

himself producing an incriminating article can in my view be proved under various other sections of the Evidence Act.

[*The remainder of this judgment is not required for this report. Ed.*]

COLDSTREAM J.—I agree.

A. N. C.

*Appeal accepted.*

**APPELLATE CRIMINAL.**

*Before Din Mohammad J.*

GHULAM QADIR—Appellant

*versus*

THE CROWN—Respondent.

**Criminal Appeal No. 749 of 1936.**

*Indian Penal Code, Act XLV of 1860, section 307 : Attempt to murder — Causing of injury — whether a necessary ingredient of an offence under the section.*

*Held*, that in order to bring a case within the purview of section 307, Indian Penal Code, it is not necessary that the injury inflicted should in itself be sufficient in the ordinary course of nature to cause death.

*Martu Vithoha Prabhu v. Emperor* (1) and *Emperor v. Balli* (2), dissented from.

*Held further*, that section 307 may apply even if no hurt is caused. The causing of hurt is merely an aggravating circumstance.

*Appeal from the order of Mr. D. W. M. Skeaf, Magistrate, 1st Class, exercising enhanced powers, Sialkot, dated 8th June, 1936, convicting the appellant.*

S. M. IFTIKHAR ALI, for Appellant.

NAZIR HUSSAIN, Assistant Legal Remembrancer, for Respondent.

DIN MOHAMMAD J.—Ghulam Qadir has been convicted under section 307 of the Indian Penal Code, and sentenced to five years rigorous imprisonment.

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The case for the prosecution is that he was in love with one *Mussammat* Barkat Bibi whom the trial Magistrate has described as young and attractive, and that after her marriage with Allah Rakha, their relations became strained. Ghulam Qadir was bent upon having her at any cost and the woman did not agree. On the day of the occurrence she was on a temporary visit to her parents' house when Ghulam Qadir went there armed with a *toka* and inflicted with it terrible wounds on her neck and jaw. *Mussammat* Barkat Bibi has stated that, on two occasions before during her visit there, the accused had met her and had threatened to murder her if she did not agree to run away with him.

Counsel for the appellant has, on the authority of *Martu Vithoha Prabhu v. Emperor* (1) and *Emperor v. Balli* (2), contended that the act of Ghulam Qadir does not fall under section 307, Indian Penal Code, inasmuch as none of the injuries inflicted by him was sufficient in the ordinary course of nature to cause death. With all respect to the learned Judges who have delivered those judgments I am disposed to think that the construction placed by them upon section 307, Indian Penal Code, is erroneous. To bring the case within the purview of section 307, Indian Penal Code, it is not necessary that the injury in itself may be sufficient in the ordinary course of nature to cause death. The material portion of the section reads as follows:—

“Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of

(1) (1913) 21 I. C. 881.

(2) (1935) 155 I. C. 1015.

murder, shall be punished \* \* \* ; and if hurt is caused to any person by such act, the offender shall be liable \* \* \* .”

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To this section are appended four illustrations which throw a great deal of light on the intention of the Legislature in enacting this provision of law. The language of the section makes it clear that even if mere hurt is caused by an act which is done with such intention or knowledge and under such circumstances that if by that act death is caused, the offender will be guilty of murder, section 307, Indian Penal Code, will apply. We cannot read into the words of the section the condition laid down by the judgments cited above, as the scope of the section will then be unjustifiably narrowed down. Section 307 may apply even if no hurt is caused. The causing of hurt is merely an aggravating circumstance and it cannot, therefore, be reasonably argued that unless an injury sufficient in the ordinary course of nature to cause death is inflicted on the victim, the intention contemplated by section 307, Indian Penal Code, cannot be presumed. Under this section the intention precedes the act and is to be proved independently of the act, and not merely gathered from the consequences that ensue. All that is necessary to be established is the intention with which the act is done and if once that intention is established, the nature of the act will be immaterial. I have no hesitation in holding, therefore, that the appellant has been rightly convicted.

Counsel has further urged that the sentence passed on the appellant is excessive. In this also I do not agree with him. Two of the injuries were inflicted on the neck of *Mussammat Barkat Bibi* and

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the third on her jaw, and this evidently shows that the attack on her was not only murderous but most brutal.

I, therefore, dismiss this appeal and confirm the sentence.

P. S.

*Appeal dismissed.*

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**CRIMINAL MISCELLANEOUS.**

*Before Din Mohammad J.*

K. L. GAUBA—Petitioner.

*versus*

THE CROWN—Respondent.

**Criminal Miscellaneous No. 246 of 1936.**

*Criminal Procedure Code, Act V of 1898, section 526 — Transfer of case — grounds for — Section 173: Accused, whether entitled to call upon prosecution to produce in Court all the documents on which they intend to rely.*

*Held*, that the mere passing of an illegal order by the Court, in good faith, would not justify an inference against the honesty or impartiality of the Court.

*Held also*, that an accused person is not entitled to have his case transferred merely because he chooses to place a sinister interpretation on an innocent act of the Magistrate.

*Held further*, that neither in section 173 of the Code, nor in the form prescribed by the Local Government is it provided that the prosecution should produce along with the *chalan* all the documents on which reliance is to be placed in the trial, or which would be produced by the witnesses to be tendered for the prosecution. An accused person is consequently not entitled, as of right, to insist upon the production of any such documents before the case starts. He does not run the risk of being hampered in his defence, as the law clearly entitles him to cross-examine, even after the charge.