

**APPELLATE CRIMINAL.**

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*Before Sir Shadi Lal, Chief Justice and Mr. Justice  
Coldstream.*

KHADIM HUSSAIN, Appellant

*versus*

THE CROWN, Respondent.

Criminal Appeal No. 265 of 1926.

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June 3.

*Indian Penal Code, 1860, section 300, Exception 1—  
Murder—Grave provocation—what constitutes.*

The law requires that the provocation contemplated by Exception 1 of section 300 of the Indian Penal Code must be such as will upset, not merely a hot-tempered or hypersensitive person, but one of ordinary sense and calmness.

*Held*, therefore, that the mere singing by the deceased girl of love songs, which reminded the accused (her cousin) of her immoral relations with a stranger, could not be held to constitute such grave provocation as would reduce the offence of murder to one of homicide not amounting to murder.

*Appeal from the order of Rai Bahadur Lala Rangilal, Sessions Judge, Gujranwala, dated the 24th February 1926, convicting the appellant.*

GHULAM MOHY-UD-DIN, for Appellant.

*Nemo*, for Respondent.

The judgment of the Court was delivered by—

SIR SHADI LAL C. J.—In this case one Khadim Hussain, a Sayyad, of the village Ali, in the district of Gujrat, has been convicted of the murder of three persons, namely, his uncle Jalal Shah, the latter's wife *Mussammât* Rasulan and daughter *Mussammât* Fatima Bibi; and has been sentenced under section 302 of the Indian Penal Code to the penalty of death.

The evidence on the record shows that *Mussammât* Fatima Bibi, who was one of the victims of the

tragedy, was married to one Hazoor Shah, but that their married life was not a happy one. It is common ground that she deserted her husband and came back to live with her parents. It appears that one Bahadur Shah, who is a head constable in the Police Force, used to pay periodical visits to Jalal Shah's house, and that he was suspected of having contracted a liaison with the girl. The prisoner resented the visits of Bahadur Shah and asked his uncle not to allow him to come and live in the house. The uncle did not like this interference on the part of the nephew and told him to mind his own business.

Now, there is ample evidence on the record, and indeed it is admitted by the convict, that on the morning of the 1st September 1925, he picked up a chopper from his house and went to the adjoining house of Jalal Shah. There he found *Mussamat* Rasulan lying on a *charpoy* in the courtyard and inflicted upon her several blows with the weapon and killed her on the spot. The blade of the chopper became loose in the course of the attack and fell down on the ground. The culprit thereupon went back to his own house and brought a dagger with which he attacked *Mussamat* Fatima Bibi and killed her then and there. He then proceeded to the shop of Ahmad Din, *Mochi*, where Jalal Shah was sitting and inflicted upon the latter numerous blows which resulted in his death instantaneously. The offender was subsequently arrested by one Allah Ditta, and it is beyond dispute that he was, at that time, wearing garments upon which the Imperial Serologist found human blood.

The accused has all along admitted that he killed the three persons in the manner described above, but he seeks to reduce the offence to one of culpable homicide not amounting to murder. Now, it is true that

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the amorous relations of *Mussammat* Fatima Bibi with Bahadur Shah were calculated to bring disgrace on the family, but we are unable to hold that the offender had received any grave and sudden provocation such as is contemplated by Exception 1 to section 300 of the Indian Penal Code. It must be remembered that Bahadur Shah had left the house of Jalal Shah on the 30th August 1925, two days before the tragedy, and it is not suggested that the victims had done anything during those two days which could be regarded as a grave provocation. It is alleged that the girl was singing, on the fateful morning, love songs which reminded the prisoner of her immoral relations with Bahadur Shah. We cannot, however, accede to the contention that the mere singing of songs should be held to be a grave provocation as contemplated by law. It may be that the prisoner had been brooding over the disgrace caused to the family by the frequent visits of Bahadur Shah, but the law requires that the provocation must be such as will upset, not merely a hot-tempered or hyper-sensitive person, but one of ordinary sense and calmness. This requirement has not been fulfilled in the present case. Moreover, it must be remembered that the prisoner was only a cousin of the girl who was apparently *sui juris*, and that in the presence of her parents he had no right to interfere with her liberty of action. Nor did he have the slightest justification for attacking Jalal Shah or his wife.

The guilt of the appellant does not admit of any doubt, and it is clear that the sentence of death is the only appropriate punishment to be inflicted in a case of this description. Confirming, therefore, the sentence we dismiss the appeal.

N. F. E.

*Appeal dismissed.*