

Gaya Bhar Vs. Emperor

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Court : Allahabad

Decided On : May-26-1916

Reported in : AIR1916All52; 35Ind.Cas.979

Judge : Sundar Lal, J.

Appellant : Gaya Bhar

Respondent : Emperor

Judgement :

Sundar Lal, J.

1. This is a reference made by the Sessions Judge of Gorakhpur. It appears that the accused went to the place of one Sarju to have illicit connection with Sarju's sister. He was arrested and on prosecution was convicted by Pandit Gursaran Newas Misra, a Magistrate of the first class, of an offence under Section 456, Indian Penal Code, and sentenced to undergo rigorous imprisonment for one month. The learned Magistrate found that there had been criminal intimacy between the woman and the accused and that the woman was a widow. The question is whether the accused is guilty of an offence under Section 456, Indian Penal Code. Section 456 refers to an offence of lurking house-trespass and Section 441 defines the offence of criminal trespass. Under Section 441, Indian Penal Code, whoever enters into or upon property in the possession of another (a) with intent to commit an offence or (b) to intimidate, insult or annoy any person in

possession of such property shall be held to be guilty of an offence of criminal trespass. It has been found by the Magistrate that there was criminal intimacy between Sarju's sister and the accused. As she is a widow and of age, to have criminal intimacy with her is no offence under the criminal law, and it cannot be said that the accused went to Sarju's house with the intent of committing any offence, so far as this part of the case is concerned. It has been said that at any rate the accused must have known that Sarju would be much annoyed and would feel greatly insulted by the visit of the accused for the purpose of having sexual intercourse with his widowed sister and, therefore, the accused's conduct fell under Section 456, Indian Penal Code. The learned Sessions Judge is of opinion that offence under Section 456 has not been made out. The Punjab Chief Court in a recent case of *Jiwan Sinyh v. Emperor* 17 P.R. 1908 Cr. : 8 Cr. L.J. 488 : 32 P.W.R. 1908 Cr. has held that under these circumstances the accused was guilty of criminal trespass. In that case Mr. Justice Chatterji came to this conclusion after finding that 'Musammat Mehro denies the intrigue, and the first Court has not found it to have existed and the view of the learned Judge in regard to its existence is not well supported.' Upon these findings it was unnecessary to decide the point. Mr. Justice Chatterji, however, held that the house in question did not belong to Musammat Mehro but to her brother and that illicit intercourse was bound to cause annoyance to the brother and he, therefore, upheld the conviction. I am unable to accept that view. In the case of *Queen-Empress v. Rayapadayachi* 19 M. 240 : 1 Weir 537 Mr. Justice Shephard and Mr. Justice Davies in a case like this observed as follows: 'In our opinion the accused, though he may have known that, if discovered, his act would be likely to cause annoyance to the owner of the house, cannot be said to have intended either actually or constructively to cause such annoyance. It is one thing to entertain a certain intention and another to have the knowledge that one's act may possibly lead to certain result. The Section (441) defining criminal trespass is so worded as to show that the act must be done with intent and does not, as other sections do (e.g., Section 425), embrace the case of an act done with knowledge of the likelihood of a given consequence.' The view taken by the Madras High Court seems to me to be the correct view applicable to a case like the one before me. The learned Magistrate in his explanation has relied upon the case of *Emperor v. Mulla* 29 Ind. Cas. 67 : 37 A. 395 : 13 A.L.J. 625 : 16

Cr.L.J. 435. In that case the accused was found inside the complainant's house at 2 A.M. He could not give any explanation of his presence. Mr. Justice Knox held that in the absence of any particular intention the accused must be held under the circumstances to have entered the house with the object of committing an offence. In the present case, however, the intention with which the accused entered the house has been clearly proved. Similarly in the cases of *Koilash Chandra Chakrabarty v. Queen-Empress* 16 C. 657 and of *Premanundo Shaha v. Brindabun Chung* 22 C. 994 the accused was found in the middle of the night in a room occupied by respectable ladies. There was no evidence that he had an intrigue with any one of them and on an alarm being raised the accused attempted to escape. It was held that the accused must be deemed to have entered the house with the object of committing an offence. I agree with the view taken by the learned Sessions Judge and following the Madras ruling above referred to, I hold that it has not been proved that the accused entered the house with the intention of committing an offence and that the intention with which he went to Sarju's house, namely to carry on, an intrigue with his sister, even when discovered, cannot be said to have caused such annoyance or insult as is contemplated by the section. I set aside the conviction and the sentence and direct that the accused be forthwith released.