

State Vs. Haricharan Rakshit

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Court : Orissa

Decided On : Oct-28-1949

Reported in : AIR1950Ori114; 15(1949)CLT123

Judge : Ray, C.J., ;Jagannadhadas and ;Narasimham, JJ.

Acts : Defence of India Rules, 1939 - Rules 81(4) and 121; Cotton Textiles (Control of Movement) Order, 1946

Appeal No. : Government Appeal No. 3 of 1947

Appellant : State

Respondent : Haricharan Rakshit

Advocate for Def. : P.C. Chatterjee, Adv.

Advocate for Pet/Ap. : Adv. General

Disposition : Appeal allowed

Judgement :

Narasimham, J.

1. This is a Government appeal against the order of acquittal passed by the Sessions Judge of Ganjam-Puri on an appeal from the conviction and sentence passed by a First Class Magistrate of Puri.

2. The respondent was found travelling in a Second Class coupe compartment of the Puri-Howrah Express on 20th July 1946. His compartment was searched by the S. I. Anti-smuggling (P. W. 3) at Khurda Road Railway Station and new cloth consisting of dhoties, sarees, ready-made garments, napkins, etc., were recovered from the compartment. The respondent had a Second Class ticket No. 2,197, Another lady who was said to be the mother of the respondent was also travelling in the same compartment with him. The Sub-Inspector seized the cloth and on weighing the same found the weight to be about 22 lbs. Subsequently, however, when the cloth was weighed by the Court Sub-Inspector of Puri Sadar (D. W. 1) the weight was found to be 14 lbs., 4 1/2 ounces. As rightly pointed out by the learned Sessions Judge this glaring discrepancy in the weight of the cloth is indeed very intriguing. Either some of the cloth was subsequently pilfered by unauthorised persons or else the weighing at the time of seizure was done very carelessly. Whatever that may be, the Crown launched prosecution against the respondent for contravention of the Government of Orissa Notification No. 16,100 S. T., dated 3rd June 1946 (hereinafter referred to as the impugned notification) banning the transport by rail of any cloth from the Province of Orissa to any place outside the Province except in accordance with a permit granted by the Controller of Supply and Transport. As the respondent had no permit with him the learned Magistrate convicted him under Section 81 (4) read with Section 121, Defence of India Rules for contravention of the impugned notification. But on appeal the learned Sessions Judge acquitted him observing that there was a conflict between the impugned notification of the Government of Orissa on the one hand and an Order of the Central Government known as the Cotton Textiles (Control of Movement) Order, 1946 (hereinafter referred to as the Central Order) and that the said Central Order should prevail. He further held that the previous sanction of the appropriate authority as provided by Clause 10 of the Central Order, was necessary before starting prosecution and that in the absence of such sanction the case must fail.

3. The essential facts are practically unchallenged. The respondent was a Second Class passenger travelling in the Puri-Howrah Express on 20th July 1946 with new cloth in his compartment which on weighing was found to be about 14 lbs. 4 1/2 ounces. His mother was also travelling in the same compartment. Even if it be

assumed that the cloth belonged jointly to the respondent and his mother it is clear that each of them was in possession of more than 7 lbs. of new cloth. Some argument was faintly advanced to the effect that the evidence to show that all the pieces of cloth seized from the compartment were new cloth was not very satisfactory and in support of this argument the entry in the search list (Ex. 2) was relied upon. But from the evidence of the S. I. (P. W. 3) there seems to be no doubt that all the pieces of seized cloth were new cloth and as much as such would come within the definition of 'cloth' as given in the impugned notification of the Provincial Government. The respondent had no luggage ticket with him and though in his written statement he denied that the seized cloth was part of his personal luggage, there can be no doubt that he was transporting the pieces of cloth as part of his personal luggage in view of his clear admission in his examination under Section 842, Criminal P. C. 'I was carrying about 14 lbs. of cloth with me.'

4. The impugned notification prohibited the transport of cloth by rail from any place in the Province of Orissa to any place outside the Province except under and in accordance with the terms of a permit granted by the Controller of Supply and Transport, Orissa. Clause 3 (a) of that notification, however, exempted from its operation the transport by rail by a railway passenger of cloth and apparel as part of his personal luggage if such cloth and apparel do not together exceed in weight 6 lbs. This clause, however, cannot in any way help the respondent because the weight of the cloth of the respondent and the mother was more than 10 lbs. The impugned notification was issued by the Provincial Government in exercise of the powers conferred by Rule 81 (2), Defence of India Rules which were then in force. Though the Defence of India Act had since expired, the liability for any penalty for contravention of any of the rules or orders made thereunder still continues to exist by virtue of the amendment made to Sub-section (4) of Section 1, Defence of India Rules, by Ordinance XII [12] of 1946.

