADHIN (APPELLANT) *v.* KING EMPEROR. (COMPLAINANT-RESPONDENT).*

1931 *September,* 29.

Indian Penal Code (Act XLV of 1860), section 84—Accused in deep love with the murdered woman—Deceased murdered by accused in a tussle with her relations who attempted to take her away from him—Non-enjoyment of good health and eccentric nature of accused—Accused, if entitled to acquittal under section 84 of the Indian Penal Code.

Where the accused who was deeply in love with a young married woman murdered her with a dagger in a tussle with certain relation of hers who wanted to take her away from him, *held* that the mere fact that the accused did not enjoy

*Criminal Appeal No. 268 of 1931, against the order of Pandit Shyam Manohar Nath Shargha, Additional Sessions Judge of Lucknow, dated the 27th of August, 1931.

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good bodily health and that he acted at times in an eccentric manner is not sufficient to acquit him under section 84 of the Indian Penal Code and it cannot be held that by reason of unsoundness of mind he was incapable of knowing the nature of his act or that he was doing what was either wrong or contrary to law. *R* v. *Kopsch* (1), and *Muhammad Husain* v. *King-Emperor* (2), referred to.

Dr. *J. N. Misra* and Mr. *K. N. Chak*, for the accused.

The Government Advocate (Mr. *H. K. Ghose*) for the Crown.

RAZA and SMITH, JJ. :—This is an appeal by one Ram Adhin, sonar, aged 35, who has been convicted by the learned Additional Sessions Judge of Lucknow under section 302 of the Indian Penal Code and sentenced to death, subject to the confirmation of this Court.

The facts of the crime itself are not disputed, and do not require to be set out in great detail. The appellant, who is a widower, and one Musammat Ramkali, *alias* Kalawati, *alias* Bitta, were in love with each other. Musammat Ramkali, who was the victim of the occurrence under trial, was a young married woman, 18 or 20 years of age. She was related by marriage to the accused, and was married to a man named Sheo Shankar, a resident of a village called Hardoia, in the Rae Bareli district. She suffered from some ailment for the treatment of which she used to come at times to Lucknow to the out-patients department at the King George's Medical College. Once or twice she and relatives of hers had stayed at Lucknow with the appellant, but suspicions having arisen she stayed on the last occasion with one Mata Prasad, another marriage relation. She was accompanied on that occasion by her husband, Sheo Shankar.

On the morning of the 31st of January, last, Musammat Ramkali went to the College, accompanied by Mata Prasad and his wife, Musammat Mahdei. Musammat Ramkali went in to see the lady doctor, and as she

(1) (1925) Cr. Appeal R. 50. (2) (1912) 15 O.C., 321.

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did not reappear for some time, Musammat Mahdei went to enquire, and was told that Ramkali had left. She then went out and found Ramkali and Ram Adhin, appellant, sitting in an *ekka*-gari. Mata Prasad was there too. He got Ramkali down from *ekka*-gari, and there was a tussle, Mata Prasad and his wife trying to get Ramkali away from Ram Adhin, while Ram Adhin sought to detain her. Finally Ram Adhin produced a dagger, (*qarauli*), made in the form of a miniature sword. This he plunged into the neck of Ramkali, killing her instantaneously. The medical evidence shows that there were two incised wounds and a superficial cut, one incised wound was on the front of the left side of the neck, one was along the back, internal to the inner border of the left shoulder-blade, and the superficial cut was on the right hand. The wound on the neck penetrated the upper part of the left lung, and passed out through the wound on the back. The cut on the hand was probably caused by the hand's being raised for protection. It was possible, the medical witness said, for all the three injuries to be caused by one and the same blow. The penetrating wound was the cause of death, and could have been inflicted with the dagger that has been produced. When striking Musammat Ramkali, Ram Adhin is said to have uttered some such words as *le jao*, or *lo ab isko lejao*, take her away, or "now take her away". There is some difference amongst the witnesses as to the precise words used.

The appellant was at once secured, and taken to the Kotwali, where Mata Prasad made a report.

That the appellant did, in fact, kill the unfortunate Musammat Ramkali is not disputed. The questions are, what was his personal history prior to the occurrence, and, more particularly, what was the state of his mind when he committed the act? It was to eliciting facts bearing on those points that the defence evidence, which was voluminous, was directed, and further to throw

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light on them the learned Additional Sessions Judge examined as Court's witnesses the Assistant Jailor of the Lucknow District Jail, a subordinate Medical Officer of that Jail, and Rai Bahadur Dr. J. P. Modi, the well-known Reader in Forensic Medicine at the King George's Medical College, and the author of the volume "Text-Book of Medical Jurisprudence and Texicology".

