APPELLATE CRIMINAL.

Before Mr. Justice Bagnley.

AH CHOUNG

v.

KING-EMPEROR.*

1931

July 13.

Obstructing a public servant, what is—Verbal objection—Actual resistance or obstacle, essential—Penal Code (Act XLV of 1860), s. 186.

Where a person stands by a staircase and, without any threat, or obstruction of the passage, verbally objects to a Police search-party going upstairs, he cannot be convicted of the offence of obstruction under section 186 of the Indian Penal Code. There must be some actual resistance or obstacle put in the way of the public servant to constitute the offence.

Aijaz Husain v. *Emperor*, 17 Cr. L.J. 413 ; *Emperor* v. *Gajadhar*, 11 Cr. L.J. 721 ; *Nishi Kanta* v. *Emperor*, 20 Cal. W.N. 857 ; *Q.E.* v. *Gangappa*, 2 Bom. L.R. 541 ; *Q.E.* v. *Sommanna*, I.L.R. 15 Mad. 221—*referred to.*

Y. C. Ariff v. *K.E.*, 1 B.L.T. 23—*dissented from.*

Campagnac for the appellant.

Maung Lat for the Crown.

BAGULEY, J.—The appellant Ah Choung has been convicted under section 186, Indian Penal Code, and fined Rs. 201 and has also been directed to pay Rs. 14-8 costs under section 546A, Criminal Procedure Code. Hence the present appeal.

The facts of the case are that the Superintendent of the Scott Market accompanied by a bazaar-gaung, two outsiders and four Police Constables visited a certain house to search for pigs, having heard that the same had been brought down to be slaughtered illegally. On the ground floor he found the accused and some other Chinamen. He explained the purpose of his visit and searched the ground floor but found no pigs nor pork. He then wanted to go upstairs

* Criminal Appeal No. 620 of 1931 from the order of the 3rd Additional Magistrate of Rangoon in Summary Trial No. 296 of 1931.

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to search but, he says, he was prevented from doing so by the accused and this is the obstruction complained of for which the appellant has been convicted.

The Magistrate who tried the case appears to have come to the conclusion that the appellant went and stood on the stairs and blocked the way and objected to the party going up but a perusal of the evidence of the witnesses seems to me to show that this finding is hardly justified. U Tun We, the Superintendent of the Scott Market, says : "Accused intercepted the way by standing on the staircase and preventing himself and the party from going upstairs." In cross-examination he says : "Accused did not put out his hands though he stood on the staircase." Tait Singh, one of the Constables who accompanied him, says that the complainant spoke to the accused and then the complainant told him that he was not allowed to search upstairs. He says the accused was sitting on a chair near the staircase. The witness did not understand exactly what was said. Ba Chit, the bazaar-gaung, says that the accused spoke in Burmese and said: "The upstairs has nothing to do with me," and the accused objected to his going up and went and stood *by* the staircase. Later on he says : "Accused did not actually obstruct with his hand and block the way. He only said: 'I cannot allow people to go up. It has nothing to do with me.'" The remaining witness for the prosecution Ah Eu Wa is the licensee of a stall in the Scott Market for the sale of pork. He no doubt is somewhat biassed against persons who are or are alleged to be illicit slaughterers of pigs. In his deposition he says that the accused stated "No permission can be given to make a search upstairs." He also says "Accused stood at the doorway leading upstairs. The doorway was about three

feet wide and accused blocked and prevented Maung Ba Chit to go up and also stretched out his arms." It will thus be seen that the four witnesses give different versions of what happened ranging from the Police Constable who says that the accused merely sat in a chair by the side of the stairs and talked, to the pork-seller who says that the accused stood on the staircase and held out his arms to prevent anybody going up.

The accused himself was examined very shortly. His examination as recorded is simply a denial of the charge but his counsel states that his version is that he did no more than what the Constable said he did, namely that he sat on a chair and said that the upstairs was not his and consequently he could not give permission for a search to be made by the party. He called witnesses who prove that the accused is the lessee of the ground floor and other persons rent the upstairs portion of the house.

