

BOMBAY HIGH COURT

Emperor

Vs

Martu Vithoba Prabhu

(Batchelor and Shah, JJ.)

24.07.1913

JUDGMENT

Batchelor, J

1. This is an appeal against a conviction of the offence of attempt to murder under Section 307 of the Indian Penal Code. The accused under that section was sentenced to seven years' rigorous imprisonment by the learned Sessions Judge of Kanara.

2. On the admission of this appeal, notice was directed to issue, and we have been assisted by the argument of the learned Government Pleader, but there has been no appearance on behalf of the accused. In these circumstances it is a matter of satisfaction that there exists no room for doubt as to the facts of the case. It is abundantly proved that the facts are as the learned Judge below has found them, that is to say, that the accused struck his wife on her neck with an axe and that the result of the blow in fact was an incised wound which amounted in law to simple hurt only within the meaning of the Indian Penal Code. The question is, whether, in the circumstances of the case, the learned Judge is right in applying Section 307 to the facts, or whether the accused is liable only to a conviction under Section 324, that is, conviction of an offence of voluntarily causing simple hurt by a dangerous weapon. It appears to us that the latter is the true view, and that the learned Judge was wrong in applying Section 307. That section provides in terms for the punishment of a person who does any act with such intention or knowledge and under such circumstances that if he by that act caused death, he would be guilty of murder. It seems clear on these words, and still clearer from the illustrations appended to the section, that the only act which could fall within the purview of the section is an act which by itself must be ordinarily capable of causing death in the natural and ordinary course of events, and that is the view which was taken of the section by this Court in *Reg. v. Francis Cassidy*¹ where the scope and meaning of this section are fully discussed, Now, although a hatchet is a dangerous weapon, a blow with it is not, in our opinion, an act ordinarily capable of causing death in the natural and / ordinary course of events. On the contrary, we should say that whether a blow with a hatchet is or is not

capable of causing such a result must depend upon the particular nature of the blow inflicted. It seems to us, therefore, that this is a case where the accused's criminal liability must be limited to the act which he in fact did, and cannot be extended so as to embrace the consequences of another act which he might have done but did not do.

3. We think, therefore, that the conviction and sentence under Section 307 must be reversed and the accused must be convicted under Section 324 of the Indian Penal Code, and he should, we think, be sentenced to one year's rigorous imprisonment.

Cases Referred.

1(1867) 4 B.H.C.R. (Cr. C.) 17