

JACKSON, J.—It is not stated that evidence was given of any special custom in this point.

The sale of the tenure would apparently pass all that was growing upon the land, unless the growing crops were excepted by the notification of sale, or else a custom was proved that the outgoing ryot should have the crops, subject to a payment for use and occupation of the land while they remained on the ground. If such a custom with tender of the proper amount was proved, the plaintiff might be entitled to recover, but otherwise he would not appear to have laid the foundation for a claim of damages, as the defendant merely cut down crops growing on his own land.

1879

AFATULLA
SIRDAR
v.
DWARAK
NATH
MOITRY.

APPELLATE CRIMINAL.

Before Mr. Justice Morris and Mr. Justice White.

THE EMPRESS v. SAFATULLA AND ANOTHER.*

1879

March 31.

Penal Code, s. 304a—Doing Rash and Negligent Act—Direction to Jury.

Where an accused was charged with culpable homicide, and the evidence showed that the deceased had an enlarged spleen, and that his death was caused by rupture of the spleen occasioned by blows inflicted by the accused on the body of the deceased,—

Held, that it was not sufficient, in order to find the accused guilty of a rash act under s. 304a of the Penal Code, that the jury should be satisfied only of the prevalence of the disease of enlargement of the spleen in the district, and infer therefrom criminal rashness in beating the deceased; but that they should also be satisfied that the accused was aware of the prevalence of such disease in the district, and also aware of the risk to life involved in striking a person afflicted with that disease.

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

WHITE, J.—The prisoners in this case were acquitted by the jury of culpable homicide, and convicted under s. 304a of the

* Criminal Reference, No. 413 of 1877, from an order made by C. D. Field, Esq., LL.D., Sessions Judge of Burdwan, dated the 1st March 1879.

1879

EMPRESS
v.
SAFATULLA.

Indian Penal Code of causing the death of one Alim Koregar by a rash act not amounting to culpable homicide.

The evidence showed that the deceased had had an enlarged spleen for several years; that his death was caused by rupture of the spleen; and that the rupture was occasioned by blows of the hands inflicted by the prisoners upon the trunk of the deceased's body whilst he was alive.

The Judge charged the jury with reference to s. 304*a* in the following terms:—"If you do not think that the act amounted to culpable homicide, but that the circumstances of this district in respect of the prevalence of disease of the spleen are such as to render any beating on the trunk of the body an act of criminal rashness, you will be justified in convicting the accused under s. 304*a*."

It appears to us that the Judge has not put the matter before the jury with sufficient precision. The mere circumstance of the prevalence of the disease of spleen in the district in which the deceased resided is not sufficient to warrant a conviction under this section. The jury should further have been told that they must be satisfied that the accused was aware of the prevalence in the district of such diseases, and also aware of the risk to life involved in the striking on the trunk of the body a person who might be suffering from disease of the spleen.

As the prisoners, however, were upon the evidence clearly guilty of voluntarily causing hurt, and the sentence is such as might have been passed for such an offence, it is unnecessary for us to interfere with the conviction.
