In Re: Maragatham and anr.

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Court : Chennai

Decided On : Oct-14-1959

Reported in : AIR1961Mad498; 1961CriLJ781

Judge : Ramaswami and ;Anantanarayanan, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 34, 299, 302 and 307

Appeal No. : Criminal Appeal Nos. 234 and 282 of 1959

Appellant : In Re: Maragatham and anr.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : M.A. Sathar Sayeed, Amicus Curiae

Judgement :

Anantanarayanan, J.

1. These are connected criminal appeals by Velu (accused No. 1) and Maragatham alias Lakshmi (accused No. 2) in Sessions case No. 8 of 1959 on the file of the learned Sessions Judge of Vellore. The two accused, who are husband and wife, having been convicted of the murder of their female infant. Rani, aged about 1-1/2 months under Section 302 I.P.C. read with Section 34 I.P.C, and sentenced to undergo imprisonment for life in each case. . They were further convicted of the offence of attempt to commit suicide (S. 309 I.P.C.) and each

sentenced to undergo simple imprisonment for six months; the sentences to run concurrently.

2. The facts are simple and tragic, and not in dispute. The two accused were starving for about ten days previous to this offence, and could find neither work nor any one to give them food. They determined to put an end to their lives and also to put an end to the life of their female infant. Rani, probably feeling that none could look to the child after them. On 7-1-1959 at about 5-30 a.m. they proceeded to a well in their village, Narayanakuppam, and jumped into it, carrying the female infant. The evidence makes it clear that they had tied themselves together with a rope, before jumping into this well.

3. Rajagopal (P.W. 1) was passing that way, and heard a sound from the well, and peeped into it. He saw the two accused inside the well, apparently spasmodically struggling for life. He jumped into the well, and, while, in the water, was able to get at the rope that had bound these unfortunate people together. He pulled the rope, and swam towards the steps leading into the well. By this means he was able to drag both accused 1 and 2 towards the steps. The wife (accused 2) was somewhat unconscious, and P.W. 1 had to carry her out of the well. The husband (accused 1) was sufficiently restored to be able to climb up the steps. He (P.W. 1) questioned accused I who told him that, finding no work and unable to bear the pangs of hunger, both the accused had determined to put an end to their lives, and jumped into the well with the child. P. W. 1 states;

'He (A-1) also told me that they placed their child in their hands, jumped into the well, and in that act the child fell into the well.'

This extra-judicial confession is of significance in determining the precise nature of the offences committed by the two accused.

4. Rajagopal (P.W. 1) then went and informed his father, the village munsif (P.W. S), Accused 2 was still a little unconscious, even when P.W. 3 came to the spot. When P.W. 3 questioned the husband (accused 1) he repeated the extra-judicial confession set forth above. P.W. 3 then sent his vadasts to the police and magistracy (Exs. P. 2, P. 3). The police came in the evening, but the body of the

infant could not) be traced, as the well was very deep. Actually, a fire engine was brought the next day, and the) water was baled out, when alone the body of the infant floated to the surface and could be recovered.

5. The autopsy held by Dr. Gopala Gounder (P. W. 2) leaves us in no doubt that the child was drowned, and that death was the consequences of asphyxia due to drowning (Ex. p. 1). The classical signs and symptoms of both asphyxia and drowning were present, such as Water in the stomach, palms and soles presenting a sodden appearance, lividity of mucosa, chambers of the heart empty, injected with blood smears, etc.

6. It only remains to add that both the accused made confessions judicially recorded by the Sub Magistrate (J) of Arkonam (Exs. P. 4 and 5). Accused 1 admitted the facts set out above, and stated 'The child slipped out of the hand', and drowned in the well.' Accused 2 admitted that both of them tied themselves with a rope, and jumped into the well with the child, in order to put an end to the lives of all the three. The child was drowned in the well.

7. In the committal court, both the accused merely admitted the facts, and stated that they did what they did, unable to bear the pangs of starvation. At the trial, accused 1 came forward with an explanation which, if true, would not render the accused liable for any offence at all, because it would not take them beyond the stage of preparation, in respect of either offence. According to him, accused 2 was carrying the child, and the child slipped and fell into the well, even before they jumped in. This was by sheer accident, and they got into the well to save the child. Accused 2 made no such plea, but merely admitted the facts.

