

1928

ASSISTANT  
COLLECTOR,  
SALSETTEv  
DAMODARDAS  
TRIBHU-  
VANDAS

Marten, C. J.

rupees. This is by no means then a trifling matter which we have to deal with.

The result, in my opinion, is that the learned Judge exercised his discretion in violation of well recognized principles of law and that he was not justified in law in exercising his discretion in the way he did, whether or no the claimants' demands were extravagant. In my judgment no adequate reason is shown for departing from the ordinary rule that costs should follow the event.

Accordingly, I would hold that these appeals should all be allowed, and that the respondents should be directed to pay the costs of Government in the Court below and also before us. But the same qualification will be imposed as in *Assistant Development Officer, Kurla Area v. Zuje*,<sup>(1)</sup> namely, that in regard to the amount of the pleader's fees awarded, the respondents should not have to pay anything in the lower Court in excess of what is certified by the Government Pleader concerned to have been really received by him from Government. That proviso does not apply to the costs in the appeal Court.

MURPHY, J. :—I agree in the judgment delivered by the learned Chief Justice.

*Appeal allowed.*

J. S. K.

<sup>(1)</sup> (1928) F. A. No. 126 of 1926, decided by Fawcett, Ag. C. J., and Mirza, J. on June 25, 1928 (Unrep.).

## CRIMINAL REVIEW.

*Before Mr. Justice Mirza and Mr. Justice Baker.*

EMPEROR v. HIRU SATWA DESLA, ACCUSED.\*

1928  
September

11 *Criminal Procedure Code (Act V of 1898), section 45 (1)—Suicide—Owner of house—Duty of giving information to police—Indian Penal Code (Act XLV of 1860), section 176.*

Under section 45 (1) of the Criminal Procedure Code, 1898, the duty of giving information to the police of the commission of an offence is cast only on the owner or occupier of land and not on the owner of a house.

\*Criminal Review No. 213 of 1928.

*Queen-Empress v. Achutha*,<sup>(1)</sup> followed.

Hence an owner of a house who fails to give information to the police regarding a suicide committed by a member of his family by falling into a well situated in the compound of the house, does not commit an offence punishable under section 176 of the Indian Penal Code, 1860.

1928  
EMPEROR  
v.  
HIRU SATWA

THIS was a review of the order passed by S. V. Lavate, Magistrate, First Class, Shahapur, under the review jurisdiction of the High Court.

The accused was the owner of a house in Kinhavli village. He lived in the house with his son and daughter-in-law by name Sakwar.

On September 30, 1927, Sakwar committed suicide by throwing herself into a well situated in the compound of the house. The accused had sent his son to inform the Police Patil of the village but as he was not in the village the dead body of Sakwar was disposed of by the accused.

The accused was charged under section 176 of the Indian Penal Code for failing to give information to the police of the commission of the offence. He was tried by the First Class Magistrate, Shahapur, who convicted the accused of the offence under section 176, but as he was old in age released him after admonition under section 562 (1A) of the Criminal Procedure Code.

The papers in the case were called for by the High Court under its review jurisdiction.

MIRZA, J. :—The accused has been convicted by the First Class Magistrate of Shahapur of an offence under section 176, Indian Penal Code, and released after admonition as contemplated under section 562 (1A) of the Criminal Procedure Code. The accused is the head of a joint-family. A daughter-in-law of his who resided with him in the family-house committed suicide by throwing herself into a well situated in the compound of the house. Under section 45 (1), Criminal Procedure

<sup>(1)</sup> (1888) 12 Mad. 92,

1928  
 EMPEROR  
 v.  
 HIRU SATWA  
 Mirza, J.

Code, every owner or occupier of land has forthwith to communicate to the nearest Magistrate or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may possess respecting the occurrence of any sudden or unnatural death. The accused was convicted because he failed to give such information regarding the unnatural death of his daughter-in-law.

The accused must be regarded as the owner of the house and not the owner of the land within the meaning of section 45 of the Criminal Procedure Code. In *Queen-Empress v. Achutha*,<sup>(1)</sup> it was held that the duty of giving such information is cast only on the owner of land, and is not to be extended to the owner of a house. It is clear that section 45 of the Criminal Procedure Code is not intended to be punitive in itself, but to facilitate information as to the commission of an offence, and thereby enable steps being taken in the investigation of the crime. The section speaks of the owner or occupier of land, but not of a house. Where there are houses it is expected that the place would be populous and the police would somehow get the information. In cases of land in the mofussil there are not always enough policemen available in the locality. Hence it is necessary that the owner or occupier of the land should give such information to them. Under the circumstances we are of opinion that section 45 of the Criminal Procedure Code should not be extended so as to include owners or occupiers of houses. We set aside the conviction.

BAKER, J. :—I agree. For a conviction under section 176 it must be shown that the accused is legally bound to give any notice or to furnish information on any subject to a public servant. In the present case there is no finding by the Magistrate that the accused

<sup>(1)</sup> (1888) 12 Mad. 92.

was the occupier of land. It has been held by the Madras High Court in *Queen-Empress v. Achutha*<sup>(1)</sup> that no obligation under section 45 of the Criminal Procedure Code attaches to the occupant of a house in a village. The suicide of the accused's daughter-in-law amounts to an unnatural death within the meaning of section 45 (1) (d) of the Code of Criminal Procedure, and therefore any person who falls within the definition in that section would be bound to give notice of it. But, in the absence of any distinct finding that the accused is the owner or occupier of land, or otherwise falls within the class of persons mentioned at the commencement of that section, section 45 will have no application. I agree, therefore, that the conviction should be set aside.

*Conviction set aside.*

J. G. R.

<sup>(1)</sup> (1885) 12 Mad. 92.

## APPELLATE CIVIL.

*Before Sir Amberson Marten, Kt., Chief Justice, and Mr. Justice Murphy.*

ARDESAR JIVANJI MISTRI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS  
v. AIMAI KUVARJI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS\*

1928  
September 23

*Public Highway—Long user—Presumption as to dedication to the public—Right of the Government to stop or divert such highway—Land Revenue Code (Eom. Act V of 1879), section 37—Persons having special interest in preservation of such right of way competent to sue—Civil Procedure Code (Act V of 1908), section 91 (2).*

Plaintiffs Nos. 1, 2 and 3 were owners of lands adjoining a *gowan* or public passage. From time immemorial this *gowan* was used as a public cart road till 1920, when the Government (defendant No. 2) sold the said passage to defendant No. 1, who included it in his own land and erected a building thereon which encroached upon this *gowan*. After giving notice to defendant No. 1 to remove the obstruction the plaintiffs filed a suit against defendant No. 1 and the Government (defendant No. 2) for removal of the encroachment and obstruction to the public passage. They also obtained an order giving them liberty to sue on behalf of themselves and their fellow villagers :

*Held*, (1) that the passage in dispute being used as a public cart-road from time immemorial was a public highway and its dedication to the public may be presumed from long user :

\*First Appeal No. 263 of 1925 from the decree passed by B. N. Sanjana, Joint Subordinate Judge at Thana, in Suit No. 6 of 1922.

L. J. 10—2