

[APPELLATE CRIMINAL JURISDICTION.]

REG. v. GOVINDA.

Murder—Culpable homicide—Indian Penal Code (Act XLV. of 1860), Sections 299 and 300.

Where the prisoner knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the closed fist, producing extravasation of blood on the brain, and she died in consequence, either on the spot, or very shortly afterwards,

Held, that there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death, the offence committed by the prisoner was not murder, but culpable homicide not amounting to murder.

THIS case was sent up for the confirmation, by the High Court, the sentence of death passed on the prisoner by R. F. Mactier, Session Judge of Satara, on a conviction of murder.

The first issue raised by Mr. Mactier was "whether Bálái, the prisoner's wife, died from violence or not?" and he determined in the affirmative, saying:—

The medical evidence is clear on this point. The hospital
 says that Bálái died from effusion of blood on the brain,
 just above, and towards the inner corner of
 the eye, rather towards the corner of the
 forehead. There have been the external mark of a blow;
 the witness, vji, says that there were ten marks of
 blood on several places as well as the contusion on
 the forehead. The bleeding at the nose was probably caused by the
 violence in the neighbourhood. It is not very easy to say how far
 the injury extended to which the deceased was subjected, but it
 is clear that it was very severe, and possibly more injuries may
 have been inflicted than are spoken of; the hospital assistant,
 however, is clear on one point, that death arose in this case from
 effusion of blood on the brain."

The second issue raised was "whether this violence was inflicted on the prisoner;" and this, too, was decided in the affirmative for

- (c) With the knowledge that * * * the act is likely to cause death.
- (4) With the knowledge that the act is *so imminently dangerous that it must in all probability cause death*, or such bodily injury as is likely to cause death.

I have underlined the words which appear to me to mark the differences between the two offences.

(a) and (1) show that where there is an intention to kill, the offence is always murder.

(c) and (4) appear to me intended to apply (I do not say that they are necessarily limited) to cases in which intention to cause death or bodily injury. Furious at a mark near a public road, would be cases of Whether the offence is culpable homicide or murder on the degree of risk to human life. If death is a is culpable homicide; if it is the most probable result.

The essence of (2) appears to me to be found in I have underlined. The offence is murder, if the that the *particular person injured* is likely, either from p of constitution, or immature age, or other special circum be killed by an injury which would not ordinarily cau The illustration given in the section is the following:—

“A, knowing that Z is labouring under such a dis- blow is likely to cause his death, strikes him with in causing bodily injury. Z dies in consequence of the b guilty of murder, although the blow might not have bee in the ordinary course of nature to cause the death of a a sound state of health.”

There remain to be considered (b) and (3), and it; parison of these two clauses that the decision of doi like the present must generally depend. The offence homicide, if the bodily injury intended to be inflicted cause death; it is murder, if such injury is *suffi- nary course of nature* to cause death. The disti appreciable. It is much the same distinction a and (4), already noticed. It is a question of

lity. Practically, I think, it will generally resolve itself into consideration of the nature of the weapon used. A blow from the fist or a stick on a vital part may be likely to cause death; a wound from a sword in a vital part is sufficient in the ordinary course of nature to cause death.

In the present case the prisoner, a young man of 18, appears to have kicked his wife (a girl of 15) and to have struck her several times with his fist on the back. These blows seem to have caused her no serious injury. She, however, fell on the ground, and I think that the evidence shows that the prisoner then put one knee on her chest, and struck her two or three times on the face. On

the first blow, which, from the medical evidence, I believe to be violent and to have been delivered with the close of the fist on the girl's left eye, producing contusion and fracture of the skull. The skull was not fractured, but the blow caused extravasation of blood on the brain, and the girl died in consequence of the blow on the spot, or very shortly afterwards. On the evidence before the Sessions Judge and the assessors have found the prisoner guilty of murder, and he has been sentenced to death. I am of opinion that the offence is culpable homicide, and not murder. I do not think there was an intention to cause death, nor do I think that the bodily injury was sufficient in the ordinary course of nature to cause death. Ordinarily, I think, a blow on the eye does not cause death. But a violent blow in the eye from the fist, while the person struck is lying with his or her head on the ground, is certainly likely to cause death, either by producing fracture of the skull or extravasation of blood on the surface or in the substance of the brain. A reference to Taylor's Medical Jurisprudence (4th Edition, page 294) will show how easily life may be taken by a blow on the head producing extravasation of blood on the brain.

For the reasons I am of opinion that the prisoner should be found guilty of culpable homicide not amounting to murder, and sentenced to transportation for seven years.

This was accordingly passed by the Court.

59
61
62