APPELLATE CRIMINAL.

Before Sir Ba U, Acting Chief Justice.

1947
Sept. 18.

MAUNG PE (APPELLANT)

v.

THE KING (RESPONDENT).*

Penal Code, ss. 300, 302—Difference between the first three clauses of s. 300 and 4th clause—Intention whether essential ingredient under clause 4.

Held: That intention is mentioned as an essential ingredient in the first three clauses of s. 300, Penal Code, but not under clause 4. If a person does a rash or reckless act without any excuse and he knows that the act is so imminently dangerous to human life that in all probability it would cause death then the act comes within this clause. The view is made quite plain by illustration (*d*) to s. 300, Penal Code.

Held further: That conviction should have been under clause 3 of s. 300 and not clause 4.

Shwe Ein v. *King-Emperor*, 3 L.B.R. 122; *Nga Na Ban* v. *King-Emperor*, Vol. I (Cr.) (1904—06) U.B.R. 33; *Manindra Lal Das* v. *The Emperor*, I.L.R 41 Cal. 1187, followed.

Choon Foung (Government Advocate) for the Crown.

BA U, A.C.J.—Appellant Maung Pe is a Chin; so was the deceased Po Sawt. They were members of an armed guard employed by the Bombay-Burma Trading Corporation, Limited, at Ywamaton, Thayetmyo District. On the morning of the 28th January 1947 they were detailed for sentry duty. They were given an American rifle and 25 rounds of ammunition. The appellant was to be on duty from 6 a.m. to 12 noon and the deceased from 12 noon to 6 p.m. At about 9 a.m. the appellant and the deceased indulged in horse-play by tickling and pulling each other about. Then the appellant aimed his rifle at the deceased. The deceased

* Criminal Appeal No. 1200 of 1947 being appeal from the order of the 1st Special Judge of Thayetmyo, dated the 30th April 1947, in Criminal Regular Trial No. 26 of 1947.

asked him not to do it and turned his back on the appellant. At that moment the rifle went off, the bullet going through the left and right thighs and injuring part of the scrotum. The wound at the tip of the left hip bone was, according to the medical evidence, necessarily fatal.

These facts are, in my opinion, conclusively proved, and on these facts the learned Special Judge held that the case fell within the 4th clause of section 300 of the Penal Code and sentenced the appellant to transportation for life.

The learned trial Judge did not apparently understand the purport and meaning of the said clause. If we examine section 300 of the Penal Code we shall find that intention is an essential ingredient in so far as the first three clauses are concerned, namely,

(i) an intention to cause the death of a certain person,

(ii) an intention to cause such bodily injury to a certain person which the offender knows to be likely to cause the death of the person injured, and

(iii) an intention to cause to a certain person such an injury as is sufficient in the ordinary course of nature to cause death ;

and in all these cases death ensues. Now, if we turn to the 4th clause we find that intention is not mentioned therein. In so far as this clause is concerned, intention is not an essential ingredient. We shall also find that it is not mentioned therein who the injured person is to be. Where and how this clause applies is this : a person does a rash or reckless act, without having any excuse for doing it, and he knows, though he has no intention of causing the death of any person, that the act is so imminently dangerous to human life that in all probability it must cause death,

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and death in fact ensues, the act so committed constitutes an offence within the meaning of this clause. This is made quite plain by illustration (*d*) to section 300, Penal Code. The same view was held by Fox J. (as he then was) in *Shwe Ein* v. *King-Emperor* (1) where the learned Judge said :

> "I accept the learned Judge's view as correct in every detail, but would add that the cases stated in section 299 and section 300 in which 'knowledge' is made the determining constituent of the offence, appear to me to refer to cases in which the doer of the act constituting the crime had no intention of injuring any one in particular, but in which he has caused death by doing a reckless or rash act, which he must have known would either in all probability endanger human life, or would be likely to endanger human life. The 4th clause of section 300 must, I think, be read as a whole, and the last words of it, *viz.* 'and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid,' appear to me to show that that clause was intended for a case of the nature I have referred to above."

This view was accepted by Shaw, Judicial Commissioner, in the case of *Nga Na Ban v. King-Emperor* (2). The Calcutta High Court in the case of *Manindra Lal Das* v. *The Emperor* (3) took the same view. In that ease the learned Judges observed :

> "The fourth part of section 300, I.P.C., applies only to cases where the person committing the act has no intention of causing injury to any particular individual."

Viewing the facts of the present case in the light of the law thus explained, I have no doubt in my mind that the case comes within the purview of the 3rd clause of section 300 of the Penal Code and not within the purview of the 4th clause as held by the learned trial Judge.

(1) 3 L.B.R. 122. (2) Vol. I (Cr.) (1904—06) U.B.R. 33.
(3) I.L.R. 41 Cal. 1187.

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As the appellant was correctly convicted under section 302 of the Penal Code and as, in the circumstances of the case, he has been given the appropriate sentence, I do not propose to interfere.

The appeal is dismissed.