From the evidence given by the appellant's witnesses, it appears as regards his general health that he has suffered from headaches and giddiness in the past, and various minor ailments such as coughs, fever, constipation and insomnia. As regards his general mental history, certain incidents (it does not seem necessary to set them out in detail,—they are exhaustively set out in the judgment of the lower court) were mentioned, which show that the appellant was eccentric. On one occasion, in the spring of 1930, he is said to have assaulted a man named Dharam Bhikshu owing to a difference of opinion in a discussion after an Arya Samaj meeting. He is further said to have been of a morose and melancholy disposition. Some of the witnesses say they entertained doubts as to his sanity, and a "*vaid*" named Pandit Bal Kishen deposed that he diagnosed that "insanity was to set in", to quote from the learned Additional Sessions Judge's record of the evidence. On the evidence of that witness, it should be mentioned, the learned lower court poured scorn, and quite refused to believe it.

A witness for the defence, however, whose evidence was certainly entitled to respect was Dr. H. Hukku, a well-known Lucknow practitioner with British qualifications and experience. He gave evidence as to the causes and symptoms of insanity, and there were put to him the circumstances attending this present case. His reply to the case as it was stated to him was: "I think it was impulsive insanity or homicidal insanity—a form of partial intellectual mania. There was absence of motive, *lo le jao* is suggestive of maniacal condition. There was no hiding, there were no accomplices and

there was the sudden shock of being deprived of the beloved."

As to the witnesses examined by the Court itself, as distinguished from the defence witnesses, the Assistant Jailor said he never formed the impression, from anything the appellant said or did, that he was "mad or senseless". The Subordinate Medical Officer of the Jail gave similar evidence. Dr. Modi saw the appellant twice on the day of the occurrence, once soon after it took place, and again at 4-20 p.m. On the former occasion he had no talk with him. On the latter occasion, when the appellant was sent to him for medical examination as to certain hurts on him, he questioned him. The replies given by the appellant were, Dr. Modi said, reasonable, and there were no symptoms of mental derangement or abnormality.

Raza and Smith, JJ.

Leaving aside for the moment the evidence of Dr. Hukku, we are not of opinion that the defence evidence, even if believed, is sufficient to prove more than that the appellant did not enjoy good bodily health, and that he acted at times in an eccentric manner. The learned Additional Sessions Judge, we may mention, said he disbelieved most of the evidence produced on behalf of the accused. He regarded it as designed "to somehow save him from the punishment which he deserves, for the sympathy of his friends, well-wishers and caste-fellows was bound to be aroused when the man was being tried for murder, which has capital sentence as a possible punishment under the law."

The learned Additional Sessions Judge went on to say, however: "In the second place, the evidence, if believed, falls far short of proving that the accused was labouring under some delusion or hallucination at the time of the murder and did not know the nature of his own act when he was committing it."

We have referred to the evidence of Dr. Hukku, who suggested that the killing of Musammat Ramkali

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must be regarded as an act of "impulsive insanity, or homicidal insanity." Dr. *J. N. Misra*, the counsel for the appellant putting the matter in a slightly different way, argued that the appellant's action was the result of "uncontrolable impulse."

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Now it may be said to be well-known that there is a school of medico-legal thought which tends to regard all forms of crime as being the result of some mental abnormality and the perpetrators of them as being the subjects more properly of medical treatment than of judicial punishment. What we have to administer, however, is the law as it stands, and not any form of medico-legal theory that is opposed to that law. There are very relevant observations on the doctrine of "irresistible impulse", as it is there designated, in "Taylor's Principles and Practice of Medical Jurisprudence", Vol. I, eighth edition, at pages 845-6. Reference is made there to various English cases, including the famous McNaughten's case. In another case, (*R* v. *Allnutt*, —the details of the report are not quoted), a learned Judge is quoted as saying :—

> "What was the meaning of not being able to resist an impulse?
>
> Every crime was committed under an impulse, and the object of the law was to compel persons to control or resist those impulses. If it was made an excuse for a person who had committed a crime that he had been goaded to it by some impulse which medical men might choose to say he could not control, such a doctrine would be fraught with great danger to society."

In another case, *R* v. *Kopsch* (1), it was remarked :—

> "If the fantastic theory of uncontrollable impules were to become part of our criminal law, it would be merely subversive."

(1) (1925) Cr. Appeal R. 50.

In the case now before us, the appellant, when examined by the Committing Magistrate, gave quite clear and reasonable replies to the questions put to him. He did not definitely suggest that he was insane at the time of the act under trial, or at any other time. He said that he was not conscious of what he did at the time in question, and that he had been ailing for the past three years, and was not conscious at times of what he did. He had, he said, suffered from constipation and vertigo. It was, we take it, in consequence of the absence of any definite suggestion of insanity, and the absence of any appearance of it, that the special procedure prescribed by section 465, Criminal Procedure Code, was not adopted by the learned Additional Sessions Judge. Before the latter, the appellant, when questioned, again gave quite rational replies. He professed that he could not remember the incidents immediately attending the killing of the deceased, and suggested that his memory is generally defective, and that his mind does not work properly. He represented that he suffers from constipation and giddiness.

Raza and Smith, JJ.

