

## FULL BENCH.

Before Young C. J., Tek Chand and Monroe JJ.

MOHAMMAD YAR—Petitioner,

versus

THE CROWN—Respondent.

Criminal Revision No. 781 of 1937.

*Indian Penal Code (Act XLV of 1860) SS. 441, 456 — Criminal Trespass — Lurking House trespass by night — Entry into a courtyard of a house at night with intent to commit an offence in the adjoining house — Offence within the meaning of S. 441.*

At night time the petitioner unchained the outer door of the courtyard of M.'s house and was passing through it in order to reach the adjoining house occupied by a married woman K. (with whom he had intimacy) with the object of committing adultery with her when he was seen by M.'s wife who raised an alarm and he was arrested while in M.'s courtyard. The question for determination was whether the act of the petitioner fell under s. 456 which makes punishable the offence of lurking house trespass by night which is an aggravated form of criminal trespass as defined in s. 441, Indian Penal Code.

*Held*, that the petitioner was guilty of criminal trespass within the meaning of the first part of the first paragraph of s. 441 as he entered into or upon property in the possession of another with intent to commit an offence, but his act did not fall within the second part of first paragraph of the same section as he did not enter into or upon property in the possession of another to intimidate, insult or annoy any person in possession of such property.

*Revision from the order of K. S. Mirza Abdul Rab, Sessions Judge, Multan, dated 8th May, 1937, affirming that of Mr. S. N. Vasudeva, Magistrate, 1st Class, Multan, dated 27th February, 1937, convicting the petitioner.*

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J. G. SETHI, for Petitioner.

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MOHAMMAD MUNIR, Assistant Advocate-General, for Respondent.

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The Order referring the case to a Division Bench dated 18th September, 1937.

JAI LAL J.—The petitioner Mohammad Yar has applied for the revision of an order of the Sessions Judge of Multan whereby his conviction under section 456 of the Indian Penal Code was affirmed. It has been found, and this finding is supported by evidence, that on the night of the 30th of January, 1937, the petitioner opened the door of the courtyard of Manzur Ahmad Shah by removing the chain; this he did by putting his hand over the door from the outside. He then entered the compound and was going towards a door which opens from that courtyard into the courtyard of the adjoining house. The adjoining house was occupied by a woman *Mussammat* Kariman with whom it appears that the petitioner had intimacy. The Sessions Judge has found that *Mussammat* Kariman is a married woman and the object of the petitioner's visit was sexual intercourse with her.

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It seems that Mohammad Yar previously used to live in the house through the compound of which he passed in order to reach the house of *Mussammat* Kariman but as he was suspected of illegal intimacy with *Mussammat* Kariman, he was asked to leave the house which he accordingly did. Manzur Ahmad Shah who had then taken the house was absent and his wife on hearing the outer door of the compound being opened thought that her husband had returned from duty and taking a light she came out to the compound in order to show him the way, but was surprised to see a stranger. She made a noise and the petitioner was arrested.

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The facts of this case do not create any difficulty and therefore the story of the prosecution must be held to be fully established as found by the learned Sessions Judge.

The real difficulty in the case is the applicability of the law of criminal trespass to the conduct of the petitioner. It is contended by the learned counsel for the petitioner that having regard to the definition of criminal trespass in section 441 of the Indian Penal Code, it is essential that the offence which is intended to be committed by the person who has entered upon the property in possession of another person should be committed on the property on which the trespass is committed. The offence to be committed in this case was adultery which is punishable under section 497 of the Indian Penal Code, but *Mussammat Kariman* was living in an adjoining house and the connecting door between the compound of the complainant's house and the compound of *Mussammat Kariman's* house was shut and it was either to be opened by the petitioner or by *Mussammat Kariman* in order to let him in. Still the offence of adultery was to be committed in the house of *Mussammat Kariman* and not in the compound of the complainant's house. Therefore it is contended that the first part of section 441 does not cover the case of the petitioner.

With regard to the second part it is said that it is obvious, under the circumstances, that the petitioner had taken steps not to be discovered on the premises of the complainant and it was not his intention to cause any annoyance to the occupants of the complainant's house. It is contended that under section 441 the direct intention of the accused must be to intimidate, insult or annoy the person in possession of the property

on which the trespass is made and that at least it must be proved that the petitioner entered with the knowledge that the entry was bound to cause intimidation, insult or annoyance to the occupants of the property. The learned counsel contends that in this case the petitioner was not considering the occupants of these premises at all and that the circumstances negative any intention to intimidate, insult or annoy Manzur Ahmad Shah or his wife.

