

## APPELLATE CRIMINAL.

*Before Mr. Justice Krishnan.*1924,  
November 18.

DORASWAMY AYYAR (ACCUSED), PETITIONER,

v.

KING-EMPEROR.\*

*Indian Penal Code (Act XLV of 1860), sec. 507—Criminal intimidation—Ability to carry out the threat offered, essential—Threat of divine punishment, not criminal intimidation—Ss. 383 and 508, application of—Acquittal on a charge of cheating under sec. 420—No separate charge of attempting to cheat—Conviction under ss. 420 and 511—Criminal Procedure Code (Act V of 1898), sec. 238 (2-A).*

For a conviction under section 507 of the Indian Penal Code (Act XLV of 1860) it must be shown that the accused committed criminal intimidation by using threats of injury which he was in a position to put into execution. The injury need not be one to be inflicted by the accused himself personally, but it is enough if he can cause it to be inflicted by another. Hence a person who extorts money by sending anonymous letters as if from God, conveying threats of divine punishment if a specified sum of money be not paid to a certain person identifiable by the description given in the letters, cannot be convicted under section 507 as it does not lie in his power either to inflict the threatened punishment, or cause it to be inflicted. Nor can he be convicted under section 385 of the Indian Penal Code for extortion as the section requires that the injury contemplated must be one which the accused himself can inflict or cause to be inflicted, and a threat of divine punishment is not such.

For the application of section 508, it is necessary that there should be some act contemplated to be done in future by the offender. The words "by some act of the offender" should be read along with the expressions "will become" and "will be rendered" in the section.

*The Queen v. Sankara (1883) I.L.R., 6 Mad., 381, followed.*

*Held that the accused was guilty of attempting to cheat and that his conviction by the lower Court under sections 385 and 503 should be converted into one under sections 420 and 511 of the*

\* Criminal Revision Case No. 100 of 1924.

Indian Penal Code and that the absence at the trial of a separate charge under section 511 was no bar to such a course as the provisions of section 238 (2-A) of the Code of Criminal Procedure, as amended, allow an accused charged with a substantial offence to be convicted of an attempt to commit the offence without a separate charge and trial.

DORASWAMY  
AYYAR  
v.  
KING-  
EMPEROR.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of I. C. STOPART, Sessions Judge of West Tanjore Division, in Criminal Appeal No. 34 of 1913, preferred against the judgment of T. S. JAMBUNATHA AYYAR, Subdivisional First-class Magistrate of Mannargudi, in Calendar Case No. 59 of 1923.

The facts of the case are set out in the judgment.

*T. S. Ramaswami Ayyar*, vakil for petitioner.

*Public Prosecutor* on behalf of the Crown.

#### JUDGMENT.

In this case accused was convicted by the Subdivisional Magistrate of Mannargudi under sections 420 and 507, Indian Penal Code, and sentenced to rigorous imprisonment for two years. On appeal the Sessions Judge of West Tanjore came to the same findings of fact but altered the conviction to one under sections 335 and 508, Indian Penal Code, holding that sections 420 and 507 were not the proper sections applicable on the facts; he also reduced the sentence to 21 months' rigorous imprisonment. In revision it is argued that on the facts found no offence has been committed by the accused under sections 335 and 508 as all the necessary ingredients of those offences are not made out; and that in any event the Sessions Judge was wrong in convicting the accused under these sections as he had not been charged under them and that the proper order if any would have been one for a re-trial.

DORASWAMY  
 AYYAR  
 v.  
 KING-  
 EMPEROR.

The facts found are that the accused sent two anonymous letters Exhibits A and B by post to one Abdul Jaffer, a well-to-do Muhammadan of Koothanallur, son of one Natharkanni Rowther, recently deceased, purporting to come from the deity at Nagore (Nagore Andavar) directing him to pay certain sums of money to a person specified in the letters whom he was to seek out and threatening him with ruin and death from divine displeasure if he failed to do so. As reference was made to the recent death of his father, Nathar Kanni, as having resulted from disobeying such warnings, Abdul Jaffer was frightened and he and his brother-in-law, Prosecution Witness 2, went to the place named with Rs. 300 and there met accused. On that occasion for some reason or other accused denied that he was the person they were in search of and ridiculed their taking the anonymous letters seriously. Seeing that Abdul Jaffer went away and did nothing more thereafter, the accused went to Koothanallur and pretended that he had two letters Exhibits C and D from the God at Nagore wherein he was commanded to go to Jaffer and explain the serious situation to him and to receive Rs. 300 from him. He also showed them the identification mark mentioned in Exhibit B, a big mole on his left arm, to convince Jaffer that he was the man referred to. Jaffer was anxious to pay but his brother-in-law, Prosecution Witness 2, dissuaded him from doing so that day; and the accused was not paid then and he went away. Very shortly after, Jaffer received another letter Exhibit E, found by the lower Courts to have been sent by the accused, saying that that was the last communication that he would receive and that dire consequences would follow without further warning. It was signed "Andavan" and purported to come from God himself. On receiving this letter Jaffer got

alarmed and sent for the accused; in the meanwhile his brother-in-law had informed the police of what had happened. Accused came to Jaffar's house and discussed the matter with him and two others and agreed to receive three currency notes of Rs. 100 each if offered on a silver plate with sugar and fruits. On the offer being so made accused took the notes and put the bundle under his arm-pit and was leaving the house when he was arrested by the police. Jaffar seems to have been satisfied with the transaction as he thought he had thereby averted the threatened danger to him and his family.

