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In re U ON MAUNG *v.* MAUNG SHWE PHAUNG.

SPARGO, J.

transfer title did not require registration, it would commence to operate from the time of its execution. That then is the date of the transfer and is therefore "the date thereof", in the words of section 54 of the Provincial Insolvency Act, although it be registered later.

FULL BENCH (CRIMINAL).

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, Mr. Justice Baguley and Mr. Justice Spargo.

1937

July 19.

THE KING *v.* ABOR AHMED.*

Murder—Intentional infliction of injury—Injury sufficient in ordinary course of nature to cause death—Injury likely to cause death—Intention and knowledge of accused—Want of proper medical treatment—Degree of criminal responsibility—Infliction of wound in vital part of body—English cases of murder and manslaughter—Authority of San Pai's *case—Penal Code, ss. 299, 300.*

Where an injury is intentionally inflicted the defence that no proper medical treatment was forthcoming does not exonerate the person who caused the injury from guilt of murder if he intended that the injury should be sufficient in the ordinary course of nature to cause death, or knew that it was likely to cause death to that person. It does not exonerate him from guilt of culpable homicide if death ensues as a natural or likely consequence. Such a person is deemed to have caused the death and his degree of criminal responsibility must depend on the knowledge or intention to be gathered from the proved facts.

Part of the headnote in *King-Emperor* v. *San Pai*, I.L.R. 14 Ran. 643, corrected.

If a man inflicts a wound in a vital spot and death ensues it is no defence to a charge of murder for the accused to say that he did not mean the injury to be fatal.

Hamid v. *King-Emperor*, 2 L.B.R. 63; *King-Emperor* v. *E Pe*, I.L.R. 14 Ran. 716; *Muvvala* v. *The Queen*, 1 Weir 300; *On Shwe* v. *King-Emperor*, I.L.R. 1 Ran 436, referred to.

English cases of murder and manslaughter must be read in the light of ss. 299 and 300 of the Penal Code and are not, by themselves, the law in Burma or British India.

Per SPARGO, J.—*San Pai*'s case is authority for no more than this that if death results from an injury voluntarily caused, the person who causes that injury is deemed to have caused death, although the life of the victim might have been

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* Criminal Reference No. 75 of 1937 arising out of Criminal Appeal No. 632 of 1937 of this Court.

CORRIGENDA.

(1936) I.L.R. 14 Ran. 643, and Index page lxviii, in the case of King-Emperor *v.* San Pai :

Headnote, *for* the second sentence *substitute* :

> Where a person wilfully and without justifiable excuse inflicts a wound which is ultimately the cause of death of another person, he shall be deemed to have caused the death of that other person.

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.

The following reference was made for the decision of a Full Bench, Spargo J. concurring by

BAGULEY, J.—The facts of this case are no longer in dispute.

The appellant, with three other lads, all it would seem 20 or under, was singing in a village street. The deceased Amira Bawli went and remonstrated with them as a child of his was lying sick in the house. The appellant Abor Ahmed told him that it was not his business as they were singing on the road, so Amira Bawli put his hand on the back of his neck and gave him a shove and the party of singers went away. Not long afterwards the appellant returned with two elder people, Zor Mulock and Abdul Hakim, and they remonstrated with Amira Bawli asking why he had assaulted the appellant as he was not in the house or in the compound. Amira Bawli said he only gave him a push to make him stop singing and if they objected they might lay the matter before the village elders. The appellant was not prepared to behave in a reasonable manner and took a *da* and cut Amira Bawli with considerable force on the left leg. The blow is described by the medical officer as on the lower third of the leg : the diagram or skeleton sheet shows it to be slightly above the ankle. As a result of this blow the victim died and the medical officer says death was due to exhaustion as the result of the injury. He further says the injury was sufficient in the ordinary course of nature to cause death.

The trial Judge holding that a man must be held normally to intend the natural consequences of his act takes it that the appellant having caused an injury sufficient in the ordinary course of nature to cause death must be considered to have intended to cause such an injury. He then quotes from the headnote of *King-Emperor* v. *San Pai* (1):

> " Where a prisoner wilfully and without justifiable excuse inflicts a wound which is ultimately the cause of death, that person is guilty of murder."

and therefore convicted him of murder and sentenced him to death.

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(1) (1936) I.L.R. 14 Ran. 643.

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BAGULEY, J.

On behalf of the appellant Mr. Kya Gaing, who admits all the facts as given above, contends that his client should not be found guilty of murder.

It seems to me that this case, *King-Emperor* v. *San Pai* (1), as reported, requires further consideration. The point for decision in that case was really covered, as pointed out by my brother Spargo J., in his short and concurring judgment, by Explanation 2 to section 299 of the Indian Penal Code. Unfortunately the leading judgment refers only to English cases, and murder as defined in the Indian Penal Code is not the same as murder as defined under the Common Law of England. The first case referred to is *R.* v. *Holland* (2) and from the facts as given in this judgment the crime under examination in that case was murder under English law. But murder in England would not always be murder under the Indian Penal Code : so it is obviously dangerous to English cases to decide whether a particular crime is murder under the Indian Penal Code ; and the principle deduced from the case as crystallized out in the headnote is in my opinion definitely incorrect so far as this country is concerned, though I have no desire to suggest that *San Pai*'s case was incorrectly decided. With respect I would say that the decision of that particular case is correct.