8. The learned Sessions Judge was justified in rejecting the plea of accused 1 at the trial, because it is opposed to the extra-judicial confessions of accused I the judicial confessions of accused 1 and 2, to the statements of accused 2 throughout and the facts and probabilities. Bull in holding that both the accused were guilty of the completed act of murder, he was merely 'cutting the Gordian knot'. His solution evades the true difficulties of the case, and is not legitimate, as it does scant justice to the material of the evidence.

9. In holding that he does cot believe that the child slipped and fell into the well, just when the accused jumped into the well tying themselves together, in order to put an end to their lives, the learned Judge forgets that he must proceed upon legal evidence and cannot surmise. There is nothing in the extra-judicial confessions to render this defence improbable. The extra-judicial confession of accused 1 to P. W. 1 suggests this.

If the learned Judge was proceeding upon circumstantial evidence, this hypothesis must be ruled out On the probabilities. On the contrary, it is perfectly probable, it is consistent with every known fact. We do reject the further plea of accused I, put forward at the trial and at no earlier stage, that both the accused got into the well only after the child slipped in, in order to save it. But we accept the story in the confession, and hold that the child slipped and fell in and was drowned, when the two accused jumped into the well. The very difficult question upon the facts is what is the offence thereby committed, with regard to the death of the Infant?

10. My learned brother, whose judgment I have had the advantage of reading, has, if I may say so with respect, laid under contribution Indian, English. American and even Russian sources of law, in order to elucidate the history of the concent of 'a tremor' in criminal jurisprudence. Upon the present facts, we have both the elements of mens rea and actus reus. Kenny indeed goes so far as to state (Edition by Cecil Turner, 195S, p. 90) that the criminality in attempt 'is constituted more by the mens rea than by the achus reus.' The fact that the line between preparation and attempt is misty, is really not a true difficulty, though it may appear such. When the principle is applied to given facts, it will be almost invariably found that the true solution is evident. As Kenny states (the same Turner Edn. p. 91)-

'the deed must be one performed 'in actual furtherance of the crime intended' (italics there in single quotation marks--Ed.) of text) and, in addition, the deed must be such that it raises a presumption that the accused was aiming at the crime in question.'

Earlier cases upon attempts to commit crimes which are 'impossible of performance' discussed lucidly in Syed Sharasul Huda's Principles of the law of crimes' (Tagore Law Lectures), upon this particular, aspect are probably out of

date. R. V. Macpherson, 1857-1 Dears and B 197, is doubted by Kenny to be good law, since there cannot be degrees of 'impossibility.' In all cases the prosecution must prove the actus reus and the mens rea, and the point is really one of evidence (Kenny, p. 94).

11. In Queen Empress v. Ramakka, ILR Mad 5, also referred to by my learned brother, the facts did not proceed beyond preparation, and the actus reus was not established. In the present case, the situation would have been precisely similar or incidental, if both the accused had merely gone, towards the well, or peered into it with the intention of jumping in, when the infant had slipped from the hands of the woman. That might conceivably be so, even if they had tied themselves together with a rope, in order to drown themselves along with the infant. But the evidence is that the accused jumped into the well, and that as they were doing so, the child slipped from the hands of the woman and fell in; that is the evidence of the facts and probabilities, and of the judicial and extra-judicial confessions. That establishes the actus reus, and the mens rea, with regard to the infant. It goes beyond preparation, and locus paenitentiae hence ceases to exist; that is available only prior to the actus reus, and not once that element is established.

12. But the true difficulty still remains, a matter upon which we have been able to discover hardly any light in the authorities and text books. Most cases of 'attempt' are cases in which the object of the offender is frustrated, and there is no successful culmination. Otherwise, the 'attempt' would merge in the crime, and would no longer retain its essential character of an 'Inchoate offence' which my learned brother has stressed. But what happens when some intervening circumstance does prevent the 'attempt' from being successful, but nevertheless brings about the same end desired by the offender, through an accident? The offender cannot be convicted of the offence itself, for the chain of causation has snapped.

This can be very simply shown in the present case, upon the facts of the record accepted by us. Section 299 I.P.C. applies to him who 'causes death by doing an act with the intention of causing death' etc. Section 300 I.P.C. specifies that culpable homicide is murder 'if the act by which death is caused is done' etc. In the

present case, before the actus reus could cause death, an accident intervened, the child slipped and was drowned, and hence it cannot be said that the acts of the accused were the direct cause of the death of the child.

