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LAL DIN
v.
THE OFFICIAL
RECEIVER,
LYALLPUR.
BHIDE J.

could not be sold in any case by the Insolvency Court, in view of the authorities cited above. It seems to me clear in the circumstances that the Official Receiver had no right to sell the leasehold rights.

I accordingly accept this petition *ex parte* and set aside the order of the Insolvency Judge, regarding the sale of the leasehold rights, but direct at the same time that the said rights shall vest in the Official Receiver for a period of two years from this date for the benefit of the creditors. The creditors will be able to avail themselves of these rights only by taking proper proceedings, for example, by a suit, etc.

No order as to costs.

A. N. K.

Revision accepted.

APPELLATE CRIMINAL.

Before Young, C. J.

HUSSAIN—Appellant,

versus

THE CROWN—Respondent.

Criminal Appeal No. 824 of 1938.

Indian Penal Code (Act XLV of 1860), SS. 300, Exception 1, 304 Part 1 — Long adulterous intercourse with accused's wife — deceased found occupying the same bed with her — killed instantaneously — gravest form of provocation — Sentence — numerous injuries on deceased — no criterion in awarding sentence.

The deceased carried on an adulterous intercourse with accused's wife while the accused was undergoing a sentence of imprisonment with the result that while the accused was in jail a child was born to his wife. On liberation from jail he was told of his dishonour by his fellow villagers and chafed about it but he exercised admirable self control and did not attempt in any way to take revenge on the deceased. The intrigue continued and nothing happened for two years after accused came out of jail. On the day in question the accused

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left his village in the morning and the deceased calculated that he would not return that night but the accused returned and was sleeping with his wife on the roof on separate cots. The deceased entered the house, went up to the roof and, thinking that the husband had not returned, lay on the bed occupied by accused's wife. The wife, knowing that her husband was there, cried out, making a pretence that the man was a thief. The accused woke up and found the deceased lying on the cot with his wife. He thereupon killed him instantaneously. The Sessions Judge found that the provocation to the accused was intense and sentenced him to three years rigorous imprisonment in view of numerous injuries on the deceased.

Held, that in the circumstances of the case, the accused had the gravest form of provocation that can well be imagined and therefore the Sessions Judge was right in convicting him under s. 304, Part 1, Indian Penal Code, as the accused was entitled to the benefit of Exception (1) to s. 300, Indian Penal Code.

Held however, that even accepting that all the wounds on the deceased were inflicted by the accused the sentence was too great because if a person is deprived of self control, the mere amount of beating which he gives to the person who deprives him of that control is not a proper criterion to take into account in awarding a sentence. The more self control is lost and therefore, the more Exception 1 applies to the case, the more likely are numerous injuries to be inflicted.

Appeal from the order of Mr. E. Mukerji, Additional Sessions Judge, Lahore, dated 9th August, 1938, convicting the appellant.

Nemo, for Appellant.

NAND LAL SALOOJA, for Advocate-General, for Respondent.

YOUNG C. J.—Hussain was charged in the Court of the learned Additional Sessions Judge with the murder of Murad. The learned Judge found the accused guilty under section 304, Part I, Indian Penal Code, and sentenced him to three years' rigorous imprisonment. The accused appeals from jail and is not represented here.

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This is a case where the accused has killed another man found in an attempt to commit adultery with his wife.

The facts of this case are worth stating. Hussain accused had been convicted previously of theft and had served a sentence of two years' rigorous imprisonment. While Hussain was in jail Murad, who has been killed, carried on an adulterous intrigue with Hussain's wife with the result that while Hussain was in prison a child was born to Hussain's wife. There can, therefore, be no doubt of the adulterous connection of Murad with the wife of Hussain. When Hussain was liberated from jail he came back to the village. He was told of his dishonour by his fellow villagers and I have no doubt was chafed about it. Hussain, however, exercised admirable self-control and did not attempt in any way to take revenge on Murad. Thus about two years elapsed after Hussain had come out of jail without any action having been taken by Hussain. The intrigue, however, appears to have continued. On the 4th May, 1938, Hussain left his village in the morning and it appears that Murad had come to the conclusion that he would not return that night. Hussain, however, did return and was sleeping with his wife on the roof on separate cots. Murad entered the house, went up to the roof and thinking no doubt that the husband had not returned lay on the bed occupied by Hussain's wife. The wife knowing that her husband was there cried out making a pretence that the man was a thief. Hussain woke up and found Murad lying on the cot with his wife. Hussain thereupon killed Murad.

The learned Sessions Judge has found very properly that the provocation to the accused was intense. He had indeed the gravest form of provocation that can well be imagined. There was no delay in the

attack by Hussain upon Murad. The learned Additional Sessions Judge, however, sentenced Hussain to three years' rigorous imprisonment. The accused does not deny the killing of Murad. The story for the defence is that the woman called out that there was a thief and the accused pursued Hussain thinking him to be a thief and dealt him a *sota* blow on the head. The other witnesses gathered on the spot and they beat the deceased. I am satisfied, however, that the accused even from his own grounds of appeal knew that the man was Murad who had been living with his wife while he was in jail and I must take it he killed Murad not because he was a thief but because he found him lying with his wife. In these circumstances as he caught the deceased *flagrante delicto* in the act of sleeping with his wife at night the accused is entitled to the benefit of Exception (1) to section 300 which is that culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation causes the death of the person who gave the provocation. As I have pointed out the provocation in this case is as grave as it is possible to imagine. Not only had the deceased taken advantage of the fact that Hussain was in jail to seduce his wife and to make her pregnant. The accused had exercised the greatest self-control on coming out of jail; but seeing the deceased actually with his wife at night in bed was sufficient to deprive even him of his self-control. The learned Judge was right in convicting the accused under section 304, Part I, Indian Penal Code. The only question that remains is one of sentence. In my opinion on the facts of this case the sentence of three years' rigorous imprisonment is a great deal too much. The learned Judge takes into consideration that there were many injuries on the

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deceased. Even accepting—which is not clear—that the accused did cause all the injuries I am not satisfied that the sentence is correct. It is to be noticed that there were incised wounds as well as wounds caused by blunt weapons on the body of the deceased and it may well be, as pleaded by the accused, that the defence may be true that the villagers on coming in assisted in the killing of the deceased. But even accepting that all these wounds were inflicted by the accused the sentence is too great. The essence of Exception I is that the accused is deprived of the power of self-control. Obviously in my opinion if a person is deprived of self-control the mere amount of beating which he gives to the person who deprives him of that control is not a proper criterion to take into account in awarding a sentence. The more self-control is lost, and therefore the more Exception I applies to the case, the more likely are numerous injuries to be inflicted. Under the circumstances I consider a sentence of three months to be adequate.

I set aside the sentence of three years' rigorous imprisonment and impose instead a sentence of three months' rigorous imprisonment.

A. N. K.

Sentence reduced.