5. The Advocate-General's main contentions were that there was no conflict between the impugned notification and the Central Order and that for contravention of the impugned notification previous sanction as required by Clause 10 of the Central Order was not necessary and that on the facts of the case the

respondent was guilty of attempting to transport cloth in contravention of the impugned notification. On behalf of the respondent Mr. Chatterjee, however, urged that (i) the sanction of the appropriate authority was necessary under Clause 10 of the Central Order and (ii) the facts proved in the case merely show that there was a preparation and not an attempt to contravene the impugned notification and that in any view of the case the acquittal was justified. In support of this argument he has relied on a recent Division Bench decision of this High Court in Govt. Appeal No. 2 of 1949, *The King v. Hari Baisakh*, A.I.R. (37) 1950 Orissa 88, where on similar facts it was held that the mere fact that a railway passenger holding a ticket for Howrah was found in possession of certain quantity of cloth in his compartment at Cuttuck was not sufficient to show that he attempted to transport that cloth from the Province of Orissa to Howrah. But there is one important distinguishing feature between that case and the present appeal. In that case the prosecution was under Section 7 read with Section 17 of Act XXIV [24] of 1946 whereas in the present appeal the prosecution is for an offence under Rule 81 (4), Defence of India Rules. Rule 121, Defence of India Rules says clearly that the doing of any act preparatory to a contravention of any of the provisions of the said Rules shall be deemed to be a contravention of the provision. That is to say, though under the criminal law preparation to commit an offence is not ordinarily an offence, Rule 121, Defence of India Rules expressly made preparation also punishable in the same manner as the completed offence. On the other hand, in Act XXIV [24] of 1946 there is no provision corresponding for Rule 121, Defence of India Rules and the general principles of criminal law which ordinarily render preparation to commit an offence not culpable, may apply. But in view of the distinguishing feature in the Defence of India Rules, the respondent cannot escape liability even if it be held that the evidence led by the prosecution merely shows that the respondent was preparing and not attempting to transport cloth by rail outside Orissa.

6. Apart from reliance on Rule 121, Defence of India Rules, I think on the facts as proved by the prosecution it can be reasonably inferred that the respondent attempted to transport cloth from Orissa to Howrah in contravention of the impugned notification. He was found travelling to Howrah in a second class compartment with a second class ticket. The train was a through train to Howrah and the cloth was found inside the compartment as part of his personal luggage

though not booked as such. Neither in his examination under Section 342, Criminal P. C., nor in his written statement did he take the plea that the cloth was not meant to be taken by him to Howrah but was meant to be delivered to some other person within the Province of Orissa, When a person travels in a through train from Puri to Howrah with a ticket for Howrah and takes some articles into his compartment as part of his personal luggage the only reasonable inference that can be made is that he intended to take those articles also with him to Howrah. It is doubtless possible that the articles may not have been destined for Howrah and the passenger may deliver them to some friend or other person whom he might meet in any of the railway stations within the Province of Orissa. But here there is nothing on record to justify the surmise that the respondent intended to leave the cloth in Orissa itself. There was no label, on the cloth to show that it was meant for some other person in Orissa nor has the respondent himself taken any such plea. Though the difference between 'preparation' to commit an offence and an 'attempt' to commit an offence is one of degree there is an essential distinction between the two which has been fully brought out in the following passage from *In the matter of Amrita Bazar Patrika Press* 47 Cal, 190 at P. 234: (A. I. R. (7) 1920 Cal. 478 S. B.);

'Attempt in an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing except for failure to consummate, all the elements of the substantive crime; in other words, an attempt consists in the intent to commit a crime, combined with the doing of same act adapted to, but falling short of, its actual commission; it may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted.'

In a recent Patna decision reported in *Province of Bihar v. Bhagwat Prasad*, A. I. R. (36) 1949 pat. 326 : (50 Cr. L. J. 682), Shearer J. observed

'An attempt to commit an offence is, as I understand it, an act or series of acts, which leads inevitably to the commission of the offence unless something which the doer of the act or acts neither foresaw nor intended happens to prevent this. An act done towards the commission of the offence which does not lead inevitably

to the commission of the offence unless it is followed or, perhaps, preceded by other acts, is merely an act of preparation.'

