REVISIONAL CRIMINAL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

EMPEROR *v.* CHHOTE LAL.*

1917
November, 8.

Act No. XLV of 1860 *(Indian Penal Codes), section* 441—*Criminal trespass—Necessary constituents of offence.*

Where a person is found in the house of another in circumstances which would *prima facie* indicate that the offence of criminal trespass as defined in section 441 of the Indian Penal Code had been committed, and sets up the defence that he did not enter the house with any of the intents referred to in the section, but in pursuance of an intrigue with a female living there, it is the duty of the trying court to give accused an opportunity of substantiating such defence.

If the accused succeeds in showing that his presence in the house was in consequence of an invitation from or by the connivance of a female living in the house with whom he was carrying on an intrigue, and that he desired that his presence there should not be known to the person in possession, then he cannot be convicted of criminal tresspass.

If, however, it is shown that the person in possession of the house has expressly prohibited the accused from coming to the house, an intent to annoy may be legitimately inferred.

The following cases were referred to:—*Balmakand Ram* v. *Ghansamram* (1), *Premanundo Shaha* v. *Brindabun Chung* (2), *Emperor* v. *Lakshman Raghunath* (3), *Emperor* v. *Mulla* (4) *Emperor* v. *Gaya Bhar* (5).

IN this case one Chhote Lal was tried summarily by a first-class Magistrate of the Banda district. The offence alleged was that of lurking house-trespass by night, and it is clear from the record that the prosecution led evidence to prove, not merely that the house of the complainant was entered by Chhote Lal under circumstances covered by the definition in section 443 of the Indian Penal Code, but also that the lurking house-trespass in question was committed with intent to commit theft. The accused in his defence admitted having been caught at night inside the house of the complainant Badri under the circumstances deposed to by the prosecution witnesses. He suggested that those witnesses were not speaking the truth with regard to his having stolen or attempted to steal any of Badri's property. He pleaded that his intention in effecting a secret entry into Badri's

* Criminal Reference No. 752 of 1917.

(1) (1894) I. L. R., 22 Calc., 391.
(2) (1895) I. L. R., 22 Calc., 994.
(3) (1902) I. L. R., 26 Bom., 558.
(4) (1915) I. L. R., 37 All., 395.
(5) (1916) I. L. R., 38 All., 517.

1917

EMPEROR v. CHHOTE LAL.

house had been to carry on an intrigue with the widowed mother of the said Badri. He pleaded, further, that he had entered the house at the express invitation of this woman. The trying Magistrate refused to inquire fully into the facts. He left it uncertain whether there was any truth in the defence above set out. He said that, even on the accused's own statement of the facts, an offence, namely, the offence of lurking house-trespass by night, punishable under section 456 of the Indian Penal Code, was established. He convicted and sentenced Chhote Lal accordingly.

The District Magistrate of Banda, not being satisfied with the propriety of the conviction, referred the case to the High Court.

The parties were not represented

PIGGOTT, J.—This is a reference by the District Magistrate of Banda in a case in which one Chhote Lal was tried summarily by a first-class Magistrate of that district. The offence alleged was that of lurking house-trespass by night, and it is clear from the record that the prosecution led evidence to prove, not merely that the house of the complainant was entered by Chhote Lal under circumstances covered by the definition in section 443 of the Indian Penal Code, but also that the lurking house-trespass in question was committed with intent to commit theft. The accused in his defence admitted having been caught at night inside the house of the complainant Badri under the circumstances deposed to by the prosecution witnesses. He suggested that those witnesses were not speaking the truth with regard to his having stolen or attempted to steal any of Badri's property. He pleaded that his intention in effecting a secret entry into Badri's house had been to carry on an intrigue with the widowed mother of the said Badri. He pleaded, further, that he had entered the house at the express invitation of this woman. The trying Magistrate refused to inquire fully into the facts. He has left it uncertain whether there was any truth in the defence above set out. He says that, even on the accused's own statement of the facts, an offence, namely, the offence of lurking house-trespass by night, punishable under section 456 of the Indian Penal Code, was established. He convicted and sentenced Chhote Lal accordingly. The District Magistrate, in referring the case, has relied upon the reported

