Balmakand Ram Vs. Ghansam Ram

Balmakand Ram Vs. Ghansam Ram

SooperKanoon Citation : sooperkanoon.com/856470

Court : Kolkata

Decided On : Oct-27-1894

Reported in : (1895)ILR22Cal391

Judge : Banerjee and ;Sale, JJ.

Appellant : Balmakand Ram

Respondent : Ghansam Ram

Judgement :

Banerjee and Sale, JJ.

1. The petitioner in this case has been convicted by the Deputy Magistrate of Monghyr of the offence of lurking house trespass by night, and has been sentenced under Section 456 of the Indian Penal Code to six months' rigorous imprisonment. He appealed to the Sessions Judge, but his appeal has been dismissed. He now asks us to interfere under Section 439 of the Code of Criminal Procedure, and set aside the conviction on the ground that, to constitute the offence of which he has been convicted, there must be criminal trespass, that is, trespass with one or more of the guilty intentions specified in Section 441 of the Indian Penal Code; that such intention must be specified in the charge, proved by evidence, and specifically found by the Court; and that as, in this case, no such intention is alleged, proved, or specifically found by the Lower Appellate Court, the conviction cannot stand.

2. The facts of the case, as stated by the learned Sessions Judge, are shortly these: 'The complainant and the accused are Marwaris. The former rents the upper storey of a house from the accused who resides, occasionally, in the lower storey. The complainant's story is that, on the 6th of August, at midnight, he was sleeping in the room with his wife; a lamp was burning in the room. He woke up and saw the accused standing by his side. He seized him, and then some constables came up attracted by his voice. The accused's case is, that he was sleeping below. He heard a noise and went outside the sudder door when the complainant came down and caught hold of him.' The Deputy Magistrate found that the complainant had suppressed some important facts, that he was not in his wife's room, but probably came from outside the house, and that he found the accused and his wife together. The Deputy Magistrate, in the Judge's opinion, may be right in his view of what took place, but says the learned Judge, 'it is absolutely opposed to all the evidence on the record.' The Judge thinks, however, that 'it is most clearly proved that the accused was actually seized in the upper storey of the house and not in the lower storey,' and that 'it is equally clear that he had no business there;' and then relying upon the ruling of this Court in the case of Koilash Chandra Chahrabarty v. The Queen Empress I.L.R. 16 Cal. 657, he affirms the conviction and sentence.

3. The contention of Mr. Ghose, who appears before us for the petitioner is, first, that the conviction is bad, because no guilty intention is set out in the charge, as it ought to have been; secondly, that it is also bad, because no such intention is proved by the evidence in the case; and, thirdly, that it is further bad in that no guilty intention is specifically founds in the judgment of the Lower Appellate Court.

4. We shall deal with these contentions in their order.

5. In support of the first contention, that the conviction is bad, because no guilty intention is set out in the charge, reliance is placed on Sections 221 and 222 of the Code of Criminal Procedure, on a comment on the same by Sir James Stephen in his History of the Criminal Law of England, volume III, page 337, and on the cases of Reg v. Govindas Haridas 6 Bom. H.C. Cr. 76, and Behari Mahton v. Queen-Empress I.L.R. 11 Cal. 106.

6. This last mentioned case, we may observe, is a somewhat peculiar one. There the learned Judges held that in a charge of rioting it was necessary that the common object of the unlawful assembly should be set out. The common object that was set out in the charge was apparently not an unlawful one, and the learned Judges observe: 'An accused person is entitled to know with certainty and accuracy the exact nature of the charge brought against him, and unless he has this knowledge, he must be seriously prejudiced in his defence. This is true in all cases, but it is more especially true in cases where it is sought to implicate him for acts not committed by himself, but by others with whom he was in company,' and then the learned Judges go on to add: 'We are of opinion that the charge, as framed, discloses no offence. The common object of the unlawful assembly, as laid in the charge, was to resist the theft of crops by violence.' The objection as to any omission in the charge is subject to the provisions of Section 537 of the Code of Criminal Procedure; and before effect can be given to any such objection, it must be shown that the omission complained of has occasioned a failure of justice. But having regard to the nature of the charge and to the line of defence adopted in this case, which, according to the ruling cited from the Bombay High Court reports, is to be taken into consideration in determining this question, we do not think that the petitioner has in any way been prejudiced in his defence. Moreover, a comparison of Sections 456 and 457 of the Indian Penal Code would go to show that no specification of the intention is necessary for a conviction under the former section, though it must be proved that the intention was a guilty one. It is only where the charge is under Section 457 that the intention is to be specifically alleged and proved.

