

Mulla Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/476864

Court : Allahabad

Decided On : Apr-08-1915

Reported in : AIR1915All178; 29Ind.Cas.67

Judge : George Knox, J.

Appellant : Mulla

Respondent : Emperor

Judgement :

George Knox, J.

1. The facts found in this case are as follows. Suraj Kumar, a Brahmin and cultivator left his house on the 26th of December 1914. His intention was to catch a train and go into Cawnpore. He took the precaution of having his house carefully closed for the night. He returned, having missed his train, somewhere about 2 A.M. He found the door which had been securely closed wide open. He says that somewhere inside his house, he caught hold of Mulla, a gadaria, who was trying to escape and that on Mulla's person were certain jewels, the property of Suraj Kumar. This portion of the evidence has apparently been discredited by both Courts and for the purpose of this case this alleged fact may be omitted from consideration altogether. The accused, when he was caught by Suraj Kumar, said that he had gone inside the house in connection with an illegal intimacy with Suraj Kumar's aunt, who is said to be a widow.

2. The facts then that have to be faced are a complete stranger is found inside a Brahmin's house at 2 A.M. in the morning having entered that house by a door which the Brahmin had taken care to secure at night. He is inside the house and when discovered is trying to escape. He does not, when arrested by the owner of the house, make any statement to the effect that he is there with any lawful intent. The intent with which he went was a matter within his knowledge, the burden of proving that his intention was an honest intention lies upon him. In the present case he alleges that he went with the intention of pursuing an intimacy, I will not call it criminal just now, but an intimacy with a Brahmin widow. He is not able to establish that any illegal intimacy of any kind had existed at any time between him and the Brahmin widow. Looking to the words contained in Section 3 of the Evidence Act, I hold that both the Courts below were right in holding that it had been fully proved that the accused had committed lurking house trespass by night and that it is very doubtful whether they erred in holding that an offence under Section 457 had been established against the accused.

3. I am asked to interfere in revision against this conviction and sentence, because no offence under Section 457, Indian Penal Code, has been made out and the conviction is bad in law. A long and laboured argument has been addressed to me which really rests on this, at its strongest point, that it was for the prosecution to establish criminal intention and that until they proved that criminal intention the accused was entitled to an acquittal.

4. The learned Vakil who appeared for the applicant took his stand upon the case of *Emperor v. Jangi Singh* 26 A. 194 : A.W.N. (1903), 230 : 1 Cr. L.J. 362 and drew my attention in particular to the words to be found in this ruling at page 195: His intention possibly was to obtain possession contrary to law, but this of itself would not constitute criminal trespass. Proof of an intention to commit an offence or to intimidate, insult or annoy was necessary. There was no evidence of any such intention, or from which such an intention might be reasonably inferred.' The facts of that case are somewhat peculiar. A zemindar had a quarrel with an occupancy tenant and when he was absent from the village by reason of ill-health, he induced the patwari to record that the occupancy tenant had left the village and abandoned his holding, and thereupon took possession of it. The learned Chief

Justice, who decided *Emperor v. Jangi Singh* 26 A. 194 : A.W.N. (1903) 230 : 1 Cr. L.J. 362 evidently arrived at the conclusion that the facts found in this case were not sufficient to establish a prima facie case of criminal trespass and it was necessary to consider further what was the intention of the zemindar who entered on this occupanny holding.

5. I was also referred to the ruling of *In the matter of the petition of Gobind Prasad* 2 A. 465.

6. The line of argument in this case, if carefully considered, will be found to be much the same. In that particular case the Pleader who appeared to support the case went so far as to say that where an entry upon property is in itself illegal, that is sufficient to establish one of the criminal intents required by Section 441, and it was held by Mr. Justice Straight 'that the intent with which the act is done must be established by clear and convincing evidence of such character and description as the particular nature of the case requires'. With all due respect to the learned Judge, this has, in my opinion, been too broadly stated and I note that it has not been followed by some of the Courts. Cases of this kind really rest upon the facts which are found. If those facts are such that a person of ordinary prudence and ability would come to the conclusion that they point to a guilty intent on the part of the accused, it is for the accused to rebut that guilty intention, and if he does not so rebut it, the guilty intent is as much found against him as his entry into or upon the property.

7. In *Sellamuthu Servaigaran v. Pallamuthu Karuppan* 9 Ind. Cas. 152 : 21 M.L.J. 161 : 9 M.L.T. 283 : 12 Cr. L.J. 30 : 35 M. 186 the learned Judges who decided that case, and one of them was a Hindu Judge of great experience, referred to a previous case of *Queen-Empress v. Raja Padayachi* 19 M. 240 : 1 Weir 537 and held that the law on this point was correctly laid down in that case: Although there is no presumption that a person intends what is merely a possible result of his action or a result which though reasonably certain, is not known to him to be so, still it must be presumed that when a man voluntarily does an act, knowing at the time that in the natural course of events a certain result will follow, he intends, to bring about that result. In the present case the ordinary and natural consequences

of the petitioners acts would be to annoy the owner of the house and to intimidate and annoy his servant who was holding possession for his master, and the petitioners, as reasonable men, must have known that such consequences would flow from their acts. They must, therefore, in my judgment, be held to have acted with intent to intimidate and annoy within the meaning of the section, and the petitions must be dismissed.'

8. In a previous case of this Court which came before me where I had to do with a very similar case *Emperor v. Ishri* 29 A. 46 : A.W.N. (1906) 279 : 3 A.L.J. 652 : 4 Cr. L.J. 291 I held that when an accused was found inside the house of the complainant at midnight, and his presence was discovered by the wife of the complainant crying out that a thief was taking away her *hansli*, it was for the accused to prove that his intention was an innocent one and in that case I referred to a previous case of *Brij Basi v. Queen-Empress* 19 A. 74 : A.W.N. (1896) 178 which I distinguished from the case before me. I see no reason to depart from what I then laid down.

9. The learned *Vakil* for the applicant drew my attention to another case *Premanundo Shaha v. Brindabun Chung* 22 C. 994. In that case the learned Judges delivered themselves of certain observations which were *obiter dicta*, which otherwise went to support the contention set up by the *Vakil*.

10. In my mind to hold that if a stranger who is found inside a *zenana* at two in the morning can escape from the consequences of his act by saying that he came there at the bidding of the wife or other inmate, would be a most dangerous doctrine and the act is deserving of severe punishment. This brings me to the third point raised in this application i.e., that the sentence of six months is unduly severe. I am not prepared to accede to this. The result is that I find the accused guilty under Section 456 of the Indian Penal Code, but I do not interfere with the sentence passed. The accused is said to be on bail, he will surrender to his bail and complete his sentence.