REVISIONAL CRIMINAL.

Before Mr. Justice Tek Chand.

1929

Jan. 11.

THE CROWN, Petitioner

versus

ALIA, Respondent.

Criminal Revision No. 808 of 1928.

Criminal Procedure Code, Act V of 1898, section 562—First offenders—power to release on probation—inapplicability of section to aggravated offences—Indian Penal Code, Act XLV of 1860, sections 300 et seq*—Homicide.*

Held, that section 562 of the Criminal Procedure Code, has not been enacted with the intention of letting off without imprisonment every juvenile offender on his first conviction for an offence described in the section, regardless of the circumstances in which the crime was committed. Before applying the section, the Court should carefully take into consideration the attendant circumstances, along with the age, character and antecedents of the offender.

Held, therefore, that the section has no application to the case of a youth, who grapples with another and, after having been separated, turns back in rage on his adversary and inflicts a heavy *lathi* blow on him killing him instantaneously, and later on speaks of his act in a spirit of truculent *braggadocio* threatening to kill those who attempt to arrest him.

Case reported by E. G. F. Abraham, Esquire, Sessions Judge, Ferozepore, with his No. 116-J of 1928.

D. R. SAWHNEY, Public Prosecutor, for Petitioner.

GHULAM MOHY-UD-DIN, for Respondent.

Report of the Sessions Judge.

The accused, on conviction by the Sub-Divisional Magistrate of Fazilka exercising the powers of a Magistrate of the First Class in the Ferozepore District, was sentenced, by order dated 21st December, 1927, under section 304 (2) of the Indian Penal Code, to furnish security under section 562, Criminal Procedure Code

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The facts of this case are as follows :—

It has been held by the Magistrate that Alia by a blow of a *lathi* on the back of the neck caused the death of Sultan. The sentence appears inadequate to this finding. If the finding is to be maintained (there is no appeal before me) the sentence should, in my opinion be enhanced.

ORDER OF THE HIGH COURT.

TEK CHAND J.—The respondent Alia, a *Teli*, youth, 15 or 16 years old, of *Mauza* Mohal, has been found guilty by the Sub-Divisional Magistrate, Fazilka, of an offence under section 304-II, Indian Penal Code, for having caused the death of one Sultan by a blow inflicted with a heavy *lathi* on the back of the neck of the deceased. Having regard to the age of the respondent, and the fact that this was his first offence the learned Magistrate has released him on probation of good conduct under section 562 (1), Criminal Procedure Code, on his entering into a bond for Rs. 2,000, with two sureties, to appear and receive sentence when called upon during three years from the date of the conviction. On being moved by the father of the deceased the Sessions Judge, Ferozepore, has forwarded the proceedings to this Court under section 438, Criminal Procedure Code. He has recommended that if the conviction is to be maintained, the sentence should be enhanced. The learned Public Prosecutor has appeared before me in support of this recommendation, while Mr. Ghulam Mohy-ud-Din, who represents the respondent, has urged under section 439 (6) that on the evidence on the record the respondent ought not to have been convicted at all, and that, in any case, if the conviction is to be upheld, the sentence passed by the learned Magistrate was just and proper in the circumstances.

