

REVISIONAL CRIMINAL.

Before Shadi Lal C. J.

MUSSAMMAT BARKAT (CONVICT) Petitioner

versus

THE CROWN—Respondent.

Criminal Revision No 66 of 1934.

Indian Penal Code, Act XLV of 1860, section 309 : Attempted suicide—Punishment—Release on probation coupled with sentence of imprisonment—legality of—Criminal Procedure Code, Act V of 1898, Section 562.

The accused (a woman) jumped into a well in order to destroy her life. She was convicted under section 309, Indian Penal Code, and sentenced by the trial Court to six months' imprisonment and at the same time released under section 562, Criminal Procedure Code, on probation of good conduct.

Held, that the sentence of imprisonment was wholly illegal, while the accused was released on probation of good conduct under section 562 of the Code.

Held also, that it is not necessary to inflict a sentence of imprisonment upon a person who, on account of family discord, destitution, loss of a dear relation or other cause of a like nature, overcomes the instinct of self-preservation and decides to take his life.

Case reported by Mr. A. C. Macnabb, District Magistrate, Attock at Campbellpur, with his No. 120-G., dated the 13th January, 1934, under section 438 of the Criminal Procedure Code, for orders of the High Court.

Petitioner, in person.

JEREMY, Public Prosecutor, for Respondent.

REPORT OF THE DISTRICT MAGISTRATE.

The facts of this case are as follows :—

On 3rd September, 1933, *Mussammat Barkat*, wife of *Dina*, caste sweeper, of *Sadar Bazar, Camp-*

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bellpur, accompanied by her two minor daughters went to a well, known as "Raja Ghulam Mohammad Wala," to fetch water. On reaching the well *Mussammât Barkat* put down the pitcher and jumped into the well. She was seen doing so by Jaffar, P. W., who was grazing his cattle near by. He hastened to the spot, and subsequently hearing the cries of the minor girls several other persons turned up. *Mussammât Barkat* was then rescued from the well and the matter was reported to the Police, who challaned the accused, *Mussammât Barkat*, under section 309, Indian Penal Code. She confessed her guilt before the trial Court.

The accused, on conviction by *Sheikh* Mohammed Iqbal Khan, *Tahsildar*, Attock *tahsil*, exercising the powers of a Magistrate of the 2nd class in the Attock district, was sentenced, by order dated 7th October, 1933, under section 309 of the Indian Penal Code, to six months' simple imprisonment. The Magistrate further added "She shall however be immediately released on entering into a bond for Rs. 500 with another surety worth the same amount to appear and receive sentence when called upon during a period of six months and she shall in the meantime keep the peace and be of good behaviour."

The proceedings are forwarded for revision on the following grounds:—

The order of the Magistrate is not in conformity with the provisions of section 562, Criminal Procedure Code, and is illegal, since he has not only convicted the accused under section 309, Indian Penal Code, but has also passed a sentence of six months' simple imprisonment and he has then added the order

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of releasing the accused. This view was taken in *Karim Bakhsh v. The Crown* (1).

The accused has executed the requisite bond.

ORDER OF THE HIGH COURT.

SHADI LAL C. J.—On the 3rd September, 1933, *Mussammatt Barkat* jumped into a well in order to destroy her life; and she has been rightly convicted under section 309, Indian Penal Code. The trial Court inflicted upon her a sentence of simple imprisonment for six months, and also released her under section 562, Criminal Procedure Code, on probation of good conduct. The language of section 562, however, makes it clear that the sentence of imprisonment imposed upon her, while she was released on probation of good conduct, was wholly illegal; and must, therefore, be quashed.

It appears that the unfortunate woman was driven to commit suicide by family discord or poverty, and she should be an object of commiseration and not of punishment. The law confers upon the Court a very wide discretion in the matter of punishment, and it is not necessary to inflict a sentence of imprisonment upon a person who on account of family discord, destitution, loss of a dear relation, or other cause of a like nature, overcomes the instinct of self-preservation and decides to take his life. In such a case, the unfortunate person deserves indulgence, and should be either released on probation of good conduct, or sentenced to a fine if he is not too poor to pay the fine. These observations apply with greater force to the case of a woman who attempts to commit suicide in similar circumstances. It is not possible to lay down any

hard and fast rule on the subject, but the Court must, in each case, consider the motive which has prompted a person to destroy his or her life.

A. N. C.

Revision accepted. SHADI LAL C.J.

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v.

THE CROWN.

APPELLATE CIVIL.

Before Tek Chand J.

SITAL DAS AND ANOTHER (DEFENDANTS) Appellants
versus

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PUNJAB AND SINDH BANK,
LIMITED (PLAINTIFF)
HOSHNAK MAL-HIRA NAND } Respondents.
AND OTHERS (DEFENDANTS)

Civil Appeal No. 139 of 1934.

Civil Procedure Code, Act V of 1908, Order XL, rule 1:
Interim Receiver—appointment of—in a suit by a mortgagee
(without possession) for recovery of the amount due to him.

The Respondent Bank, having brought a suit against the mortgagors and subsequent mortgagees of a factory, for recovery of the amount due to it on foot of an equitable mortgage, applied to the trial Court for appointment of a Receiver. The Court granted the petition and appointed the subsequent defendant-mortgagees (who were in possession under a lease) Receivers of the mortgaged property. On appeal by the subsequent mortgagees—

Held, that in this Province it is well settled that a mortgagee without possession is entitled to move the Court to appoint an *interim* Receiver and the Court may pass an order to that effect if, in the circumstances of the case, it thinks that it is just and convenient to do so.

Paras Ram v. Puran Mal-Ditta Mal (1), *Sujan Singh v. Punjab & Sind Bank Ltd.* (2), and *Paramasivan Pillai v. Ramasami Chettiar* (3), relied upon.

(1) (1925) 85 I. C. 737.

(2) 1932 Ind. Rulings 648.

(3) (1933) I. L. R. 56 Mad. 915 (F.B.).