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Court : Chennai

Decided On : Nov-09-1917

Reported in : AIR1918Mad36(2); 43Ind.Cas.578; (1917)33MLJ729

Appellant : S. Vullappa and ors.

Respondent : S. Bheema Row

Judgement :

Wallis, C.J.

1. The question in this case is, what is the meaning of 'with intent to annoy' in Section 411 of the Indian Penal Code. In his History of the Criminal Law, Vol. II, p. 100 Sir James Stephen gives the following definition of intention: 'The direction of conduct towards the object chosen is called the intention or aim (for the metaphor involved in the word is obviously taken from aiming with a bow and arrow).' and he distinguishes the aim or intention of an act from the motive or reason which actuated the person doing it. At the same time he admits (page 110) that intention is frequently used and understood as being synonymous with motive, and speaks of 'two common fallacies, namely, the confusion between motive and intention, and the tendency to deny an immediate intention because of the existence real or supposed of some ulterior intention. For instance, it will often be argued that a person ought to be acquitted of wounding a police man with intent to do him grievous bodily harm, because his intention was not to hurt the police-man but only to escape from his pursuit. This particular argument was so common that to

inflict grievous bodily harm with intent to resist lawful apprehension is now a specific statutory offence.' That is to say, the legislature in England has now solved the difficulty by making the intent to resist lawful apprehension the gist of the offence. If we are to apply these tests to the present case, there can be no doubt that the accused must be taken to have intended to annoy the complainant when he trespassed on his house in spite of his protests even though his ulterior intention was to search for his own jewels which he believed to be hidden there. On the other hand it is clear that this was not the view of the meaning of 'intent' taken by Macaulay and the other Indian Law Commissioners in the draft Penal Code. They regarded the maxim that every one must be taken to intend the natural consequences of his acts as a fiction which should not be recognised in the Penal Code. Their treatment of this question elicited many criticisms which were met in paragraph 100 of the first report on the Penal Code by the Indian Law Commissioners.' The Commissioners saw clearly the difference between 'intent' and 'knowledge of likelihood,' and meant to express it distinctly in order to avoid the necessity of fiction in laying charge as for example by imputing 'intent' constructively when the circumstances imply only 'a knowledge of likelihood' advisedly intending as they did that there should be no distinction in general, in respect of penal consequences between cases in which a man causes an effect which is an offence designedly, and cases in which 'he causes it by doing what ' he knows is likely to cause it.' Advisedly intending this in general they worded the enactment so that the charge may be always expressed according to the truth.' (The Indian Penal Code as originally framed: Madras Higginbotham & Co., p. 215).

2. Their view was in the language of the Commissioners that there should in general be no distinction in respect of penal consequences between cases in which a man causes an effect which is an offence designedly and cases in which he causes it by doing what he knows is likely to cause it, but that it should expressly be made punishable to do the act with knowledge of the likelihood as they call it. An examination of the Indian Penal Code as finally passed into law shows that it was framed on these lines. The maxim that every one must be taken to intend the natural consequences of his acts is incorporated in the definition of 'voluntarily' in Section 39, and thus made applicable in every section where that word is used. More generally doing the act with a criminal knowledge or a criminal

intent is expressly made punishable. Section 39 speaks of 'an act which is criminal only by reason of its being done with a criminal knowledge or intention' and the distinction is observed in Sections 87 to 89; 166 and 167, 194, 295, 297, 299, 350, 366, 367, 425, 499, 504 and 505, in all of which doing the act with intent and doing the act with a knowledge of the consequences are both made punishable. The same result is effected by the addition of the explanation to Section 188. In Section 350 in particular it is made punishable to use force 'intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury fear or annoyance to the person to whom the force is used.' The contrast with the language of Section 441 is very suggestive,

3. In these circumstances, when in the isolated Section 441 doing the act with the specified intent is alone made punishable, the inference appears to be that the legislature did not intend that in this section doing the act with a knowledge of its consequences should be punishable. The only other section resembling this which I have noted on a cursory examination of the Code is Section 201, and the omission as regards Section 441 may be explained by the fact that trespassing with intent to annoy was a new offence unknown in English Law. This is the view on which *Queen Empress v. Rayapadayachi* I.L.R. (1896) M. 240 was decided and I think it should be followed in preference to *Emperor v. Lakshman* I.L.R. (1902) B. 558 and the judgment of Benson, J. in *Sellamuthu Servaigaran v. Pallamuthu Karuppan* I.L.R. (1911) M. 186.