In the present case the contraband cloth had been put in the second class compartment of the Puri Express. Nothing more was required for its transport to Howrah and in the usual course it would have reached the place of destination. Doubtless the respondent might prevent the completion of the offence by throwing away the articles before the train crosses the boundary of the Province of Orissa. But an attempt to commit an offence does not cease to be an attempt merely because after the attempt is made and before the actual completion of the offence the offender may be able to prevent its completion by doing some other act in pursuance of a changed intention. As pointed out in the aforesaid two decisions the question to consider is whether an act was done which if not prevented would have resulted in the full consummation of the act attempted. Here the placing of the contraband cloth in a compartment of the through train from Puri to Howrah with the intention of taking it to Howrah renders the attempt complete, because that act would inevitably lead to the commission of the offence. What the offender might do at subsequent stages of the journey for frustrating the completion of the offence, due to fear of detection or other reasons, is quite immaterial.

7. With great respect to the learned Judges who decided the Govt. Appeal No. 2 of 1949, *The King v. Hari Baisakh*, A. I. R. (37) 1950 Orissa 88, I may add that the conclusions in that judgment were too broadly stated. In that case the accused was found boarding a train at Cuttack carrying 42 lbs. of handloom cloth. He had not booked the luggage separately but had purchased a railway ticket for Howrah. The learned Judges observed that it cannot be reasonably held that the accused's intention was to carry the cloth to Howrah because it was just possible that he may have unburdened himself of his luggage at a way-side station. In considering what was the intention of the accused at the time of his entering the train with some luggage in his possession it may not be safe to rely on what he might possibly do at subsequent stages of the journey. The cloth was being carried as part of his personal luggage inside the compartment and he himself was travelling to Howrah. There was nothing on the article to show that it was meant for some other place. The only reasonable inference that can be drawn is that the accused intended to

take the article to the same place to which he was going, namely, Howrah. Apparently the learned Judges relied on *Narayanaswami v Emperor*, A. I. R., (19) 1932 Mad. 507 : (33 Cr. L. J. 682). It is, however, not necessary to elaborate this point in the present appeal because by virtue of Rule 121, Defence of India Rules, the respondent's contention must in any case fail.

8. Next it was argued that the impugned notification must give way to the Central Order and that the absence of sanction from the competent authority as required by Clause 10 of the Central Order was fatal to the whole case. The lower appellate Court was much impressed by this argument chiefly because of two decisions of the Patna High Court reported in *Kapildeo v. Emperor*, A. I. R. (32) 1945 Pat. 975 : (47 Cr. L. J. 190) and *Manohar Lall v. Emperor*, A. I. R. (32) 1945 Pat. 477 ; (24 Pat. 487). But I find no repugnancy between the Central Order and the impugned notification. Clause 3 of the Central Order runs as follows :

'No person shall offer for transport by rail, or cause to be transported by rail, any sloth or apparel except adder and in accordance with

(i) a general permit notified in the Gazette of India by the Textile Commissioner . . .
'

In pursuance of this clause the Textile Commissioner notified the general permit in No. 107/1-TA/45 (ii) dated 5th January 1946, para. 3A of which runs as follows :

'A Railway passenger may offer for transport by rail or cause to be transported by rail cloth and apparel as part of his luggage if such cloth and apparel do not together exceed in weight 13 lbs.' Mr. Chatterjee has relied on this para. 3A and urged that if under the general permit issued under the Central Order a passenger was entitled to carry 13 lbs of cloth as luggage, any provision in the Provincial Order restricting the quantity of cloth to less than 13 lbs must necessarily be repugnant to the Central Order. This argument, however, overlooks a very important difference in the language of the Central Order and the impugned notification. The relevant words in the Central Order, 'offer for transport or cause to be transported.' Paragraph 3A of the general permit also uses the very same words. Those words indicate that the agency for the transport of the cloth must be

