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RANI BHUNESHWARI KUER v. MANIR KHAN.

FAZL ALI, J.

I agree with the learned Subordinate Judge that in the absence of any other evidence this was the only way of proceeding in the matter. We are then asked by the learned Advocate for the respondents to mention in our judgment that our finding in this case will not debar the defendants from placing better evidence if they choose to do so on a future occasion before the Revenue authorities or any other proper authority in order to have the proportionate valuations of the villages in suit determined on a more satisfactory basis. The learned Advocate for the appellant concedes that they cannot be prejudiced in any proceeding in future and I agree with him.

The result is that the appeal is dismissed with costs and the cross-appeal is partly allowed in the terms mentioned above in the judgment.

ROSS, J.—I agree.

Appeal dismissed.

Cross-objection allowed in part.

APPELLATE CRIMINAL.

Ross, J.

(On difference of opinion between Kulwant Sahay and Allanson, JJ.)

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Nov. 8.

GAHBAR PANDE

v.

KING-EMPEROR.*

Penal Code, 1860 (*Act XLV of* 1860), *sections* 300, 302 *and* 304—*striking girl on head with lathi—skull fractured—death—whether the offence is murder or culpable homicide not amounting to murder.*

Where a Dusadhin aged 15 had snatched away some gram from a Babhni girl aged 8 or 9 who had taken some gram

*Criminal Appeal no. 132 of 1927, from a decision of J. A. Saunders, Esq., I.C.S., Sessions Judge of Muzaffarpur, dated the 24th of June, 1927.

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from a Dusadh's field, and the appellant, a young man of 19, fractured the Dusadhin's skull with a lathi blow on the back of the scalp (from which wound she died) and also dealt her two blows on the thigh, *held*, by *Ross*, J., agreeing with *Kulwant Sahay*, J., that neither the circumstances of the assault nor the weapon used necessarily suggested an intention to kill, or an intention of causing such bodily injury as the appellant knew to be likely to cause death, or an intention to cause such bodily injury as would, in the ordinary course of nature, cause death, and, therefore that the appellant was not guilty of murder under section 302 but of culpable homicide not amounting to murder under section 304.

Per *Allanson*, J.—It was not necessary for the prosecution, in order to establish the charge of murder, to prove that the appellant intended to cause the fracture of the skull. It was sufficient to show that he intended to inflict such bodily injury as would, in the ordinary course of nature, cause death. The appellant was therefore guilty of murder under the second and third paragraphs of section 300, i.e., he intended to cause such bodily injury as he knew to be likely to cause death, and he intended to cause such bodily injury as was sufficient, in the ordinary course of nature, to cause death.

Per *Kulwant Sahay*, J.—The word "knowledge" in section 300(2) imports a certainty and not merely a probability.

Reg v. *Govinda* (1) referred to.

The facts of the case material to this report are stated in the judgments.

S. P. Varma, (with him *Bindhyachal Prasad*) for the appellant.

A. B. Mukerji, Government Pleader, for the Crown.

KULWANT SAHAY, J.—The appellant Gahbar Pande was tried along with his brother Nathu Pande on a charge under section 302/34 of the Indian Penal Code for the murder of a girl named Gujari, aged about 15 years, the daughter of one Mewak Dusadh. Nathu Pande was acquitted, but the appellant Gahbar Pande was convicted under section 302 of the Indian Penal Code and sentenced to transportation for life.

30th August 1927.

The prosecution case shortly stated is that Mewak Dusadh has a field which bears survey plot no. 813 in village Lauria in which gram was growing. On the 27th of March last about two gharis before sunset a little girl named Reshmi aged about 8 or 9 years, the daughter

