APPELLATE CRIMINAL.

Before Mr. Justice Brown.

BABA NAYA
v.
KING-EMPEROR.*

1927
Aug. 30.

Penal Code (Act XIV of 1860), s. 302—Death resulting in a different way from that expected, effect of—Intention to be presumed from blows on head with stick—Nature of weapon, force, and number of blows—Murder and manslaughter.

If one person causes the death of another, then if his intention was to cause death or to cause bodily injury sufficient in the ordinary course of nature to cause death, the offence would be murder, even though death resulted in a way different from that expected by the assailant. As to the intention to be presumed in cases of blows on the head with a stick, instinct at least, if not knowledge and experience, tells every man that to hit another human being any violent blow on the head may possibly result or is likely to result or will probably result in serious injury to the person struck, but knowledge, belief or expectation of the amount of injury that may be caused must depend upon what is used in inflicting the blow and the force with which the blow is delivered. Repeated blows or even a single blow forcibly delivered with a heavy weapon would make the offence a murder, but where a sudden blow is struck with a stick that is not heavy, the offence would be culpable homicide not amounting to murder.

Nga Kan v. *K.E.*, 11 L.B.R. 115; *Shwe Ein* v. *K.E.*, 3 L.B.R. 122; *Shwe Hla* v. *K.E.*, 2 L.B.R. 125—*referred to.*

BROWN, J.—The appellant, Baba Naya, has been convicted under section 302 of the Indian Penal Code and sentenced to transportation for life.

The case against him is that on the night of the 19th April last, he had a quarrel with one Tataya with regard to the tying up of sampans in the Bassein River. Tataya and the appellant were both boatmen working on sampans. Jogalu, the first witness for the prosecution, says that when he came back to the sampan that night, Tataya was on his way to the serang to complain as to the boats and met the

* Criminal Appeal No. 1004 of 1927 from the order of the Sessions Judge at Bassein in Criminal Trial No. 16 of 1927.

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appellant and said to him "You hit me this morning. Won't you hit me again." Tataya then hit the appellant on the face with his hand and the appellant then hit him with a stick and Tataya fell down. Tataya was taken to the police-station and then to the hospital. He was conscious on arriving at hospital and his injuries did not appear very serious, but on the morning of the 22nd he developed fits and he died that evening at about 7 p.m.

The *post mortem* examination revealed the fact that he was suffering from extensive fracture of the skull, but the brain had not been directly injured. Death was due to septic meningitis.

As to the main facts of the case, I see no reason for differing for the conclusion come to by the learned Sessions Judge. The deceased himself reported that night to Maung Lwin, station-writer at Athegyi Police-station, that the appellant was his assailant, and Jogalu, Dallaya, Dhadraju and Pawtiya all say that it was the appellant who struck the blow on the deceased's head. These witnesses have exaggerated the violence of the attack, but there is no reason why they should falsely accuse the appellant if in fact he had nothing to do with the attack at all. The appellant says that the injury was caused by a fall, but this is not a very likely story and he brings no evidence in support of it. On this ground I can see no reason for interference with the finding of the Sessions Judge.

I admitted the appeal to consider the question as to what offence has been proved to have been committed by the appellant. The learned Sessions Judge discussed the question of the death having been caused by meningitis and not directly from the fractures themselves and came to the conclusion that that did not make any difference to the

offence committed. With this view, I am in entire agreement. If one person causes the death of another, then if his intention was to cause death or to cause bodily injury sufficient in the ordinary course of nature to cause death, the offence would be murder, even though death resulted in a way different from that expected by the assailant. I think, however, that the Sessions Judge went too far in holding that the appellant in the present case must have been held to have intended to give the deceased such a blow as would break the bony part of the skull in the way in which it was actually broken. The question of the intention to be presumed in cases of blows on the head with a stick has been fully discussed in the cases of *Shwe Hla U* v. *King-Emperor* (1) and *Shwe Ein* v. *King-Emperor* (2). In *Shwe Hla U's* case, the capricious effect of injuries on the head was pointed out and it was also pointed out that the act of the accused in such a case as this must be judged by the light of the common knowledge of mankind upon the dangers and results of striking a person on the head. The following passage occurs in the judgment of Mr. Justice Fox:—"Death from a blow or blows on the head is probably as a rule associated by people unskilled in medical science only with the breaking of the skull. Ignorance of the actual causes which may bring about another's death in consequence of a blow cannot affect the question of the striker's knowledge and intention when striking the blow. If actual knowledge and experience do not do so, instinct at least tells every man that to hit another human being any violent blow on the head may possibly result or is likely to result or will probably result in serious injury to

(1) (1903) 2 L.B.R. 125. (2) (1905) 3 L.B R. 122.

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the person struck, but knowledge, belief or expectation of the amount of injury that may be caused must depend upon what is used in inflicting the blow and the force with which the blow is delivered."

In that particular case, the offence was held to be murder because the blow was repeated. In *Shwe Ein's* case, the accused had hit the deceased a blow on the head in a moment of anger with a piece of wood 78½ tolas in weight and it was held that the intention to cause death or to cause bodily injury sufficient in the ordinary course of nature to cause death could not be presumed.

The same question was again considered in the case of *Nga Kan* v. *King-Emperor* (3), and concurrence was expressed with the opinion expressed in *Shwe Ein's* case, that, speaking generally, where a man strikes another on the head with a not very formidable weapon one blow only, no greater intention can be attributed to him than that of causing injury likely to cause death. *Nga Kan's* case was held to be an exceptional one and although one blow only was delivered in that case, the assailant was nevertheless found guilty of murder. But the weapon used in that case was a heavey bamboo weighing 116 tolas and nearly 6 feet in length and the blow was delivered with such force that the skull had been practically divided into two parts. Death seems to have followed almost immediately.

In the present case, the medical evidence shows that the factures were severe and the blow must have been a hard one, but the weapon produced said to be the weapon used in the assault, is a stick weighing 62½ tolas only and measuring 28 inches in length. The weapon used was thus far less deadly

(3) (1921) 11 L.B.R. 115.

than the weapon in *Nga Kan's* case and the actual damage to the skull caused by the wound does not seem to have been nearly so great as in *Nga Kan's* case. The blow was struck suddenly on the spur of the moment and in the words of the Sessions Judge himself it seems probable that if the appellant had any coherent idea at all, it was more after this style "I will give the brute a whack on the head. Take *that*." I do not think the blow in the present case has been shown to be so severe as to justify a departure from the general rule that when one blow only is delivered with a stick, the intention requisite for murder cannot be presumed. I am therefore of opinion that the pellant in the present case was not guilty of murder it was guilty of culpable homicide not amounting murder punishable under the first part of section 04, Indian Penal Code. That the intention necessary or this offence must be presumed, there can be o question.

I alter the conviction into a convictisn under the t part of section 304 of the Indian Penal Code reduce the sentence to one of ten years' rigorous risonment.