

Appellate Jurisdiction(a)*Criminal R. A. No. 250 of 1872.*NIDAMARTI NAGABHUSHANAM—*Prisoner.*

Prisoner killed his mother by beating and kicking her. The Session Judge found that the death resulted from brutal beating and kicking, but acquitted of culpable homicide because the violence was not such as the prisoner must have known to be likely to cause death.

Held, that this was no ground for acquitting of culpable homicide not amounting to murder: the question for the Judge was whether the act was done with the intention of causing bodily injury which was likely to cause death.

The Session Judge convicted the prisoner on the charge of causing death by a rash act. *Held*, that the section was wholly inapplicable.

Culpable rashness' and 'culpable negligence' distinguished.

THIS was an appeal against the sentence of the Court of Session of Guntúr in Case No. 32 of the Calendar for 1872.

1872.
October 24.
C. R. A. No.
250 of 1872.

No counsel were instructed.

The Court delivered the following

JUDGMENT :—In this case the prisoner killed his own mother by beating and kicking her. The Session Judge finds that the death resulted from a brutal beating and kicking, but he acquits of culpable homicide, because the violence was not such as the prisoner must have known to be likely to cause death. This is, it is manifest, no ground for acquitting of culpable homicide not amounting to murder. With such knowledge the act would be murder (Penal Code, Sec. 300, 2ndly). The question for the Judge was whether the act was done with the intention of causing bodily injury which was likely to cause death. The Judge finds the brutal beating and kicking and dragging by the hair of the head of an old woman of 60 by a powerful man, who so acted without the smallest provocation. The causal connexion between the brutal assault and the death is found to be undoubted, but the Session Judge has convicted the prisoner under the new section of causing death by a rash act. This section is, in our opinion, wholly inapplicable to the facts of this case. Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow,

(a) Present: Holloway and Kindersley, JJ.

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 250 of 1872.

but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness (*luxuria*). Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that if he had he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection. It is manifest that personal injury, consciously and intentionally caused, cannot fall within either of these categories, which are wholly inapplicable to the case of an act or series of acts, themselves intended, which are the direct producers of death. To say that because, in the opinion of the operator, the sufferer could have borne a little more without death following, the act amounts merely to rashness because he has carried the experiment too far, results from an obvious and dangerous misconception. We have had great hesitation whether we ought not to have remitted this case for a finding, whether the Session Judge and the assessors think that the act was done with such knowledge as to constitute culpable homicide. We are, however, averse to re-opening criminal cases unless absolutely compelled to do so, and as the evidence makes out, at least, a case of culpable homicide not amounting to murder, and a legal though inadequate sentence^(a) has been passed, we are able, under Section 426 of the Procedure Code, simply to dismiss the appeal.

36 Oct 30^r

As this is neither a case of rashness nor of negligence, it becomes unnecessary to consider whether in any case a conviction under this new section can properly follow, where the rashness, or negligence, amounts to culpable homicide. It is clear, however, that if the words "not amounting to culpable homicide" are a part of the definition, the offence defined by this section consists of the rash or negligent act not falling under that category, as much as of its fulfilling the positive requirement of being the cause of death.

(a) Rigorous imprisonment for two years. [Ed.]