

as regards the alleged custom. The result therefore is that the appeal fails and is dismissed with costs.

Appeal dismissed.

APPELLATE CRIMINAL

Before Mr. Justice Bisheshwar Nath Srivastava

SOBHA AND ANOTHER (APPELLANT) *v.* KING-EMPEROR
(COMPLAINANT-RESPONDENT)*

Indian Penal Code (Act XLV of 1860), section 299, Explanation 2 and section 304—Simple hurt—Death due to septic meningitis due to neglect in treatment and wrong remedies—Explanation 2 of section 299, I. P. C., applicability of.

Where a person causes simple injury to another but the latter subsequently dies of septic meningitis which developed on account of the use of wrong remedies and neglect in treatment, the death cannot be said to have been caused by the bodily injury within the terms of Explanation 2 to section 299 of the Indian Penal Code and the person causing the injury cannot be convicted of culpable homicide not amounting to murder under section 304 of the Indian Penal Code.

Dr. J. N. Misra, for the appellant.

The Government Advocate (Mr. H. S. Gupta), for the Crown.

SRIVASTAVA, J.:—This is an appeal by two brothers Sobha and Tilak who were charged under section 304 of the Indian Penal Code for the offence of culpable homicide not amounting to murder of their uncle Badri. The learned Additional Sessions Judge of Bahraich has convicted Sobha under section 304 of the Indian Penal Code and sentenced him to 8 years' rigorous imprisonment but has found Tilak guilty only under section 323 of the Indian Penal Code and sentenced him to six months' rigorous imprisonment.

The case for the prosecution is briefly as follows: On the 31st of July, 1934, about one or two gharis before

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*Criminal Appeal No. 173 of 1935, against the order of Pandit Damodar Rao Kelkar, Additional Sessions Judge of Bahraich, dated the 5th of March, 1935.

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At sunset Badri deceased noticed Tilak grazing cattle in his paddy field. On being questioned by Badri why he had got the paddy crop grazed by the cattle Tilak abused Badri. When Badri began to drive the cattle in order to get them impounded in the cattle pound Tilak called out his brother Sobha. Sobha came armed with a *lathi* and struck a blow on the head of Badri which felled him to the ground. Both the brothers then beat Badri with kicks and fists. While this was going on some witnesses arrived on the scene and on their preventing the accused from beating Badri they stopped the beating. The learned Additional Sessions Judge has accepted the prosecution version as given above, and it has not been questioned before me by the learned counsel for the appellants. It is therefore unnecessary for me to refer to the evidence of the prosecution witnesses in support of it. The learned counsel for the appellants has laid emphasis on the fact that Badri himself went in a bullock cart to the thana which is at a distance of about eight miles from the village and made a report which was only under section 323 of the Indian Penal Code and section 24 of the Cattle Trespass Act. It is further pointed out that when the Head Constable who wrote the report asked Badri if he wanted to go to the hospital to get the injuries examined Badri declined to do so. Three days later Badri went to Bahraich and filed a complaint which was also in respect of an offence under section 323 of the Indian Penal Code and section 24 of the Cattle Trespass Act. It is also pointed out that Badri died at his house more than three weeks after the occurrence on the 22nd of August, 1934. Stress has also been laid on the evidence of the Civil Surgeon who stated that the cause of death was septic meningitis. It is argued that the evidence of the Civil Surgeon and his *post mortem* report show that sepsis was caused by neglect in the treatment and by the village poultice which had been applied on the head. On the above grounds it is contended that the conviction of Sobha

under section 304 of the Indian Penal Code is not correct. I am inclined to agree with this contention. As already mentioned the deceased was the uncle of the accused. It has not even been suggested that there was any previous ill-feeling between the uncle and the nephews. The occasion for the assault was an ordinary village quarrel due to the grazing of cattle. Admittedly only one blow was struck with a *lathi*. Whether or not it was deliberately aimed at the head it is not possible to say, but there can be no doubt, as stated by the Civil Surgeon that "the injury on the top of the head was simple as examined externally. There was no fracture at the seat of the injury". Badri himself and his son who accompanied him to the police station soon after the assault as well as to the Magistrate's Court at Bahraich three days after the occurrence also did not regard the injury at all serious, as the complaint was made only under section 323 of the Indian Penal Code. This is also borne out by the fact that they did not think it necessary for Badri to go to the hospital for examination. Thus it seems perfectly clear that Sobha had no intention of causing death or such bodily injury as he knew to be likely to cause death. In the circumstances stated above I am not prepared even to hold that Sobha must have had the knowledge that the blow he was dealing was likely to cause death. It was unfortunate that the one single blow dealt by Sobha to his uncle, who was an old man of eighty years, ultimately resulted in his death.

Reference has been made by the learned Additional Sessions Judge to explanation 2 of section 299 of the Indian Penal Code. This explanation provides that where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment, the death might have been prevented. The evidence of the Civil Surgeon shows that in this case the immediate cause of death was

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septic meningitis and that the sepsis was due to the neglect in treatment and the application of some village poultice which was found on the left side of the head at the *post mortem* examination. My reading of the evidence is that the injury itself was not such as would in the natural course result in death but that the death was caused by the intervening circumstances, namely sepsis consequent to the bad handling of the wound and the application of the village poultice. In other words, it seems to me that the case is one of the death being caused by the use of wrong remedies and unskilful treatment rather than one in which the death were caused by the bodily injury, although by resorting to proper and skilful treatment it might have been prevented.

For the above reasons I allow the appeal of Sobha, set aside his conviction and sentence under section 304 of the Indian Penal Code and convicting him under section 325 of the Indian Penal Code sentence him to two years' rigorous imprisonment. No arguments were addressed in support of the appeal of Tilak, and it is dismissed.

APPELLATE CIVIL

*Before Sir C. M. King Kt., Chief Judge and
Mr. Justice Ziaul Hasan*

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THAKUR SATROHAN SINGH AND ANOTHER (PLAINTIFFS-
APPELLANTS) v. UMA DATT (DEFENDANT-RESPONDENT)*

Hindu law—Joint Hindu family—Alienation by father—Debt—Suretyship—Hypothecation of family property by father by way of security without incurring personal liability—Debt not for legal necessity or for antecedent debt—Hypothecation, whether valid and enforceable.

Held, that a debt incurred personally by a father in a joint Hindu family for being surety for appearance or for honesty of another, is binding under the Hindu law upon the sons,

*Second Civil Appeal No. 119 of 1933, against the decree of Pandit Pradyumna Krishna Kaul, Subordinate Judge of Sitapur, dated the 19th of January, 1933, reversing the decree of Pandit Pearey Lal Bhargava, Munsif of Biswan, dated the 27th of July, 1932.