7. This view is supported by the observation of Mr. Justice Ainslie in the case of The Queen v. Mehar Dowalia 16 W.R. Cr. 63, where that learned Judge says: 'The charge under Section 451, if properly drawn, would have charged the accused with committing house trespass with intent to commit some specific offence, punishable with imprisonment, but as this was omitted, nothing remains in the charge or conviction, but the house trespass, and the maximum punishment for that under Section 448 is imprisonment for one year;'and then, for reasons which have relation to the facts of that case, the learned Judges thought that even that reduced sentence was not warranted by the finding of the Sessions Judge. And

Sections 448 and 451 are related to one another very much in the same way as Sections 456 and 457 are to each other. A conviction under Section 456 would not, in our opinion, be bad for want of specification of the intention in the charge, though one under Section 457 could not be sustained without such specification.

8. Then as to the second contention, that the guilty intention must be proved, there can be no question that the prosecution must prove that the trespass was committed with a guilty intention, that is, with one of the different intentions specified in Section 441 of the Penal Code. But, in our opinion, it is not necessary to prove specifically which of the several guilty intentions the accused had; it will be enough if it is shown that the intention must have been one or other of those specified in Section 441, though it may not be certain which it was.

9. In the present case, though it is not quite certain what the precise intention of the accused in committing the trespass which forms the subject of the charge was, it is clear that it must have been one or other of those specified in Section 441.. One of them would probably be excluded by the circumstances attending the trespass, that is, the intention to annoy. Considering that the trespass was stealthily committed, it would not be reasonable to suppose that it could have been intended to annoy any of the persons in the room that was trespassed into, though such annoyance must have resulted from it. Nor could the intention of the accused have been to intimidate any one, as his subsequent conduct shows for as soon as he was found out, he tried to make his escape quietly. But the intention must have been one to commit some offence, or to insult the modesty of complainant's wife by intruding upon her privacy. Judging from the time, the place, and the manner in which the trespass was committed, and the conduct of the accused when he was found out, it is impossible to suppose that the trespass could have been committed either unintentionally or with any innocent intention. It must have been committed with the intention of insulting the modesty of the complainant's wife, or of committing some offence, though it is not quite certain what the offence intended was.

10. Here it will be necessary to consider the case from each of the two points of view from which it may be viewed; first from the point of view of the first Court,

according to which the trespass was committed into the sleeping apartment of the wife of the complainant in his absence; and, secondly, from the point of view of the Lower Appellate Court, according to which it would not be right to adopt the view of the first Court, seeing that it was opposed to the evidence, and that it must be taken that the trespass was committed while the husband and the wife were sleeping together. But upon either view, in the absence of any reasonable and probable suggestion as to what the intention of the entry could have been, the only rational inference, under the circumstances, must be that it was made with the intention of committing some offence in relation to the wife of the complainant, the least heinous of which would be one under Section 509 of the Indian Penal Code, that is, intrusion upon her privacy to insult her modesty.

11. It was argued that the accused must have been prejudiced, if the intention was so uncertain that the Court was unable to find affirmatively what it was, and that if any specific intention had been alleged, it could have been disproved, just as the intention at first imputed by the complainant in his complaint to the Police, namely, one of theft, has been disproved by the cross-examination of the witnesses tending to show that the accused is a man of such position that theft would be a most improbable motive. But here we must be guided, not by the undefined possibility of the accused having been prejudiced, but by some suggestion which a reasonable man can accept, that there has been prejudice to the accused. No reasonable suggestion has been made, and none occurs to us, as to how the accused, whose defence was an utter denial of the entry, could possibly have been prejudiced by reason of the absence of any specification of the intention with which the trespass was committed.