On the evidence I hold that the accused did no more than object verbally to the party going upstairs from a position close to the foot of the stairs either standing or sitting down, it makes no difference which. There is no allegation of any threat. The question to be decided now is whether this amounts to a voluntary obstruction to a public servant in the discharge of his public functions.

It is not disputed that the Superintendent of the Scott Market is a public servant and in searching for pigs illicitly slaughtered or about to be illicitly slaughtered he was acting in the discharge of a public function.

Mr. Campagnac has succeeded in finding a good many cases on the question 'what is an obstruction' but unfortunately most of them are in unauthorised reports and they do not seem to cast very much

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light on the subject. The only authorised report is *Queen-Empress* v. *Sonmanna* (1). In this case a District Judge had issued a commission to a certain person to search the house of the accused and to remove certain property from it to the District Court. On the facts of the case as found by the Subdivisional Magistrate it is said that the commissioner went to the village of the accused, read out the order and asked him to allow it to be executed. The accused remained inside his house and, closing the doors against the commissioner, obstructed the execution of the commission in spite of repeated requests.

On these facts it would certainly appear that the accused openly shut the doors to the commissioner. In the judgment of the Bench which dealt with the case however it is stated: "All that is found is that the commissioner . . . . . read out the order and asked the petitioner to be allowed to carry it out, and that petitioner, without giving any answer, remained inside his house with closed doors." This finding of facts does not suggest any active slamming of the doors on the face of the commissioner but a resistance which was purely passive and in fact the accused simply did nothing and continued to do nothing. It was held that the conviction could not be sustained because the use of the word 'voluntarily' in the section contemplated the commission of some overt act of obstruction, and did not intend to render penal mere passive conduct. Turning to the unofficial reports we have the case of *Queen-Empress* v. *Gavgappa* (2). The headnote which accurately sets out the judgment is as follows: "A person objecting to the search of his house, without using force or threatening language, cannot be convicted of an

(1) (1892) I.L.R. 15 Mad. 221. (2) 2 Bom. L.R. 541.

offence . . . under section 186, Indian Penal Code." The idea contained in this headnote is practically the same as that to be found in the Madras case already cited. In *Emperor* v. *Gajadhar* (1) it was held that a man who merely ran away when a chaprasi came to arrest him on a civil warrant could not be convicted under section 225B, Indian Penal Code, and it was held that to justify a conviction under that section or under section 186 there must be an overt act of resistance or obstruction. In *Aijaz Husain* v. *Emperor* (2) no evidence was recorded and the Magistrate did not say what particular fact he found proved. The conviction under section 225B was set aside because the Court was satisfied that the accused against whom a civil warrant of arrest had been issued merely objected to being arrested and the chaprasi made no attempt to do so and came away and complained that the accused declined to be arrested. Here again the idea is that the accused merely objected verbally and committed no overt act of obstruction The next case cited is *Musammat Darkan* v. *Emperor* (3). This is of little help because the order of the High Court is simply one setting aside the conviction and sentence for the reasons recorded by the learned Sessions Judge and as the first reason given by the learned Sessions Judge was that the Court took cognizance of the case without jurisdiction it was really unnecessary to go any further. The next case is *Nishi Kanta Pal* v. *The Emperor* (4). This case which is one quoted by Ratanlal in his Law of Crimes and which is apparently relied upon by the learned Magistrate is of somewhat different application. A rule was issued by the Calcutta High Court on three grounds to show cause

(1) 11 Cr. L.J. 721.
(2) 17 Cr. L.J. 413.
(3) 29 Cr. L.J. 645.
(4) 20 Cal. W.N. 857.