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Now I have no hesitation in saying that on the findings of the learned Magistrate, the sentence passed by him is manifestly inadequate, and that if I were to maintain the conviction, I shall be constrained to sentence the respondent to a substantial term of imprisonment. The story as given by the alleged eye-witnesses, which has been accepted by the learned trial Magistrate, is that on the 16th of September, 1927, Sultan, deceased, with his cousins was grazing his flock of sheep in the field of his maternal uncle, Fateh Mohammad (P. W. 6), when Alia, respondent, and his cousin, Gudda, took their flock to the same field. On Sultan objecting to the respondent bringing his sheep there, an altercation ensued and they grappled with each other. They were, however, separated by Nura (P. W. 3), Khushia (P. W. 4), Sadiq (P. W. 5), Nizam and Bashir, who were sitting close by and who advised both parties to take away their sheep, but Alia turned back in rage and struck a blow with a bamboo *lathi* on the neck of Sultan, who fell down immediately and died soon after. Alia made good his escape carrying the *lathi* in his hand. Kasim Ali (P. W. 12), who had seen the respondent running through his courtyard, on being informed later of the incident, followed him on a pony, armed with a gun and accompanied by one Mohammad Khan and succeeded in overtaking him at a distance of a mile-and-a-half on the other side of the village. When Qasim Ali advanced towards the respondent, the latter flourished his stick at him and said "I have killed one and I will kill you now," but Kasim Ali threatened to fire at him and eventually succeeded in capturing him.

Now, if this story is to be believed, and it has been believed by the learned Magistrate—it is obvious that

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the beneficent provisions of section 562 cannot be invoked in favour of the offender. The only reason given by the learned Magistrate for applying that section to this case is that the respondent was a boy 15 or 16 years of age, and that this was his first offence. But it must be borne in mind that section 562 has not been enacted with the intention of letting off without imprisonment every juvenile offender on his first conviction for an offence described in the section, regardless of the circumstances in which the crime was committed. The section itself is clear on this point and magistrates, before applying the section, should carefully take into consideration the attendant circumstances, along with the age, character and antecedents of the offender. There can be no manner of doubt that the section, has no application to the case of a youth, who grapples with another and after having been separated by others turns back in rage on his adversary, and inflicts a heavy *lathi* blow on him, killing him almost instantaneously, and later on speaks of his act in a spirit of truculent *braggadocio* threatening to kill those who attempt to arrest him. If such a person were to be released on probation, the very object with which this salutary provision of the law was enacted would be defeated, and an impression created in the minds of young men that they can commit at least one serious offence with impunity. I, therefore, agree with the learned Sessions Judge, that if the finding is to be maintained, the appropriate punishment must be a substantial sentence of imprisonment.

The main question for consideration, however, is whether the conviction is justified on the record. The story for the prosecution as given above is supported

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by the evidence of four eye-witnesses, Sadiq *alias* Pula, son of Ali Mohammad (P. W. 1), Nura (P. W. 3), Khushia (P. W. 4) and Sadiq, son of Suleman (P. W. 5), all of whom depose that they saw the respondent inflict the fatal blow on the neck of the deceased. There is also the evidence of Ghulam Mohammad (P. W. 2), father, and Fateh Mohammad (P. W. 6), maternal uncle, of the deceased, that as soon as they reached the spot on receipt of information of the attack on Sultan, they were informed by the aforesaid persons that the respondent had killed the deceased. All these witnesses are, however, closely related to each other and are under the influence of Fateh Mohammad (P. W. 6), who admittedly had civil litigation with the father of the respondent some years ago and who had been sentenced to five years' rigorous imprisonment in a riot case, in which Ghulam Mohammad (P. W. 2), father of the deceased, and Nura (P. W. 3) had also been convicted. Their evidence must, therefore, be accepted with a great deal of caution, even though the First Information Report was made without any undue delay. Moreover, none of these witnesses has any satisfactory explanation to offer why they and the other persons present at the time did not attempt to capture or pursue the culprit. It seems strange that these six persons should have allowed a youth like the respondent to run away without making any attempt to catch hold of him.

