APPELLATE CRIMINAL.

Before Mr. Justice Leach, and Mr. Justice Spargo.

KING-EMPEROR *v.* SAN PAI.*

1936

June 24.

Murder—Infliction of serious wound—No proper treatment of the wound—Death resulting from wound—Indian Penal Code (Act XLV of 1860), s. 299, explanation 2.

A person may be guilty of murder notwithstanding that death would have been avoided if the injured person had submitted to proper treatment. Where a prisoner wilfully and without justifiable excuse inflicts a wound which is ultimately the cause of death, that person is guilty of murder. It makes no difference whether the wound was in its own nature instantly mortal, or whether it became the cause of death by reason of the deceased not having adopted the best mode of treatment.

R. v. *Davis*, 15 Cox's C.C. 174 ; *R.* v. *Holland*, 174 E.R. 313; *R.* v. *Pym*, 1 Cox's C.C. 339—*followed.*

Ba Han (Assistant Government Advocate) for the Crown. A man must be taken to intend the natural consequences of his act. *Tun Baw* v. *King-Emperor* (1) ; *Nga Sein Gale* v. *King-Emperor* (2). Even if death is caused in a way different from that which the assailant intended the offence is murder. *Fazla* v. *Emperor* (3) ; *Po Tu* v. *King-Emperor* (4) ; *Baba Naya* v. *King-Emperor* (5). The assailant is responsible for the death of the deceased whether death ensues directly from the wound or in consequence of the wound creating conditions which give rise to a fatal disease. *Nga Dwe* v. *King-Emperor* (6). The disease of which the deceased died developed directly out of the act of violence inflicted by the accused, and the offence is therefore murder.

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* Criminal Appeal No. 598 of 1936 from the order of the Sessions Judge of Pyapôn in Sessions Trial No. 4 of 1936.

(1) 6 L.B.R. 100.
(2) I.L.R. 12 Ran. 445.
(3) 29 Cr.L.J. 678.
(4) 4 L.B.R. 306.
(5) I.L.R. 5 Ran. 817.
(6) 10 L.B.R. 171.

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Eunoose for the respondent argued on the facts of the case.

LEACH, J.—The respondent was charged in the Court of Session, Pyapôn, with the murder of one Kasi, a Chettyar's clerk. Kasi was stabbed in the chest on the 27th March 1928 and died nineteen days later. The learned Sessions Judge accepted the evidence that the respondent stabbed the deceased, but held that he was only guilty of causing grievous hurt, for which he inflicted a sentence of seven years' rigorous imprisonment. The Crown has appealed against the decision of the learned Sessions Judge and contends that the evidence discloses that the respondent is guilty of murder. The respondent denies that he stabbed Kasi and has appealed against the conviction. The defence set up was that of alibi. The long delay in the trial of the respondent is explained by the fact that he was only arrested on the 30th of October last year, he having absconded.

Maung Tha Zan, the father of the respondent, was indebted to the S.T.M. Chettyar firm. Maung Tha Zan cultivated land near The-ein Tanyi village, Pyapôn district, and on the 27th of March 1928 was at his field hut with members of his family. At the hut was lying a quantity of paddy belonging to Maung Tha Zan. With a view to obtaining possession of this paddy, or some portion of it, Nagaratana Pillay, the agent of the S.T.M. Firm, Ana Lana Alagaru, a clerk in the firm, and Kasi went to the hut. They were accompanied by Maung Kin, the headman of a neighbouring village, Mutu, a ten-house-*gaung*, and Kupu, a cultivator. On arrival at the hut the Chettyar agent demanded paddy in lieu of the debt due to his firm. Nagaratana Pillay is now dead, but his deposition in another case arising out of what happened on this

occasion has been put in evidence ; and evidence has been given by Ana Lana Alagaru, Maung Kin, Mutu and Kupu. According to the Chettyar evidence, when they demanded payment they were abused by Maung Tha Zan and his wife and daughter slapped and slippered Nagaratana Pillay. Maung Tha Zan then struck Nagaratana Pillay on the head with the handle of a spade, breaking the handle, and the respondent stabbed Kasi in the chest with a dagger, after which he bolted from the scene.

That the respondent stabbed Kasi in the chest has been fully proved. The Chettyar evidence that the attacks on the agent and on Kasi were entirely unprovoked is, however, not convincing. The first information report, which was made by Ana Lana Alagaru, shows that before there was any attack made upon the agent or upon Kasi the Chettyar party took possession of the paddy and attempted to remove it. They had no warrant or authority of any description entitling them to do this, and their action was most high-handed. I shall return to this aspect of the case shortly as it has a bearing on the question of sentence.

