

**CRIMINAL REFERENCE.***Before Mr. Justice Holmwood and Mr. Justice Sharfuddin.*

PIKA BEWA

v.

EMPEROR.\*

1912

Mar. 13

*Causing death by rash or negligent act—Administering of a toxic potion without knowledge of, or inquiry into, its actual contents—Penal Code (Act XLV of 1860), s. 304A—Statement by accused, when the only evidence in the case, and relied on by the prosecution—Evidentiary value of such statement.*

If a person intentionally commits an offence, and consequences beyond his immediate purposes result, the result is not to be attributed to mere rashness: if knowledge cannot be imputed, still the wilful offence does not take the character of rashness because its consequences have been unfortunate, but acts probably or possibly involving danger to others, which in themselves are not offences, may be offences within section 304A and kindred sections if done without due care to guard against dangerous consequences.

*Reg. v. Nidamarti Nagabhushanam* (1), *Empress v. Ketabdi Mundul* (2) followed.

Where the only evidence of an offence is a statement by the accused, and it is relied on by the prosecution as evidence thereof it must be taken as a whole, and nothing can be read into it which is not contained therein.

THE appellant, Pika Bewa, was tried before the Sessions Judge of Cuttack, with the aid of assessors, on charges under sections 302, 304 and 304A of the Indian Penal Code, for causing the death of her husband, Prahlad Barik, and of her mother-in-law, Tira Bewa, by administering aconite in their food.

\* Criminal Reference No. 6 of 1912, and Criminal Appeal No. 118 of 1912, against the order of L. C. Adami, Sessions Judge of Cuttack, dated Feb. 12, 1912.

(1) (1872) 7 Mad. H. C. 119.

(2) (1879) I. L. R. 4 Calc. 764.

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One of the assessors found her guilty, but the other not guilty, of murder. The Sessions Judge, agreeing with the former, convicted her of murder, and sentenced her to death.

The facts of the case were as follows. Pika Bewa lived in the house of her husband with her little son, her mother-in-law and Dasa Barik her husband's brother. During this period she had carried on an intrigue with one Maguni, a close neighbour, who was on bad terms, in consequence, with the other members of her family. In October 1911, she was, on account of her conduct with Maguni, sent away to her father's house some 12 miles distant, but returned home unexpectedly on the evening of the 15th November with her son. Next morning she awoke early and paid Maguni a visit at his house, and later on, when he passed by her doors, she went out and spoke to him again, for which she was reprimanded by her mother-in-law. In the evening of the same day she cooked rice and pumpkin curry for the night meal which she served to her husband, mother-in-law and brother-in-law while she gave her son and herself only the rice. Shortly after Tira Bewa complained of a parched tongue, a burning sensation in her mouth, and reeling of the head, and began vomiting. Prahlad also then began to complain of the same symptoms. One Panchu Dhal was thereupon brought in by Dasa, and on his advice Tira was rubbed down with *ghee* which apparently stopped the vomiting, but she died after a little rest. Prahlad then began vomiting, and Dasa spoke of feeling the same sensation as the others had exhibited. He again called in Panchu Dhal who came with Maguni. After rubbing Dasa with *ghee* they went out and brought one Fakir Singh, a *guni* or sorcerer, who administered a decoction to Dasa. Narain Naik, a *kobiraj*, was then sent for and prescribed for

Dasa, Prāhlād having died in the meantime. Dasa ultimately recovered. During the whole of this time Pika sat apart and did not offer to nurse her husband or mother-in-law. She was then taken to the household of Bhai Behari, a neighbour, and on the 18th, she told Behari's wife, who was not examined as a witness in the case, and also two villagers, the prosecution witnesses Nos. 9 and 10, in the absence of the police, that, as her husband and mother-in-law did not like her, she had given them a medicine in the curry, which she had purchased from a Sonthal for two annas, in order to make them love her. She repeated the statement to the Sub Inspector of Police, and was taken to a village called Chotaraipore, a mile away, where she identified a Sonthal named Kuanria as the vendor of the powder or medicine, and the latter after denying the sale admitted it. Pika and Kuanria were then arrested but Maguni absconded.

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The Civil Surgeon of Balasore found, on *post mortem* examination, inflammation of the mucous membranes of the stomach and intestines of the deceased, and of the kidneys. No poison was found by the Chemical Examiner in the viscera submitted to him, but traces of aconite were discovered in the vomited matter.

Pika, Maguni and Kuanria were sent up to the Committing Magistrate who, after holding an enquiry, committed Pika to the Sessions under sections 304 and 304A of the Penal Code, and discharged the others. In her examination before the Magistrate she denied illicit intimacy with Maguni and the administering of poison to her husband and mother-in-law, and explained her story to the police about the love drug as having been obtained by mal-treatment. At the trial, when questioned by the Judge, she admitted cooking the rice and curry, but denied putting any poison or love potion in it. She also denied the intrigue with

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Maguni, and the purchase of any medicine from a Sonthal, and stated that she did not tell the villagers so. The only direct evidence of the administering of any drug in the food by the appellant was her statement to the two villagers as proved by them at the trial.