4. I will only add that the decision in my opinion does not involve any risk to the public security. A man who forces his way into another's house against his will commits a civil trespass for which he may be made answerable in substantial damages. Further, the owner of the house may obstruct his entry, and even I think, use reasonable force to remove him without committing the offence of wrongful restraint punishable under Section 341, and any active resistance to such obstruction would amount to the use of criminal force punishable under Section 350 as under that section it is sufficient if the accused knows that the use of such force is likely to cause annoyance to the person to whom it is used and any preparation for the use of such force will constitute an assault punishable under Section 351. I would answer the question in the negative. It must of course be a

question of fact in each case whether the intent was to annoy or not.

Ayling, J.

5. With all respect, I find it impossible to answer the question referred to us with a simple affirmative or negative. That a mere knowledge that the entry is likely to cause insult or annoyance cannot be taken to be equivalent to an intent to insult or annoy must, I think, be conceded: A comparison of Section 441, I.P.C. with the other sections of the code referred to by the learned Chief Justice makes this clear. Where the legislature has in so many instances specifically placed a knowledge that a certain result is likely to follow from the act on the same footing as an intent to cause that result, it can hardly be contended that the two are synonymous.

6. On the other hand it seems to me necessary to bear in mind that a person's object (to use a non-contentious word) in entering on another person's property may be two-fold : and that, while intent must in most cases be a matter of inference, there are degrees of probability ranging up to practical certainty, from the stronger of which an inference of intent may not improperly be drawn (Vide the distinction emphasised in *Emperor v. Lakshman* I.L.R (1902) 36 Bom. 558 The reference deals with certainty as well as likelihood of causing annoyance.

7. The practical difficulty however seems to me to lie less in the degrees that intervene between likelihood and certainty than in the question of the extent to which one motive displaces another or should be treated to the exclusion of another as influencing a man's act.

8. Suppose A enters the dining room of B, a total stranger, during a dinner party. Annoyance to B is so certain that in the absence of special circumstances or any evidence tending to suggest an independent motive for the intrusion, a Court might I think, fairly infer that A's intent was to annoy B and nothing else.

9. Now suppose it is shown that A, on entering meant

1. to convey warning to one of B's guests in a matter of life and death.
2. to gratify his curiosity by looking at a picture in B's dining room.

10. Is A's, action to be treated as equally criminal or non-criminal in each of these cases

11. I think not: and it seems' to me that in every such case, where a specific intent other than one to insult or annoy is set up, the Court must determine whether the motive involved in it is sufficiently strong to displace the intent of annoyance which would otherwise be inferred. The existence of an independent motive for the entry does not in all cases preclude the consideration of an intent to annoy inferable from the practical certainty that annoyance would be caused.

12. In case 1, I should hold that the intruder's intent (in the sense contemplated by Section 441, I.P.C.) is not to annoy and that he has committed no offence.

13. The principle of Section 81, I.P.C., might be applied and it might be held that the danger to be averted by the warning far outweighed the annoyance caused to the owner of the house : or it might be held that the urgency of the matter precluded the intruder from realising, as he must be presumed to do in ordinary circumstances, the certainty of annoyance.

14. In case 2, the motive put forward by the intruder is so trivial, that neither line of reasoning can be adopted. In effect it is as if he said to the owner of the house, ' I know my entry will annoy you, but I want to see your picture, and I mean to do so even at the cost of annoying you, I don't wish to annoy you, but I propose to gratify my curiosity whether I annoy you or not.'

15. In this case, I do not think the intent inferable from the known certainty of annoyance is displaced by the trivial intent set up by the intruder; and I should be inclined to hold that the offence of criminal trespass had been committed.