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of Nathu Pande, pulled out some gram from the field. Gujari snatched it from Reshmi and there was a struggle between the two for the possession of the gram. Gujari is said to have hit Reshmi with a stick which was in her hand. Gahbar Pande, the uncle of the girl Reshmi came running from the north with a lathi in his hand followed by his brother Nathu who had also a lathi, and being incited by Nathu to kill the girl for having the audacity to hit a Babhni girl, Gahbar struck Gujari on the head with his lathi and she fell down. Then both Gahbar and Nathu struck her with a lathi and Gujari died instantaneously. Gajadhar, who is a nephew of Mewak, came running and then Vakil Pande and Babu Lal Pande assaulted him with lathis and he also fell. Mewak who was irrigating his onion field at a short distance from the gram field came running and found his daughter dead. He then went to his nephew Gajadhar, who was lying unconscious, and revived him. He then left the corpse of his daughter in charge of Gajadhar and himself went to the police-station, where his first information was recorded at 7-30 P.M. The junior Sub-Inspector who was in charge of the thana and had recorded the first information, left for the place of occurrence and reached there at 8-30 P.M. He found the corpse not in the gram field but in another field, bearing survey no. 860 which belonged to one Dhani Pande at a distance of about 30 yards to the north-west of the gram field. He held the inquest and examined certain witnesses and ultimately both Nathu Pande and Gahbar Pande were sent up for trial.

The defence of the accused was that they did not assault the girl Gujari and had committed no offence; that there was no quarrel at all in the gram field between Reshmi and Gujari, nor did Reshmi uproot gram from the field of Mewak; that Gujari Dusadhin, who was a young unmarried girl, aged more than 15 years, generally grazed buffaloes on the chaur and parti lands along with Gahbar Pande who is aged 19 or 20; that there was a suspicion of undue intimacy between the two and the caste men of Mewak held a Panchaiti and Gujari was forbidden to graze buffaloes with Gahbar Pande; that on the day of occurrence Gahbar Pande was grazing buffaloes in the chaur along with Gujari and that Reshmi was also grazing her goat near about. Gajadhar Dusadh noticed Gahbar Pande and Gujari grazing the buffaloes together and chased Gahbar, whereupon Gahbar ran away. Reshmi abused Gajadhar for this, whereupon Gajadhar struck her with a stick. Gajadhar then took Gujari to her father Mewak who was irrigating his onion field near the field of Dhani Pande and told him about it, whereupon Mewak Dusadh became angry and struck his daughter Gujari with the wooden shovel with which he was irrigating his field on account of which Gujari died and that in order to save his own life Mewak had brought the false case against the accused persons on wrong allegations.

It might at once be said that there is no evidence on the side of the defence to prove the defence story. Reshmi was examined as a court witness and she to a certain extent supported the defence version of the occurrence. But having regard to all the circumstances and the evidence on the record, I agree with the learned Sessions Judge in holding that this defence version of the occurrence has not been established. No blood was found in the field where Mewak Dusadh is said to have struck the girl. The nature of the injuries on the girl makes

it improbable that Mewak Dusadh inflicted all those injuries. Even if the blow on the head which fractured the skull be assumed to have been caused by the shovel with which Mewak was irrigating his field, the other injuries on the person of the girl were not likely to be caused by the shovel, and it is hard to believe that Mewak went on striking the girl after she had fallen. The defence version does not account for the injuries on the person of Gajadhar. For the reasons given by the learned Sessions Judge, I must hold that the defence version has not been established.

The learned Sessions Judge has disbelieved the prosecution witnesses as regards the part alleged to have been taken by Nathu Pande, and having regard to the statement made by Mewak Dusadh to the police officers and to the deposition of Jotik Dusadh, the learned Sessions Judge was right in holding that Nathu came to the place of occurrence after the girl Gujari had been killed.

As regards Gahbar, it is to my mind clearly established that he struck Gujari the lathi blow on the head and, after she fell, he gave her two more lathi blows on the right thigh. There are no doubt discrepancies in the evidence of the prosecution witnesses, and they have clearly given exaggerated accounts and in some respects false accounts as regards some of the particulars deposed to by them. All of them had stated that Nathu Pande incited Gahbar to kill the girl, because she had dared to strike a Babhni girl. All of them also say that Nathu Pande struck her along with Gahbar Pande. There are certain discrepancies also as regards the place where Gujari fell. But there can be no doubt about the statement made by each of the witnesses that Gahbar Pande came running with a lathi either on seeing Reshmi assaulted by Gujari or by being told of it by Reshmi herself. There is no reason to doubt the evidence of Mewak, Uttim, Gajadhar and Jotik when they say that Gahbar struck her with a lathi. I therefore agree with the learned Sessions Judge in holding that Gahbar did strike Gujari with a lathi on the head and also on the thigh. The blow on the head caused a fracture of the skull and was the cause of the death.