It cannot be said that when examined by the courts below the appellant displayed any signs of insanity. Dr. *J. N. Misra*, however, who argued the case for the appellant with both erudition and ability, invited our attention to a passage contained in the treatise of Dr. J. P. Modi that has already been referred to, at pages 336 and 337, (2nd edition). The learned author there details six points which, according to him, "the medical man takes . . . into consideration before deciding whether the murder was the result of some delusion (homicidal mania)". Those points are:—

(i) The personal history of the murderer ("the murderer may be eccentric, melancholic, degenerate, neurasthenic, etc.")

(ii) The absence of motive.

(iii) The absence of secrecy.

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(iv) Multiple murders.

Want of preparedness or pre-arrangement.

(vi) Want of accomplices.

Raza and Smith, JJ.

Leaving out of consideration the fourth of the above points, which has no application here, the other five, Dr. Misra argued, all exist as regards the present appellant. We are, however, not able to agree that that is so. The prospect of losing the object of his affections may very well be supposed to have excited in the appellant feelings of jealous rage, which led him to kill her, so that if she was not to be his, she should at any rate be no one elses. The annals of crime furnish many such cases. It cannot be said that there was absence of motive.

As regards absence of secrecy, again, the appellant seems to have acted under the influence of passion, and, it is clear, paid no attention to the unconcealed nature of his act.

As to the want of preparedness or pre-arrangement, it is to be remembered that the appellant had a dagger with him. Even if it be believed, as some of the defence witnesses say, that he was in the habit of carrying that dagger, the fact remains that he had it, and no further preparation was necessary, as the tragic result showed.

As to the want of accomplices, that point carries no weight. There is no suggestion made that the appellant had conceived a definite intention of killing the young woman. In any case, as is said in Taylor's treatise that has been referred to, (Vol. I, 8th edition, page 843) :—

> "The lack of power of combination is perhaps of all others the most striking characteristic of insanity, hence it is a rule that when a lunatic commits a crime he does not confide in anybody; obviously the same

may be true of a sane criminal, so that the point standing alone is of little weight."

The result is that we were not impressed by Dr. *Misra's* ingenious attempt to bring this case within the scope of the points set out in the treatise of Dr. Modi.

Raza and Smith, JJ.

The law we have to administer is stated in section 84 of the Indian Penal Code. Whether that section is unduly narrow or drastic is not a matter with which we are concerned. As to that point, we may refer to the observations made by a learned Additional Judicial Commissioner in the ruling reported in *Muhammad Husain* v. *King-Emperor*. (1). What we, therefore, have to consider is whether the appellant was, at the time he killed Musammat Ramkali, incapable, by reason of unsoundness of mind, of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

On a consideration of all the facts and circumstances of the case, we find ourselves quite unable to hold that the appellant is entitled to acquittal by anything contained in section 84 of the Indian Penal Code. We do not believe that as regards his general bodily health he suffered from anything worse than the minor ailments that all human flesh is heir to, and as regards his mental state we are not satisfied by the evidence that he suffered from any thing more serious than eccentricity. We are, in the words of the section, not of opinion that by reason of unsoundness of mind he was incapable of knowing the nature of his act, or that he was doing what was either wrong or contrary to law, and we are, therefore, of opinion that the Additional Sessions Judge rightly found him guilty of an offence punishable under section 302 of the Indian Penal Code.

We are, however, of opinion that we ought to alter the sentence to one of transportation for life. Our

(1) (1912) 15 O.C., 321 (343).

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reasons for this are that we are satisfied that the appellant is not quite normal mentally, and that his act was not premeditated, and was committed in a moment of extreme excitement. While, therefore, we maintain the conviction, we reduce the sentence from one of death to one of transportation for life. Apart from this alteration in the sentence, the appeal is dismissed.

Appeal partly allowed.

MISCELLANEOUS CIVIL.

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

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September, 30.

BANKEY BEHARI LAL AND ANOTHER (DEFENDANTS-APPELLANTS) *v.* ABDUL RAHMAN AND OTHERS (PLAINTIFFS-RESPONDENTS).*

Civil Procedure Code (Act V of 1908), order XLVII, rules 4 and 7 and order XLIII, rule 1(w)—Review—Appeal against an order granting a review of judgment, grounds of—Order rejecting an application in chambers without hearing the applicants—Review of the order granted—Court, if justified in granting review of that order—Appeal against order granting review, when lies—Civil Procedure Code (Act V of 1908), section 151—Application under section 151 of the Code of Civil Procedure on the ground that counsel had no power to enter into a compromise on behalf of the applicant and the proceedings relating to the compromise decree were null and void—Court, if competent to cancel its proceedings and direct retrial—Pre-emption—Oudh Laws Act (XVIII of 1876), section 15.

Held, that an appeal against an order granting an application for review of judgment must be restricted to one or other of the grounds set forth in order XLVII, rule 7 of the Code of Civil Procedure. Order XLIII, rule 1(*w*) gives a right of appeal against orders granting an application for review but does not specify the grounds on which the appeal can lie. Those grounds have been specified in order XLVII, rule 7.

*Miscellaneous Appeal No. 51 of 1930, against the order of S. Shaukat Husain, Subordinate Judge of Unao, dated the 25th of September, 1930.