Before Mr. Justice Loch and Mr. Justice Glover.

1868
Aug. 7.

THE QUEEN v. HARI GIRI.*

Culpable Homicide—Provocation—Act XLV. of 1860, *s.* 300 *(Penal Code.)*

Culpable homicide, though committed under provocation, will amount to murder, unless it is proved not only that the act was done under the influence of some feeling which took away from the person doing it all control over his actions, but that that feeling had an adequate cause.

THIS was a case tried with the aid of Assessors.

The prisoner was committed for trial on charges under section 304 (culpable homicide not amounting to murder) and 335 (causing grievous hurt on provocation). The Sessions Court added a charge under section 302 (murder), "in order that the question of the sufficiency of the provocation might be adequately disposed of." The Assessors found the prisoner guilty under section 304, being of opinion that his offence was reduced from murder under Exception 1 of section 300.

It appeared that deceased had gone accompanied by the Police to serve a notice of sale of prisoner's crop. When the Police and deceased separated, prisoner rushed out with a sword, and struck deceased on the head with it, so that he died within four days. The Judge found that the act was not excused by its being in lawful defence of person or property, but he remarked: "I am, however, quite of opinion that a sufficient cause of provocation existed to remove the offence from the definition of murder to that of culpable homicide not amounting to murder, knowing the way in which legal rights are exercised in the mofussil, and looking at the fact of the imperfect way in which the exact circumstances have been brought out, and to the probability of the attacking party having over-stepped the law to a greater degree than is apparent, I think the prisoner is entitled to the benefit of the exception. I do not place full reliance upon the evidence for the defence, or believe in the

* Committed by the Magistrate and tried by the Officiating Sessions Judge of Cuttack, on a charge of culpable homicide.

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plunder of the crop, though I think it probable that wanton damage may have been done. If the exact facts, as deposed to by the witnesses for the prosecution, are to be credited, the offence would, I consider, amount to murder, but the witnesses are, so to speak, all on one side and in one interest, and would not of course depose to any facts which might tend to implicate them in an illegal act. I convict him of culpable homicide not amounting to murder. I consider the facts show that the act was committed with the intention of causing such bodily injury, as was likely to cause death, and sentence him, as stated in the finding, to 5 years' rigorous imprisonment."

The prisoner appealed

The judgment of the High Court was delivered by

GLOVER, J.—We see no reason whatever to interfere in the prisoner's favor, and his appeal is rejected. Indeed, we are very decidedly of opinion that, on the evidence, the prisoner should have been convicted of murder.

The Sessions Judge has found that the prisoner killed the deceased with a sword, and that he (the prisoner) was not at the time acting in defence of either life or property. But he has considered his case to come within Exception 1, section 300 of the Indian Penal Code, on the ground of grave and sudden provocation. No doubt, the question, whether such provocation was sufficient to take the case out of the purview of section 300, was a question of fact. But the Sessions Judge has not given any tangible reasons for giving the prisoner the benefit of the exception. He thinks that the distraint was probably carried out without exact warrant of law, but how, or in what point, he does not say. He does not believe that the prisoner's field was plundered, although he thinks that some damage may have been done. In short, he gives the prisoner the benefit of various possibilities, the existence of which has only been surmised.

This does not seem to us the correct way of treating the case: To give an accused person the benefit of Exception 1, it ought to be shewn distinctly, not only that the act was done under

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the influence of some feeling which took away from the person doing it all control over his actions, but that that feeling had an adequate cause.

Now, taking the case in the most favorable light for the prisoner, we cannot find anything that satisfies these conditions It is clear that the prisoner was not taken unawares, but had some expectation of what was likely to happen, and had placed his sword in readiness for the emergency.

However indignant he may have been at the wrong he supposed to have been done to him, it seems impossible to say that the provocation he received was of such a nature, as would take away from him all power of self-control, in any case the provocation was certainly not sudden.

As the Judge and Assessors have found on the evidence that the prisoner is not guilty of murder, and have acquitted him thereof, this Court cannot interfere, no question of law being involved; but we think it right to express our dissent from that finding, and to say that in our opinion it was not justified by the evidence

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Before Mr. Justice Phear and Mr. Justice Hobhouse.

THE QUEEN v. FATIK BISWAS.*

1868
Sept. 10.

False Evidence in a Judicial Proceeding—Charge—Evidence—Hand-writing of Magistrate—Indian Penal Code (Act XLV of 1860) s. 193.

It is essential in order to sustain a charge under section 193 of the Penal Code, that it should be proved that there was a judicial proceeding, and that the false statement alleged to have been made in the course of that proceeding, was made. A charge under this section should specify not only the judicial proceeding in the course of which the prisoner is accused of having made the false statement, but the particular stage of the proceeding in which the statement is made.

The knowledge by the Sessions Judge of the hand-writing of the judicial officer, before whom the statement was made, is no evidence of the statement having been made before that officer.

THE prisoner, in this case, was charged under section 193 of the Penal Code, with having intentionally made a false state-

* Committed by the Magistrate and tried by the Sessions Judge of Jessore, on a charge of giving false evidence in a judicial proceeding.