
(1934) 10 AHC CK 0025
In the Allahabad High Court

Kallan Khan and Another

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 29-10-1934

Acts Referred:

Penal Code, 1860 (IPC) — Section 332

Citation : AIR 1935 All 160 : 153 Ind. Cas. 469

Hon'ble Judges : Bajpai, J

Bench : Division Bench

Judgement

Bajpai, J.—Kallan Khan and Muhammad Hanif, two brothers have been convicted by a Magistrate u/s 332, Penal Code, Kallan Khan has been sentenced to two months' rigorous imprisonment and to pay a fine of Rs. 25 and Muhammad Hanif to pay a fine of Rs. 25 only. Their conviction and sentence were confirmed in appeal by the learned Sessions Judge.

2. The prosecution case, as borne out by the statement of Miss Vancell, a nurse, has been believed by the Courts below. It is to the effect that during the prevalence of small-pox in the Cantonment Area at Benares, an order was passed by the Civil Surgeon and communicated to Miss Vancell that she should go and vaccinate ladies and children in the Cantonment Area. It is said that she on 2nd April 1934, went to the house of Kallan Khan and knocked at the front door. On not getting any reply, she went to the door behind the house and knocked at it. Somebody asked from inside the house as to who was knocking and Miss Vancell's identity was announced.

3. After this nobody either opened the door or objected to the entry of Miss Vancell who thought that, as about 5 minutes had elapsed, there was no objection to her getting inside the house. She opened the door which was not chained from inside and she entered the house when it is said she was roughly handled by the two accused and her frock was torn. She received some hurt at the hands of the two accused. She remonstrated and said that she had come to vaccinate and that the accused should behave politely; but they instead of

desisting inflicted some injuries on her. The story has been believed by the Courts below. The case for the defence however was that Kalian was very anxious to get his family vaccinated and had been trying for the last month or so to obtain vaccination and that a day or two before 2nd April, he had actually gone to the hospital and spoken to Miss Vancell about it when Miss Vancell behaved rudely towards him. He on 2nd April also sent a letter to Dr. Bala Prasad through his brother, Hanif, which was, according to the accused, actually delivered to Dr. Bala Prasad and in this letter Kalian Khan had said that he would not like to be vaccinated by Miss Vancell with whom he had a slight unpleasantness and that he would get himself vaccinated by some other compounder. The sending of this letter on the date of the incident and the unpleasantness with Miss Vancell a day or two before have not been believed by the Courts below. The position therefore is that Miss Vancell knocked at the front, door and the door behind the house. It became known to the inmates of the house as to who was seeking admission. She waited for 5 minutes, during which time admission was not refused. The door was not closed from inside and she entered. Under these circumstances the person seeking admittance should assume that he or she had the implied consent of the house owner to enter and if the person making the entrance happens to be a public servant who has entered the premises in order to discharge his or her public duties, and if he or she is obstructed or assaulted, as Miss Vancell was as suited in the present case, an offence, u/s 332, Penal Code, is made out.

4. It is however argued by learned Counsel for the applicant that u/s 247, Cantonments Act, (Act No. 2 of 1924) four hours" written notice of| the intention to make an entry was necessary before Miss Vancell could enter the house. But it is clear that the entry which is contemplated in Section 247 which requires 4 hours" written notice| is an entry without the consent of the occupier or the owner. In the present! case the entry was with the implied consent of Kalian Khan and no question of a 4 hours" written notice arises. If consent is refused or if refusal is anticipated, then it is incumbent on the Cantonment Authority to give a 4 hours" written notice of the intention to make the entry. It is therefore clear that the person, who obstructed Miss Vancell, was guilty u/s 332, Penal Code. Reliance was placed by learned counsel for the applicant on the case of Emperor v. Bahal (1906) 28 All. 481 but the facts of that case are entirely different from the facts of the present case. There a vaccinator attempted against the wishes of the child"s father to vaccinate the child and the vaccinator was slightly assaulted by the relations of the child and it was held that it was no part of a vaccinators" duty to insist on vaccinating a child in opposition to the wishes of its parent or guardian and the vaccinator rendered himself liable to a charge of assaulting the child and those who used force in preventing this assault could not be said to be guilty of any offence.

5. It was then urged that the sentence of fine on Kalian Khan is uncalled for and that Muhammad Hanif should not have been convicted and sentenced if at all. It is said that it is impossible that Kalian Khan who is an insurance agent should

have behaved in the manner in which he is said to have behaved according to. Miss Vancell. It is submitted that even if the defence version about the sending of a letter to Dr. Bala Prasad and about the unpleasantness with Miss Vancell a day or two prior to the occurrence be disbelieved, it cannot be accepted that Kalian Khan would behave in this unmannerly fashion without any provocation whatsoever from Miss Vancell. The suggestion is that it is almost certain that when Miss Vancell entered and Kalian did not like vaccination at her hands, Miss Vancell behaved in a provocative manner. There might have been some force in this suggestion, if the defence had been made on those lines. At the same time it is just possible that Miss Vancell was not as roughly handled as she tries to make out.

6. The accused, Kalian Khan, has served out the whole of the sentence of imprisonment that was passed on him. No portion of the fine has been ordered to be paid to the nurse by way of compensation and I do not think, that it was necessary to impose any fine in the circumstances of this case. Hanif is a boy of eleven and even according to the nurse, he does not seem to have taken any prominent part in the incident and whatever little he did might have been under the influence of his elder brother Kalian Khan. I feel inclined to set aside his conviction. The result of what I have said before is that I maintain the conviction of Kalian Khan but remit the fine. In the case of Muhammad Hanif I set aside his conviction and sentence. The fine if paid, will be refunded.