

1936

GANESHA
v.
SADIQ.

right * * * the time limited for instituting a suit * * * against the person guilty of the fraud or accessory thereto * * shall be computed from the time when the fraud first became known to the person injuriously affected thereby." The plaintiff's suit being within time and his right being superior to that of Ganesha, no further question arises in this case.

We accordingly affirm the decision of the Courts below and dismiss this appeal with costs.

A. N. C.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Addison and Din Mohammad JJ.

IMAM BAKHSH—Appellant

versus

THE CROWN—Respondent.

Criminal Appeal No. 1931 of 1936.

Indian Penal Code, Act XLV of 1860, Section 300, Exception 1, Proviso — Grave and sudden provocation — not sought — what amounts to.

The appellant was informed by K. of an intimacy between his sister *Mst.* Kauran and Shera but he was not convinced. On the night in question K. saw Shera entering the *kotha* of *Mst.* Kauran at midnight and, having quietly locked the door from outside, went and informed the appellant, who picked up an axe and went straight to the *kotha* of *Mst.* Kauran. Appellant asked K. for the key of the door but the latter refused to give it to him, saying that all he should do was to inform the Police. Appellant then broke open the lock with his axe and killed both his sister and Shera, who were inside the *kotha*.

Held, that the provocation was not sudden and was sought by the accused himself and, therefore, Exception 1 to section 300 of the Indian Penal Code did not apply to the present case.

Mehra Mistak v. Emperor (1), relied upon.

1936

Nov. 10.

Appeal from the order of Mr. S. A. Rahman, Sessions Judge, Mianwali, dated 8th August, 1936, convicting the appellant.

1936

IMAM BAKHSH
v.
THE CROWN.

KHURSHAID ZAMAN, for Appellant.

R. C. SONI, for Government Advocate, for Respondent.

The judgment of the Court was delivered by—

ADDISON J.—This is an appeal by Imam Bakhsh against a sentence of transportation for life passed upon him under the provisions of section 302, Indian Penal Code, for the murders of his sister, *Mussammât Kauran*, who was a widow, and of one Shera, a *mochi*.

The facts are quite clear. *Mussammât Kauran* was suspected by Khadam Hussain, a brother of her deceased husband, of having an intimacy with Shera and he told this to the appellant, the brother of *Mussammât Kauran*, but the appellant was not convinced. On the night in question Khadam Hussain saw Shera entering the *kotba* of *Mussammât Kauran* at midnight and quietly placed a lock outside the door. He then went and informed the appellant, who picked up an axe which was lying near his bed and went straight out of his house to the *kotba* of *Mussammât Kauran*. He found it locked. He asked Khadam Hussain to hand over the key to him. This he refused to do and told the appellant that all that should be done was to report the matter to the police. The appellant threatened Khadam Hussain who ran away in order to call other persons so as to prevent the appellant doing harm to any one. Thereupon the appellant with his axe broke open the lock and the door and found his sister and Shera inside. He then proceeded in a most brutal manner to kill Shera and, when he was

1936

IMAM BAKHSH
v.
THE CROWN.

satisfied that he was dead, he turned upon his sister and killed her in as savage a way. The witnesses, who arrived at the spot, called out to him to stop injuring his sister but he would not stop.

The only point urged before us in appeal was that the appellant had grave and sudden provocation. One of the provisos, however, to Exception 1 to section 300, is that the provocation is not sought. In the present case it is established that the appellant knew that his sister was suspected of an intimacy with Shera. When told by Khadam Hussain that night, he left his house after picking up an axe, went to the house of his sister, broke into it in spite of protests and then proceeded first to murder Shera and then to murder his sister. Even if it is assumed that the provocation was grave, it cannot be said that it was sudden. The appellant knew what to expect in the house before he left his own house. In order actually to see the couple together, he had to break into the house after which he proceeded to slaughter his sister and Shera in a savage manner, one after the other. Obviously this provocation was not sudden while it was also sought by him. It follows that Exception 1 to section 300, does not apply in the present case. A similar case, decided by a Division Bench of this Court, is *Mehra Mistak v. Emperor* (1). There is no escape from the conclusion that this was a case where two people were deliberately murdered.

There is no force in the appeal and we dismiss it.

P. S.

Appeal dismissed.