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in the teeth of sub-section (2) of section 22 of the Indian Limitation Act, 1908. We have already said that Musammat Tulsha Dei was a defendant to the suit as it was originally brought, and in the subsequent proceedings her position from that of a defendant was changed into that of a plaintiff. The case is, therefore, entirely covered by the rule enacted in sub-section (2) just now referred to.

Hasan and Misra, JJ.

We, therefore, allow this appeal, set aside the decree of the lower appellate court and restore the decree of the court of first instance with costs all through.

Appeal allowed.

APPELLATE CRIMINAL

Before Mr. Justice Wazir Hasan and Mr. Justice Muhammad Raza.

1927 October, 14.

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

Penal Code (Act XLV of 1860), sections 300 and 299—Murder—Culpable homicide not amounting to murder—Interpretation of enactments, rules of—Illustrations and marginal notes to sections, value of.

Per HASAN, J.:—If an act which an accused person is said to have committed does fall within any of the explanations enacted in section 300 of the Indian Penal Code and does not fall within any of the exceptions enacted in that section, the act is "murder"; but if it does fall within any of the exceptions enacted in section 300, the act is one of "culpable homicide not amounting to murder."

The four clauses of section 300 of the Indian Penal Code, which immediately precede the illustrations, must be taken to define the limits and to be exhaustive in themselves, for the purposes of the Code, of the offence of culpable homicide.

*Criminal Appeal No. 450 of 1927, against the order of W. Y. Madeley, Sessions Judge of Rae Bareli, dated the 12th of September, 1927, sentencing the appellant to death.

When the court is called upon to interpret a piece of enactment which comprises both the substantive provision and an illustration of the same, the court is not justified in rejecting the illustration as a guide in the interpretation of the substantive provision.

Illustrations do not stand on the same footing as marginal notes. Marginal notes may not be notes enacted by the Legislature, and they cannot be referred to for the purpose of construing the enactment; on the other hand, illustrations are part and parcel of enactment.

Per RAZA, J. :—Where an accused in the exercise of his right of private defence of property exceeded the power given to him by law and caused the death of the person against whom he was exercising such right of private defence without premeditation, *held*, that his case fell within exception (2) of section 300 of the Indian Penal Code, and he was guilty of culpable homicide not amounting to murder punishable under section 304, Indian Penal Code. *Thakurain Balraj Kunwar* v. *Rae Jagatpal Singh* (1), *and Mahomed Syedol Ariffin* v. *Yeoh Ooi Gark* (2), relied upon.

Mr. *J. Jackson*, for the appellant.

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

RAZA, J. :—Ram Lal, a brahman of Duntahar, district Rae Bareli, has been convicted by the learned Sessions Judge of Rae Bareli of having murdered Manna Pasi of Misrankhera, hamlet of Dumtahar, on the 18th of January, 1927. He has been sentenced to death, subject to confirmation by this Court. He appeals, and the reference in confirmation is also before us.

The accused was committed for trial to the Sessions Court on a charge under section 304 of the Indian Penal Code, but the learned Sessions Judge amended the charge and convicted the accused under section 302 of the Indian Penal Code.

(1) (1904) L.R., 31 I.A., 132, (142). (2) (1916) L.R., 43 I.A., 256, (263).

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The facts as found by the learned Sessions Judge are these :—

The accused beat the deceased with a heavy *lathi* and caused his death. The deceased was unarmed at that time and the accused went on ill-treating him with the *lathi* after he had become insensible. The accused pretended to think that Manna was shamming and had him carried into the village slung to a pole saying that he would *chalan* him. When Manna died, the accused absconded.

The accused's defence in this case was that he found Manna stealing *sarson* from his field. He (accused) went up to Manna quietly and tried to catch him. Manna then attacked him with a *hansiya*. A fight ensued, and in that fight he accidentally killed Manna with the *lathi*. He did not know that Manna was seriously hurt and had him taken into the village and wanted to *chalan* him. However, he gave Manna up to Chhabba, maternal uncle of Manna, on the request of the villagers. When he heard of the death of Manna he was afraid of the police, and absconded.

