
(1960) 07 MP CK 0041

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 146 of 1958

State of Madhya Pradesh

APPELLANT

Vs

Bhure Singh Chandan Singh Rajput

RESPONDENT

Date of Decision : 12-07-1960

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 223, 225, 238, 342, 535
Penal Code, 1860 (IPC) — Section 354, 451

Citation : AIR 1960 MP 375 : (1960) JLJ 851 : (1961) 6 MPLJ 22

Hon'ble Judges : P.K. Sharma, J;A.H. Khan, J

Bench : Division Bench

Advocate : Government Advocate, for the Appellant; J.M. Anand, for the Respondent

Final Decision : Partly Allowed

Judgement

Sharma, J.

This appeal has been preferred by the State against the judgment dated the 13th of September 1958 passed by the Addl. Sessions Judge Vidisha in Criminal Appeal No. 68 of 1957 whereby he set aside the order of conviction and sentence under Sections 451 and 354 I. P. C., passed against the present respondent by the Magistrate First Class Khilchipur in Criminal Case No. 17 of 1957 and ordered him to be acquitted of both offences.

The facts of the case, briefly stated, are that on the night of the 12th of January, 1957 at about 8-15 P.M. the present respondent is alleged to have trespassed into the house of one Bhagwanlal constable at Khilchipur and on entering therein indecently assaulted his wife Mst. Satywati, who immediately raised a hue and cry. One Brijmohan on hearing her Outcry went to the house of Bhagwanlal but found its door closed from inside. Brijmohan thereupon went and informed Bhagwanlal that the present respondent Bhuresingh head constable was inside his house.

Thereupon Bhagwanlal along with Vijaysingh, Abdul Gani and other police constables came to his house. On pushing open the bolted door Bhagwanlal found that the accused was indecently assaulting his wife. Bhagwanlal with the help of Vijaysingh and others overpowered the accused. He was thereafter taken to the police station where Bhagwanlal lodged the first information report Ex. P/1.

The accused was on the facts stated above prosecuted and tried for offences under Sections 451 and 354 I. P. C.

In his statement u/s 342 Cr, P. C., the accused stated that he had paid a visit to Bhagwanlal's house at the invitation of his wife Mst. Satyawati. He pleaded that he had criminal intimacy with Satyawati since sometime prior to the incident and had, therefore, gone to her house on her invitation. He denied that he had bolted the door from inside or that Satyawati had raised an outcry at the time of the incident. According to him when Bhagwanlal came back from his duty he saw his wife sitting on a "charpoy" along with him.

He denied that he was seen by Bhagwanlal indecently assaulting his wife, but pleaded that they were sitting with their hands flung round each other's neck. According to him Brijlal and other persons arrived at the scene of occurrence only afterwards on being called by Bhagwanlal. The respondent, however, admitted that he was taken by Bhagwanlal and Ramgopal to the police station- The accused examined himself and 17 others witnesses in support of his plea.

At the conclusion of the trial the learned Magistrate First Class Khilchipur held the evidence adduced by the accused in support of his plea to be discrepant and unreliable in nature. Relying on the evidence of Mst. Satyawati, as corroborated by the other evidence on record, it was held that the accused committed house trespass with the intention to committed an offence u/s 354 I. P. C., and that on entering therein he actually committed an offence under the latter section.

The accused was, therefore, found guilty of both offences and sentenced to undergo rigorous imprisonment for six months on each count the sentences to run concurrently. In addition to the Substantive sentence the trial Court sentenced the accused u/s 451 I. P. C., to pay a fine of Rs. 20 or in default to undergo rigorous imprisonment for 10 days.

On appeal the Addl. Sessions Judge Vidisha (Camp at Rajgarh) held on a consideration of the entire circumstances of the case that it was not unlikely that the present respondent went to Bhagwanlal's house on the night in question on Satyawati's invitation. He disbelieved the prosecution version regarding Satyawati having raised an alarm. In conclusion the learned appellate Judge held that it had not been proved beyond reasonable doubt that the accused trespassed into Bhagwanlal's house with the intention of committing an offence u/s 354 I. P. C., or that he on entering therein committed an offence under that section. The appeal was, therefore, allowed and the present respondent was acquitted of both charges.

Before us the learned Government Advocate did not seriously challenge the finding of the lower appellate Court that the accused had not gone to Bhagwanlal's house with the intention of indecently assaulting his wife Mst. Satyawati. It was, however, vehemently urged by him that the present respondent having himself admitted that he had been carrying on an intrigue with Mst. Satyawati since sometime prior to the incident and that he had gone there on the relevant day in the absence of Bhagwanlal on Mst. Satyawati's invitation, it ought to have been held that he committed house-trespass with the intention of committing adultery--an offence punishable with imprisonment. It was, therefore, contended by the learned Government Advocate that the lower appellate Court acted illegally in acquitting the present respondent of the offence u/s 451 I. P. C.

