

## Reg vs Govinda on 18 July, 1876

### Equivalent citations: (1877)ILR 1BOM342

#### JUDGMENT

Melvill, J.

1. I understand that these proceedings have been referred to me under Section 271-B of the Code of Criminal Procedure, in order that I may decide whether the offence committed by the prisoner was murder, or culpable homicide not amounting to murder.

2. For convenience of comparison, the provisions of Sections 299 and 300 of the Indian Penal Code may be stated thus:

#### Section 299.

A person commits culpable homicide, if the act by which the death is caused is done

- (a) With the intention of causing death;
- (b) With the intention of causing such bodily injury as is likely to cause death:
- (c) With the knowledge that the act is likely to cause death.

#### Section 300.

Subject to certain exceptions, culpable homicide is murder, if the act by which the death is caused is done (1) With the intention of causing death;

(2) With the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;

(3) With the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;

(4) With the knowledge that the act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death.

3. I have underlined the words which appear to me to mark the differences between the two offences.

4. (a) and (1) show that where there is an intention to kill, the offence is always murder.

5. (c) and (4) appear to me intended to apply (I do not say that they are necessarily limited) to cases in which there is no intention to cause death or bodily injury. Furious driving, firing at a mark near a public road, would be cases of this description. Whether the offence is culpable homicide or murder, depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder.

6. The essence of (2) appears to me to be found in the words which I have underlined. The offence is murder, if the offender knows that the particular person injured is likely, either from peculiarity of constitution, or immature age, or other special circumstance, to be killed by an injury which would not ordinarily cause death. The illustration given in the section is the following:

A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health.

7. There remain to be considered (b) and (3), and it is on a comparison of these two clauses that the decision of doubtful cases like the present must generally depend. The offence is culpable homicide, if the bodily injury intended to be inflicted is likely to cause death; it is murder, if such injury is sufficient in the ordinary course of nature to cause death. The distinction is fine, but appreciable. It is much the same distinction as that between (c) and (4), already noticed. It is a question of degree of probability. Practically, I think, it will generally resolve itself into a consideration of the nature of the weapon used. A blow from the fist or a stick on a vital part may be likely to cause death; a wound from a sword in a vital part is sufficient in the ordinary course of nature to cause death.

8. In the present case the prisoner, a young man of 18, appears to have kicked his wife, (a girl of 15) and to have struck her several times with his fist on the back. These blows seem to have caused her no serious injury. She, however, fell on the ground, and I think that the evidence shows that the prisoner then put one knee on her chest, and struck her two or three times on the face. One or two of these blows, which, from the medical evidence, I believe to have been violent and to have been delivered with the closed fist, took effect on the girl's left eye, producing contusion and discoloration. The skull was not fractured, but the blow caused an extravasation of blood on the brain, and the girl died in consequence either on the spot, or very shortly afterwards. On this state of facts the Sessions Judge and the assessors have found the prisoner guilty of murder, and he has been sentenced to death. I am myself of opinion that the offence is culpable homicide, and not murder. I do not think there was an intention to cause death; nor do I think that the bodily injury was sufficient in the ordinary course of nature to cause death. Ordinarily, I think, it would not cause death. But a violent blow in the eye from a man's fist, while the person struck is lying with his or her head on the ground, is certainly likely to cause death, either by producing concussion or extravasation of blood on the surface or in the substance of the brain. A reference to Taylor's Medical Jurisprudence (Fourth Edition, page 294) will show how easily life may be destroyed by a

blow on the head producing extravasation of blood.

9. For these reasons I am of opinion that the prisoner should be convicted of culpable homicide not amounting to murder, and I would sentence him to transportation for seven years.

10. This order was accordingly passed by the Court.