12. Great reliance was placed upon an Anonymous Case No. 52 of 1869 (5 Mad. H.C. App., 5). That was a case in which the accused was charged with committing house trespass by night. The case for the prosecution was, that the accused was found in the house at night. This fact the accused admitted, but he pleaded that he was there for the purpose of carrying on an intrigue with the prosecutor's wife. The Deputy Magistrate dismissed the charge under Section 250 of the Code of Criminal Procedure, on the ground that the husband refused to lay a complaint of house trespass with the intent to commit adultery, and the action of the Deputy

Magistrate was approved by the High Court in these words: 'The High Court are of opinion that the Deputy Magistrate, though he might have legally convicted the prisoner of the offence of house trespass, of which by his own confession he appears to have been guilty, was not bound to do so. The complainant seems to have absolutely refused to charge the defendant with having entered the house with intent to commit the offence of adultery, and founded his complaint solely on the entry having been with intent to commit a theft, and that was found to be false. In the opinion of the High Court the Magistrate was right under the circumstances in refusing to convict of a charge which the husband refused to make, though the reason which the Deputy Magistrate gives, viz., that he had not the power, was erroneous. 'Now that was a peculiar case. In the first place the learned Judges do not lay it down as a matter of law that the conviction there could not have been sustained if there had been a conviction by the Deputy Magistrate; and in the second place, the offence, with the intention of committing which the trespass in that case was found to have been committed, was one which could be an offence only if the husband was not a consenting party, and would be no offence if he was a consenting party. See Section 497 of the Indian Penal Code. The refusal of the husband, therefore, to prosecute the accused for adultery in that case was a very good reason why there could not be any conviction for trespass.

13. In the next place, though the prosecution must prove the existence of some one or more of the intentions mentioned in Section 441 of the Indian Penal Code, the proof need not be direct, that is, by the confession of the accused,' showing that his intention was one of those mentioned in that section; or by the evidence of witnesses proving that he admitted to them that such was his intention. It will be enough if it is proved like any other fact (and the existence of intention is a fact) by the evidence of conduct and of surrounding circumstances. This is not disputed as a rule of law, but it is argued, on. behalf of the petitioner, that upon the facts of this case there is nothing to prove the existence of any such intention. Now what is the evidence of conduct and of the surrounding circumstances in this case? The accused, who is a stranger to the complainant, was found at midnight stealthily entering his sleeping apartment. When detected, and subjected to very severe treatment, for the evidence goes to show that the complainant threw him down and sat upon his chest, he uttered not a word of protestation of innocence; he made

not the slightest show of remonstrance, bat submitted meekly to all the ill-treatment to which he was subjected, and when questioned by the complainant's mother, he simply said: 'I have committed a fault, pardon me.' All this is, in our opinion, clearly proved by the evidence which we have read for ourselves. If human conduct is to be judged by the standerd of human probability, it is impossible to say that the trespass could have been committed with any innocent intention, and had not been committed with a guilty intention. In our opinion, the surrounding circumstances and the conduct of the accused abundantly prove the, existence of some one or other of the intentions that would bring the case within Section 441 of the Indian Penal Code.

14. We were told that this did not prove any intention, though it might raise a suspicion of the intention being guilty. But what is the meaning of proof as defined in the Evidence Act which is the law of the land? By Section 3 of the Act 'a fact is said to be proved, when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.' That is the definition which the Legislature has laid down for our guidance as to when a fact is said to be proved. We may add that it is only the embodiment of a sound rule of common sense; and applying this definition and this rule of common sense to this case, we feel bound to say that a guilty intention is proved in this case, and that it must have been some one of those mentioned in Section 441 of the Indian Penal Code, though it is not easy to say precisely which of those it was.

15. A lengthy argument was addressed to us on the necessity of showing that the offence or the insult, intimidation or annoyance, to which the intention must relate, must be one that had been intended, and not simply one that has resulted from the trespass, and in support of this argument the cases of In the matter of the petition of Shib Nath Banerjee 24 W.R. Cr. 58, The Empress v. Panjab Singh I.L.R. 6 Cal. 579, Shumbhu Nath Sarkar v. Ram Komul Guha 13 C.L.R. 212, and In re Govind Prasad I.L.R. 2 All. 465, were relied upon. But these form very different classes of cases. They are cases where the entry appeared, or was shown to have been with some intention, other than those specified in Section 441, and the annoyance that