But how far can indirect causation to be recognised as operative, in criminal jurisprudence? A glimmer of light is thrown upon this problem in the case law relating to explanation 2 to Section 299 I.P.C. If, after the blow or act of injury impugned as homicidal, a distinct set of circumstances arises causing a new mischief, 'then the new mischief will be regarded as the causa causans aod not the Original blow' R. v. Flynn, (1868) 16 WR 319 cited in Ralan's 'Culpable Homicide', p. 8). But the question is hardly fire from subtle difficulties, as the following examples will show.

13. If A shoots at B, who is standing near a balustrade in a tall building, and the shot misses, and B in consequence of the explosion turns giddy and fells over the balustrade into the street below and is killed, would A be guilty of the murder of B? Hardly, for it is not his act that has caused the death; it is a circumstance given that the shot missed its aim. But the actus reus is certainly established, and A would be guilty of attempt at murder.

If a child is thrown into a well, and in falling it strikes a led ge, the existence of which the murderer does not suspect, and dies of a fractured skull before it strikes the water, could the offence of murder be held proved against the criminal in question? Clearly, only the attempt can be held established on those facts, since it was not the act of the accused which caused the death. But degrees of causation can vary, and give rise to difficulties. In the first instance, if the shot missed its aim, but struck a pillar and 'recochetted' back to the victim, killing him thereby, it would be difficult to argue that the completed offence was not established.

14. Even in English criminal jurisprudence, which has a long history of growth by juristic analysis and judicial interpretation, the difficulty would appear to remain unsolved. The following passage in 'Russel on Crime' 'Turners 19S8 Edn.) page 466 is highly significant:

'A distinction has been drawn between proximate and remote consequences of a man's conduct. As stated previously, there has So far been no authoritative test for deciding exactly where the line should be drawn between these two classes'.

Some light will be found thrown upon this difficult problem of indirect causation, with specilic reference to the philosophical definition of causation as 'the necessary connection of events in the time-series', in Betrand Russell's 'On the notion of cause' ('Mysticism and Logic' 1950 Edn. p. 180). The problem is not merely metaphysical, but actual in criminal jurisprudence, and has been found so in English law.

15. Giving our best consideration to the matter, we are of the view that both accused 1 and accused 2 can be found guilty only of attempt to murder, and we modify the convictions accordingly (S. 307 I.P.C.). We confirm the convictions under Section 309 I.P.C. as well as the sentences imposed upon that count.

16. The case is a tragic and pitiable one, and the death of the child was really due to economic insecurity, to the fact that both the accused felt themselves slipping from the ledge into destruction, due to sheer want. Hence we sentence each of the accused under Section 307 I.P.C. to 18 months' rigorous imprisonment, the sentences to run concurrently, with those imposed by the Earned Sessions Judge under Section 309 I.P.C. already, and confirmed by us. RAMASWAMI, J.:

17. I agree with my learned brother that accused 1 and 2 can be convicted only of attempt to commit murder. On account of the importance of the topic I wish to add the following.

18. The law relating to 'attempt' punishable in criminal law is practically the same in England, United States of America and India.

19. This branch of criminal law has been the subject of detailed study in the standard English text book, Kenny's Outlines of Criminal Law, 17th Edn. (1958) by J. W. C. Turner, pp. 89 to 95; the American Classic. 22 Corpus Juris Secundum page 138 and following; and so far as India is concerned, J. D. Mayne's Criminal Law of India, 3rd Edn. Ch. XV, p. 925 and following and two valuable monographs,

Sri N. Arunachalam's 'Treatise on the Law of Crimes', Chapter IX pags 142 and following; and Section K. L. Ratan's 'Culpable Homicide' Chapter XIII ('Attempt to murder), page 109 and following; The Tagorc Law Lectures by Sir Syed Shamsui Huda on 'Attempt' --inchoate crimes lectures, IIIrd of the Tagore Law Lectures--1902 published) as the Principles of the law of crimes in B. India though out of date still remains the outstanding contribution on the subject.

20. Attempt to commit a crime and the abetment of the commission of that crime belong to the category of incomplete crimes or inchoate crimes injurious rather in tendency than in fact. These are also classified as crimes in the interests of social security and well-being. In civil law the attempted doing of an act which when completed is actionable, is not actionable at all. On the other hand, the attempted commission of an offence is taken serious note of by the Criminal law and attempts are also punished with great severity.

