

Before Mr. Justice Macpherson and Mr. Justice Morris.

QUEEN *v.* NOBIN CHUNDER BANERJEE.*

1873
Oct. 24.

Criminal Procedure Code (Act X of 1872), s. 263—Verdict of Jury—Murder—Insanity.

Baboo Juggadamund Mookerjee for the Crown.

Mr. Bonnerjee (with him Baboo Bacharam Mookerjee) for the prisoner.

THE facts are sufficiently stated in the judgment of the Court which was delivered by

See also
14 B. L. R.
Ap. 1.

MACPHERSON, J.—The Jury in this case have found that the prisoner caused the death of his wife, but that he is not guilty of murder, because when he killed her, he, by reason of unsoundness of mind, was incapable of knowing that he was doing an act which was wrong or contrary to law. The Sessions Judge, disagreeing with the verdict of the Jury as regards the unsoundness of the prisoner's mind was of opinion that he ought to have been convicted of murder; and he has (under s. 263 of the Criminal Procedure Code) submitted the case to the High Court, considering it necessary for the ends of justice to do so. It thus becomes necessary for us to deal with the case submitted to us as with an appeal, which we read as meaning an appeal by the prosecution: and by the provisions of s. 263, we have authority to convict the accused person on the facts, and to pass sentence accordingly.

In the "grounds" recorded by the Judge as required by s. 404, he says that in his opinion the verdict is opposed to the evidence on the record; that the accused was not of unsound mind; and that he committed the offence of murder.

There is really but one question before us that as to the state of the prisoner's mind at the time he caused his wife's death. That he did cause her death cannot be seriously doubted. The Jury have found as a fact that he did, and the Sessions Judge agrees with them as to this. And that this finding is correct is, we think, conclusively shown by the evidence.

The learned Counsel for the prisoner has contended that as, under s. 257 of the Criminal Procedure Code, it is the duty of the Jury (as distinguished from the duty of the Judge) to decide which view of the facts is true, this Court cannot disturb, or at any rate ought not to disturb, the verdict of the Jury, if there is on the record any evidence whatever in support of it. But s. 257 must be read as qualified by s. 263, the effect of which is that, if the

* Reference to the High Court under s. 263 of the Code of Criminal Procedure by the Officiating Sessions Judge of Hooghly, dated the 11th September 1873.

Judge disagrees with the Jury and submits the case to the High Court, the whole matter is opened up, the High Court must treat the case as before it on appeal, may convict the accused person on the facts, and, if it does convict him, shall pass the proper sentence upon him. We quite agree, however, that the powers given to this Court by s. 263 are not to be lightly exercised; and that the unanimous verdict of a Jury ought not to be set aside, even if the Sessions Judge disagrees with it, unless that verdict is clearly and patently wrong and unsustainable on the evidence. If there were any substantial doubt in this case, we should certainly not disturb the verdict. It appears to us, however, that there can be no reasonable doubt about the matter. Without saying that there is on the record absolutely nothing which could be said to afford some evidence of unsoundness of mind, we have no hesitation in saying that there is scarcely any such evidence, and that, such as it is, it is wholly unreliable and worthless for the particular purpose of proving insanity. Witnesses speak of the intensity of the prisoner's rage and grief when he heard of his wife's alleged infidelity, a day or two before the murder; of his rolling on the ground in his passion; of his eyes being red or blood-shot; and of his skin being hot. They also tell how, when he had struck down his wife, he came out of the house, calling aloud that he had killed her, and voluntarily giving himself up to a chaukidar that he might be dealt with according to law for what he had done. These points are relied on as showing insanity. It may be that if there had been substantial evidence of the prisoner's unsoundness of mind, these facts, or some of them, might have been deemed to be corroborative of it. But in themselves these facts, whether taken singly or together, are no real evidence of unsoundness of mind, for there is not one of them which might not in the natural course of events have been found to exist in the case of a man who was perfectly sane, but was laboring under the influence of great grief and passion.

It is not because a man commits a very horrible murder, or because he commits it while laboring under strong passions and feelings, that therefore the world is to assume that he must have been insane when he committed the deed. The fact of unsoundness of mind is one which must be clearly and distinctly proved, before any Jury is justified in returning a verdict under s. 84 of the Penal Code. Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes until the contrary is proved.

Here it is not attempted to be proved that prior to this occurrence, the prisoner ever at any time showed any symptoms of insanity; it is not even suggested that the prisoner was of unsound mind until he heard the reports which caused him two days afterwards to take his wife's life. Nor is it alleged that he was of unsound mind subsequently, at the time he was tried, or at any other time. And not a single medical witness, nor even the jailor who has had him in custody since the murder (which took place in the end of

1873

 QUEEN
 v.
 NOBIN
 CHUNDER
 BANERJEE.

1873

QUEEN
v,
NOb-N
CHUNDER
BANERJEE.

May), has been called to speak as to the prisoner's mind being unsound. The case proved is simply that the prisoner, who was employed in a Government Printing Press in Calcutta, and up to that time was of sound mind, went from Calcutta on the 24th May to visit his wife who was living in her father's house; that almost immediately after reaching his father-in-law's house, he became aware of certain rumours as to his wife's infidelity; that he (and apparently not without cause) believed these rumours to be true, and considered that her father was very much to blame in the matter; that he was passionately angry and greatly grieved at what he heard, and removed his wife from her father's house to that of an aunt (*didi-ma*) who lived close by; that he resolved to bring his wife away with him back to Calcutta, but was afraid (and very likely with good reason) that he would be prevented from doing so by those who had led his wife astray; that he took his wife back to her father's house on the 27th, saying that on the next day he would take her to Calcutta; that the same evening, seizing the opportunity of his being in the house alone with his wife, he murdered her; and that, having murdered her he ran out of the house crying aloud that he had done so, and went and delivered himself up to a *chaukidar* saying he had killed his wife and he might deal with him as the law directed.

The prisoner has confessed the whole matter at length before the Deputy Magistrate and subsequently before the Magistrate. And the statements made by him are borne out in all substantial respects by the evidence of the witnesses who have been examined. It is clear that the murder was committed owing to the unhappy position in which the prisoner considered his wife and himself to be placed. He did the deed under the influence of anger, jealousy, and grief. No doubt any person placed in the position in which he was, or believed himself to be placed, is much to be commiserated. But there is absolutely nothing on the facts before us from which any reasonable person can conclude that the prisoner was "incapable of knowing the nature of the act," or that he was incapable of knowing that he was doing what was wrong or contrary to law. On the contrary, all the evidence shows that he knew the nature of the act perfectly well, and knew that it was wrong and that it was contrary to law.

On the whole we think the verdict of the Jury so utterly wrong, and so entirely against the evidence, that we consider that the Judge acted rightly in submitting the case under s. 263, and that it is our duty to convict the prisoner on the facts.

We find that the prisoner has committed culpable homicide amounting to murder, and we sentence him (under s. 302 of the Penal Code) to transportation for life.