In such cases the nature of the injuries found to exist on the body of the deceased is a matter of great importance and is generally of considerable assistance in determining the truth or otherwise of the account of the incident as given by the alleged eye-witnesses. It is, however, unfortunate that in this case the two medical witnesses who were examined at

the trial are not agreed in their opinion. The Assistant Surgeon (P. W. 14), who conducted the *post-mortem* examination of the body of Sultan on the 17th of September, was of opinion that he had died of strangulation, and not as a result of a *lathi* blow on the neck. As his conclusion was in conflict with the evidence of the alleged eye-witnesses, the District Magistrate, Ferozepore, on the matter coming to his notice, ordered the body to be exhumed in the presence of the Civil Surgeon (P. W. 13), the Naib-Tahsildar of Fazilka and a number of other officials. Owing to the decomposed condition of the body and the liquefaction of the important organs, it was not possible for the Civil Surgeon to express a definite opinion as to the cause of death, but he was inclined to the view that the deceased had not been strangled to death and that it was possible that the severe congestion on the back of the neck was due to a blow on the neck.

There being a conflict of medical opinion it is necessary to examine the evidence of the two doctors in some detail. It may, however, be mentioned at the outset that the genuineness of the record, made by the Assistant Surgeon, of the injuries on the body of the deceased and of the state of the internal organs, is not challenged on behalf of the Crown. It is conceded that the record is accurate, but it is contended that the conclusions, which the Assistant Surgeon deduced therefrom as to the cause of death are inaccurate, and for this purpose reliance is placed on the evidence of the Civil Surgeon.

Now, as stated already, the Civil Surgeon examined the exhumed body six days after the death. He has deposed that when he saw it, " decomposition

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was advancing," and " mature maggots were creeping in " the brain, the cord and lungs had ' melted away'; the liver was ' decomposing and there was no *trace of the respiratory organs from which it could be found that the death was due to stoppage of respiration.*' There was no skin on the front part of the neck, but the skin on the back and sides of the neck was supple and the underlying tissues still showed signs of congestion. He has also admitted that from " the appearance it was not possible to find out the cause of death on account of the decomposition and the liquefaction of the important organs." It is obvious that much weight cannot be attached to the opinion of the Civil Surgeon, based as it is, on an examination of the body in the condition described above. He, however, concluded that death was not caused by strangulation, but was probably due to compression of the brain, caused by the effusion of blood, because (*i*) the back of the neck showed severe congestion of the deeper tissues, and (*ii*) the underlying skin was supple and not " hard and leathery," as, in his opinion it should have been if the deceased had been strangled to death. As to (*i*) the Civil Surgeon has, however, himself stated that its existence did not exclude the possibility of death by strangulation as originally congestion might have been uniform all round the neck, and that he could not say that it was not so, owing to the disappearance of the skin on the front side, at the time of his examination. It may be stated that in the notes of the *post-mortem* examination made by the Assistant Surgeon it is clearly stated that there was a continuous horizontal bruise $1'' \times 10''$ round the neck. The existence of the congestion on the back of the neck, does not, therefore, militate, in any way against the hypothesis that

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the deceased was strangled to death. Nor does the other circumstance relied upon by the Civil Surgeon that the skin underlying the bruise round the neck was not "hard and leathery" but supple, appear to be of any value. It is stated in *Lyon's Medical Jurisprudence in India* (8th Edition) at page 277 that in cases of strangulation "the hard yellow brown parchmenty appearance of the skin in the course of the mark is more seldom met with. Whether the mark will be parchmentized or not depends entirely on the nature of the ligature. If this is hard and rough, such a mark will result. In strangulation, more frequently than in hanging the ligature employed is a soft one such as a handkerchief, or other piece of cloth, and this is the reason for the *frequent absence of the parchmentized mark.*" Similarly Dr. Modi in his *Text-book of Medical Jurisprudence and Toxicology* says at page 131, "The base of the (ligature) mark which is known as a groove or furrow, is usually pale with reddish and ecchymosed margins. It is *rarely hard, yellow and parchment-like* as in hanging." The learned Public Prosecutor has not drawn my attention to any authority to the contrary and I must hold that the reasons given by the Civil Surgeon in support of his conclusion are not convincing.