some person other than the passenger himself. For instance, if the luggage was booked and despatched in the brake-van it may be said that the passenger caused the luggage to be transported but when the passenger was taking the cloth in his compartment without booking it as luggage at all how can it be said that he caused the cloth to be transported? All that can be reasonably said is that he himself transported the cloth. In the Central Order there is another clause (Clause 6) which deals with a case of transport of cloth by the person himself. Under that clause the Textile Commissioner may by notification prohibit the transport of cloth from any place within such area as may be specified in the notification to any place outside that area by rail. If under this clause the Textile Commissioner had issued a notification and fixed a different maximum limit of permissible transport there may be some repugnancy between that notification and the impugned notification. But I have not been shown any notification issued by the Textile Commissioner under Clause 6 of the Central Order dealing with the transport of cloth by rail. My attention was drawn to a notification of the Textile Commissioner (No. 101-TA/46 (ii) dated 16th February 1946) which refers to the transport of cloth by road: That notification has obviously no application to the present case. Therefore my conclusions may be summarised thus : (i) Clause 3 of the Central Order and any general permit issued under that Order will apply only in those cases where the transport of the cloth by rail is through an agency other than the railway passenger himself, (ii) Clause 3 (a) of the impugned notification however applies to the transport of cloth by rail by the passenger himself: (iii) There is thus no conflict between the impugned notification and the general permit issued under Clause 3 of the Central Order, (iv) There might be a conflict between the impugned notification and a notification that may be issued by the Textile Commissioner under Clause 6 of the Central Order regarding transport of cloth by rail but as no such notification has been brought to my notice it is unnecessary to discuss which notification will prevail if there is such a conflict.

9. In 1943 the Central Government issued another order known as the Cotton Textile (Control of Movement) Order, 1948 repealing the 1946 Order. In the 1948 Order the language of Clause 9 is slightly different as will be clear from the following extract :

'No person shall transport or cause to be transported by rail, road, air, sea or inland navigation any cloth, yarn or apparel except under and in accordance with

(i) a general permit notified in the Gazette of India by the Textile Commissioner'. It will be noticed that the words 'offer for transport' occurring in Clause 3 of the 1945 Order have been replaced by 'transport' in 1948 Order. But the 1948 Order has no application to the present case because the offence was said to have been committed on 20th July 1946 and the judgment of the appellate Court also was delivered in 1947 long before the commencement of the 1948 Order, It is, therefore, unnecessary to discuss the effect of the 1948 Order so far as the legal question involved in this appeal is concerned.

10. In view of the aforesaid conclusion it is unnecessary to consider the correctness of the decisions reported in *Kapildeo v. Emperor*, A. I. R. (82) 1945 Pat. 375 : (47 Cr. L. J. 190) and *Manoharlal v. Emperor*, A. I. R. (32) 1945 Pat 477 : (24 Pat. 487). I would rely on *Gogan Ram v. Emperor*, A. I. R. (33) 1946 Pat. 285 : (47 Cr. L. J. 892) and hold that the impugned notification covers a ground quite different from that covered by Clause 3 of the Central Order and as such the sanction contemplated by Clause 10 of the Central Order is not necessary for prosecuting the respondent for contravening the impugned notification.

11. I would, therefore, allow the appeal, set aside the order of acquittal passed by the Sessions Judge and restore the conviction of the respondent under Rule 81 (4) P/121, Defence of India Rules and sentence him to a fine of Rs. 100 in default to undergo rigorous imprisonment for two months.

12. The order of the trying Magistrate confiscating the seized cloth is also restored. A somewhat lenient sentence is passed because of the interval that has elapsed since the date of the occurrence and also because the seized cloth has been forfeited to the Government.

Das, J.

13. I agree that the appeal is to be allowed and that the conviction of the respondent and the order of forfeiture of the cloths seized should be restored. I

agree also that the accused should be sentenced to a fine of Rs. 100 and for two months' rigorous imprisonment in default.

14. There is no question of any repugnancy between the relevant Provincial Order and the Central Order in this case as pointed out in my learned brother's judgment. What the legal position would be, if there had been any repugnancy, is a matter on which it is unnecessary to express any final opinion in this case, more so, as we had not the benefit of a full and exhaustive discussion at the bar on the matter.

15. On the footing that the Provincial Order applies to this case, the only question is whether on the facts, an offence has been committed. In Govt. Appeal No. 2 of 1949, *The King v. Hari Baisakh*, A. I. R. (87) 1960 Orissa 88 decided by my learned brother Panigrahi J., and myself, we held on almost identical facts that no offence had been committed. That, however, was a case relating to an alleged offence committed on 7th August 1948 and was punishable, if established, under Act XXIV [24] of 1946. There is no provision in the said Act corresponding to Rule 121, Defence of India Rules, making even preparation for an offence punishable as for the main offence. That case, therefore, can be distinguished on this ground. I must, however, recognise that it has been contended that the reasoning in our prior judgment was wrong. That decision proceeds on two assumptions ; (1) that the offence committed in breach of Orissa Notification No. 16100 (S. T.), dated 6th March 1946 is not complete until after the articles are moved out of the province ; (2) that where a person with a railway passenger ticket to a place beyond the province carries with him some luggage without a luggage ticket to indicate that the luggage was also being carried to a place outside the province he cannot be presumed to be carrying the luggage to the place of his own destination. It is argued that both these assumptions are erroneous. As far as the first assumption is concerned, it has been pointed out that the word used in the relevant notification is 'transport' and not 'export' and that the word 'transport' connotes a continuous act from the start to the destination. It has also been contended that the Legislature could not have intended to prohibit an act which becomes completed only when the articles reach the other side of the province and go outside its jurisdiction. There is no doubt considerable force in these arguments. But it appears to me that while the word 'transport' may not necessarily bear the same

