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THE KING *v.* DIAS.

P. C., Kurunegala, 4,459.

Verdict of jury—Culpable homicide not amounting to murder—Pulling the trigger of a gun with the intention of intimidating.

Where, in the course of a dispute and fight in regard to an encroachment on land, a person aimed a revolver at his opponent and pulled its trigger three or four times in vain, and then snatched a gun from one of his party, and without bringing it to the shoulder pulled its trigger when his opponent was standing only a few feet from the muzzle, and the gun discharged itself into his chest and killed him,—

Held, that the verdict of the jury that "the accused was guilty of culpable homicide not amounting to murder, and that he pulled the trigger with the intention of intimidating" was not bad.

THIS was a special case reserved by Mr. Justice Grenier for a Full Bench. The point involved appears in the following statement of his lordship.

At the criminal sessions of the Supreme Court for the Western Circuit now being held in Colombo, Kirindage Elaris Dias stood indicted before me for murder. The Crown called a large

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number of witnesses whose evidence showed that in the course of a fight or dispute in regard to an encroachment which, it was alleged, the prisoner, who was in the employ of Mr. E. L. F. de Soysa, had made on land belonging to Mr. David Gunasekera, under whom the deceased was employed as a cooly, the prisoner first aimed a revolver at the deceased and pulled the trigger three or four times, but none of the cartridges exploded. He then snatched a gun from one of his party who was standing close to him, and without bringing it to the shoulder fired at the deceased, who was within a few feet from the muzzle. The shot lodged in the deceased's chest, and he died from the effects of the wound so inflicted about two days after. The prisoner himself had a contused wound on his forehead, and had to be attended to in hospital altogether for about four or five weeks. A cooly by the name of Muniandi, who was one of prisoner's party, was also wounded, although slightly. In view of the facts disclosed by the evidence, I told the jury in the course of my summing up that if they believed the evidence, and that prisoner fired the gun at deceased in the heat of passion in a sudden quarrel, and in the circumstances deposed to by the witnesses called by the Crown, they should convict the prisoner of at least the offence of culpable homicide not amounting to murder.

The jury retired, and returned into Court after being in consultation for some considerable time, and the foreman stated that their verdict was that the prisoner was guilty of culpable homicide not amounting to murder, but added that the jury found that the gun went off while in the possession of the prisoner. I then asked the foreman, as the finding seemed to me very indefinite, if the jury found that the gun went off accidentally, in which case I said the prisoner would be entitled to an acquittal. The foreman stated that such was not their finding. I asked the jury to retire, as they seemed to be unable to agree at once, and reconsider their verdict. The jury returned into Court and the foreman then stated that the verdict of the jury was that the prisoner was guilty of culpable homicide not amounting to murder, " and that he pulled the trigger with the intention of intimidating." To prevent any further uncertainty as to the verdict, I directed the foreman to reduce it into writing, which he did.

I accepted the verdict of the jury as substantially one that the prisoner was guilty of culpable homicide not amounting to murder, on the ground which was then present in my mind that every one was presumed in law to intend the natural and reasonable consequence of his acts, and that even if the prisoner's intention was to intimidate he should be held responsible for the

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death of the deceased, once it was found by the verdict of the jury that the prisoner discharged a loaded gun at the deceased, and, according to the evidence, which I assumed the jury credited within a few feet of him.

I sentenced the prisoner to ten years' rigorous imprisonment.

The question I would submit for the consideration of a bench of two or more Judges is whether I was right in accepting the verdict of the jury in the terms in which it was embodied as a verdict that the prisoner was guilty of culpable homicide not amounting to murder.

The case came on for hearing before Layard, C.J., Moncreiff, J., and Grenier, A.J., on the 10th May, 1905.

Dornhorst, K.C. (with him *Bawa* and *Van Langenberg*), for the prisoner.

Rámanáthan, S.-G. for the Crown, was not called upon.

10th May, 1905. LAYARD, C.J.—

The facts of this case are:—That in the course of a dispute and fight in regard to an encroachment on certain land the prisoner pointed a revolver at the deceased and pulled the trigger three or four times. According to the case stated, the revolver was loaded, but none of the cartridges exploded.

The presiding Judge, who reserved the case, believed that the revolver was loaded, but I understand the prisoner's counsel to state that the revolver was not loaded, and that there was no evidence to show that the revolver contained any cartridges at the time the pirsoner pulled the trigger.

For the purposes of my judgment, and as the prisoner does not admit that the revolver of which he pulled the trigger three or four times was loaded, I will assume that the revolver was not loaded. The prisoner then snatched a gun from one of his party, who was standing close to him, pointed the gun at the deceased, at the same time pulling the trigger, and shot the deceased who was within a few feet of the muzzle of the gun. The deceased died from the gunshot wounds.

The presiding Judge in his charge drew the attention of the jury to the distinction between culpable homicide amounting to murder and culpable homicide not amounting to murder, and explained to the jury that in certain circumstances the jury would be entitled, if they found certain facts, to return a verdict of the lesser offence. The jury retired and returned into Court bringing

in a verdict of "guilty of culpable homicide not amounting to murder," but adding that "the gun went off while in possession of the prisoner."