decision of a Judge of this Court in the case of *Emperor* v. *Gaya Bhar* (1). It has been suggested that this decision is inconsistent with that of another Judge of this Court in the case of *Emperor* v. *Mulla* (2). In our opinion the two decisions are not inconsistent and we agree substantially with both of them. When the evidence shows that a man has been found lurking at night inside the house of another person, a perfect stranger to him, or a person in whose house he has no apparent business, the prosecution will be entitled to ask the court to infer from these facts that there was a guilty intention on the part of the accused sufficient to bring his action within the purview of section 441 of the Indian Penal Code. This was clearly laid down in the case of *Balmakand Ram* v. *Ghansamram* (3), and also in the case of *Premanundo Shaha* v. *Brindabun Chung* (4), at page 994 of the same volume. And in dealing with cases of this sort we may remark that Magistrates should not overlook the existence of section 509 of the Indian Penal Code when they are considering the allegation on the part of the prosecution that the entry by the accused into the premises in question must, presumably, have been with intent to commit some offence. Difficulties are only likely to arise when the accused himself pleads in his defence and establishes, either by direct evidence, or by way of reasonable inference from proved facts, that he had some specific intention in entering the house, and that the intention in question was neither to commit an offence nor to intimidate, insult or annoy any person in possession of the house. The provisions of section 106 of the Indian Evidence Act (Act I of 1872) may also be referred to in this connection. In the case now before us the accused alleged two things: firstly, that he had entered the house at the request of one of its inmates, and, secondly, that he had no intention of insulting or annoying the complainant Badri. Presumably it might be suggested in his defence that this latter plea was sufficiently established by the precautions taken by him to conceal from Badri the fact of his presence in the house. At any rate it was clearly no part of the case for the prosecution that Badri knew of the existence of any intrigue between the accused Chhote

(1) (1916) I. L. R., 38 All., 517. (3) (1894) I. L. R., 22 Calc., 391.

(2) (1915) I. L. R., 37 All., 995. (4) (1895) I. L. R., 22 Calc., 994.

1917

EMPEROR v. CHHOTE LAL.

Lal and his mother, or had ever forbidden Chhote Lal's access to his house on the ground of his knowing or suspecting the existence of such intrigue. We make these remarks because we think it possible that the decision of the learned Judge of this Court in the case *Emperor* v. *Gaya Bhar* (1), may be interpreted too widely and may be held to apply to cases in which an accused person has forcibly or clandestinely entered a house which he knew to have been definitely closed and barred against him by the owner thereof. In such cases it might not be a sufficient answer to a charge of criminal trespass for the accused to say that he personally hoped that the owner would remain in ignorance of the fact of his entry. The court may find on the facts that the intention to insult or annoy, under such circumstances, was so clearly inherent in the acts of the accused as to form an essential part of the purpose with which entry into the house was effected. On this point the remarks of the learned Judges of the Bombay High Court in the case of *Emperor* v. *Lakshman Raghunath* (2), are certainly pertinent. In our opinion there should have been a further inquiry into this case before the accused was either convicted or acquitted. He was himself anxious to summon the complainant's mother as his witness, and the trying Magistrate has given no valid reasons for refusing that request. It may be that this woman's evidence would have entirely satisfied the Magistrate as to the facts of the case, or the Magistrate may come to the conclusion that the allegations made by the accused in his defence are wholly false and that he has aggravated his position by putting forward these allegations and dragging a respectable woman into court on the strength of them. On the other hand, if the Magistrate finds the facts to be as alleged by the accused, the case should be decided on the principles of law laid down in the rulings to which we have referred, including the decision of this Court in the case of *Emperor* v. *Gaya Bhar* (1), from which, if the principles laid down are properly limited and understood, we see no reason to dissent. We set aside the conviction and sentence in this case, but we do not acquit the accused Chhote Lal of the offence charged. On the contrary we direct the Magistrate to proceed with the trial,

(1) (1916) I. L. R., 38 All., 517. (2) (1902) I. L. R., 26 Bom., 558.

to inquire into the truth or otherwise of the defence set up and to pass such orders in the case as appear to him correct and appropriate.

WALSH, J.—I agree. What I propose to say on the question of law referred to us, covers this case and also Criminal Reference No. 837 of 1917 before us for orders. I think it is a question of fact in each case. As Lord JUSTICE BOWEN once said, "the state of a man's intention is as much a question of fact as the state of his digestion" and the real question of law is whether, when there has been a conviction, there is any evidence of intention justifying the conviction. There is no conflict between the reported cases, and I venture to sum up the result of them in this way. They come to this, that if there is an invitation, or complicity by the woman, combined with an intention to preserve strict secrecy, then it is difficult to say that there is any intention to annoy a third person, but if that third person has expressly prohibited the accused, then his act becomes a direct defiance of an express order, and it is impossible to say that you cannot infer from it an intention to annoy the author of the order. I think this is what has already been established by the decided cases. I agree with the decision of Mr. Justice KNOX in *Emperor* v. *Mulla* (1), that a man found inside the complainant's house who makes no statement of his reasons for being there or gives an explanation which is demonstrably false, is clearly liable to be convicted, on the ground that the burden of proof lies upon him and he has not discharged it. I do not understand that Mr. Justice SUNDAR LAL differed from that decision. On the contrary he seems to have agreed with it. Mr. Justice SUNDAR LAL held, in *Emperor* v. *Gaya Bhar* (2), that mere knowledge, on the part of the accused, that he is likely to cause annoyance is not sufficient, and in coming to that conclusion he merely followed the case of *Queen Empress* v. *Rayapadayachi* (3), where it was held that although a man may know that his act is likely to cause annoyance it does not necessarily follow that he does the act with intent to annoy. And, so far, I think Mr. Justice SUNDAR LAL and the Madras High Court were really giving effect to the