connotation as 'export' if the relevant notification intended to prohibit the very act of carrying the articles (provided of course that the intention was to carry it out of the province), then it should have been expected that the word 'carries' or some such equivalent term would have been used instead of the word 'transport' in the notification. On the other hand the notification in terms prohibits transport from a place in Orissa to a place outside the province and it is difficult to say that so long as a person is still inside the province with the goods, he can be said to have transported the same to a place outside the province merely because he intends to do so. It is, however, unnecessary to express a final view on this matter since in any view, the facts proved, would either amount to an attempt or preparation to commit the offence. 16. On the question whether the facts in this case amount to an attempt or preparation, in our judgment in Govt. Appeal No. 2 of 1949, *The King v. Hari Baisakh*, A. I. R. (37) 1950 Orissa 88, we were inclined to the view that the analogous facts in that case would not amount to an attempt. But we had no doubt (though it was unnecessary to say so for the purpose of that case) that it would amount to preparation provided that the facts could be taken to have established the intention to carry the luggage to the passenger's destination. There has been discussion at the bar as to what amounts to an attempt in such cases. In spite of a good deal of effort in the various decided cases to delimit the demarcation line between an attempt and preparation, it ultimately resolves itself into one of degree depending on the facts of each case. In a case of this kind I would hesitate to hold that the stage of attempt had been reached except when the train was about to leave the halting station just prior to the one on the other side of the border of the province. But there can be no doubt that from the moment the passenger boards the train, the 'preparation' is complete, if the facts prove clearly that the goods were intended to be carried outside the province.

17. The further question that remains is whether the fact of the passenger holding a railway ticket showing his destination to be a place outside the province is enough evidence to put accused on the defence. In our judgment in Government Appeal No. 2 of 1949, *The King v. Sari Baisakh*, A.I.R. (37) 1950 Orissa 88 we must be taken to have decided that it is not. Having heard the matter more fully argued, I am inclined to agree with the view taken by my learned brothers that where a person who holds a ticket showing his destination outside the province,

carries with him goods which are shown or admitted to be his personal luggage and where he is travelling in a train which in the normal course would reach that destination without a break, these are facts prima facie sufficient to put the accused on his defence. There may be other circumstances which might equally support such a prima facie inference. What needs, however, to be recognised is that it is ultimately a question of fact and not one for raising a legal presumption either one way or the other. With these remarks as to the effect of our earlier judgment, I concur with the order proposed by my learned brother.

Ray, C.J.

18. I agree that this appeal shall be allowed and the respondent convicted and sentenced as proposed by my learned brother Narasimham. I am also in agreement with his line of reasoning.

19. In view of the importance of the subject and the need for accuracy of expression in some of the conceptions involved in the question, I wish to add a few words.

20. With great reluctance, though, I differ from brother Das in thinking that in the facts of this case but for Rule 121, Defence of India Rules, conviction could be recorded of the contravention of the rule concerned. In this connection. I differ from his observation: 'But it appears to me that while the word 'transport' because he intends to do so.' My reasons are as follows: 'Transport' means (vide the Concise Oxford Dictionary) 'convey (person, goods, troops, baggage, etc.), from one place to another.' The conceptions of two termini and the act of conveying from one to the other, are implicit in its connotation. An act of transport cannot be undertaken and even contemplated without them. Two specific places each at one end and the other must form the termini. In the case of transport by rail, any of the intermediary stations does not come into the picture as a terminus, except for one who has to detrain there. Every moment that the train proceeds on its way, it is transporting a passenger with his luggage to where he is going to alight. It cannot be predicated that until the station is reached and the passenger alights, the act of transport is neither done nor undertaken. No doubt, the act of transport earlier begun and all the while continuing is completed at the destination.