The question is as to what offence Gahbar has committed. All the four assessors were of opinion that the offence did not amount to murder, but to culpable homicide not amounting to murder. The learned Sessions Judge was of opinion that although the case did not fall under the first clause of section 300, it came under the second clause of the section and also under the third clause, and was covered by *Illustration* (*c*) to section 300. Now, clause (*2*) of section 300 makes culpable homicide murder if the act by which death is caused is done 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; and under clause (*3*) it is murder if the act is done 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*. *Illustration* (*c*) runs thus:—

"*A* intentionally gives *Z* a sword cut or club wound sufficient to cause the death of a man in the ordinary course of nature. *Z* dies in consequence. Here *A* is guilty of murder, although he may not have intended to cause *Z*'s death."

This *Illustration* evidently covers the third clause of section 300. The question for consideration is whether the appellant Gahbar Pande in

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giving the blow with the lathi on the head had the *intention* of causing such bodily injury as he *knew* to be likely to cause the death of Gujari, or whether he gave the blow with the *intention* of causing such bodily injury as was sufficient in the ordinary course of nature to cause her death. The essence of the crime of murder under clause (2) of the section is that there must be the intention of causing such bodily injury as the offender knows is likely to cause death. In order to convict Gahbar Pande of the offence of murder under clause (2) of the section, it has to be found that he had the intention of causing the fracture of the skull which was the injury inflicted upon the girl and also that he had the knowledge that such injury which he intended to inflict was likely to cause death. It is conceded that he had no intention of causing death. It is hard to suppose that he intended to cause the injury which was, as a matter of fact, caused by the blow on the head given by him. Two girls were struggling for the possession of a handful of gram; the elder girl had given a lathi blow (although with a thin lathi) to the younger girl; the uncle of the younger girl came running to the place where the two girls were struggling. Is it reasonable to suppose that on account of such a struggle the appellant intended to cause such bodily injury to the elder girl as he knew was likely to cause death? The evidence and circumstances lead me to suppose that he could have no such intention or knowledge. The learned Sessions Judge has disbelieved the statement of the prosecution witnesses as regards Nathu Pande having incited Gahbar to kill the girl. The evidence shows that only one blow was struck on the head and the girl fell and thereafter two more lathi blows were given on the leg. The medical evidence shows two more bruises, one on the right temple 2″×1″ and the other on the left side of the skull 3″×1″, and the Civil Surgeon was of opinion that altogether five blows were struck. The evidence of the witnesses, however, goes to show that Gahbar Pande struck one blow on the head and after the girl had fallen he gave two more blows on the thigh. The first information makes mention of a lathi blow on the head. Before the committing magistrate the witnesses had also stated that Gahbar gave a blow with a lathi on the head and she fell. In the Sessions Court also the evidence goes to show that Gahbar struck her only one blow on the head with the lathi. Now, if he had the intention of causing the fracture of the skull which was the injury caused and he knew that such fracture was likely to cause death, his intention was carried out by the first blow, and there was no reason why he should go on inflicting more blows thereafter. I am of opinion that he had not the intention of causing such bodily injury as he knew likely to cause death, but intended only to chastise her. The third clause of section 300 also does not in my opinion apply. Here also it must be shown that the injury which Gahbar intended to cause was such as to be sufficient in the ordinary course of nature to cause death. A blow on the head with a lathi is certainly likely to cause death and the person who inflicts lathi blow on the head of another person must be presumed to have the intention of causing such bodily injury as is likely to cause death. But to my mind it does not necessarily follow that a lathi blow on the head is always sufficient in the ordinary course of nature to cause death, and I have already found that he had no intention of causing the bodily injury which was as a matter of fact, caused, namely, the fracture of the skull which resulted in the death of the

