

APPELLATE CRIMINAL.

Before Mr. Justice Broadway and Mr. Justice Martineau.

THE CROWN—APPELLANT,

versus

MAUJ DIN AND OTHERS —RESPONDENTS.

Criminal Appeal No. 617 of 1922.

Personal Action—complaint by husband under section 498, Indian Penal Code—Death of the complainant—whether prosecution abates.

M. S. filed a complaint against the present respondents, charging them with having abducted his wife. After the trial had come to an end and the judgment alone remained to be pronounced M. S. died. The Magistrate convicted all the four respondents. The Sessions Judge on appeal, following *Ishar Das v. Emperor* (1), acquitted the respondents on the ground that a complaint under section 498 of the Penal Code was a personal action, and the right to continue the case came to an end on the death of the complainant.

Held, that a criminal prosecution does not abate merely on account of the death of the injured party and that the order of the Sessions Judge acquitting the respondents was consequently wrong.

Hazara Singh v. Crown (2), *Muhammad Ibrahim v. Shaik Davood* (3), and *Imperator v. Nur Mahomed* (4), approved.

Ishar Das v. Emperor (1), *Rama Nand v. Crown* (5), and *Iabhu v. Crown* (6), not followed.

Krishna Behari v. Corporation of Calcutta (7), referred to.

Appeal from the order of W. de M. Malan, Esquire, Sessions Judge, Jhelum, dated the 19th April 1922, reversing that of Sardar Balwant Singh, Garriwal, Magistrate, 1st Class, Pind Dadan Khan, District Jhelum, dated the 28th March 1922, and acquitting the respondents.

D. G. RALLI, Assistant Legal Remembrancer, for Appellant.

NEMO., for Respondents.

(1) 10 P. R. (Cr.) 1908.

(2) (1920) I.L.R. 2 Lah. 27.

(3) (1920) I.L.R. 44 Mad. 417.

(4) (1907) 8 Cr. L. J. 190.

(5) 26 P. R. (Cr.) 1917.

(6) 25 P. R. (Cr.) 1919.

(7) (1904) I.L.R. 31 Cal. 993 (F. B.)

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THE CROWN
v.
MAUJ DIN.

The judgment of the Court was delivered by—

BROADWAY J.—Mauj Din, Muhammad Afzal, *Mussammatt* Sabhrai, and *Mussammatt* Jawai were proceeded against on a complaint filed by Mangal Sain under section 498, Indian Penal Code, in which he charged the said four persons with having abducted his wife, *Mussammatt* Bhagwanti.

Apparently after the trial had come to an end and judgment alone remained to be pronounced Mangal Sain died. The Magistrate convicted the four persons above named and passed various sentences on them.

These persons appealed to the Sessions Court and their appeal was accepted on the ground that a complaint under section 498, Indian Penal Code, was a personal action and the right to continue the case came to an end on the death of the complainant. Mauj Din and his three companions were therefore acquitted and against this acquittal the Local Government has preferred an appeal under section 417, Criminal Procedure Code.

The learned Sessions Judge proceeded on *Ishar Das v. Emperor* (1), an authority that was followed in *Rama Nand v. Crown* (2) and *Labhu v. Crown* (3), but was dissented from in *Hazara Singh v. Crown* (4).

In *Ishar Das v. Emperor* (1) the criminal proceedings were for defamation and it was held by a Division Bench of the Chief Court that such proceedings terminated on the death of the complainant, a prosecution for defamation being essentially a personal action. Reliance was placed on section 89 of the Probate and Administration Act and *Krishna Behari v. Corporation of Calcutta* (5) by way of analogy. In *Rama Nand v. Crown* (2) the complainant had instituted criminal proceedings under section 323, Indian Penal Code, and I held that just as a prosecution for defamation was a personal action so was a prosecution for causing simple hurt and applying the same analogy and following *Ishar Das v. Emperor* (1) I held that the prosecution could not be carried on after the death of the complainant.

(1) 10 P. R. (Cr.) 1908.

(3) 25 P. R. (Cr.) 1919.

(2) 28 P. R. (Cr.) 1917.

(4) (1920) I.L.R. 2 Lah. 27.

(5) (1904) I.L.R. 31 Cal. 993 (F. B.)

This view was accepted by Rattigan C. J. in *Labhu v. Crown* (1). In *Hazara Singh v. Crown* (2), four persons had been sent up by the police for trial under section 304, Indian Penal Code. Two were convicted under section 304, Indian Penal Code, and the two others under section 325, Indian Penal Code. On appeal the learned Sessions Judge altered the convictions of all 4 to convictions under section 323, Indian Penal Code. They then moved the High Court on the Revision side contending that as the injured man had died the prosecutions had abated. The case came before a Division Bench of this Court when the three decisions above quoted were considered, and it was held that section 89 of the Probate and Administration Act had no application to a criminal prosecution. A reference to that section will show that this view is undoubtedly correct and the same view has been expressed by the Madras High Court in *Muhammad Ibrahim v. Shaik Davood* (3) in which the circumstances were very similar. Indeed the previous authorities did not lay down that section 89 of the Probate and Administration Act governed criminal prosecutions, but that section was relied on as laying down certain principles, that by way of analogy might be applied to criminal proceedings, having regard to the narrowness of the line between a prosecution and a suit for damages.

After a careful consideration of the judgment of Scott-Smith J. in *Hazara Singh v. Crown* (1), I have no doubt that the later view is preferable, and that a criminal prosecution cannot abate merely on account of the death of the injured party (see also *Imperator v. Nur Muhammad* (4)). I would therefore accept this appeal and as the learned Sessions Judge has given no finding on the merits, I would set aside the order of acquittal and return the appeal to him for disposal.

MARTINEAU J.—I concur.

A. R.

Appeal accepted, case remanded.

(1) 25 P. R. (Cr.) 1919.

(2) (1920) I.L.R. 2 Lah. 27.

(3) (1920) I.L.R. 44 Mad. 417.

(4) (1907) 8 Cr. L. J. 197.