

Before Mr. Justice Norman and Mr. Justice E. Jackson.

THE QUEEN v. RAMTAHAL KAHAR.

Grave Provocation—Presumption—Loss of the Power of Self-Control—Providing oneself with a Deadly Weapon—Culpable Homicide not amounting to Murder.

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July 12.

The wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantation. The prisoner armed with a sword and watching from the roof of the house saw his wife being actually violated by the deceased. He jumped down from the roof and struck deceased with his sword in several places, from the effects of which he died.

Held. that the prisoner's conviction for murder could not be sustained. The offence committed was culpable homicide not amounting to murder.

NORMAN, J.—The prisoner has been convicted by the Judge of Gya of the murder of one Bahuri Tewari, and sentenced to transportation for life. While passing this sentence, the Judge suggested that the papers should be sent to the Lieutenant-Governor of Bengal, in order that the sentence might be reduced if his Honor should think fit to exercise the powers of mitigating the sentence, under section 54 of the Criminal Code of Procedure.

On a perusal of the abstract statement of the cases tried before the Sessions Judge, we sent for the record under section 403.

The facts are shortly as follows :—

The prisoner is a ryot, and he and his wife appear to be servants of one Durgaprasad. He, suffering from partial blindness, sent for the deceased Bahuri Tewari, a brahmin, who practised as a baido or native physician.

Bahuri represented that he must perform certain incantations for which the presence of a young woman was necessary. The wife of Durgaprasad assisted by two female servants, and her brother, Narayan Sing, forcibly took the prisoner's wife, Chunya, to Bahuri to do some Puja. They fastened the door and went away, leaving her with Bahuri. This was on Wednesday night. On the following day she complained to her husband, the prisoner. The prisoner says that she told him she had been ravished by Bahuri, and that she would not survive the disgrace. Chunya in her evidence says that she did not tel

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her husband that she had been ravished on Wednesday night, but that she told him all that had occurred, which was that after she had been left with Bahuri, he told her to prepare a *Chula* in the corner to light a fire and place incense on it; that there was then a noise at the door; that Bahuri asked if there was any one outside, and then let her go.

The prisoner borrowed a *phulsi*, or sword, and on the following night placed himself on the roof of the cow-house, in which Bahuri and his nephew lodged, to watch what went on.

The prisoner's wife was again taken to Bahuri. After some pretence at incantations, Bahuri threw her on a charpoy, and attempted to have connection with her by force. The prisoner jumped down from the roof, and rushed into the room; his wife escaping by the door saw the prisoner strike Bahuri with the sword in several places. From the effects of the wounds so received, Bahuri died the next day from loss of blood.

It appears to me that the prisoner should not have been convicted of murder. I think the story of the wife that she had not been ravished, and did not complain to her husband that she had been ravished on the Wednesday night, is evidently true. The prisoner, no doubt found himself helpless, unable to resist the united influence of Durgaprasad, who stood in the relation to him of both master and zemindar, of his master's wife and family and of the Brahmin Baido. Practically he probably could not have prevented his wife from being left with the Baido for the purpose of his incantations. All he could do was to watch and protect her if she should be assailed during the night. The deceased is described as a robust middle aged man, and he had a nephew with him. It seems not unreasonable that the prisoner should have provided himself with a weapon of offence on such an occasion. When the prisoner found that his wife was actually being violated by the deceased, it seems to me that he received the gravest of all possible provocations, and that he may, and ought to be presumed to have been deprived of the power of self-control by such provocation. The wounds were just what a man under the impulse of sudden passion on a sudden emergency would inflict. Having struck three or four blows, the

prisoner went away without waiting to see the effect of them, without staying to see that he had killed the deceased out-right. There was no mutilation and no wanton cruelty on the prisoner's part. The offence of which the prisoner should have been found guilty is culpable homicide not amounting to murder. I think a sentence of eight months' imprisonment to be computed from the date of his sentence by the Sessions Court will be amply sufficient to meet the ends of justice.

JACKSON, J.—I quite concur.

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THE QUEEN v. HARDYAL.

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July 13.

Power of Sessions Judge—False Evidence—Penal Code, ss. 193, 194.

The Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court.

In the trial of a prisoner for murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas before the Magistrate he had stated as was the fact that the prisoner had committed the murder.

Held, that such witness was guilty under section 193, and not under section 194 of the Penal Code, as he did not know that he would cause a conviction for murder.

JACKSON, J.—The Judicial Commissioner has now proved the deposition which the prisoner gave before the Sessions Court in the trial of Mohan Lal for murder. In that deposition, the prisoner stated that one Dava had cut down his aunt Patti. It is proved that before the Magistrate he had stated that Mohan Lal had committed the murder. The other evidence taken in the case also proves that Mohan Lal committed the offence. Finally, the prisoner in his defence has admitted that his deposition before the Judicial Commissioner was false, and that before the Magistrate was the true statement. The prisoner is therefore guilty of having given false evidence before the Judicial Commissioner, but I think his offence falls within section 193 and not section 194. The prisoner, when he made that false deposition, did not know that he would cause, or know it to be