

BANDA KORALA v. PINHAMY.

P. C., Puttalam, 6,723.

1901.

July 27 and
August 12.*Penal Code, s. 486—Criminal intimidation—Practice of huniam or sorcery.*

The performance of *huniam* ceremonies, with the intention of putting persons in fear of their personal safety and so preventing them from entering a field and reaping a crop, is criminal intimidation.

THE accused were convicted in this case of criminal intimidation by an act which they believed to be a threat to cause death, and which they knew would be so regarded, being an offence under section 486 of the Penal Code. The Police Magistrate, Mr. H. W. Brodhurst, found that while the complainant was in possession of a field which he had cultivated and sown with paddy, the accused intending to prevent him from reaping his crop placed in the field a "huniam-bola," or charm, which is commonly believed by the villagers to cause death to any person entering the field; and that in consequence of this act of the accused, the crop had to be abandoned for want of persons to reap it.

It was proved that the "huniam-bola" was like a ladder with three steps, which was placed on the field, and that the fourth accused wearing a red cloth performed a ceremony over it by bringing a king cocoanut, with three images and complainant's name drawn on it, and burying it near the "bola"; he also killed a white cock and sprinkled its blood on the leafy framework of the "bola." The first and second accused stood by as guards, and the third put some resin powder over the cocoanut. The first accused intoned some words, and with the second accused knelt down and prayed that complainant should die within nine days. On one of the witnesses, who watched this ceremony from behind a bush, asking the accused why they had done this, he was told, "Take care, do not enter that field."

The magistrate observed: "It no doubt seems ridiculous to an Englishman that a *bonâ fide* owner should be kept out of his property by such means, but I have no doubt that the superstitious villagers believed that their lives would be forfeited if they entered the field, and that the accused placed the 'bola' there, intending that it should have that effect." He ordered them to pay a fine of Rs. 100 each, or in default to undergo six months' rigorous imprisonment.

The accused appealed.

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Samarawikrama, for appellants.—Accused did not threaten anybody. He said nothing to the villagers; he only muttered some incantations and went through a ceremony which was in itself harmless. The complainant admits that he was not frightened. If other people were, it was due to their weak minds and not to any intimidation on the part of the accused. The accused did nothing more than go through a ceremony. [LAWRIE, A.C.J.—How is this criminal intimidation ?]

Allan Drieberg, for respondent.—The effect of the ceremony was to put those of complainant's friends who were going to help him to reap the harvest in fear of their lives, so that the ceremony did intimidate the villagers by an act which they believed a threat to cause death, and which the accused knew would be so regarded. The section does not state that the injury to be suffered should be at the hand of man only.

Samarawikrama.—Injury is defined in the Penal Code. That definition should be applied here. Injury is harm done by one person to another illegally. The harm that may be caused by supernatural agencies is not within the scope of that definition. *Casim v. Kaliya*, 2 C. L. R. 133.

Cur. adv. vult.

12th August, 1901. LAWRIE, A.C.J.—

This case discloses a curious survival of an Old Kandyan custom. Sir John D'Oyly, writing eighty years ago, has a short chapter on *Hūniyam*. "This" (he says) "is a species of sorcery, and was held in general abhorrence. It consists in making an image or delineating a figure to represent an enemy, or in writing his name and using diabolical arts, ceremonies, and imprecations, whereby it is believed that skilful persons have the power of occasioning his death, sickness, or some heavy calamity.

"It is said" (continues Sir John D'Oyly) "that in the reign of Narandra Singha several persons suffered executions for this crime, and that their lands were confiscated or delivered to the injured party.

"In the reign of Kirti Siri five persons suffered execution for having practised this sorcery against the king as an act of treason."

In this case the accused wrote the name of the complainant on a coconut, which was sprinkled with the blood of a cock; they buried it with imprecations, and over it was placed a "bola" of a peculiar and significant shape; by these acts they intended to threaten that misfortunes would befall the complainant and all who should join in entering the field and reaping the crop. That,

in my opinion, falls under the 488rd section of our Penal Code, and amounts to criminal intimidation.

The Ceylon Code omits section 508 of the Indian Code, which more directly meets the case. The 508th section makes it an offence in India to cause acts to be done or omitted to be done by inducing the belief that, if the person does or omits to do them, he will be rendered an object of divine displeasure.

How that section is worked in India I do not know. If construed strictly, I fear that clergymen commit this offence daily, and that few of them would escape liability to pay a weekly fine for the Sunday sermon.

In my opinion the accused in this case threatened the complainant. True, they did not say that they themselves would do an injury, but they said that injury would certainly follow if ^{an} act was done. They tried to prevent the complainant doing the act by intimidating him, and that was criminal, because the act was one which the complainant was legally entitled to do.

I affirm the conviction.

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A.C.J.