*Babu Jyotish Chandra Hazra and Babu Debendra Nath Kumar*, for the accused.

*The Deputy Legal Remembrancer (Mr. Orr)*, for the Crown.

HOLMWOOD AND SHARFUDDIN JJ. This is an appeal and reference from the judgment and sentence of the learned Sessions Judge of Cuttack who, agreeing with one assessor and differing from the other, has found the accused, Pika Bewa, guilty of murdering her husband and mother-in-law by aconite poisoning, and sentenced her to be hanged by the neck till she is dead.

In the first place, with regard to the reference on the capital sentence, it is clear that such sentence cannot be carried out inasmuch as there is doubt whether the accused person is or is not pregnant. But in the view which we take of the case this will become immaterial. It is proved to our satisfaction that these two persons died of aconite poisoning, and that another man Dasa, the younger brother of the accused's husband, very nearly met his death, but was apparently saved by the decoction of various local simples which was given to him first of all by a beggar and subsequently by a sorcerer or charmer. We would observe that it would have been most important to examine these persons more carefully as to their knowledge of simple poisons like aconite and opium, and the drugs that they are in the habit of using as antidotes to those poisons, when the antidote of irritant poisons would necessarily be something of a very opposite character

to the antidote in the case of narcotic poisoning; and it does not appear that when these persons were summoned they knew anything more than that the deceased was suffering from symptoms of poisoning, and they say they took the drugs with them. While we are on the subject of defective investigation in this case, we may mention that Bhai Behari's wife was a most important witness who certainly ought to have been examined. There are many other points which ought to have been cleared up so as to leave it without doubt that this woman had knowledge that what the Sonthal and Maguni are alleged to have given her was an irritant poison. Now, the only evidence as to this is Pika's own statement to two villagers whom the Judge and one of the assessors appear to us to have rightly believed, the witness Amrao (P. W. 9), and the witness Hari Saha (P. W. 10). They are also corroborated by the witness No. 11, Udai Narain Singh, who says that the accused identified one Kuanria Manjhi as the person who had given her medicine. Kuanria at first denied giving the accused anything, but afterwards admitted it.

It is in evidence that the accused returned to her home on the night of the 15th November, and the murder took place in the evening of the 16th. On the morning of the 16th there is evidence to show that she went to visit Maguni, and in the afternoon of the 16th Maguni came to her husband's house, and from the evidence of Dasa, witness No. 3 for the prosecution, it would appear that notwithstanding the known intrigue between Maguni and Pika, Maguni was on visiting terms with the whole family. We can have no doubt that whatever poison was administered to the deceased was administered through the instrumentality of Maguni and some Sonthal whom he got hold of to supply the poison. The woman's own

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statement is that she did not know that it was poison ; she thought it was some charm to procure the love of her husband and her mother-in-law who had been treating her badly. This statement may not seem to be very credible, but it is all the evidence we have ; and when the accused's own statement is to be relied upon, it must be taken as a whole, and nothing can be read into it which is not found within the four walls of the statement. We must, therefore, as far as this woman's guilt is concerned, accept her statement that she at the instigation of Maguni obtained some powder, the character of which she was ignorant of and mixed it with pumpkin curry which she knew would be eaten by her husband, her mother-in-law and her husband's brother Dasa with whom she also appears to have been on unfriendly terms. The fact that she herself only ate plain rice and gave her child only plain rice is a very suspicious circumstance against her. She must, therefore, at any rate have been aware that she was committing something dangerous in administering some drug which had been given to her by a man whose relations with her made him an enemy of her husband, and this, we think, is undoubtedly a rash and negligent act within the meaning of section 304A. If she had known that the substance she was administering was an unlawful substance, that is to say, poisonous substance, that would have made a specific offence and in that case section 304A would not apply. If a man intentionally commits any offence and consequences beyond his immediate purposes result, the result is not to be attributed to mere rashness : if knowledge could not be imputed, still the wilful offence does not take the character of rashness because its consequences have been unfortunate ; but acts probably or possibly involving danger to others, which in themselves are

not offences, may be offences within the meaning of section 304A and kindred sections, if done without due care to guard against dangerous consequences; and this was the view which was taken by the Madras High Court in *Reg. v. Nidamarti Nagabhushanam* (1) which was approved by this Court in the case of *Empress v. Ketabdi Mundul* (2).

Now, the mere administering of a love potion or drug, which a person thinks might be beneficial, is not in itself an offence; but when it is supposed to have effect upon persons with whom the paramour of the accused had enmity, and when she administers it without due care and caution or any enquiry as to what it really is, her act certainly falls within section 304A.

We think that the conviction under section 302 cannot be allowed to stand, as the accused is entitled to the benefit of the doubts which we have already adverted to. But we think that she is certainly guilty under section 304A. We think that it has been shown that she is a woman of abandoned character, and richly deserves a more severe punishment than we are able to give her under that section. We, therefore, direct that she be rigorously imprisoned for two years under section 304A, which is the maximum sentence which the law allows under that section. The conviction and sentence under section 302 are set aside.

E. H. M.

(1) (1872) 7 Mad. H. C. 119.

(2) (1879) I. L. R. 4 Calc. 764.