(1) (1915) I. L. R., 37 All., 395. (2) (1916) I. L. R., 38 All., 517.

(3) (1896) I. L. R., 19 Mad., 240.

1917

EMPER v. CHHOTE LAL.

absence from this section (section 441) of the words found in a cognate section, namely, section 297, where the knowledge that the feelings of a person are likely to be wounded, is one of the ingredients of the offence. This view is borne out by the decision in *Emperor* v. *Lakshman Raghunath* (1), to which my brother PIGGOTT has already referred. In that case there was a distinct prohibition. The accused only wanted to get at their judgement-debtor and trespassed upon the complainant's house in order to do it. Some people might be annoyed by that, while some people might not mind it, and an enemy of the judgement-debtor certainly would not. But in the particular case the complainant forbade them to do it, and it was held, and I agree with the decision, that, in the face of his order directly forbidding them, an offence was committed within this section. There is a passage in that judgement, which I adopt:—"When it is uncertain whether a particular result will follow (as in the Madras case in which the accused hoped to keep his conduct secret), there may be no intent to cause that result even though it may be known that the result is likely. But it seems impossible to contend, when an act is done with a knowledge amounting to practical certainty that a result will follow, that it is not intended to cause that result." Regard must, obviously, be had to all the circumstances of the case. It may sometimes happen, I suppose, in this country as in others, that a man who is making love to another man's wife is doing it not merely with the tacit approval of the husband but as the result of a conspiracy, if I may use the word, between the husband and the wife to enable the wife to get away from the husband, and find a protector. Such cases are not unknown. In such a case the man might not know that his visits were approved by the husband and might think that he was successfully carrying on a secret intrigue, the truth being that the husband was assisting the wife all the time. I take it that no court ought to find, if those facts were established, and although the man complained against himself might have thought that his conduct was likely to annoy, that he had any intention of annoying the husband. I agree with the view taken by the learned Sessions Judge of Cawnpore in the case which is before us, Revision No. 837 of 1917,

(1) (1902) I. L. R., 26 Bom., 558.

Lala v. *Emperor**, that if the accused knew that he had been expressly prohibited from entering the house by the uncle it is legitimate to infer that he intended to annoy by persisting. Another example is that of a son in disgrace who persists in entering his father's house after a direct prohibition. I think this feature of the case in Reference No. 837 of 1917 just marks the dividing line between the two cases. I entirely agree with the order proposed in the case before us. The facts must be ascertained before the final decision can be arrived at.

Conviction quashed.

* In the case referred to the following judgement was delivered:—

PIGGOTT and WALSH, JJ.:—This is a case in which a conviction of lurking house-trespass by night (section 456 of the Indian Penal Code) has been recorded by the trying Magistrate and has been confirmed by the Sessions Judge on appeal. The case has come before us in revision, substantially upon the pleading that on the view of the facts taken by the learned Sessions Judge the latter ought to have held that no offence had been proved. One difficulty we must necessarily feel in dealing with the case on these lines is that the learned Sessions Judge has not definitely found the facts to be in accordance with the argument addressed to us in support of this application. The facts in question were not alleged by the accused himself, but certain circumstances suggesting the possibility of their existence were deposed to by some of the witnesses called for the defence. The learned Sessions Judge has in effect said that, even supposing the facts to be as now suggested on behalf of the accused, the conviction must be upheld. In substance the case before us is really governed by the decision of this Court in the case of *Emperor* v. *Mulla*, (1915) I L. R., 37 All., 395, and might well have been affirmed on those grounds. Apart from this, we have just been considering in connection with Criminal Reference No. 752 of 1917 the question of law which has been discussed in connection with the present application, and we need only say that we think the conviction in the present case could be justified along the line of argument followed by the learned Sessions Judge. In saying this we are by no means admitting the facts to be as suggested on behalf of the accused. It would be unfair to do so in the face of the express denial of those facts by Musammat Bhagia (the young woman principally concerned) in the evidence given by her before the Court. We dismiss the application and confirm the conviction and sentence passed by the Magistrate. The accused must surrender to his bail to undergo the unexpired portion of sentence.