21. Four stages are passed through in doing an act. The first stage or origin of an act is in the contemplation of a human being who is capable of acting. This stage is not dealt with by any system of criminal jurisprudence in English speak-countries. 'The Devil himself knoweth not the thought of man' and so it is absolutely difficult to divine the contemplation in the mind. of an individual and punish him for the idea in his head. The will is not to be taken for the deed. Junes as has been said cannot look into the breast of criminals. But if a person goes past the stage of contemplation and reaches the stage of preparation, he brings himself within the clutches of the law.' According to Mayne, preparation consists in devising or arranging the means of measures necessary for the commission of the offence.

It often happens that in a series of acts culminating in an offence each step is preparafion for the next. In such cases it would be unduly restricting the meaning of the word to say that an attempt must preclude all stages of preparation and be the last proximate act to that which would complete the offence or to say that it must be the One immediately preceding that with which the acts constituting the offence began -- Huda, p. 88. Preparations are punished under the various sections of the penal Code, the notable examples being Ss. 122, 126, 599 etc.

The next stage is attempt Or the direct movement towards the commission after preparations have bee' made.

22. In actual practice it has always been found difficult to draw a line between Preparation and attempt. It cannot be stated with any degree of accuracy where the former stage ends and the latter stage begins. The Code has not sought to define either contemplation or preparation or attempt. 'This is probably due to the fact that the word 'attempt' is not used in any technical sense' (Huda supra at page 49). It is left to the common sense of the magistrate and judge to determine whether the stage reached by the accused is preparation or attempt : Jainlal v. Emperor, : AIR1943 Pat82 , Reg v. Padala Ven-katasamy, ILR Mad 4; The King v. Tustipada Mandal. : AIR1951 Ori284 ; In the matter of the Petition of R. Mac Crea, ILR All 173.

23. There are three ways in which the Code has dealt with attempt to commit offences. (a) the offence and the attempt to commit it are dealt with in the same section and the extent of punishment for both is the same, e.g. Section 196 I. P. C.(b) The second head is attempt at committing specific offences dealt with side by side with the offences themselves separately and with separate punishments as illustrated by Ss. 307, 308 I. P. C.(c) With respect to Cases not Provided for in any of the two clauses mentioned above, the general Section 511 I. P. C. applies.

In order that a person may be guilty of an attempt at the commission of an offence under Section 511 of the Code the offence itself if completed should be punishable with imprisonment for life or for a lesser period; and secondly in such attempt the culprit must do an act towards the commission of the offence, e.g. if the offence which is attempted at is punishable with fine alone, the attempt at the commission of the same cannot be punished under Section 511 I. P. C. To these three categories may also be added a fourth category of an attempt comprised in Section 309, I. P, C. dealing with an attempt to commit suicide. Section 309 I. P. C. takes in the words of Section 511 I. P. C. in regard to what would constitute an attempt according to these sections, the Persons attempting must do an act towards, the commission of offence.

'The language of the section seems to me somewhat redundant. The very essence of the idea of an attempt is something done towards the act attempted to be done -- Huda, p. 50.'

24. To draw a line between preparation and attempt, as just now mentioned, is really difficult but still it must be drawn. The law allows locus paenitentiae to every person before he brings himself within the grips of the Criminal law. This is the stage to which he can go and beyond which he cannot. I make this reference to the locus paenitentiae because m the appeal memorandum it is pleaded that accused 2 had not become culpable because of the doctrine of locus paenitentiae.

In ILR Mad 5, a woman on account of a quarrel with her father and brother ran towards a well shouting that she would fall into it. In a prosecution for attempt at suicide, it was held that she could not be found guilty. Her running towards the well merely amounted to a preparation and no more. She must have reached the well and must also have done something so that she may fall into it. e.g. tried to jump from the parapet wall of the well. It was held that she had not gone past the locus paenitentiae allowed to her by the law. From the facts set out in the judgment of my learned brother, it Will be seen how the act of accused went beyond the stage of preparation.

25. In order to find out whether the act of accused in this case amounted to the inchoate crime of attempt or the completed crime of murder of the infant, we must discuss the definitions of 'attempt' in the English, American and Indian law. This discussion recalls the dictum of Rowlatt, J., in R. v. Osborn, 1919 84 J. P. 63,

'Now people in the street' said Rowlatt, J., 'before they begin to think about it, think it is very easy thing to say what amounts to an 'attempt', but when you come to analyse it, it become; a little difficult.'

