

1876.

REG. v.
PARSA'PA'
MA'HA'-
DEVA'PA'.

seems to have been of opinion that the section must be held applicable to all contempts of Court. If the limitation imposed upon the section by the Allahabad Court be removed, as the Court thinks it must, the section must necessarily be held applicable to the case now before it; for the continuance of a nuisance, after the Magistrate's injunction to desist, is clearly a contempt of the Magistrate's authority.

The Court considers it must, therefore, annul the conviction and sentence.

Note.—See in addition to the cases cited in this judgment the case of *Sufatollah* (22 Calc. W.R. 49 Cr. Rul.), *Queen v. Jagaj Mal* (I.L.R. 1 All. 162), *Queen v. Gur Baksh* (I. L. R. 1 All. 193), and *Reg. Co. Guji Kom Ranu* (I. L. R. 1 Bom. 311).

[APPELLATE CRIMINAL JURISDICTION.]

Reference No. 63 of 1876.

August 10.

REG. v. LOCHA' KA'LA'.

*Extradition—The Code of Criminal Procedure (Act X. of 1872), Section 157—
Warrant—Police Officer.*

It is not essential to the validity of a warrant issued under Section 157 of Act X. of 1872 that the magistrate, issuing it, should be, at the time he issues it, within the local limits of his jurisdiction. He may issue such a warrant from a place in foreign territory.

THIS was a reference from A. Borradaile, Magistrate of Ahmedabad, under Section 296 of the Code of Criminal Procedure.

The Magistrate stated that Major Wodehouse, Assistant to the Political Agent in Kattywar, and Magistrate F. C. in the Ahmedabad District, issued from Camp Wadhwan, a place in Kattywar, a warrant for the apprehension of a non-European British subject in respect of an offence committed in Kattywar. The warrant was addressed to the Fouzdar of Palyad who, though Palyad is in foreign territory, was invested with the power of

blows on the chest were not the cause of death according to the doctor's evidence. It is quite possible—by no means improbable—that he may have, as he says, only intended to chastise her, though rather severely. I am disposed to think his act was culpable homicide not amounting to murder, and that it is punishable under Section 304, Indian Penal Code.

“No apparent motive is shown for taking her life.

“People often survive such blows and the prisoner may have intended to cause hurt, though aware that hurt might prove serious.”

LL, J. :—I understand that these proceedings have been brought under Section 271-B of the Code of Criminal Procedure that I may decide whether the offence committed by the prisoner was murder or culpable homicide not amounting

to murder. For convenience of comparison, the provisions of Sections 299 and 300 of the Indian Penal Code may be stated thus :—

Section 299.

Section 300.

Whoever commits culpable homicide, if the act by which the death is caused is

Subject to certain exceptions culpable homicide is murder, if the act by which the death is caused is done

with the intention of causing death ;

(1) With the intention of causing death ;

the intention of causing bodily injury which is likely to cause death ;

(2) With the intention of causing such bodily injury as the offender *knows to be likely to cause the death of the person to whom the harm is caused :*

(3) With the intention of causing bodily injury and the bodily injury so inflicted is likely to cause death ;

reasons which it is unnecessary for the purposes of this report to state.

The third issue was "whether this was 'murder' or the minor offence of culpable homicide?" In determining this, the Judge said:—

"I must hold that it was the more serious offence. There was no grave and sudden provocation, but this last beating seems to have been the conclusive long-continued series of beatings and the violence committed was such that the prisoner in committing it, took on himself the risk of causing death to
* * *

The case came on for hearing before KEMBALL and NARAYAN HARIDA's, JJ.

Dhirajlal Mathuradas, Government Pleader, appeared for the Crown.

Their Lordships at the outset intimated to the Government Pleader that there was a difference of opinion between them as to what offence the prisoner had committed, and that the case accordingly be referred to MELVILL, J., for his opinion.

In reviewing the case, Mr. Justice KEMBALL minuted that the prisoner was exceedingly cruel to his wife. "If she is legally guilty of her murder, I have no doubt; but in view of the circumstances, the age of the prisoner, and the state of doubt of the Judge as to what would be the proper sentence, make me hesitate to confirm the sentence. If I am disposed to alter it to transportation for life."

Mr. Justice NA'NA'BHA'I HARIDA's' minute ran thus:

"I am not satisfied that the prisoner intended to kill. This is hardly evidence sufficient to prove the 'malice aforethought' requisite under Section 300."

6/19
6/24
er acted cruelly, is quite
beat her otherwise than
on the nose caus

extending over Chowria, a village of the Dhandhuka Taluka of the Ahmedabad District, where the accused was captured in execution of the warrant. Mr. Borradaile was of opinion that the warrant having been issued from foreign territory was illegal and should be set aside. He considered "that the offender being a resident of the Ahmedabad District should only have been arrested on a warrant issued by the Political Agent, under Section 11 of Act XI. of 1872, or, Major Wodehouse having been duly authorized (*vide* notification dated 10th August 1875, published at page 802 of the *Bombay Government Gazette*, dated 12th idem), on a warrant issued by Major Wodehouse, under Section 157 of the Code of Criminal Procedure, *within* the district, the issue of a warrant being a portion of the inquiry which Section 63 of the Criminal Procedure Code directs shall be made in the district. The warrant was executed by a foreign fouzdar who has not the charge of a police station in British territory. Section 161, Criminal Procedure Code, orders that a warrant shall ordinarily be directed to a police officer, but if no police officer be immediately available, the Magistrate may direct it to any other person. In the present case the police of this district were immediately available."

The reference was heard by KEMBALL and NA'NA'BHA'I HARJI JJ.

PER CURIAM:—Section 63 of the Criminal Procedure Code has no application to the present case. The offence committed in a foreign territory, the presence of the portion of Ahmedabad District in British territory was unnecessary for the purposes of issuing a warrant.

Major Wodehouse having jurisdiction in the district where the offender was found, it was competent to him, under Section 157 of the Criminal Procedure Code, to issue a warrant for the arrest of such offender.

The Pályád Thánadár appears to have been invested with powers extending over the village where the accused was arrested. The issue of the warrant, therefore, to him was perfectly legal.