Let us now examine the external and internal appearances shown in the Assistant Surgeon's notes of the *post-mortem* examination. These are :—

(*a*) a continuous horizontal bruise 1″ broad and 10″ long round the neck at the level of the wind-box, showing a distinct ligature mark ;

(*b*) a bruise 8″ × 3″ on the back of the neck :

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(*c*) marks of violence on the front and the side of the chest, there being bruises on the supraclavicular region of the neck and on the right and left side of the thorax on the mid-ribs ;

(*d*) effusion of bloody serum in both the pleura, (about 1 lb. in each) and about 10 oz. in the pericardium ;

(*e*) acute venous congestion of both the lungs and the spleen ;

(*f*) extensive ecchymosis of the soft tissues below the bruises above-mentioned ; and

(*g*) effusion of blood below the scalp and also over the brain below the membrane.

It is hardly necessary to point out that (*a*), (*d*), (*e*) and (*f*) are typical symptoms of asphyxial death by strangulation. If any authority is needed, reference may be made to Taylor's *Principles and Practice of Medical Jurisprudence* (Eighth Edition) and *Lyon's Medical Jurisprudence in India* (8th Edition), page 277. In the former work it is stated at page 609 of Volume I that when sub-pleural, sub-pericardial and sub-meningeal bleedings are present, we may legitimately say that "death has almost certainly taken place from asphyxia." The learned author also says at page 658 that in the majority of cases of death by strangulation intense venous congestion of the lungs is found, and that the spleen is usually congested. It is also stated that the brain is occasionally congested, but more commonly is in its natural state. On the same page an instance is cited of an admitted case of strangulation in which "blood was found effused in the brain." That the deceased died of strangulation is further supported by the existence

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of the injuries described in (*c*) above, which clearly indicate that the assailant, after having over-powered the deceased, sat on his chest and pressed him with his knees, elbows and hands (See *Cox's Medical-Legal Court Companion*, 2nd Edition, page 106). The learned Public Prosecutor relies, however, on injury (*b*) as indicating violent impact of a hard substance on the back of the neck, but this, as suggested by the Assistant Surgeon, could have been caused by the back of the neck pressing against a hard substance when he was being strangled. The Civil Surgeon also has explained that the existence of this injury is not necessarily inconsistent with death by strangulation.

The Civil Surgeon has, however, emphasized the absence of (*a*) the protrusion of the eye-balls and the tongue, (*b*) lavidity of the face and the upper limbs and (*c*) congestion of the larynx and trachea as negativing the theory of strangulation. But as pointed out by Taylor (Volume I, at page 656) these external signs are not essential features of death by strangulation and " may be entirely absent " in some cases,—See also Lyon, page 278.

After a careful perusal of the evidence on the record, I am of opinion that the external and internal appearances found on the body undoubtedly point to the conclusion that Sultan met with his death by strangulation, and that the story related by the so-called eye-witnesses which as shown already has otherwise also a ring of improbability about it cannot be accepted.

Before concluding, one other matter requires notice. It has been strongly urged by Mr. Ghulam Mohy-ud-Din that the learned Magistrate has acted improperly in attributing corrupt motives to the Assistant Surgeon and in referring in his judgment

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to the so-called "lengthy accounts" given by the Constables Ude Chand (P. W. 7) and Ghulam Mohy-ud-Din (P. W. 8) and by Nizam (P. W. 11). He has read to me the depositions of these witnesses and has rightly pointed out that none of them gave direct evidence relating to this matter, but that the insinuations made by them are based solely on hearsay and as such ought not to have been allowed to go on the record. The learned Public Prosecutor concedes that these statements are inadmissible and were wrongly admitted on the record and referred to in the judgment. It is significant that not a single question even remotely suggesting any corrupt practice was put to the Assistant Surgeon either on behalf of the prosecution or by the Court, though he was twice examined at the trial.

For the foregoing reasons, I hold that the guilt of the respondent has not been established, and I accordingly quash the conviction, acquit him and direct that the bond executed by him be cancelled forthwith.

N. F. E.

Revision dismissed.

Conviction quashed.