1931

Present : **Lyall Grant J.**

(No. 17, 3rd Midland Circuit.)

KING *v.* RANHAMY.

P. C. Matale, 1,942.

Verdict—Charge of murder—Conviction for causing death by rash and negligent act—penal Code, s. 298.

Where an accused is indicted for murder, he may be convicted of causing death by a rash and negligent act.

THE accused was charged with murder before the third Midland Circuit held at Kandy, and the jury returned a verdict of causing death by a rash and negligent act.

The Judge in his charge to the jury said that they could find the prisoner guilty of murder, of culpable homicide not amounting to murder, of grievous hurt, or if they accepted the statement of the prisoner, they might consider that he acted rashly or negligently in using his gun, and if they so held they could find him guilty of causing death by a rash or negligent act under section 298 of the Penal Code. The jury convicted him under section 298.

No objection was taken at the trial either to the verdict or to the charge.

Some weeks later, Counsel for the prisoner rasied the point that on a charge of murder it was not competent for the jury to bring in a verdict under section 298, and asked that it should be referred to a Bench of two or more Judges. The Judge ordered the prisoner to be produced in order to ascertain whether he wished the point specially referred and warned him that he would run the risk of again being tried for murder.

The accused intimated that he did not wish to proceed further and the Judge made the following order.

Mackenzie Pereira, for accused.

January 12, 1931. LYALL GRANT J.—

The fact that the prisoner, after having had the matter explained to him, says that he does not wish to take the risk of a new trial concludes the matter. It is impossible for me, in these circumstances, to make a reference on a point which was not raised at the trial but raised afterwards by Counsel.

It is proper, however, that I should say that I have carefully examined the authority placed before me by Counsel and I am satisfied that it does not support the view which he advanced, namely, that on an indictment for murder by shooting, it is impossible for a jury to hold that the prisoner caused death by a rash act.

The arrangement of our Penal Code strongly supports the view that such a finding is a possible one. Section 298 is included in that part of the Code which deals with offences affecting life. It is common knowledge that on an indictment for murder juries habitually convict of offences which are not even included in that part of the Code, such as grievous hurt or hurt.

That, to my mind, is a wider extension of the provisions of section 183 of the

Criminal Procedure Code than is a conviction under section 298 of the Penal Code.

I have examined *Sohoni's Commentary* on section 238 of the Indian Criminal Procedure Code (corresponding to our section 183) and I find that a conviction for kidnapping was held not to be a proper conviction on an indictment for murder. Kidnapping is not a minor offence in the same class with murder. It is not an offence affecting life. On the other hand, the English law knows only two classes of offences affecting life, namely, murder, where the killing is done with intent to kill, and manslaughter, where the killing is done without this intention, and either with the knowledge that the act was dangerous to life or without that knowledge. This would include a case of rashness or negligence. On an indictment for murder a finding of manslaughter in circumstances such as those before us would, in England be clearly justified, and I see nothing in our Code to show that any other procedure is contemplated.

I was referred to a case in the *Allahabad Reports* in which Mr. Justice Straight gave a decision in a case where the Sessions Judge had convicted of causing death by a rash act. That case is reported in 3 *Allahabad Law Reports, page* 776, and the remarks of the Judge are at page 779. All that seems to have been decided in that case is that where a person struck another a blow which caused death without the intention of causing death or of causing such bodily injury as was likely to cause death, or with the knowledge that he was likely by such act to cause death, but with the intention of causing grievous hurt the offence of which he was guilty was not the offence of causing death by a rash act but was the offence of voluntarily causing grievous hurt.

That of course is no authority in support of the contention which is now advanced. If anything, it supports the opposite view.