was caused to the person in possession of the property trespassed upon had simply resulted from the trespass without its having been intended. In the present case it is impossible to suggest that the entry had been for some other purpose, and that the insult that any one might have felt had only resulted without its having been intended. On the other hand the case of Koilash Chandra Chakrabarty v. Queen-Empress I.L.R. 16 Cal. 657, relied upon by the Court below, fully supports the view we take. In that case the learned Judges observe: 'What we have then to deal with is the case of a man, a stranger, who, uninvited, and without any right whatever to be there, effects an entry in the middle of the night into the sleeping apartment of two women, members of a respectable household, and who, when an attempt is made to capture him, uses great violence in the effort to make good his escape. Under such circumstances, we think the Court ought to presume that the entry was effected with an intent, such as is provided for by Section 441 of the Indian Penal Code.'

16. It was sought to distinguish that case from the present by showing that, whereas violence was used by the accused in that case in his effort to make his escape, in the present case no such thing has happened; but though no violence was used, we still have strong evidence furnished by the conduct of the accused, after he was caught, that his intention could not have been innocent but must have been one that was guilty. We were cautioned against drawing a wrong inference of fact from circumstances, and it was suggested to us that the accused might have entered the sleeping apartment of the complainant in a state of somnambulism, or whilst under the influence of intoxication. Of course, suggestions like these are always possible, but are they reasonable in the circumstances of the case, and can we, as reasonable men, say that, under the circumstances of this case, the entry was the result of one of these causes. We must say that the answer must emphatically be in the negative. No such thing was ever alleged or suggested in either of the Courts below, and the defence of the accused is wholly incompatible with any allegation or suggestion of this kind. We were told that, before circumstantial evidence can be made the [Section 09] basis of a safe inference of guilt, it must exclude every possible hypothesis, except that of the guilt of the accused. We do not think that this is a correct statement of the rule.

17. The rule is very clearly and correctly stated in the well-known work on Circumstantial Evidence by Wills, p. 188, where it is said: 'In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt.'

18. We now come to the third contention of the learned Counsel for the, petitioner, that this Court in revision is bound to accept the findings of fact arrived at by the Courts below, and that if those findings are not sufficient to warrant a conviction, this Court must set aside the conviction without substituting a finding on the evidence different from that arrived at by the Court below as a basis for the same, and in support of this contention the case of Empress v. Baban Khan I.L.R. 2 Bom. 142 was relied upon.

19. We do not think that that case supports the contention of the learned Counsel. In the exercise of our power of revision under Section 439 of the Code of Criminal Procedure, it is open to us to alter any finding and confirm a conviction; and if the evidence on the record will sufficiently warrant a conviction, we should not, in revision, be justified in setting aside the conviction, merely because the view taken of the evidence by the Courts below is one that is not sustainable, or because some fact which ought to have been found has either not been found or found incorrectly. This view is fully supported by a recent decision of this Court in the case of Basiraddi v. Queen-Empress I.L.R. 21 Cal. 827.

20. We have given the case our best attention; we have read the evidence for ourselves; and we have carefully considered the arguments of the learned Counsel for the petitioner, and it is but due to him to add that arguments pressed by him are always entitled to careful consideration. But we must say that nothing has been shown to us to induce us to hold that the conviction in this case is wrong, either in law or upon the facts.

21. It remains now to consider the question of sentence. The accused has been sentenced to six months' rigorous imprisonment. The learned Deputy Magistrate being of opinion that the offence is of a very grave nature; and so, no doubt, it would have been, if it could have been affirmatively found that the intention was,

as he evidently thinks it was, to commit adultery; but, as we have said above, though the intention was a guilty one, it is not easy to determine which of the several guilty intentions that constitute the offence of criminal trespass, the accused had when he entered the room in question. That being so, he is entitled to the benefit of that finding to this extent that the punishment to be awarded to him should only be that which is sufficient for the offence of lurking house-trespass by night with the least possible culpable intention.

22. Having regard to this fact, and to the condition in life of the accused, we think that a sentence of simple imprisonment for one month will fully meet the ends of justice. Accordingly we affirm the conviction and reduce the sentence to one of simple imprisonment for one month.