

1942

Present : Soertsz J.

BALAWANDARAM v. HEENKENDE.

713—M. C. Teldeniya 515.

Criminal trespass—Entry on path on which accused has right of way—Criminal intimidation—Utterance of threats to person absent—Threats conveyed to person—Penal Code, ss. 433 and 486.

Entry on a land in the occupation of a person with intent to intimidate, insult or annoy is criminal trespass, even though the place entered be a path on the land over which the accused has a right of way.

Utterance of threats, designed to intimate a person, who is not present, constitutes criminal intimidation, if the threats were brought to the knowledge of that person.

Sinnappa v. Vallipuram et al. (4 C. W. R. 231), followed.

APPEAL from a conviction by the Magistrate of Teldeniya.

R. L. Pereira, K.C. (with him A. D. J. Gunewardene), for the accused, appellant.

H. V. Perera, K.C. (with him S. J. C. Kadirgamar), for the complainant, respondent.

June 26, 1942. SOERTSZ J.—

Counsel for the appellant made two submissions in regard to the convictions entered in this case under sections 433 and 486 of the Penal Code. He submitted that the conviction under section 433, for criminal trespass, was wrong inasmuch as the appellant had done nothing more than he had been wont to do when he made use of the footpath over the complainant's land to go to and come from his own land which adjoins that of the complainant. Counsel contended that by reason of such an user of the footpath the appellant could not be said to have entered upon land in the occupation of the complainant and that, therefore, the charge of criminal trespass failed *in limine*, regardless of the question of the intention of the appellant when he used the footpath. Next, in regard to the conviction under section 486, for criminal intimidation, Counsel submitted that the threats spoken to by the witnesses were uttered in the absence of the complainant and that for that reason it could not be said that the offence contemplated by section 486 of the Penal Code was constituted. In other words, the contention was that direct intimidation is what section 486 has in view.

Counsel for the respondent maintained that land belonging to A, over which B has a right of way, is none the less land in the occupation of A and that if B's user of that right of way on a particular occasion is motivated by an intention to intimidate, insult or annoy A, then his offence of criminal trespass is complete. He made the further submission that in view of the appellant's undertaking in an earlier case, that he would not use the path pending certain litigation, there was not, in fact, a right of way for the appellant over the land. In regard to the charge of intimidation, respondent's Counsel argued that the offence was complete if threats to A are uttered in the presence of B with the intention that B should convey to A that such threats were uttered, regardless of the question whether in point of fact B conveyed that matter to A or not. Alternatively, Counsel submitted that the offence was complete the moment B informed A of the threats that had been uttered.

The questions that arise on these conflicting contentions must be examined in the light of the established facts of this case. These facts as found by the Magistrate are that the right of way in question was disputed by the complainant who charged the appellant in April, 1941, with criminal trespass. That case was settled, the respondent undertaking to institute a civil case within a month to have this dispute decided, and the appellant on his side undertaking not to use the right of way in the meantime. The evidence shows that by way of putting temptation to use this footpath in the interval out of the appellant's way, the respondent barred access to the path by fixing barbed wire across the entrances and provided himself with access by means of a gate at one entrance. This gate was secured with wire which had to be unfastened whenever entrance to the respondent's land was sought. Between the day the case was settled and the day of the offence charged in the case, there does not appear to have been any use made of this footpath by the respondent. The day of the alleged offences happens to be the day on which the respondent went to Kandy and instituted the civil case, and it was on the very day—whether by coincidence or

because the appellant had come to know what the respondent was engaged in on this day; it is not clear which, although I feel disposed to think that the appellant had come to know that the respondent had gone to Kandy to file the case—that the appellant broke the gate and entered the respondent's land, and went in the direction of his house on the adjoining land. He was accompanied by another man and as he went, he said, "I will allow the Tamil Pariah to build a gate", and he indulged in abuse. This happened in the absence of the respondent. But after the respondent's return, the appellant again went along the path, accompanied by the other man and carrying a gun. He stood at the gate and once more indulged in abuse. The respondent sent his watcher to ascertain what all this meant and the appellant, who was still on this land, attempted to prod the watcher with his gun, saying, "where is that Pariah Mudalali"? He once more found his way through the gate, threatening to shoot the watcher, when he asked him why he was breaking through the gate, and went to a boutique near by and "had a row" with another employee of the respondent. On that occasion, he declared that he would shoot the Mudalali (that is the respondent). The watcher ran up and told the respondent of the threat and the respondent straightaway locked himself in the store room and spent an anxious and dinnerless vigil. Next morning he went to the Peace Officer and made his complaint.

On these facts, it is clear that by the appellant's own undertaking the respondent's land was unqualifiedly in the respondent's occupation on the day in question. But even assuming that notwithstanding that undertaking given by the appellant he was entitled to use the path, he was not entitled to use it in such a way as to make manifest that the intention behind his user was to insult, annoy or intimidate. The case for the respondent is not that annoyance or intimidation resulted only from the user in violation of the undertaking, but from the additional circumstances, namely, the forcing open of the gate, the abuse, the threats, the carrying of the gun, to mention some.

I am clearly of opinion that the offence of criminal trespass is made out.

In regard to the charge of criminal intimidation, de Sampayo J., in the case of *Sinnappu v. Vallipuram and Others*¹, held that "the essence of intimidation is the holding out of some threat directly to the person concerned, or with the intention of its being communicated to him". That was the view taken in the Indian case referred to by de Sampayo J., *Gunga Chanda Sen v. Gour Banikaya*². In the present case, it is clear that the appellant's intention was that the threats should be conveyed. He uttered them to two employees of the respondent, and one of them conveyed the fact to the respondent. It is not necessary in this case to consider what the position would have been if the person who, it was intended should convey the threat to the respondent, did not in fact convey it to him, although my view is that if the fact that the threat was uttered came to the knowledge of the respondent in some way, and he was able to prove it the charge would be established. If, however, the respondent remained in ignorance of the threats, *cadit quaestio*, in that event, there could be no charge.

¹ 4 C. W. R. 231.

² I. L. R. 15 Cal. 671.

I hold that the conviction under section 486 is right.

On the question of sentence, I am of opinion that the Magistrate was very lenient. The appellant acted in an extremely high-handed and provocative manner. It was fortunate that the respondent's reaction to all this aggressiveness on the part of the appellant was akin to the "soft answer that turneth away wrath". He took refuge in his store room. I should have imposed a sentence of imprisonment, and it is with some misgiving that I refrain from interfering with the sentence in that way on appeal. But, I consider it necessary, in the interests of law and order, that while I affirm the convictions and sentences entered by the Magistrate I should order the appellant, in respect of the conviction entered against him on the charge of intimidation, to enter into a bond under section 80 of the Criminal Procedure Code with one surety in a sum of Rs. 250 to keep the peace for a period of six months.

Affirmed.