The medical evidence shows that an abscess developed in the upper lobe of the right lung as the result of the stab wound. Dr. S. Simon, a Sub-Assistant Surgeon, who performed the post-mortem examination, was of opinion that the injury was sufficient in the ordinary course of nature to cause death, but he considered that if an operation had been performed the life of the deceased might have been saved. The learned Sessions Judge found that Kasi had died as the result of the abscess in the lung, which had been set up by infection on the blade of the weapon. He considered that it was "bad luck" that the blade was infected and on this basis held that section 302 of the Indian Penal Code did not apply and that the offence came within

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the purview of section 326. This decision is not in accordance with the law which applies in a case of this nature, and it is, therefore, necessary to state what the law is.

A person may be guilty of murder notwithstanding that death would have been avoided if the injured person had submitted to proper treatment. A person may be guilty of murder when the immediate cause of death is the treatment administered and the question whether the treatment was proper treatment does not arise, provided that it was administered *bona fide* by a competent physician or surgeon.

In the case of *R.* v. *Holland* (1) the evidence showed that the deceased had been waylaid and assaulted by the prisoner and had received a severe cut across one of his fingers by an iron instrument. He was advised to have the finger amputated, but he refused. A fortnight later lockjaw set in as the result of the wound and ultimately caused death. The medical evidence was to the effect that if the deceased had in the first instance consented to have his finger amputated it was most probable that his life would have been saved. The prisoner was indicted for murder and found guilty. Maule J. told the jury that if the prisoner wilfully, and without justifiable cause, inflicted the wound which was ultimately the cause of death, the prisoner was guilty of murder. For this purpose it made no difference whether the wound was in its own nature instantly mortal, or whether it became the cause of death by reason of the deceased not having adopted the best mode of treatment. The real question was whether in the end the wound inflicted by the prisoner was the cause of death.

(1) 2 M. & Rob. p. 351 ; 174 E.R. 313.

In *R.* v. *Pym* (1) Erle J. observed :

" I am clearly of opinion, and so is my brother Rolfe, that where a wound is given, which, in the judgment of competent medical advisers, is dangerous, and the treatment which they *bonâ fide* adopt is the immediate cause of death, the party who inflicted the wound is criminally responsible, and of course those who aided and abetted him in it."

In *R.* v. *Davis and Wagstaffe* (2) the evidence disclosed that a person who had been injured by a blow had died under chloroform which was administered preliminary to an operation which competent medical men considered to be advisable and it was common ground that the patient would not have died but for its administration. It was nevertheless held that the person causing the injury was liable to be indicted for manslaughter. Matthew J. in summing up to the jury said that the rule of law was that the death could be traced back to the man by whom the injury was done. For it would never do to have a serious injury by one man on another, and have the issue raised that death was due to want of skill on the part of the medical man. People who inflicted injuries must deal with the law.

In the present case, the medical evidence is to the effect that death would probably have been prevented if an operation had been performed, but this does not alter the nature of the crime committed by the respondent. He stabbed Kasi in the chest and Kasi died from an abscess resulting from the injury. Where a person stabs another in the chest with sufficient force to penetrate the chest cavity, it must be held that he intended to cause injury sufficient in the ordinary course of nature to cause death, and it matters not that the immediate cause of death was an abscess set up

(1) (1843-46) 1 Cox's C.C. 339 at p. 341. (2) 15 Cox's C.C. p. 174.

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by the wound. The evidence in this case leaves no doubt that the respondent is guilty of murder and the appeal of the Crown must be allowed.

I do not consider, however, that the facts justify the infliction of the supreme penalty. There is no doubt that the Chettyar party was guilty of provocation. Without lawful authority they attempted to seize paddy belonging to the respondent's father. While this does not amount to provocation of a nature which would reduce the crime to one of culpable homicide not amounting to murder, it is a factor which must be taken into consideration when considering the question of sentence. I consider that the provocation was sufficient to justify the Court sentencing the respondent to transportation for life and not to death. My learned brother shares this view. The conviction will therefore be altered to a conviction under section 302 of the Indian Penal Code and the respondent will be sentenced to transportation for life.

SPARGO, J.—I agree with my learned brother that the respondent caused the death of Kasi. It makes no difference that the death was due to sepsis in the wound caused by the respondent ; see, in addition to the cases referred to by my learned brother, explanation 2 to section 299, Indian Penal Code.

It was a stab in the chest and an intention to cause bodily injury sufficient in the ordinary course of nature to cause death is a legitimate inference. He is therefore guilty of murder. I agree that it is a case where the lesser sentence may fittingly be imposed.