The presiding Judge, very properly, pointed out to the jury that if they found that the gun went off accidentally the prisoner would be entitled to an acquittal. The foreman promptly replied that they did not so find. The Judge then asked the jury to retire again and reconsider their verdict. The jury subsequently returned into Court and gave a verdict to the following effect:— "That the prisoner was guilty of culpable homicide not amounting to murder, and that he pulled the trigger with the intention of intimidating."

The presiding Judge accepted the verdict, but reserved a case for the consideration of this Court.

It is argued by the prisoner's counsel that clearly the verdict and rider show that the prisoner did not do the act with the intention of causing death, or with the intention of causing such bodily injury as was likely to cause death. I think I must sustain the view that the prisoner's counsel advances in that respect.

By our law culpable homicide is not, however, limited to cases where a person causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, but includes the case in which a person does the act with the knowledge that by such act he is likely to cause death. It seems to me, therefore, that I am bound to assume from the verdict of guilty of culpable homicide returned by the jury, that they thought that the prisoner when he acted acted with the knowledge that by pulling the trigger he was likely to cause death; that is to say, that he acted with knowledge that the gun, at the time he pulled the trigger, was loaded, and it appears to me that from the facts as stated in this case the jury might rightly deduce the knowledge of the prisoner from the surrounding circumstances.

The prisoner had first apparently tried to intimidate the attacking party by pulling the trigger of an unloaded revolver; if he did not wish to go any further than to intimidate them by pointing an empty weapon at them, there was no necessity for him to have done anything more than to keep on pulling the trigger of the revolver, but he appears to have gone a step further, for he snatched from the hand of one of his own companions a gun and pulled the trigger of that gun, whereby the death of the deceased was caused.

Where a person fails with an unloaded weapon to quell a disturbance, and snatches another weapon from a bystander, I cannot

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LAVARD, C.J.

say that the jury would be wrong in allowing the ordinary presumption to apply, that he knew that the gun was loaded when he so snatched it from his companion and pulled the trigger.

It was argued by the prisoner's counsel that if all the facts disclosed in this case were consistent with innocence, then we should not be justified in holding the prisoner guilty in view of the presumption that might arise from his having snatched a gun from a bystander and pulled the trigger. I do not think, however, that we can in this case say that all the facts established pointed to the innocence of the prisoner. They do if we assume the prisoner believed the gun was unloaded. The presumption arises, for the facts proved against him is that he did know, and the prisoner has failed to rebut that presumption, and there is nothing to show that the jury in bringing in a verdict of guilty of culpable homicide not amounting to murder did not find from the evidence before them that the prisoner had knowledge that the gun was loaded.

MONCREIFF, J.—

I am of the same opinion. I think there is no fatal inconsistency in the verdict, which finds that the accused intentionally pulled the trigger, and that his object was to intimidate or keep off the deceased, with whom he was quarrelling; for the verdict also finds that he was guilty of culpable homicide not amounting to murder, which means that he knew that he was likely to cause death by his act. In other words, he took the risk.

As for the suggestion that it was not proved that he knew that the gun was loaded, if it had been the case that he did not know, I think that would have been the first thing he would have said in answer to the charge. Far from doing so, he allowed his case to be so tried that no special finding on that point was either asked for or given.

The point, therefore, is in my opinion covered by the finding that the accused was guilty of culpable homicide not amounting to murder.

GRENIER, A.P.J.—

I agree with my lord and with my brother Moncreiff.

I should not have reserved this point were it not that I was doubtful at the time whether I was right in accepting the verdict of the jury, in the terms in which it was embodied, as a verdict that the prisoner was guilty of culpable homicide not amounting to murder.

It was an unusual verdict for a jury to return in a case like this, where, I think, the evidence clearly established the fact that the prisoner fired the gun at the deceased in the heat of passion and upon a sudden quarrel.

In the course of my summing up, as I invariably do, I drew the attention of the jury to the difference between murder and culpable homicide not amounting to murder, and I understood by their verdict that the jury found the prisoner guilty of the lesser offence.

Now, it is perfectly plain to me that the rider which the jury added to their verdict was unnecessary in view of their positive finding that the prisoner was guilty of culpable homicide not amounting to murder.

It is of course impossible to say what was in the mind of the jury at the time they returned their verdict with this rider, but judging by what had transpired previously I take it that the jury found, as a matter of fact, that the gun did not go off accidentally.

It was impossible for the Crown in the circumstances of this case to prove that the prisoner knew the gun was loaded, and thus bring home knowledge to him of the fact. The gun was in the possession of his companion, and he took it from him after he had made certain unsuccessful efforts to discharge the revolver; and I think that the same presumption must have occurred to the jury as occurred to me, that the prisoner knew very well when he fired the gun that it was loaded, and that the natural and probable consequences of his act would be either death or grevious hurt.

I agree with the observations which my lord has made on the arguments advanced by counsel for the prisoner, and in my humble opinion the verdict of the jury was quite justified by the evidence.