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girl. Now, if a person causes death by doing an act with the intention of causing such bodily injury as is likely to cause death, his offence comes under section 299, and it is only if the intention was to cause bodily injury, which injury was sufficient in the ordinary course of nature to cause death, that the offence would come under section 300, clause (3). The difference between the two is no doubt fine, but there is certainly a difference and it is to my mind not clear upon the evidence that the offence comes under section 300 of the Code. The difference between culpable homicide amounting to murder and culpable homicide not amounting to murder has been very ably brought out by Melvill, J. in *Reg* v. *Govinda*(1). No doubt a man is presumed to intend the natural and inevitable consequence of his own act, but the presumption of intention must depend upon the facts of each particular case, and 'knowledge' as used in clause (2) of the section is a word which imports a certainty and not merely a probability. In the present case the evidence to my mind goes to show that the appellant had not the intention of causing such injury as he knew to be likely to cause death, or as was sufficient in the ordinary course of nature to cause death. The difference between culpable homicide and murder is merely a question of different degrees of probability that death would ensue.

Upon the evidence I am of opinion that the injury inflicted upon the girl was inflicted by the appellant with the knowledge that it was likely to cause death but without any intention to cause death and the case falls under the second paragraph of section 304 of the Indian Penal Code. I would therefore alter the conviction from one under section 302 to one under the second paragraph of section 304 of the Indian Penal Code and sentence the appellant to seven years' rigorous imprisonment.

ALLANSON, J.—In my opinion the offence committed was murder. The girl was about 15 years of age. The accused is a youth of 19 or 20. There had been a scuffle between two girls. The appellant, who is a Babhan, resenting the fact that a Dusadh girl had hit his niece with a light stick, arrived on the scene and felled her by a lathi blow on the head. When her father reached the spot she was dead. The post-mortem showed that in addition to two bruises across the right thigh and a bruise on the right temple and another on the left side of the skull, there was a contused lacerated wound on the back of the skull $2\frac{1}{4}'' \times \frac{1}{4}''$ and bone deep. Under this wound there was comminuted fracture of the occipital bone into three pieces. One piece of the fractured bone was found pressing the brain substance, and the fracture also entered the posterior fossa of the base of the skull. In the opinion of the doctor the fracture was sufficient to cause death in the ordinary course of nature. The fracture was caused by one blow, and altogether five blows were struck on the girl. Death was probably instantaneous.

In my opinion the act of the appellant comes under the second and third paragraphs of section 300 of the Penal Code. The blow was delivered by a young man with a lathi on the head of a defenceless girl of 15 with such violence that her skull was fractured into three pieces and she died instantaneously. In my opinion the facts show that the appellant struck the blow with the intention of causing such

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bodily injury as he knew to be likely to cause death. The appellant certainly intended to cause bodily injury and the probable consequence of a blow of this nature on a child's head would be her death. I cannot believe that the appellant did not know that the injury he intended to cause was likely to cause death. But even if the appellant were given the benefit of doubt so far as paragraph 2 is concerned, I cannot see any escape from the conclusion that his act comes under the third paragraph of section 300. He intended to cause bodily injury. It is clear from the medical evidence that the bodily injury actually inflicted was sufficient in the ordinary course of nature to cause death. Did he intend to inflict that bodily injury? I am not prepared to hold that it is necessary for the prosecution to prove that the appellant had a knowledge of anatomy, that is, to prove that he had an intention to cause the fracture of the skull. Take *Illustration* (*c*) to section 300. It would be no defence for an offender coming within that *Illustration* to plead that he did not intend to cut an artery. The law does not say that the offender must know that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. The question is not whether he intended to fracture the skull, but whether he intended to inflict such bodily injury as was sufficient in the ordinary course of nature to cause death. He struck a girl what was evidently a heavy blow with a lathi on the top of the head, fracturing her skull and killing her instantaneously. The fracture was in the doctor's opinion sufficient in the ordinary course of nature to cause death. I cannot see how on the facts of the present case it can be held that he did not intend to inflict the bodily injury which he actually inflicted. He must be presumed to know what the natural consequence of a blow of this kind on the head of a child would be.

