

(1879) 07 CAL CK 0006

Calcutta High Court

Case No: None

The Empress

APPELLANT

Vs

Gonesh Dooley and
Gopi Dooley

RESPONDENT

Date of Decision: July 28, 1879

Acts Referred:

- Penal Code, 1860 (IPC) - Section 304, 304(a)

Citation: (1880) ILR (Cal) 351

Hon'ble Judges: McDonell, J; Broughton, J

Bench: Division Bench

Judgement

McDonell, J.

The Officiating Additional Judge of the 24-Parganas, differing from the jury, has referred this case to the High Court u/s 263 of the Code of Criminal Procedure. (His Lordship stated the facts of the case and continued): We think that the offence committed by the prisoner Gonesh was an offence u/s 304 of the Indian Penal Code. He did not intentionally cause the boy's death; nor did he, knowing that the act was "so imminently dangerous that it must, in all probability, cause death," put the snake upon the boy.

2. The case of *The Queen v. Poonai Fattemah* (12 W.R 7), put by the prosecution and referred to by the Judge in the charge, was one in which the prisoner actually caused the snake to bite the person who was killed. It differs, as the Judge remarks, materially from the present case, because then there was clearly the knowledge of imminent danger that must in all probability cause death.

3. The Judge, in referring the case, was of opinion, that the prisoner should be punished u/s 304(a,) but this section does not apply to the present case, in that, for the reasons stated above, we consider that the "rash act" did amount to culpable homicide.

4. We think it may be said in this case that Gonesh did not think that the snake would bite the boy. But we think that the act was done with the knowledge that it was likely to cause death, but without the intention of causing death. We think Gonesh should be sentenced to three years" rigorous imprisonment. Gopi, we think, abetted Gonesh, and is punishable under Sections 114 and 304, Indian Penal Code; but as he took a less active part in the matter, he should be rigorously imprisoned for one year only. We sentence the prisoners accordingly.