At very short notice I have found three recent cases of this Court which would certainly have resulted in convictions for murder if this principle were followed, but in all the cases the conviction was altered either to one under section 304 or one under section 326 of the Indian Penal Code.

In the case of *Nga Hla* v. *King-Emperor* (Criminal Appeal No. 1117 of 1934) the appellant chopped a man's foot and caused his death and the injury was sufficient in the ordinary course of nature to cause death ; but in the judgment occurs the passage :

> " If the appellant had the intention of either causing death or of causing such injury as was sufficient to cause death in the ordinary course of nature, he would have inflicted an injury on a vital part of the body but not on a non-vital part such as a foot."

and the conviction was altered to one under section 304, Indian Penal Code.

In *Nga Tin Maung* v. *King-Emperor* (Criminal Appeal No. 1634 of 1935) the injury was a cut at the back of the right knee. The judgment contains the passage :

(1) (1936) I.L.R. 14 Ran. 643. (2) M. & Rob. 351 ; 174 E.R. 313.

"There is no dispute that he gave only one blow on the knee. If he had any intention of killing the deceased he would have given a blow on a vital part, such as the head or the neck."

and this conviction was altered to one under section 304, Indian Penal Code.

In *Nga Po Tu* v. *King-Emperor* (Criminal Appeal No. 446 of 1936) death was caused by a cut above the elbow which caused death and death resulted because no attempt was made to staunch the blood. In this case the conviction was reduced to one under section 326, Indian Penal Code ; but in all these cases the appellants wilfully and without justifiable cause inflicted wounds which were ultimately the cause of death, so all of them run counter to *King-Emperor* v. *San Pai* (1) as it appears in our Reports.

I do not think that the decision in this case really supports the head-note, but reported as it is with these references to English cases I think it is distinctly misleading and, after all, our Reports are intended mainly as guides to subordinate Courts.

It has been suggested that there is no need to refer this matter to a Full Bench because a judgment might be written explaining it, but I am very much averse to one Bench criticizing or explaining almost to the extent of explaining away a published ruling of a Bench of equal standing. It was in consequence of this having been done that the paragraph on pages 586 and 587 of the Report in *King-Emperor* v. *Nga Lun Thoung* (2) had to be inserted in the judgment. I would, therefore, refer to such Full Bench as my Lord the Chief Justice may direct the question—

" Is the principle laid down in *King-Emperor* v. *San Pai* (1), as it appears in the Report, embodied in the head-note correct ? "

Lambert (Government Advocate) for the Crown. Explanation 2 to s. 299 of the Penal Code reproduces the English law. See Ratanlal on the Law of Crimes, 14th Ed. p. 700, and the cases cited. In *King-Emperor* v. *San Pai* (1) Leach J. cites three English cases in support of the proposition that a person may be guilty

(1) (1935) I.L.R. 14 Ran. 643. (2) (1935) I.L.R. 13 Ran. 570.

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of murder notwithstanding that death might have been avoided if the injured person had submitted to proper medical treatment. The English cases so cited do support this proposition. *R.* v. *Holland* (1), however, goes further and gives an instance of an act which would constitute murder in England but not here in Burma. According to the definition in s. 300 (*3*) of the Penal Code in order that an accused person may be held to be guilty of murder he must not only have intentionally caused an injury which proves to be sufficient in the ordinary course of nature to cause death but he must also have intended that such injury should be sufficient in the ordinary course of nature to cause death.

On the facts *San Pai*'s case was correctly decided. The learned Judge is right in stating that 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 by the wound.

The headnote in *San Pai*'s case is not quite correct. The second sentence omits to indicate that the bodily injury which the accused intended to inflict was sufficient in the ordinary course of nature to cause death. Without such intention the offence is not more than culpable homicide not amounting to murder.

A man's intention is gathered from all the surrounding circumstances, including the knowledge which may be imputed to the individual concerned. If a villager cuts a man upon the arm or leg, which might be considered to be a non-vital part of the body he is presumed not to know that death is a likely consequence

(1) M. & Rob. 351.

and consequently not to have intended to cause injury sufficient in the ordinary course of nature to cause death. See *Ba U* v. *King-Emperor* (1) ; *Kra Chan U* v. *King-Emperor* (2) ; *Nga Tin Maung* v. *King-Emperor* (3) ; *Po Chit* v. *The Crown* (4).

Kya Gaing for the accused. The reference order involving the decision in *San Pai*'s case is in favour of the accused. On the facts the accused should not be convicted of murder.