In fact this concept of attempt to commit crimes did not take its modern comprehensive form until the judgment of Lord Mansfield in 1784 in R. v. Scofield, (1784) Cald. Mag. Gas. 397 which was followed a few years later in H. v. Higgins, (1801) 2 East 5. In English law there are three elements of liability in an attempt: (a) There must be evidence of some overt act (b) the evidence of mens rea and (c)

an interruption to the series of acts or omissions which but for that interruption would have culminated in the completion of the offence.

That interruption may be due to a voluntary determination of the offender not to complete the offence or by some extraneous intervention. The burden is therefore on the prosecution to show that (i) the actus reus that the accused had done something which in point of law marked the commission of the offence, and (ii) the mens rea that in taking this step he was inspired by the serious intention to go into reach a definite objective which would constitute a specific felony or misdemeanour (Gardner v. Akeroyd, 1952 2 All ER 300. In regard to the series of acts or omission which if uninterrupted would have culminated in the commission of the offence, there have been unnecessarily narrow and unnecessarily wide tests regarding the sufficiency of the actus reus. But the required test has been formulated by J. W. C. Turner in Kennys Outlines of Criminal law, (ibid) and in a valuable article which he has contributed on 'Attempts to commit crimes' in the ''Modern Approach to Criminal Law' Vol. IV of 'English Studies in Criminal Science' (page 273 and following)

'The actus reus of an attempt to commit a specific crime is constituted when the accused Person does an act which is a step towards the commission of that specific crime, and the doing of such act cannot reasonably be regarded as having any other purpose than the commission of specific crime.'

(See also Archbold Criminal Pleading Evidence and Practice 33rd Edn. 1954 p. 1489; Russell on Crimes, 11th Edn. by J. W. C. Turner, 1958 Ch. 6).

26. This formula may be amplified as follows; An act which does not contribute to the commission of the crime, cannot be counted as part of the actus reus, even though it may be excellent evidence of mens rea. If the acts of the accused, taken by themselves, are unambiguous, and cannot, in reason, be regarded as Pointing to any other end than the commission of the specific crime in question, then they constitute a Sufficient actus reus. In other words, his acts must be unequivocally referable to the commission of the specific crime. They must speak for themselves. It would be of assistance to the proper solution of difficult cases of alleged attempts, if no extrinsic evidence of the mens rea of the accused, e.g.,

such as a confession, were to be considered unless and until a sufficient actus reus has first been established.

There is of course no such rule or practice operating in our courts in cases of attempt but Magistrates and Judges would be well advised to apply their minds in this way to the cases offered for their consideration. So long as a sufficient actus reus of an attempt has been done, it does not matter what happens afterwards, The attempt may be successful or unsuccessful. If successful the offence may merge in the greater crime but that does not alter its nature. Thus the tests to be applied is the same in all cases of attempt, whether the accused has attempted what is possible or impossible.

If the acfs of the accused beyond reasonable doubt indicate, and indicate only, that he intended to commit a certain definite crime, then he has performed a sufficient actus reus to support a charge of attempting to commit that crime.

27. The leading English decisions are: R v. E. Cheeseman, (1862) Le & Ca 140; R. v. Ring, (1892) 17 Cox CC 491 (overruling); R. v. Collins, (1861) 9 Cox. OC 497 illustrations (a),(b) to Section 511 I. P. C. show that the law in India is the same as (1892) 17 Cox CC491; R.v. Linneker, 1906 2 K. B. 99; R. v. Whybrow (1951) 35 Cr App R 141; R. v. Miskell, 1954 1 All ER 137; and R. v. Moran, (1952) 36 Cr App R 10, discussed in Russell at page 994 regarding attempts to do what is impossible.

28. Turning to America, 23 Corpus Juris Secyndum, page 139 etc. has the following to say: Generally speaking, whether there has been an attempt to commit a crime depends on the state of mind and the conduct of the accused in the attempted consummation of his design. More specifically, an attempt to commit a crime consists of the following elements: (1) The intent (intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice -- Stephen's General view of the Criminal Law of England, p. 69 (2nd Edn,) to commit the crime; (2) Performance of some act towards the commission of the crime; (3) The failure to consummate its commission, or, as sometimes stated, the intent to commit a crime, and a direct ineffectual act done towards the commission.

No degree of intent will of itself suffice to constitute an indictable attempt to commit acrime, no matter how evil or malignant it may be; nor can an act alone constitute an attempt, no matter how well adapted it may be to effect a criminal result, unless coupled with an intent. So a failure to consummate the crime is usually held to be as much an element of an attempt to commit it as the interest and performance of an overt act towards its commission.