The learned counsel for the respondent on the other hand contended that the accused having been tried on a charge u/s 451 on the allegation that he committed house trespass with intention to commit an offence u/s 354 I. P. C., cannot at this stage be convicted of house trespass committed with a different intention namely to commit the offence of adultery.

It may be observed at the outset that where the accused has admitted entry into a house and alleged a specific purpose, the Courts have held that no prejudice would be caused even though the original charge specified a different intention with which the entry was effected and the finding is that the entry was effected for the purpose of carrying on illicit intrigue with some of the inmates of the house. See *Jadav Mahton v. Emperor* AIR 1921 Pat 217 and *Karali Prasad Guru v. Emperor* AIR 1917 Gal 824. In the case reported in 12 Cri LJ 453 (Mad), *In re Kurnam Seshayya*; it was held that it is sufficient if the evidence leaves no room for doubt that the accused wanted to commit an offence and that it was not necessary for the Magistrate to find what specific offence the accused wanted to commit.

Reliance was placed by the learned counsel for the respondent on the judgment delivered by O'Sullivan J. in the case of *Waroo v. Emperor* AIR 1948 Sind 40, on the case being referred to him as a result of difference of opinion between Tyabji and Meher JJ. This case can in my opinion have no application to the facts of the present case. In paragraph 21 of his judgment the learned Judge observed as follows :

"The appellant set up a liaison with Wasul but never admitted that she was a married woman, and the question of her being the wife of Phatu was never, in my view, attempted to be met by the appellant.""

In the present case the respondent himself admitted in his statement u/s 342 Cr. P. C. that he used to go to Satyawati's house along with her husband. They were both members of the police force and knew each other very well. Thus on the facts admitted by the accused himself it would be clear that he went to Bhagwanlal's house with the intention of carrying on an illicit intrigue with his

wife. The evidence of P. W. 3 Brijmohan and P. W. 4 Vijaysingh further proves that Bhagwanlal on being informed that the accused was inside his house immediately came there along with Vijaysingh and other police constables. On finding the accused inside his house he raised a hue and cry, took the accused to the police station and lodged a report against him charging him with house trespass. This conduct on his part clearly negatives the possibility of his consent to or connivance with the illicit intrigue between his wife and the accused. The facts of this case are, therefore, clearly distinguishable from Waroo's case AIR 1948 Sind 40 (supra).

In *Queen Empress v. Kangla* ILR All 82, the accused was charged with house trespass with the intention of committing theft. It was proved to the satisfaction of the Court that the accused did enter the complainant's house in order to have sexual intercourse with the woman whom, he knew to be the wife of the complainant and further that he did so without the husband's consent or connivance. It was held that the conviction was proper and that it was not necessary, under the circumstances, that the complainant should bring a specific charge of adultery.

In the case of *Lala Ojha v. Queen-Empress* ILR Cal 863, it was laid down as follows :

"If the prosecution establishes certain facts constituting an offence and the Court misapplies the law by charging and convicting the accused for an offence other than that for which he should have been properly charged, and if notwithstanding such error the accused has by his defence endeavoured to meet the accusation regarding these acts, then the appellate Court may alter the finding and convict him of an offence which those acts properly constitute, provided the accused is not prejudiced by the alteration in the finding. Such an error is one of form rather than of substance and the alteration by an appellate Court of the finding would not necessitate a re-trial expressly on a charge for that offence."

It was observed by their Lordships of the Supreme Court in the case of *Willie (William) Slaney Vs. The State of Madhya Pradesh*, , para 44, that

"Sections 225, 232, 535 and 537 (a) between them cover every conceivable type of error and irregularity referable to a charge that can possibly arise, ranging from cases in which there is a conviction with no charge at all from start to finish down to cases in which there is a charge but with errors, irregularities, and omissions in it. The Code is emphatic that "whatever" the irregularity it is not to be regarded as fatal unless there is prejudice".

I am, therefore, clearly of the opinion that the learned Addl. Sessions Judge Vidisha acted illegally in acquitting the present respondent of the offence u/s 451 I. P. C., merely for the reason that the charge u/s 354 I. P. C., had failed, though the facts admitted by the accused himself make out an offence of trespass into Bhagwanlal's house with the intention to commit the offence of adultery. The

present respondent Himself admitted in his statement on oath that Bhagwanlal did not like his clandestine visits to his house and was trying to catch him red-handed. This admission on his part proves that Bhagwanlal had not consented to nor was conniving with the continuance of the illicit intrigue between the present respondent and his wife. The respondent very well knew that Satyawati was Bhagwanlal's legally married wife. He is therefore, (sic), to be convicted u/s 451 I. P. C., for having committed house-trespass with the intention of committing the offence of adultery.

We would, therefore, partly allow this appeal and convict the present respondent Bhuresingh of an offence u/s 451 I. P. C. He is sentenced to undergo rigorous imprisonment for four months thereunder. The order of acquittal in respect of the offence u/s 354 I. P. C., is hereby maintained.

A. H. KHAN, J. : I agree.