The principal witnesses for prosecution in this case are Manni Kori, Ghansila Pasi and Newal Kishore Brahman. I have carefully considered the evidence given by these witnesses. Manni's evidence shows simply that the accused was striking Manna with the butt of the *lathi* thrusting it against him. Manna tried to get up but was knocked down again. He states in his cross-examination that he saw Ram Lal strike only one *lathi* thrust. He says nothing as to how the quarrel arose. He states that the quarrel had started before he arrived there, and that he first noticed the beating when the accused was striking the deceased who was lying on the ground. The evidence given by Ghansila and Newal Kishore shows that Ram Lal shouted "thief,

thief'' and so they ran to the place of occurrence to see what was the matter. They found Ram Lal standing there with a *lathi* in his hand. Manna was lying in the field. Ram Lal said then and there that he had struck Manna as the latter was trying to run off after theft. Ram Lal gave Manna a poke in the belly with his *lathi* in their presence and told him to get up. Manna could not get up as he was unconscious. Manna was then taken to the village and Ram Lal also went there.

Manna was beaten in the field of Dayal. That field is close to the fields of Ram Lal accused and Manna deceased.

I am not prepared to agree with the finding of the learned Sessions Judge that the whole story of the accused is false. The evidence given by Ghansila and Newal Kishore shows that they saw the accused and the deceased in Dayal's field. They saw that Ram Lal had some *sarson* plants in his hand, and there were also some *sarson* plants lying scattered there. It may be safely inferred from their evidence that Manna was really found stealing *sarson* from Ram Lal's field. He (Manna) tried to run off after theft. Ram Lal tried to catch him and struck him with his *lathi*. There is no reliable evidence on record to show that Manna had attacked Ram Lal with a *hansiya*.

The medical evidence is as follows :—

(1) Abrasion $1\frac{1}{2}'' \times 1/3''$ along the upper and fore-part of the left temporal region.

(2) Bruise $1\frac{1}{4}'' \times \frac{1}{2}''$ on the upper and anterior and inner part of the right arm with swelling on the whole of the arm. There was a large effusion of blood which was coagulated underneath the skin of the whole of the right arm.

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(3) Bruise $1\frac{1}{2}'' \times \frac{1}{2}''$ on the right side and middle of the back near the spine.

There was no ligature mark on the neck. There was small effusion of blood which was coagulated underneath the scalp in the left temporal region underneath wound No. 1. Death was probably due to concussion of the brain. It was the result of the head injury described under No. 1. All the injuries could have been caused by a blunt weapon such as a *lathi*.

Raza, J.

There is no doubt that Ram Lal accused is responsible for the fatal injury caused to Manna. I have seen the *lathi* which was used by the accused in striking Manna. It is a heavy *lathi*. It is a highly dangerous act to beat a man upon the head with a heavy *lathi*. Though it is not established in this case that the act by which death was caused was done with the intention of causing death, but having regard to all the facts and circumstances of the case, I think, the accused should be held to have had the knowledge that he was likely to cause death. If the offence committed by the accused in this case be held to be culpable homicide amounting to murder, his act would fall within the second or fourth clause of section 300 of the Indian Penal Code. But, I think, the accused was not guilty of the offence of murder, but of the offence of culpable homicide not amounting to murder and the case falls within exception (2) of section 300 of the Indian Penal Code. The accused in the exercise of his right of private defence of property exceeded the power given to him by law, and caused the death of Manna against whom he was exercising such right of private defence, without premeditation. He is, therefore, guilty of the offence of culpable homicide not amounting to murder, punishable under section 304 of the Indian Penal Code.

The result is that the appeal is allowed to the extent of altering the section of conviction from 302 to 304 of

the Indian Penal Code. I direct that Ram Lal accused be punished with rigorous imprisonment for five years.