It was urged by the learned Counsel that his intention was not to cause such bodily injury as he knew to be likely to cause death, but only to chastise her. This argument shows an obvious confusion between intention and motive. I entirely dissent from the proposition that the *intention* of a man who " chastises " a girl by smashing her head with a lathi must be judged from his *motive*. In my opinion the fact that the prosecution witnesses say that blows were struck on the girl's body after she fell is of no help to the appellant. The doctor says it is likely that the injuries on the thigh were received when she was standing. If the subsequent blows were given after she was felled by the lathi unconscious, if not dead, that would go to show the brutal violence of the assault. Be this as it may, the other injuries cannot be taken as indicating that the appellant had no intention to cause such bodily injury as in the ordinary course of nature would cause death.

If the act of the appellant comes within section 300, there remains only the question whether he can avail himself of any of the *Exceptions* to that section. Clearly he cannot do so. It was seriously argued that *Exception 4* applied. The argument requires no discussion.

In conclusion I am bound to say that if I had held that the offence was not murder, I should have found it difficult to bring it under the second part of section 304. For I do not see how on the facts of this case it can be held that, though the appellant did not intend to cause such bodily injury as was likely to cause death, yet he did the act with

the knowledge that it was likely to cause death. If he knew the blow was likely to cause death, he must be presumed on the facts of the present case to have intended the natural consequences of his act. If it is not a case of murder, it would be in my opinion a case of grievous hurt.

I would confirm the conviction and sentence and dismiss the appeal.

On this difference of opinion the case was referred to Ross, J., for decision.

S. P. Varma, (with him *Bindhyachal Prasad*) for the appellant.

C. M. Agarwala, Assistant Government Advocate, for the Crown.

Ross, J.—I agree with the opinion of Kulwant Sahay, J., that this case falls under the second paragraph of section 304 of the Indian Penal Code, and that the conviction should be altered accordingly and that the sentence should be seven years' rigorous imprisonment. It is not necessary for me to discuss the case at length as I am in full agreement with his reasoning. The appellant who is a young man of 19 struck a girl of 15 on the back of the scalp with a lathi and caused a compound fracture of the skull as the result of which she died. The evidence further is that after this blow he struck the girl two blows on the thigh. The cause of the assault was of a trivial character. The deceased who was a Dusadhin had snatched away some gram from a Babhni girl of 8 or 9 years, who had taken the gram from a Dusadh's field. Neither the circumstances of the assault nor the weapon used necessarily suggest an intention to kill or the only slightly different intentions defined in clauses (*2*) and (*3*) of section 300. On the contrary the fact that two slight blows were given on the thigh after the blow on the head seems to indicate that there was no such intention present to the mind of the appellant when he struck the girl on the head. At the same time, by striking the girl on the head with a lathi, he undoubtedly intended to cause such bodily injury as was likely to cause death and he was

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therefore guilty of culpable homicide not amounting to murder. The facts of this case do not, in my opinion, warrant any stronger conclusion.

Conviction altered.

LETTERS PATENT.

Before Dawson Miller, C.J. and Ross, J.

1928.

March, 21.

LALJI SINGH

v.

NAWAB CHOWDHARY.*

Registration Act, 1908 (*Act XVI of* 1908), *section* 2—*mango tree, whether is immovable property.*

A mango tree is immovable property within the meaning of section 2, Indian Registration Act, 1908.

Appeal by the defendants.

L. K. Jha and *Bhagwan Prasad*, for the appellants.

S. N. Ray, for the respondents.

DAWSON MILLER, C.J.—This is an appeal under the Letters Patent on behalf of the first party defendants from a decision of Das, J., affirming the decree of the Subordinate Judge.

It appears that the plaintiffs in the year 1916 purchased from the second party defendants in the suit a plot of land measuring 1 bigha, 12 kathas situate within the jurisdiction of the Sub-Registry office of Sheohar and in the same conveyance 5 dhurs of land together with 10 mango trees standing thereon situate within the area of the jurisdiction of the Sub-Registrar of Sitamarhi were included. This was no doubt

*Letters Patent Appeal no. 5 of 1927, from a decision of Das, J., dated the 26th January, 1927.