

above. The counsel for the decree-holder is unable to refer us to any provision authorising the court to allow future interest in cases in which no such interest has been allowed by the original decree. So this part of the lower court's order must also be set aside.

The result therefore is that the rate of interest is modified to 9 per cent. instead of $6\frac{1}{2}$ per cent. per annum with yearly rests. The decretal amount thus arrived at after giving credit to the judgment-debtor for Rs.1,064-3 and any other sum which might have been paid subsequent to the order of the lower court shall be payable in four annual instalments of equal amount, the first of these instalments being payable on 31st January, 1937. In default of payment of any two instalments the entire unpaid decretal amount shall fall due at once. The order reducing the amount of costs and allowing future interest is set aside. In the circumstances we make no order as to costs.

Appeal allowed.

REVISIONAL CRIMINAL

Before Mr. Justice E. M. Nanavutty

RAM BALI AND ANOTHER (APPLICANTS) *v.* KING-EMPEROR
(COMPLAINANT-OPPOSITE PARTY)*

1936
November, 24

Indian Penal Code (Act XLV of 1860), section 447—Platform containing Congress flag ordered to be demolished—Accused standing on platform to prevent Congress flag from being removed—Accused, if guilty of criminal trespass under section 447, Indian Penal Code.

Where the object of the accused in standing on the *chabutra*, which the Chairman of the Municipal Board wanted to demolish, was to prevent the Congress flag from being removed, their conduct in remaining near their flag cannot be said to have been actuated with an intent to insult, intimidate or annoy the Chairman of the Municipal Board and they cannot

*Criminal Revision No. 111 of 1936, against the order of S. M. Ahmad Karim, Sessions Judge of Fyzabad, dated the 7th of July, 1936.

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GAURI
SHANKAR
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GANGA
BAKHSI
SINGH

Srivastava,
C. J.
and
Nanavutty,
J.

1936 be held to be guilty of an offence of criminal trespass under
 RAM BALI section 447, Indian Penal Code.

v.
 KING- Dr. J. N. Misra and Mr. Bhagwati Nath Srivastava,
 EMPEROR for the applicants.

The Assistant Government Advocate (*Mr. S. C. Das*),
 for the Crown.

NANAVUTTY, J.:—This is a criminal revision filed
 under section 435 of the Code of Criminal Procedure
 against an appellate judgment of the learned Sessions
 Judge of Fyzabad upholding the conviction of the
 applicants for an offence under section 447 of the
 Indian Penal Code, but reducing the sentence passed
 upon each of them by the trial Magistrate to one
 month's rigorous imprisonment and a fine of Rs.25. In
 default of payment of fine, each of the applicants was
 sentenced to a further term of one month's rigorous
 imprisonment.

The facts out of which this application for revision
 arises are briefly as follows:

On the 14th of March, 1936, a *chabutra* or raised
 parapet that was situate in the grounds to the north of
 the Victoria Manzil Hall in the town of Sultanpur was
 being dug up under the orders of Babu Ambey Sahai,
 Chairman of the Municipal Board of Sultanpur. The
 applicants, Pandit Ram Bali and Thakur Ram Harakh
 Singh went to this *chabutra* at about 7 or 8 p.m. and
 interfered with the digging of the *chabutra* and are also
 said to have used certain words derogatory to the dignity
 of the Chairman of the Municipal Board of Sultanpur.
 Babu Ambey Sahai, the Chairman of the Municipal
 Board of Sultanpur, thereupon filed a written report
 at the Kotwali police station and asked the City Kotwal
 to take legal action against Pandit Ram Bali and
 Thakur Ram Harakh Singh. The Kotwal thereupon
 registered an offence under section 447 of the Indian
 Penal Code and prosecuted both accused and they have
 been convicted by the trial Magistrate and their con-
 viction has been upheld by the lower appellate court.

They have, therefore, come up now in revision in this Court.

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 RAM BALI
 v.
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 EMPEROR

Nanavatty,
 J.

I have heard the learned counsel for the applicants as also the learned Assistant Government Advocate and examined the evidence on the record. In my opinion the facts found proved by the lower appellate court do not constitute an offence of criminal trespass punishable under section 447 of the Indian Penal Code, against the two applicants. Their sole object in standing on the *chabutra*, which the Chairman of the Municipal Board of Sultanpur wanted to demolish, was to prevent the Congress flag from being removed. The learned Sessions Judge commenting upon the conduct of the applicants has observed as follows:

"Had a little common sense been exercised by the applicants by taking away the flag as requested by the Kotwal, no prosecution would have been maintainable."

It seems to me that if the prosecution had also exercised a little more tact and common sense and remembered the provisions of section 95 of the Indian Penal Code, this prosecution would never have seen the light of day. The applicants are not shown to have committed any offence by remaining standing on the *chabutra* with a view to prevent their flag from falling down, nor can their conduct in remaining near their flag be said to have been actuated with an intend to insult, intimidate or annoy the Chairman of the Municipal Board of Sultanpur. The feelings of the complainant Babu Ambey Sahai may have been hurt by the refusal of the applicants to leave the spot, but the intention of the applicants was not to hurt the feelings of the Chairman of the Municipal Board of Sultanpur, but merely to preserve their flag from falling down. As to the civil rights of the parties to this unfortunate litigation, I shall express no opinion. This is a criminal revision and a criminal court is not competent to decide the civil rights of the parties.

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EMPEROR

Nanavutty,
J.

The trial Magistrate has noted in his judgment that Thakur Ram Harakh Singh pleaded guilty. I can find no such plea of guilty on the record. The accused has made a certain statement in explanation of his conduct, but that statement does not amount, in my opinion, to a plea of guilty.

For the reasons given above, I allow this application, set aside the conviction and sentences passed upon the applicants, acquit them of the offence charged and direct that the fines, if paid by them, be refunded to them.

Application allowed

REVISIONAL CRIMINAL

Before Mr. Justice E. M. Nanavutty

1936
November, 24

BABU SUNDAR LAL GUPTA AND ANOTHER (APPLICANTS) v.
KING-EMPEROR (COMPLAINANT-OPPOSITE PARTY)*

*Indian Penal Code (Act XLV of 1860), sections 441 and 447—
Criminal trespass—Accused holding condolence meeting in
Municipal Park in contravention of notice of Chairman,
Municipal Board—Criminal intention or mens rea—Accused,
if can be convicted of criminal trespass.*

Every offence under the India Penal Code virtually imports the idea of criminal intent or "*mens rea*". But where the accused held a condolence meeting in a park in contravention of a notice served by the Chairman of the Municipal Board, held, that the intention to hold such a meeting cannot possibly amount to an intention to commit an offence, nor can the primary intention be said to be to intimidate, insult or annoy the Chairman of the Municipal Board and the action of the accused in holding the meeting does not amount to an offence of criminal trespass as defined in section 441, I. P. C. and they cannot be convicted under section 447, Indian Penal Code. They could only be said to have committed an act of civil trespass for which they could be sued in the civil court. A criminal court has no jurisdiction to decide such a question.

*Criminal Revision No. 110 of 1936, against the order of S. M. Ahmad Karim, Sessions Judge of Fyzabad, dated the 7th of July, 1936.