29. An overt act in part execution of an intent to commit a crime, but, under most authorities, falling short of the completed crime, is an essential element of an attempt to commit a crime. While the sufficiency of a particular act depends on the facts of the particular case, the act must always amount to more than mere preparation, and move directly towards commission of the crime.

30. An actual intent to commit the particular crime towards which the acts move is a necessary element of an attempt to commit a crime. The intent must be one in fact, not merely in law, but may be inferred from the circumstances.

31. Voluntary abandonment of an attempt which has proceeded beyond preparation will not bar a conviction therefor. However, voluntary abandonment may be urged by accused to show his intent.

32. To constitute an indictable attempt to commit a Crime, its consummation must be apparently possible, or in other words, there must be at least an apparent ability to commit it. If the means employed' are so clearly unsuitable that if is obvious that the crime cannot be committed or it has been held, if its consummation is dependent on the conduct of a third-person-principal who has an opportunity to frustrate it the attempt is not indictable. On the other hand, if there is an apparent ability to commit the crime in the way attempted, the attempt is indictable, although unknown to the person making the attempt, the crime cannot be committed, because the means employe are in fact unsuitable or because of extrinsic facts, such as the non-existence of some essential object, or an obstruction by the intended victim, or by a third person.

33. The law in India in regard to attempts contemplated by Section 511 I. P. C. is the same as set out above (1). In regard to an attempt to commit murder (Section

307 I. P. C.) the correct position has been envisaged in Section K. L. Ratal's 'Culpable Homicide' pages 113 to 115 as follows:

'An intention to cause death is not punishable. It the intention is translated into action and an act is done in pursuance of such intention which results in the death or the victim, the act amounts to murder. But mere intention alone or the harbouring of an evil design is not by itself punishable. There must be a manifestation of that intention by an overt act. The conditions or circumstances under which the accused sets out On his adventure may be such that whist he may manifest his intention to cause death by doing an act he may fail to carry out his intention and his victim may escape unhurt. In the first case the author of the act is guilty of murder. In the second, he is guilty of an attempt to murder; there having been a manifestation of the intention by an overt act done in pursuance of that intention, the act becomes punishable as an attempt. An intention and a manifestation of that intention by an overt act amounts to an attempt. It is a question of fact for the jury to decide with, what intention or knowledge was the act done. But the mere fact that the circumstances were not so favourable for a successful termination of the act of the accused, no qualification as to the nature of the act should be imposed in deciding the question, whether the act itself amounts to an attempt. If the act is an attempt and the intention was to commit murder, the act amounts to an attempt to commit murder. The words, 'under su:h circumstances' in Section 307 mean no more than the conditions under which the act is done; they could never have been intended to qualify the nature Of the act. *****

'The section clearly contemplates an act which is done with the intention of causing death but which fails to bring about the intended consequences. A separate punishment is provided for in cases where hurt is caused as a result of the net of the accused which implies that it is possible to conceive of attempts at murder where no hurt is caused at all. The nature of the act is immaterial if an intention to cause death is established.'

'The intention Precedes the act and is to be proved independently of the act, and not merely gathered from the consequences, that ensue,' B. v Cassidy, 4 Bom II.

C. R. Cr. 17 dissented from in Vasudeo Balwant v. Emperor, AIR 1932 Bom 279, Bharat Dube v. Emperor, AIR 1941 Pat Si; Amvaij Nadan v. Emperor, 1937 Mad WN 556.

34. It is interesting in this connection to note that in the U. Section S. R. attempts are treated by the Criminal Code as being equivalent to completed crimes in danger, and full penalties are meted out (Art. 19). At the same time the courts seem to appreciate that there is a problem of Proof in an attempt. The Supreme Court of the R. Section P. Section R. has said because of the problem of proof when action has not been completed, penalties should be applied only when preparatory acts have been manifested in a definite concrete form. The Court has no difficulty in convicting a nineteen year old youth who set fire to a hay field hoping to burn down a collective farm which occupied a farm formerly owned by his family. The fire had been put out quickly by the members of the farm so that no harm resulted, but the act was classified as destruction with counter-revolutionary intent by fire of public property and the lad was sentenced to five years of hard labour with loss of political and civil rights: Case of Shmakov, No. 2, 982 (1931) 8 Sud. Prak. RSFSR. 9 (Law and Social Change in the U. Section S. R. by Prof. John N. Hazard of Columbia University published by the London Institute of World Affairs, page 103).