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why a conviction under section 186, Indian Penal Code, should not be set aside and the judgment merely states that after reading the explanation of the Magistrate the Court is of opinion that the conviction cannot stand. It goes on to say : " No offence under section 186, Indian Penal Code, appears to have been committed ; " but whether because there was no obstruction or whether because the Munsiff obstructed was not acting in a way justifiable in law is not clear. In the statement of the facts of the case given in the quotation from the reference by the Sessions Judge in appeal I gather that the Munsiff wanted to go along a certain waterway and the appellant put a fence across the waterway and completely obstructed the Munsiff. If the judgment is intended to lay down the proposition that putting a fence completely across a waterway is no causing of obstruction I can only say that with respect I am unable to follow it. The last case mentioned is *Y. C. Ariff and Musoor* v. *King-Emperor* (1). This is a case of the late Chief Court of Lower Burma. The Bailiff went to a certain house to attach some property. The second accused fetched the first accused, and, when he arrived, he used strong language, and both accused pushed the party out of the house. It was held that in a case of this kind section 95 of the Indian Penal Code would apply. If there had been any justification whatsoever for the Bailiff and his peon being in the house at all I am unable to agree that section 95 could possibly apply to a public servant treated in this way who was acting in the execution of his duties. It is also stated in the headnote of this case that a possibly strongly worded protest and order or request to leave the premises does not amount to obstruction. I think this also goes rather too far.

(1) 1 B.L.T. 23.

A protest I agree would not be an obstruction but a strongly worded protest verging on threats I consider would be an obstruction if there appeared to be the least likelihood of those treats being immediately carried out. A public servant has not got to continue until he actually suffers an assault. If he is actually assaulted then section 353, Indian Penal Code, would apply and it seems clear that section 186 would apply where section 353 would not apply. The word 'obstruction' has a certain connotation of passiveness. Its derivation from the Latin "to build against or to block up" shows that it is a passive act and in the present case had the accused done some passive act which would have rendered it necessary for the search party to use force to him or to any instrument with which he was obstructing in order to carry out the search I would hold that there had been an obstruction within the meaning of the section, as for example if he had stood on the stairway blocking it up so that the party would have had to use force to remove him from the stairway in order to go up. On the evidence however I am unable to hold that the accused did obstruct to this extent. He may well have said that as the upstairs was no concern of his he was not in a position to give permission for a search to be made by the party and in view of the fact that the Constable says that he merely sat on a chair by the side of the stairway and the bazaar-gaung definitely says that the accused did not actually obstruct with his hand and block the way but stood *by* the staircase I must hold that he did no physical act which could be regarded as obstruction while his verbal protest, not containing anything that could be interpreted as a threat which was likely to be immediately put into force, could not amount to obstruction either.

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I therefore set aside the conviction and sentence and acquit the accused. The fine will be refunded and also the money paid in for stamp costs.

APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Sen.

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July 15

MAHOMED YACOOB
v.
P.L.R.M. FIRM AND OTHERS.*

Court-sale—Sale when effected—Bid accepted by officer conducting sale—Bid whether required to be accepted by Court—Civil Procedure Code (Act V of 1908), O. 21, rr 65, 84; Appendix E, form 29—Sale where officer authorized merely to record bids.

At a Court-sale the sale is effected when the offer of the highest bidder is accepted by the officer conducting the sale. The auction-purchaser cannot withdraw his bid after such acceptance, on the ground that he did so before the bid had been confirmed by the Court. The effect of condition 3 in the form of proclamation of sale in Appendix E, form 29, of the Civil Procedure Code is to give the Court a *quasi*-revisional discretion in the matter, and not to require the Court itself to 'knock down' the property. Only where there is a practice or rule of the Court for the officer conducting the sale merely to record the bids and to forward the bid sheet to the Court for its acceptance or rejection of the bids or any of them, does no sale take place until the Court has accepted the bid.

Maung Ohn Tin v. *P.R.M.P.S.R.M. Firm*, I.L.R. 7 Ran. 425; *Rajendra Prosad* v. *Upendra Nath*, 19 C.W.N. 633—*followed.*

Jaibahadar v. *Maluk Dhari*, I.L.R. 2 Pat. 548; *Surendramohan* v. *Banerji*, I.L.R. 58 Cal. 788—*distinguished.*

Afauzuddin v. *Howell*, I.L.R. 6 Ran. 609—*overruled.*

Mootham for the appellant.

Hay for the respondents.

PAGE, C.J.—This appeal must be dismissed.

The appellant purchased certain property at an auction sale held by a Receiver authorised by the Court on that behalf. The appellant was the highest

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* Civil First Appeal No. 42 of 1931 from the judgment of the District Court of Toungoo in Civil Regular No. 1 of 1930.