APPELLATE CRIMINAL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Fforde.

SOHRAB—Appellant,

versus

THE CROWN—Respondent.

1924

Jan. 14.

Criminal Appeal No. 997 of 1923.

Indian Penal Code, 1860, section 300, exception 1—Murder—Culpable homicide—Provocation.

Held, that, before exception 1 to section 300 of the Indian Penal Code can be applied, the provocation must be such as will upset, not merely a hasty and hot-tempered person, but one of ordinary sense and calmness.

The principle enunciated in *Reg.* v. *Welsh* (1), and cited with approval in *The King* v. *Lesbini* (2), followed.

Appeal from the order of H. F. Forbes, Esquire, Sessions Judge, Dera Ghazi Khan, dated the 18th August, 1923, convicting the appellant.

SAGAR CHAND AND NIAZ MUHAMMAD, for Appellant.

Nemo, for Respondent.

The judgment of the Court was delivered by—

SIR SHADI LAL, C. J.—The appellant Sohrab, a *Biloch* of the Dera Ghazi Khan District, has been convicted of having, on the morning of the 11th May, 1923, killed three persons, namely, his two wives *Mussammat* Ghulam Fatima and *Mussammat* Wasai and his daughter *Mussammat* Bahar Khatun ; and has been sentenced under section 302, Indian Penal Code, to the penalty of death.

The facts of the case are simple and do not admit of any dispute. There is ample evidence on the record that *Mussammat* Bahar Khatun, who was an unmarried girl of 20 years of age, had contracted a liaison with

(1) (1869) 11 Cox 336, 338. (2) (1914) 3 K. B. 1116.

1923

SOHRAB v. THE CROWN.

one Ramza, *Mochi*, who used to live in a house adjoining that of the prisoner. This intimacy led to the pregnancy of the girl. The paramour on hearing of the pregnancy absconded from the village about a fortnight before the date of the crime, and the girl in order to prevent a scandal procured an abortion about a week before the date in question. On the morning of the 11th May the prisoner returned to his house from his field, and found his wife *Mussammat* Wasai reproaching *Mussammat* Ghulam Fatima that her daughter was a loose woman and had contracted an intimacy with a *Mochi*. On hearing this conversation between the two women the accused, who was holding an axe in his hand, attacked *Mussammat* Ghulam Fatima with the weapon and killed her on the spot. He then attacked in quick succession *Mussammat* Wasai and *Mussammat* Bahar Khatun with the same weapon, and killed them instantaneously.

The prisoner has admitted all along that he killed the three women by inflicting injuries with an axe, and unless he can bring his case within one of the exceptions to section 300, he is clearly guilty of murder. The learned *Vakil*, who has argued the case on his behalf, contends that it was on the morning in question that the prisoner came to know for the first time that his daughter had contracted an intimacy with a *Mochi*, and that in a fit of anger he killed not only the daughter, but also his two wives who are alleged to have connived at the intrigue. The learned *Vakil* asks us to hold that the provisions of Exception I to section 300 are applicable to the case, and that the offence committed is not murder but culpable homicide not amounting to murder. To this contention we are unable to accede.

We entirely accept the principle enunciated in *Reg.* v. *Welsh* (1), which has been cited with approval in *The King* v. *Lesbini* (2), that "there must exist such an amount of provocation as would be excited by the circumstances in the mind of a reasonable man, and so as to lead the jury to ascribe the act to the influence of that passion." There can be no doubt that the provocation must be such as will upset, not merely a hasty and hot-tempered person, but one of ordinary sense and calmness. Judged by this standard the facts relied upon by the accused do not constitute any grave and sudden provocation such as is contemplated by law. We must, therefore, hold that the appellant has been rightly convicted of murder and that the sentence of death is the only appropriate punishment which can be awarded to him.

Confirming, therefore, the sentence of death, we dismiss the appeal.

C. H. O.

Appeal dismissed.

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(1) (1869) 11 Cox 336, 338 (2) (1914) 3 K. B. 1113.