ROBERTS, C.J.—The question propounded in this reference is as follows :

" Is the principle laid down in *King-Emperor* v. *San Pai* (5) as it appears in the Report, embodied in the head-note, correct ? "

I am of the opinion that *King-Emperor* v. *San Pai* (5) was rightly decided. The case was one in which the conviction for murder was upheld, the appellant having stabbed one Kasi in the chest so as to penetrate the chest cavity. It was held that he intended to cause injury sufficient in the ordinary course of nature to cause death, thus bringing the case within the third part of section 300 of the Indian Penal Code. It mattered not that the immediate cause of death was an abscess set up by the wound. This is expressly provided for by Explanation 2 of section 299, which runs as follows :

" Where death is caused by bodily injury the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented."

The explanation does not say that the person shall be necessarily guilty of murder. Whether he is guilty

(1) 4 L.B.R. 367.
(2) A.I.R. (1923) Ran. 247.
(3) A.I.R. (1936) Ran. 112 ; 37 Cr. L.J. 473.
(4) A.I.R. (1924) Ran. 212.
(5) (1936) I.L.R. 14 Ran. 643.

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ROBERTS, C.J.

of murder depends on whether his act falls within the category of acts enumerated in section 300.

Unfortunately the headnote in the case is too wide. It says :

"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 should read :

"Where a person wilfully and without justifiable excuse inflicts a wound which is ultimately the cause of death of another person, he shall be deemed to have caused the death of that other person."

It seems desirable to add a few words on the meaning of the third part of section 300 which says that culpable homicide is murder if the act by which the death is caused is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. Though in fact an injury may be sufficient in the ordinary course of nature to cause death it is not murder unless it was intended that the injury should be sufficient in the ordinary course of nature to cause death. Where there was such an intention it is murder.

It has been held again and again that if a man inflicts a wound in a vital spot and death ensues, it is no defence to a charge of murder for the accused to say that he did not mean the injury to be fatal. As was said by Leach J. in *King-Emperor* v. *E Pe* (1) the intention of the accused is to be gathered from the proved facts of the case. And see *Hamid* v. *King-Emperor* (2) and *On Shwe* v. *King-Emperor* (3).

If a man inflicts a wound in a spot which is not ordinarily vital, his intention is equally to be gathered

(1) (1936) I.L.R. 14 Ran. 716. (2) 2 L.B.R. 63.
(3) (1923) I.L.R. 1 Ran. 436.

from the proved facts of the case. If, for instance, it is a wound which happens to be sufficient in the ordinary course of nature to cause death, the Court must consider not merely whether the wound was intentionally inflicted but whether it was intended to be sufficient in the ordinary course of nature to cause death—*Muvvala Kondaiya* v. *The Queen* (1).

Put shortly then, where an injury is intentionally inflicted the defence that no proper medical treatment was forthcoming does not exonerate the person who caused the injury from guilt of murder if he intended that the injury should be sufficient in the ordinary course of nature to cause death, or knew that it was likely to cause death to that person. It does not exonerate him from guilt of culpable homicide if death ensues as a natural or likely consequence. Such a person is deemed to have caused the death, and his degree of criminal responsibility must depend on the knowledge or intention to be gathered from the proved facts.

It should be added that the English cases cited in *King-Emperor* v. *San Pai* (2) must all be read in the light of section 299, Explanation 2, and of section 300 of the Penal Code which is Statute law inapplicable to England. The English cases are not, by themselves, the law in Burma or British India ; and in particular I am satisfied that the case of *R.* v. *Holland* (3) led to a result which was different from that which would be correctly arrived at in this country having regard to section 300, though reference to it was made by way of illustrating the meaning of section 299.

My answer to the question propounded therefore is that the case of *King-Emperor* v. *San Pai* (2) was rightly decided but that part of the headnote is incorrect for the reasons which I have given.

(1) 1 Weir 300. (2) (1936) I.L.R. 14 Ran. 643.
(3) 2 M. & Rob. 35, 174 E.R. 313.

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BAGULEY, J.—I agree.

SPARGO, J.—I agree with my Lord the Chief Justice in his answer to this reference, namely, that the head note in the case of *King-Emperor* v. *San Pai* is incorrect so far as concerns that part of it which reads :

"Where a prisoner wilfully and without justifiable excuse inflicts a wound which is ultimately the cause of death, that person is guilty of murder."

I agree that this part should read :

"Where a person wilfully and without justifiable excuse inflicts a wound which is ulimately the cause of death of another person, he shall be deemed to have caused the death of that other person."

The question that arose for decision in *San Pai*'s case was whether a man who stabbed another in the chest should be deemed to have caused his death, the victim having died from an abscess which formed in the lung owing to the weapon with which the wound was inflicted being infected and not immediately from the wound.

The learned Sessions Judge who tried the case found that

"death was caused by an abscess on the lung which was not diagnosed. If an operation was performed his life might have been saved. It was bad luck that the blade of the knife was infected or otherwise Kasi would probably not have died. I am of opinion that section 302, Indian Penal Code, does not apply and that the offence comes within the purview of section 326, Indian Penal Code."

It is evident that the Bench, of which I formed a member, endeavoured to answer the above question and my learned brother Leach supported the conclusion that he had arrived at by showing that a similar rule applied in England. *San Pai*'s case is authority for no more than this that if death results from an injury

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.

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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.