16. If it be held otherwise it would follow that against such an entry there would be no right of private defence. For the trespass would not be criminal, and Section 97, I.P.C. only gives a right of private defence of property against a criminal trespass. It is true that this difficulty is to some extent modified as pointed out in the concluding portions of the judgment of the learned Chief Justice, which I have had the advantage of perusing. Obstruction of an intruder's entry would doubtless not

amount to wrongful restraint under Section 341, I.P.C., and might be resorted to by the owner or occupier without infringement of the law. But I am not clear how far his rights would extend against an intruder who had already effected his entry; or whether he would be legally justified in using reasonable force to expel him. I cannot therefore altogether dismiss this aspect of the case, in endeavoring to ascertain the intention of the Legislature in regard to Section 441 I.P.C. If my reading of the latter is incorrect, it seems worthy of consideration whether Section 97, I.P.C., does not need amendment. I would therefore answer the reference as follows:

A mere knowledge that the trespass is likely to cause insult or annoyance to the owner of the property does not amount to an intent, to insult or annoy within the meaning of Section 441, I.P. C : but where the trespasser knows that his trespass is practically certain in the natural course of events to cause insult or annoyance to the owner of the property, it is open to the Court to infer an intent to insult or annoy. It is a question of fact whether this presumption of intent is displaced by proof of any independent object of the trespass.

Kumaraswami Sastri, J.

17. The question referred to us for decision is whether knowledge that his act is likely or certain to cause annoyance or insult to the person in possession, would if his intention was other than one to intimidate insult or annoy render him guilty of an offence under Section 448 of the Indian Penal Code.

18. Though there is a conflict of decisions on the question the preponderance of authority is in favour of the view taken by Abdur Rahim, J., one of the referring Judges that it is not sufficient to prove that the person charged under Section 448 must have known or had reason to believe that his act would cause insult or annoyance to the person in possession. The question is not free from difficulty but I am of opinion that the reference should be answered in the negative.

19. It is clear from a perusal of the various sections of the Indian Penal Code that a difference is drawn between 'intention' and 'knowledge of consequences' and that the Code takes notice of actual and not. presumed intention in determining

criminality though in determining what a man's actual intention was, Courts can raise all fair inferences that can be drawn from his acts. When an act is made an offence by reason of its having been committed with a specified intention the intention has to be found as a matter of fact upon evidence which justifies the inference that the accused had the intention required to render his action criminal.

20. When proof of intention is necessary it is clear that unless the accused admits that his intention was such as would render him guilty of the offence charged--intention which is a psychological fact--can only be proved by having regard to the nature of the act he commits and a criminal intent is often presumed from acts which are reasonably susceptible of but one interpretation. The rule of law that a man must be taken to intend the natural consequences of his act is really a rule of evidence. The Court is not bound to accept the statement of the accused as to his intention but may find from the facts what his intention was and in order to arrive at a conclusion may hold that when a man uses means which at the time he used them he knew or had reason to believe to be likely to cause a result his intention was to cause the result.

21. When however the Court on the materials before it comes to the conclusion that a person had a specified intention when he did an act which is not the intention required to make his act an offence under Section 441 the mere fact that he would have known that certain consequences would happen if he had paused to consider would in my opinion be insufficient.

22. The view taken by the framers of the Act has been pointed out by the Chief Justice in his judgment and I think that in construing Section 441 it must not be forgotten that wherever the Penal Code wants to make a man liable for knowledge of consequences it expressly says so. As pointed out by Sir William Markby (Elements of Law, paragraph 222) expectation that a consequence would follow or a knowledge that it is likely to follow without any desire that it should follow is an attitude of mind which is distinct from intention and the framers of the Act clearly kept the two distinct and treat knowledge as a state of mind differing from intention. In some sections, e.g., 118 to 120, 153, 154, 217, 293 etc., the words used are 'Intending or knowing it to be likely'. In others only intention is referred to

e. g., 124, 140, 174 to 176, 193, 211, 509 etc. In some sections the word used is 'knows' e.g., 127, 130, 188, 196, 260 etc. In some sections the words are knowing or having reason to believe or believing, e.g., 130, 181 to 183, 201 to 203, 499 etc. In certain sections the words are 'reason to be believed' e. g., 155, 156 and in others ' for the purpose of e.g., 189, 190. In Section 298 the words used are ' deliberate intention.'

23. I think the correct view has been taken in *Queen Empress v. Rayapadayachi* I.L.R. (1896) M. 240. Though the facts show that the accused wanted to conceal his presence in the house the judgment proceeds on the broad ground that 'S. 441 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 of the likelihood of a given consequence.' To introduce the rule that knowledge of consequences is equivalent to an intention when the probability of consequences following is of more than a particular strength would, in my opinion, introduce, into the section, which, as pointed out by Straight, J., in the matter of *Gobind Prasad* I.L.R. (1879) A. 465 is complicated enough, further difficulties.

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