'Transport,' from the very conception inherent in it, cannot be a momentary act. 'Transport' begins at one place and ends at another. Between these two places it is continuing. Besides the two termini, the concept of 'motion' is also implicit in its connotation. 'Transport,' as a noun, means 'conveyance;' e. g., 'A transport vessel' means 'a vessel employed to carry soldier, stores, etc., to destination.' In consideration of the meaning attached to the word, 'carry' as distinguished from 'transport,' to my mind, would not have been an apt expression in enacting the role or expressing the notification, as the case may be. I can carry a thing without the remotest idea of conveying it from place to place. The argument that in the circumstances of the case the act of 'transport' does not begin till the provincial boundary is crossed suffers from the defect as if the intention to contravene the concerned role begins to form not till then. This is hardly a tenable argument. To argue that there only the intention is manifest may carry some measure of conviction. Taking the limited view of its connotation, it would be difficult to predicate, in the case of one who is charged with 'transporting the cloth, in question, from Puri to Howrah,' that he is guilty of the offence charged until he reaches 'Howrah.' Because, by parity of reasoning, it could be successfully urged in his defence that he could throw off the goods a mile or two before the train reaches the destination. If it is held to amount to 'transport' for the purpose of the charge from where the train crosses Orissa boundary till any station before Howrah, I see no reason why it does not amount to such 'transport' from any station inside Orissa in the direction of Howrah.

21. Now, I shall address myself to whether the respondent's action, in the present case, was merely a preparation for or an attempt to 'transport.' The line of distinction between the two, in its irreducible minimum, is no doubt very thin, but it is real and subsisting. It is more easy to discriminate one from the other in concrete instances than to define by expression of general applicability. If preparation for a crime is not punishable, it is because mere intention to commit an offence is not indictable. The intention must manifest itself in an overt act before an offence or an attempt to commit an offence can be said to have been perpetrated. The act must be immediately connected with the offence, not that it must necessarily result in accomplishment of the act that makes the offence. It has been authoritatively laid down in the case of *R. v. Brown*, (1890) 16 Cox. C. C. 715

: (24 Q. B. D. 357) that it is no defence to an indictment for attempting to commit a crime to prove that it was physically impossible to complete the offence. The most illuminating way of expressing it would be to adopt the definition (Article 74 of the Draft Criminal Code of England prepared by Lord Blackburn, and Barry, Lust and Stephen JJ.):

'An attempt to commit an offence is an act done or omitted with intent to commit that offence, forming part of series of acts or omissions which would have constituted the offence if such series of acts or omissions had not been interrupted either by the voluntary determination of the offender not to complete the offence or by some other cause.'

22. To prove that if no interruption had taken place the prisoner could have completed the offence attempted is wholly irrelevant to the issue (See *R. v. Brown*, (1890) 24 Q. B. D. 357 : (16 COX. C. C. 716.)

23. The question in each case is whether the acts relied on as constituting the attempt were done with intent to commit the complete offence, and as one or more of a series of acts or omissions directly forming some of the necessary steps towards completing that offence, but falling short of completion by the intervention of causes outside the volition of accused or because the offender of his own free will desisted from completion of his criminal purpose for some reason or other than mere change of mind. When one stops only at preparation for a crime and does not take any step towards its commission, he is credited with being penitent and giving up the design by mere change of mind. This change of mind may come too late and that after being influenced by extraneous causes or circumstances. In the latter case, the offence of attempt to commit a crime is complete. Suppose, a passenger for fear of detection unburdens himself of the luggage containing contraband cloth at some station before the inter-provincial border, he cannot be held to have been transporting from place inside the Province to another though he designs to make it appear like that. He must be held to have been transporting and not merely attempting to transport the goods across the provincial boundary. In some instances, the essence of an offence consists in the result achieved, such as, murder, causing, hurt or grievous hurt and in others even attempt to do certain

acts or omissions towards completion of an injury is made complete offence. Reduction of the Province's store of cloth by above 5 lbs. is not the gist of the offence but mere attempt to reduce or deprive by means of transport is the kernel of the offence. In such circumstances, as would lead inevitably to the conclusion that transport had been undertaken to carry goods beyond the Province, the offence, it is plain to my mind, is complete, The prosecution need not prove that if no interruption had taken place the prisoner could have completed the offence. (R. v. Brown, (1890 24 Q. B. D. 357 : 16 COX. C.C. 715 ante.). That in the instant case the circumstances were present has been shown by Narasimham J. In my judgment, the respondent is guilty and the Crown must succeed in this appeal.

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