

The State Vs. Sidney Rodrigues and anr.

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Court : Mumbai

Decided On : Mar-20-1953

Reported in : 1954CriLJ9

Judge : Hemeon, J.

Appellant : The State

Respondent : Sidney Rodrigues and anr.

Judgement :

ORDER

Hemeon, J.

1. S. Rodrigues, who was prosecuted under Section 456, Penal Code at the instance of B. V. Hoogwerf, engine driver Bilaspur, was charged under that section by the Second Class Magistrate, Bilaspur; and the Additional District Magistrate. Bilaspur, has now reported the case under Section 438. Criminal P. C. with a recommendation that vile charge be quashed.

2. B. V. Hoogwerf's case was, briefly stated, as follows : Prior to March 1950, the relationship between S. Rodrigues, 20 years, and him was good but he then objected to his friendship with his daughter Edith, at the time about 18 years of age. This led to bad feeling between them, and on the night of 2-7-1950 when B. V. Hoogwerf, who is an engine driver, was going on duty, S. Rodriuges-pushed

him on the platform of the Bilaspur railway-station. Hoogwerf reported this to the police and to the D.L.S., Bilaspur.

3. On the night of 18-8-1950, Hoogwerf's uncle woke him up and told him that someone had entered the house through the back door in the direction of his daughter's room. He then went to the back of the house and met his brother who told him that S. Rodrigues had entered the house-He was seen standing in the verandah near a pillar wearing rubber shoes, blue shorts & a light blue undervest, and carrying a torch in his hand. The matter was reported to the police; and he (B. V. Hoogwerf) filed a complaint under Section 456 Penal Code on 1-12-1950.

4. S. Rodrigues in examination admitted that he had gone to the room of B. V. Hoogwerf's daughter on the night of 18-8-1950 and that he had entered the house from the back door, but he claimed that it had been opened for him and. that he had gone to the room in pursuance of letter which B. V. Hoogwerf's daughter Miss Edith had sent him on the same day. ' He denied that B. V. Hoogwerf objected to the friendship between him and his daughter or that he was aware that B. V. Hoogwerf would be annoyed if he entered his house.

5. The letter in question is Ex. D-3, is dated 18-8-1950 and is in the following terms:

Dear Sidney,

Please come over to-night to my place as I want to talk to you about certain things. Please don't fail to call over.

Edith (Hoogwerf).

This letter pointed to the friendship which existed between S. Rodrigues and Miss Edith Hoogwerf : and this was borne out by the photographs Exs. D-1 and D-2 which show them together. The witness Hichens (P. W. 7) also declared that Miss Edith Hoogwerf was in love with S. Rodrigues. It was in the circumstances clear that the latter's visit on the relevant night was in pursuance of the invitation extended to him by Edith Hoogwerf with whom he was on very friendly terms; and there is no reason to disbelieve his assertion that she opened the door for him.

6. There had been, it appears, a social function at the railway institute in July 1950; and when Rodrigues and Edith Hoogwerf were talking to Miss Hichens (P. W. 7), the complainant arrived, apologised to Miss Hichens and took his daughter away with the comment that he did not want them to be in the company of Rodrigues. During the same month, there was on the railway station platform between Hoogwerf and Rodrigues the incident to which advertence has already been made. It is, therefore, evident that these two persons were not on good terms and that Hoogwerf would not have approved of the younger man's visit to his daughter on the night in question.

7. This did not, however, 'per se' connote that Rodrigues had entered the house with intent to intimidate, insult or annoy Hoogwerf; and in - Emperor v. Chhotelal' : AIR1919 All249 (A), a Division Bench held that if an accused succeeds in showing that his presence in the house was in consequence of an invitation from or by the connivance of a female living in it with whom he was carrying on an intrigue and that he desired that his presence there should not be known to the person in possession, he cannot be convicted of house trespass. The learned Judges also pointed out, however, that if it were shown that the person in possession of the house had expressly prohibited the accused from coming to the house, an intent to annoy could be legitimately inferred

8. The fact that Hoogwerf did not approve of his daughter's association with Rodrigues did not postulate that Rodrigues went to his house with intent to annoy him; and he had, as indicated, gone there in pursuance of Edith Hoogwerf's written invitation to him. It may have occurred to him that her father would not approve of the visit, but this did not signify that he intended to annoy him by accepting the invitation. There was, moreover, nothing to show that Hoogwerf had expressly forbidden him to go to the house; and he himself admitted that he had no witness to corroborate his assertion that he had objected to Rodrigues visiting his house. Nor was there anything even to show that he had told his daughter that she was not to receive him there; and he, significantly enough, did not examine her as a prosecution witness.

9. In - 'Abdul Majid v. Emperor' AIR 1938 Lah 534 (B), a Pull Bench recorded the view that it must depend on the facts of each case as to whether an intent to annoy the person in possession of the property entered upon can, in the circumstances, be reasonably inferred and that where an accused enters at night the complainant's house with intent to have intercourse with the unmarried daughter of the complainant by invitation, the accused cannot be said to have the primary or even the subsidiary or secondary intent to annoy the person in possession from whom he had taken all possible precautions to keep his entry secret. The mere fact that he knew or ought to have known that, if discovered, his presence in the house might cause annoyance to the owner or other inmates of the house is by itself not sufficient to bring his case within Section 441, Penal Code.

10. This view was followed in - 'Emperor v. Takbirullah' AIR 1941 Pesh 79 (C), by a Division Bench of which Almond, J. C. made the following observations:

We are unable to agree with the reasoning given in '58 J. R.,' for it appears to us obvious that if a man enters the house of another person with the intention of committing clandestine adultery with an unmarried woman, not only does he not intend to insult or annoy any other person in the house, but he desires above all things that his presence should not be known to the other occupants.

Having regard to these authorities,, with which I am in respectful agreement, the reference made by the learned Additional District Magistrate, Bilaspur, was proper; and it would appear that 3. Rodrigues was wrongly charged for the commission of an offence under Section 456, Penal Code. All that he had done was to visit Hoogwerf's house in response to an invitation from his daughter Edith; and, in view of the relations which existed between Hoogwerf and Rodrigues, the latter had not the slightest intention of annoying the former and must have been keenly desirous of not having his visit discovered by him.

11. The charge under Section 456, Penal Code against S. Rodrigues is accordingly quashed.