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On the other hand, the learned Assistant Advocate-General points out that if a person enters the house of another person during night even if he takes steps to conceal his presence, he must be assumed to know that if discovered his conduct is bound to cause annoyance to the occupants of the property and if with that knowledge he commits the trespass he must be held to intend to cause the natural or necessary consequences of his act. There seems to be force in this contention. Take the case of a robber or a burglar who intends to commit robbery or theft in a house but in order to effect entrance into that house he goes through the neighbour's house. Is he not guilty of criminal trespass in the neighbour's house? This, however, is a question which has to be decided in the present case.

With regard to the applicability of the first part of section 441, the learned counsel for the Crown rightly points out that the section as framed does not contemplate that the offence should be committed on the property on which the trespass is committed. At the same time, it is possible to argue the other way. No authority has been cited by the learned counsel on either side and as to the applicability of the second portion of section 441 there is considerable conflict of opinion not only in this Court but in other Courts, also.

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I consider that, under the circumstances, it is desirable that the legal point involved in this case should be decided by a larger Bench. I accordingly refer the case for decision to a Division Bench to be heard some time in the month of October.

This case was referred to the Full Bench and the Judgment of the Full Bench was delivered by:—

TEK CHAND J.

TEK CHAND J.—The petitioner Mohammad Yar was convicted under section 456 Indian Penal Code and sentenced to suffer imprisonment till the rising of the Court and pay a fine of Rs.100. His appeal having been rejected by the Sessions Judge, he applied for revision to this Court. His petition was heard in the first instance by Jai Lal J., sitting in Single Bench. The learned Judge accepted the findings of fact arrived at by the Courts below as correct, but referred the case to a Division Bench, as there was some conflict of judicial opinion on the questions of law involved. In view of the importance of the question, the Division Bench referred this case, along with another case (Cr. R. 1472-37), for decision by the Full Bench.

The facts found are that one Ilahi Bakhsh was the owner of two contiguous houses. These houses had separate entrances and separate courtyards. There was, however, an intervening door, through which access could be had from the courtyard of one house into that of the other. This door usually remained shut and chained. One of the houses was occupied by the owner Ilahi Bakhsh himself, and his married sister *Mussammat* Kariman also lived with him in it. At the time of the occurrence, the adjoining house was let to one Manzur Ahmad Shah, a police constable, who was living in it with his wife. Formerly, this latter house was let to the petitioner, Mohammad Yar, who is

an Ahlmad in one of the local Courts. But as he was suspected of having intimacy with *Mussammât* Kariman, sister of the landlord Ilahi Bakhsh, who, as already stated, lived in the adjoining house, the petitioner was made to vacate the house, and it was let to Manzur Ahmad. After vacating the house, however, the petitioner continued his improper relations with *Mussammât* Kariman and clandestinely visited her in the house occupied by her brother Ilahi Bakhsh.

On the evening of the 30th of January, 1937, at about 9-30 P.M., the petitioner unchained the outer door of the courtyard of Manzur Ahmad's house and was passing through this courtyard in order to go to the adjoining house occupied by Ilahi Bakhsh and *Mussammât* Kariman, with the object of having sexual intercourse with the latter, when he was seen by Manzur Ahmad's wife. She raised an alarm, and the petitioner was arrested while he was still in the courtyard of Manzur Ahmad's house. These facts are no longer in dispute, and the sole question is whether they fall within section 456 Indian Penal Code.

The offence made punishable under that section is lurking house-trespass by night; this is an aggravated form of criminal trespass as defined in section 441 Indian Penal Code. The contention for the Crown is that the act of the petitioner is covered by both the alternatives, described in the first paragraph of section 441, which reads as follows:—

“Whoever enters into or upon property in the possession of another *with intent to commit an offence* or to intimidate, insult or *annoy* any person in possession of such property \* \* \* \* \* is said to commit criminal trespass.”

