

Mr. Ferguson.

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May 31st, 1941.

the presumption of intent upon the natural and probable consequences of his acts and considering especially the fact that the deceased died of some four axe wounds which must have been administered by both the front of the axe which was a single bitted one and also by the flat side by which means it was suggested in the Doctors evidence that the whole skull had been crushed in at one place at the front, it would be most dangerous to risk the result of a new trial.

The question of appealing under section 1016 of the Code for the purpose of having the Court of Appeal quash the conviction on the ground that the evidence shows that the accused was temporarily insane is not by an manner of means beyond the bounds of possibility although of course to come to a firm conclusion on this matter it would be necessary to have a transcript of the whole trial and go very carefully through it for although a Doctor called for the prosecution did say speaking in generalities however and not about the accused in particular that an Indian who had been drinking and who acted in the way described to him which in the form of my question was the same way that the accused acted was for the time at least insane. It must not however be forgotten that the word "insane" used in that way and as defined by the cases may well differ somewhat.

Even assuming that an appeal upon the basis mentioned in the last preceding paragraph would be successful its desirability in view of the fact that the accused would then be sent to the asylum to await the pleasure of the Lieutenant-Governor is in view of the sentence imposed by the Court, very questionable.

The other possibility is that of taking an appeal from sentence and while it may be argued that in view of the strong recommendation for mercy five years may be rather longer than should have been imposed yet at most it must be two or three years only longer than could reasonably have been expected in view of the decision in Rex vs. Ball and other

Indian Affairs. (RG 10, Volume 7473, File 19154-11, Pt. 1).

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