HASAN, J. :—I entirely agree with my learned brother in his conclusion that the appellant Ram Lal is not guilty of the offence of murder, but I feel serious and have grave doubts in my mind as to whether he is guilty even of culpable homicide not amounting to murder. The definition of culpable homicide which includes both culpable homicide which amounts to murder and culpable homicide not amounting to murder is given in section 299 of the Indian Penal Code. When that section is analysed it will be realized that the elements which constitute the offence of culpable homicide are expressed and explained in terms of the four explanations enacted in section 300 of the same Code. It follows to my mind that if an act which an accused person is said to have committed does fall within any of those explanations and does not fall within any of the exceptions, the act is "murder"; but if it does fall under one or other of those explanations and also falls within any of the exceptions enacted in section 300, the act is one of "culpable homicide not amounting to murder." My learned brother thinks that the case before us might well fall within explanations 2 and 4, and as it further falls within exception (2) of the same section it is a case of culpable homicide not amounting to murder.

It seems to me that in interpreting the several clauses or explanations in section 300 of the Indian Penal Code, aid must be taken from the illustrations enacted in that section. In this connection the first thing to be borne in mind is that the illustrations find place in the body of the section previous to the five exceptions that follow. It is further clear that before the exceptions begin and immediately preceding the illustrations the Legislature enacts the four clauses which are intended to give a complete and exhaustive definition of culpable

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homicide. It cannot be suggested that an act may amount to an offence of culpable homicide even if it does not fall within one or other of the clauses of section 300. Those clauses must, therefore, be taken to define the limits and to be exhaustive in themselves, for the purposes of the Code, of the offence of culpable homicide. This being so, it is significant that the Legislature has enacted only as many illustrations as there are clauses to section 300. I may here be permitted to make a digression and say that illustrations do not stand on the same footing as marginal notes. Marginal notes may not be notes enacted by the Legislature, and the commonly accepted view now is that they cannot be referred to for the purpose of construing the enactment. "It is well settled that marginal notes to the sections of an Act of Parliament cannot be referred to for the purpose of construing the Act. The contrary opinion originated in a mistake, and it has been exploded long ago. There seems to be no reason for giving the marginal notes in an Indian statute any greater authority than the marginal notes in an English Act of Parliament."—*Per* Lord MACNAGHTEN in the case of *Thakurain Balraj Kunwar* v. *Rae Jagatpal Singh* (1).

On the other hand, illustrations are part and parcel of enactment, and it seems to me that when the court is called upon to interpret a piece of an enactment which comprises both the substantive provision and an illustration of the same, the court is not justified in rejecting the illustration as a guide to the interpretation of the substantive proviso. In the case of *Mahomed Syedol Ariffin* v. *Yeoh Ooi Gark* (2) Lord SHAW in delivering the judgment of the Judicial Committee made the following observations :—

> "On the second point their Lordships are of opinion that in the construction of the

(1) (1904) L.R., 31 I.A., 132, (142). (2) (1916) L.R., 43 I.A., 256, (263).

Evidence Ordinance it is the duty of a court of law to accept, if that can be done, the illustrations given as being both of relevance and value in the construction of the text. The illustrations should in no case be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they or the sections deal. And it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations, which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired."

Hasan, J.

It was suggested that there is nothing in section 300 to support the view that a particular illustration in that section applies to any particular clause of the same section. It is true that there are no express words to that effect, but if we read the clauses and the illustrations together and the section as a whole we can say at once that a particular illustration can apply to no other but a particular clause. Thus it will be seen that illustration (*a*) is only applicable to the first clause of the section, and similarly illustrations (*b*), (*c*) and (*d*) are applicable to the corresponding clauses in the substantive enactment separately.

When, therefore, I read clauses 2 and 4 with the help of illustrations (*b*) and (*c*) my mind gets filled up with serious doubts as to the applicability of either the

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one or the other of those clauses to the facts of the present case.

I do not think that it is necessary for me to pursue this matter further. I have said what I have said above only for the purpose of making it clear as to what my own views on the question of the interpretation of the provisions of section 300 are. But if according to my judgment the appellant is not guilty of the offence, punishable by section 304 of the Indian Penal Code, he is certainly guilty of the offence punishable by section 325 of the same Code. I, therefore, agree with my learned brother that the conviction under section 302 should be set aside and that the appellant should be sentenced to five years' rigorous imprisonment, and we accordingly do so.

Hasan, J.

BY THE COURT :—We allow the appeal to the extent of altering the section of conviction from 302 to 304 or 325 of the Indian Penal Code. We direct that Ram Lal accused be punished with rigorous imprisonment for five years.

Appeal partly allowed.