voluntarily caused, the person who causes that injury is deemed to have caused death although the life of the victim might have been saved if proper medical attention had been given, and even if medical treatment was given but was not the proper treatment, provided that it was administered in good faith by a competent physician or surgeon.

1937

THE KING v. ABOR AHMED

SPARGO, J.

It is clear that the headnote goes far beyond this and I can only suppose that this particular passage was included in the headnote by mistake.

APPELLATE CRIMINAL.

Before Mr. Justice Baguley, and Mr. Justice Spargo.

ABOR AHMED *v.* THE KING.*

1937

July 21.

Culpable homicide not amounting to murder—Violent injury with dah *on leg near ankle—Death from injury—Injury sufficient in ordinary course of nature to cause death—Intention or knowledge—Cuts on the leg—Violent blow with formidable weapon—Knowledge of injury likely to cause death—Penal Code, ss. 302, 304, part 1.*

The appellant after an altercation smote the deceased with great force on the leg above the ankle with his *dah* with such force that he cut through the bones and the arteries. As a result the man died four days later in the hospital. The medical evidence was not satisfactory.

Held, that the appellant did in fact inflict injury sufficient in the ordinary course of nature to cause death, but the intention to cause such injury or the knowledge that he must inflict such injury could not be imputed to him. A man who directs a blow on the leg, especially near the ankle, does not, as a general rule, intend to cause injury sufficient in the ordinary course of nature to cause death. But under the circumstances as the appellant struck a very violent blow with a formidable weapon he must be held to have known that the injury he would inflict was likely to cause death, and so was guilty under s. 304, part 1 of the Penal Code.

The King v. *Abor Ahmed*, (1937) Rang. 384, applied.

Kra Chan U v. *King-Emperor*, 2 B.L.J. 103, dissented from.

Kya Gaing for the appellant.

Lambert (Government Advocate) for the Crown.

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* Criminal Appeal No. 632 of 1937 from the order of the Sessions Judge of Arakan in Sessions Trial No. 14 of 1937.

1937

ABOR AHMED v. THE KING.

BAGULEY, J.—The question which was referred to the Full Bench having been answered in the sense in which it has been, this case has now to be determined on what are really the agreed facts.

The appellant after an altercation smote the deceased on the leg above the ankle with his *dah* with such force that he cut through the bones and the arteries. In consequence the man died four days later in hospital.

The medical officer when examined in the Committing Court said that the injury inflicted was sufficient in the ordinary course of nature to cause death. When examined in the Sessions Court he went further and said that the injury was necessarily fatal. The fact that he made these divergent statements does not inspire very great confidence and it is difficult to decide which of these statements must be accepted. In view of this fact, and relying on what is common knowledge we think that it cannot be held that the injury was more than sufficient in the ordinary course of nature to cause death.

The question then arises as to what offence the appellant has committed. He did in fact inflict injury sufficient in the ordinary course of nature to cause death. Can he be imputed with the intention to cause such injury or the knowledge that he must inflict such injury ? In my opinion this cannot be assumed against him.

Our attention has been drawn to a Bench decision of this Court, not officially reported, *Kra Chan U* v. *King-Emperor* (1), in which the appellant was convicted of murder, where the injury inflicted was much the same as the injury inflicted in the present case. This decision is now 14 years old and the more recent decisions of this Court which have been referred to in the order of reference to the Full Bench show that the

(1) 2 B.L.J. 103.

general tendency of opinion now is not accordance with the rule laid down in *Kra Chan U*'s case.

The intention, so far as we can see, of the appellant was to cut the deceased on the leg, and the cut inflicted was quite low down near the ankle. A man who directs a blow in this direction as a general rule would be a man who did not intend to cause injury sufficient in the ordinary course of nature to cause death because most cuts on the leg are not injuries sufficient in the ordinary course of nature to cause death. The blow was delivered with great force, very great force perhaps we could say, and even residents in the jungle must be held to know that a violent blow of this nature with a formidable weapon is likely to cause death wherever the blow may fall, but I do not think that any intention higher than this can be imputed against the appellant.

I would, therefore, set aside the conviction under section 302, Penal Code, and the sentence of death and in its place record a conviction under section 304, Part I, and order that the appellant be rigorously imprisoned for ten years.

SPARGO, J.—I agree.