It was contended that in entering into the courtyard of Manzur Ahmad, the petitioner had (i) the

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'primary' intent to commit adultery with a married woman, *Mussammat Kariman*, which is an offence under the Indian Penal Code, and (ii) he had also the 'secondary' intent to annoy Manzur Ahmad Shah and his wife who admittedly were in possession of the house entered upon. It is, therefore, argued that the petitioner is guilty under the first as well as the second alternative. I have no doubt that the second alternative cannot possibly apply to this case. In the circumstances above-mentioned, it cannot be held that the petitioner had any intention to insult or annoy Manzur Ahmad, his wife, or any other person living in that house. His sole object in stealthily passing through the courtyard of Manzur Ahmad's house was to find access, through a back-door to the adjoining house occupied by *Mussammat Kariman*. He did not expect to find any person in that courtyard and hoped that he would get entry into *Mussammat Kariman's* house unnoticed. Even if he could be supposed to have known that, if discovered, his presence in Manzur Ahmad's courtyard might cause annoyance to any person living there, this would not make him guilty of committing criminal trespass in that house. This question has been discussed at length in the connected case (Cr. R. 1472 of 1937) decided to-day, and for the reasons given there I have no hesitation in holding that, on the facts of this case, the second alternative does not apply.

The petitioner's act, however, clearly falls within the first part of section 441. It has been found that he entered Manzur Ahmad's house with the intention of having sexual intercourse with *Mussammat Kariman* who lived in the adjoining house. The petitioner himself stated that *Mussammat Kariman* was a married woman. Under the law of India, adultery is a

criminal offence. Section 497 of the Indian Penal Code provides that whoever has sexual intercourse with a person, who is, and whom he knows or has reason to believe, to be the wife of another man, without the consent or connivance of that man, such intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and is punishable with imprisonment which may extend to five years. The petitioner, therefore entered into the house with the intent of committing an offence. It is, however, argued by the learned counsel for the petitioner that in order to bring a case within this section it is essential that the intent must have been to commit an offence in the particular premises entered upon and not in a neighbouring house. In other words, the learned counsel wants the word ' there ' to be read after the phrase " commit an offence " in the second line of the section. I have no doubt that this contention is without force. The phraseology used by the legislature is clear and explicit, and it is not permissible to us to add any words to it, so as to give it an extended or restricted meaning. The section, as worded, means that if a person enters upon property with intent to commit an offence on that property, or on any other property, or with respect to a person who is, or is not, in possession of the property entered upon, he is guilty under it.

I hold, therefore, that in this case the petitioner has been rightly convicted under section 456, Indian Penal Code, he having been found to have entered into the courtyard of the house in possession of Manzur Ahmad with intent to commit adultery in the adjoining house. I consider, however, that the offence is only a technical one and, in the circumstances, the ends of justice would be met by maintaining the sentence of imprisonment till the rising of the Court and reducing

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 MOHAMMAD YAR            the fine from Rs.100 to Rs.5. With this modification.  
 v.            in the sentence, I would dismiss the petition for  
 THE CROWN. revision.

            
 TEK CHAND J.

            
 YOUNG C. J.

YOUNG C. J.—I agree.

            
 MONROE J.

MONROE J.—I agree.

A. N. K.

*Revision dismissed..*

**LETTERS PATENT APPEAL.**

*Before Addison and Din Mohammad JJ.*

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 Nov. 30. BHARAT NATIONAL BANK, LTD., AND ANOTHER.  
 (JUDGMENT-DEBTORS) Appellants,

*-versus*

BHAGWAN SINGH AND ANOTHER  
 (DECREE-HOLDERS)  
 ABDULLAH KHAN AND OTHERS  
 (JUDGMENT-DEBTORS) } Respondents..

**Letters Patent Appeal No. 81 of 1934.**

*Civil Procedure Code (Act V of 1908) O. XXI, r. 2 —  
 Statement by decree-holders that an understanding has been  
 arrived at and that time has been given to judgment-debtors  
 to complete the understanding — Whether an adjustment of  
 the decree.*

Where the agent of a decree-holder stated in execution proceedings on a certain date that an understanding had been arrived at with the judgment-debtors who had at their request been allowed time to complete it, and that in case of non-completion of the understanding, proper application for further proceedings would be presented and the Court thereupon adjourned the case to a certain date when the proceedings were consigned to the record room.

*Held*, that the decree had not been extinguished on the above date as the decree-holders' agent reserved to himself the right of reviving the execution proceedings if the negotiations did not mature and time had been allowed to the