DORASWAMY  
AYYAR  
2.  
KING-  
EMPEROR.

It is on the above facts that we have to decide what offence the accused had committed. One of the sections under which the accused was convicted by the first Court is section 507, Indian Penal Code. It is a kind of criminal intimidation. The offence of criminal intimidation is defined in section 503, Indian Penal Code. The Sessions Judge was of opinion that the injury mentioned in it must be an injury to be inflicted by some act of the offender and that as here the threat was in the nature of an intimation of divine displeasure the offence did not fall under criminal intimidation. It seems to me the view that section 507 does not apply here is correct. The threat made in this case may be shortly stated to be this:

“if you don't pay me the money demanded from you, God is going to punish you and your family with ruin and death.”

There is here no doubt a threat that an injury will happen to the person threatened but the words of section 503, Indian Penal Code, which defines criminal intimidation, seem to imply that the threat must be one which can be put into execution by the person threatening as the section speaks of avoiding the execution of the threat.

DORASWAMY  
 AYYAR  
 v.  
 KING-  
 EMPEROR.

I do not think it is necessary, as the Sessions Judge seems to think, that the injury should be one to be inflicted by the offender; it is sufficient if he can cause it to be inflicted by another, and the infliction of it could be avoided by some act or omission that the person threatening desires. In the present case the punishment by God is not one the accused could cause to be inflicted or the execution of which he could avoid. I therefore agree with the learned Sessions Judge that the accused's offence does not amount to criminal intimidation and therefore does not fall under section 507, Indian Penal Code.

I am also of opinion, differing from the Sessions Judge on this point, that it cannot be brought under section 508, Indian Penal Code, either. It is a very special section and its words must be carefully scrutinized. As pointed out by the learned Vakil for the accused, the section requires that by some act of the offender the person warned must be led to believe that he will become or will be rendered an object of divine displeasure. I was first inclined to think that the words "by some act of the offender" was to be read only with the words "will be rendered" immediately preceding them and not with the words "will become" but on further consideration I am satisfied that it is not a right view. The former words should be read with both the expressions "will become" and "will be rendered" as otherwise it will unduly enlarge the scope of the section as pointed out by Mr. Mayne in his commentary on the section. That some future act on the part of the offender is necessary to make the section apply is the view taken in *The Queen v. Sankara*(1); the observations of TURNER, C.J., on page 394 are particularly

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(1) (1883) I.L.R., 6 Mad., 381.

clear on the point. Following that ruling I must hold that the offence under section 508, Indian Penal Code, is not made out here for it is not the case that the accused was going to do something in the future to bring divine displeasure on Jaffar.

Section 385 also does not seem to apply for the illustrations to section 383 (which defines extortion) show that the injury contemplated must be one which the accused can himself inflict or cause to be inflicted. The threat that God will punish a man for some act or omission of his is not such an injury as the section refers to.

Section 420, Indian Penal Code, would in my opinion have applied but for the fact that the Sessions Judge finds that Jaffar was not actually deceived. This finding is open to doubt but in revision I must accept it; it does not however exclude the possibility of considering the accused's offence as an attempt to cheat under sections 420 and 511, Indian Penal Code. The accused was not charged under these Sections read together but only under section 420, Indian Penal Code, by itself but the new amendment of section 238, Criminal Procedure Code, clause 2-A, allows an accused charged with a substantial offence to be convicted of an attempt to commit that offence without a separate charge and trial. There can be no doubt on the facts found in the case that the accused attempted to deceive Jaffar by making him believe that the God at Nagore had ordered him to pay money to the accused, and thereby to dishonestly induce Jaffar to pay him Rs. 300. Although on the Sessions Judge's finding that Jaffar was not actually deceived, the offence of cheating is not made out, it is clear that the attempt to cheat Jaffar on the part of the accused was complete. The accused is therefore liable to be convicted under sections 420 and 511, Indian Penal Code.

DORASWAMY  
AYYAR  
v.  
KING-  
EMPEROR.

It is, however, argued that it is not open to me in revision to convict the accused as above stated as he was acquitted of the offence under section 420, Indian Penal Code, by the Sessions Judge and reliance is placed on clause (4), section 439, Criminal Procedure Code. It was suggested that I should send the case down to the Sessions Judge and direct him to convict. That seems to be a useless prolongation of the case, but if the law requires it it must be done. In this case, however, the Sessions Judge has not considered whether the accused is guilty or not of an attempt to cheat and has not recorded any finding of acquittal on such a charge. The prohibition under clause (4), section 439, does not therefore apply in this case. The case is one in which it was difficult to say what the offence committed by the accused was on the facts proved. In such a case it is doubtful whether the alteration of one section into another can be said to be a case of acquittal under the former section within the meaning of clause (4). It is not however necessary to decide that point in this case for the Sessions Judge has not acquitted the accused of the offence of attempting to cheat. I therefore hold that it is open to this Court to convert the conviction of the accused to one under sections 420 and 511, Indian Penal Code, and I convict accordingly. The sentence of 21 months' rigorous imprisonment seems to be unduly severe. I reduce it to 6 months' rigorous imprisonment.

D.A.R.

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