
(1971) 07 MP CK 0010
In the Madhya Pradesh High Court

The State of Madhya Pradesh	Vs	APPELLANT
Murat Singh Har Prashad and Others		RESPONDENT

Date of Decision : 28-07-1971

Acts Referred:

Essential Commodities Act, 1955 — Section 7
Penal Code, 1860 (IPC) — Section 511

Citation : (1971) CriLJ 1804 : (1974) ILR (MP) 990 : (1971) JLJ 889 : (1971) MPLJ 960

Hon'ble Judges : S.M.N. Raina, J;N.C. Dwivedi, J

Bench : Division Bench

Judgement

N.C. Dwivedi, J.

In this appeal, the State of Madhya Pradesh has challenged the order of acquittal of the thirteen respondents, Muratsingh. Jodha Karan Singh, Bhagwandas, Chhiman, Ramsingh, Ramdas, Ramsahai. Mst. Phulan Dulaya, Kriparam Atarsingh, Ganeshi, Mansha-ram and Chapla.

The village .. Khiryajhansi is situated within the boundary of the State of Madhya Pradesh and is at a distance of about 1 1/2 to 2 furlongs from river Pahui, which is the dividing boundary between the State of Madhya Pradesh and the State of Uttar Pradesh. In village Khiryajhansi, the respondents Bhagwandas, Ganeshi. Ramdas and ManshEiram have agricultural lands in which they had sown wheat and gram in Samvat 2021. The respondents Kripa- ram is the son of Sheoram who has agricultural lands in this village. The respondent Ramsingh is the village Choukidar and is the son of the respondent Chhiman. The respondent Atar-singh is the son of the respondent Ganeshi.

For the purposes of Inter-zonal Wheat and Wheat Products (Movement Control) Order, 1964, the State of Madhya Pradesh constituted one zone, No. III, while the State of Uttar Pradesh constituted another zone, No. II, as per, scheme.

The prosecution case is this. On 16-5-1965 on receipt of information, A- S. I.

Laxmansingh (P.W. 5) in the company of head constable Govind Prasad (P.W. 1), Babulal (P.W. 2) and Chand-drabhansingh (P.W. 3) reached the Kha-rivaghat of Pahu.j river. At about 4.30 A. M. from the side of the village Khiri-yajhansi, nine bullock-carts, each following the other, carrying wheat bags, arrived into the sandy bed of the Pahu.i river. A. S. I. Laxmansingh (P; W, 5) detained the bullock carts after surrounding them. Two respondents, Jodha Karan Singh and Ramsingh, seeing the raiding party, escaped and in spite of pursuit were not apprehended. Other respondents were apprehended then and there.

One bullock cart belonged to .Ramcharan, another to respondent Bha-gwandas, third to respondent Atarsingh in which respondent Ganeshi was sitting, fourth to Ramdas in which Ramsahai, Phulan Dulaiya and Kriparam were sitting. In the fifth cart, which belonged to respondent Chhima.n, Ramsingh was sitting. The sixth cart belonged to respondent Muratsingh in which Jodha Karan Singh was sitting and the seventh and eighth carts belonged to respondent Chapla and Mansharam respectively.

Respondent Ramdas was driving the cart in which besides him, Ramsahai, Phulan Dulaiya and Kriparam were sitting. Respondent Chhiman was driving the cart in which his son Ramsingh was sitting who had escaped. In the cart driven by Muratsingh, besides him. Jodha Karan Singh was also sitting but he too had escaped.

The bullock carts with the grain were seized vide seizure memos., Exs. P-I to P-7. The A. S. I. Laxmansingh (P.W. 5) then brought the respondents with the bullock carts and the grain to the Bhandar Police station and recorded the report, Ex. P. 9. The bullock carts with the grain were heading towards Chirgaon (U. P.) but the respondents had no permit to export wheat outside the zone of Madhya Pradesh.

The respondent Jodha Karan Singh denied that he was with the apprehended bullock carts and stated that on the date of the occurrence, he had gone to the house of Sundarsingh Mukhiya of village Dhan. The respondent Muratsingh stated that the grain was being taken from village Kumharra to Chirgaon for sale.

Respondent Mansharam stated that he and others were taking the grain from village Kumharra where the police personnel detained their bullock carts. The respondents Ramsingh and Jodha Karan Singh were not with them. He further stated that the police did not apprehend the bullock carts of Chhaliya, Bhaduwa, Kuliya, Sarju and others.

The respondent Ramsingh abjured his guilt and stated that he had gone to bring his sister at the house of Harnarayan at village Kalyan Kumharra. He denied that he had escaped from the Pahu.i river bed.

The respondent Chhiman stated that the grain was being taken from village Khumharra to Chirgaon for sale and he was apprehended at village Kumharra.

The respondent Bhagwandas stated that the grain seized from him belonged to

Patel Ganeshlal and his cart was detained at village Kumharra. He was taking the grain from village Kumharra to Chirgaon for sale.

The respondents Ganeshi stated that he had cultivation in village Sorai. He and respondent Bhagwandas were taking the Grain to Chirgaon for sale but the police apprehended them at village Kumharra. Atarsingh," his son, was with him.

The respondent Ramdas stated that the grain belonged to him which he was taking from village Kumharra to village Chirgaon for sale and he was apprehended at village Kumharra.

The respondent Chapla also stated that he was detained at village Kumharra from where he was taking the grain to Chirgaon for sale.

The respondent, Ramsahai stated that he had come to his relation and on return was apprehended at village Kumharra.

The respondent Atarsingh stated that he had illwill with Chandra-bhansingh (P.W. 2). He had only gone to see the apprehended carts at village Kumharra. Chandrabhan Singh told the Sub Inspector that he was the son of Ganeshi and at his instance, he was apprehended.

The respondent Kriparam stated that he was taking the grain of his own cultivation from village Kumharra to village Chirgaon for sale and was apprehended at village Kumharra.

The respondent Phulan Dulaiya stated that she was taking grain of her own cultivation and was apprehended at Kumharra.

The Magistrate, after scrutinising the prosecution evidence recorded the following findings:?

- (a) That the respondents had no licence for exporting wheat;
- (b) That the respondents Ramshingh and Jodhakaran Singh were with the carts and had escaped;
- (c) That the respondents had the intention to cross-over to the boundary of Uttar Pradesh;
- (d) That the respondents could not be said to have exported or attempted to export because they had not crossed the zone and as good citizens, they might have changed their minds not to violate the law of the land and unless they crossed the boundary of Madhya Pradesh, offence of export or attempt to export could not be inferred.
- (e) Since the respondents had moved the carts within the boundary area of village Khiriyajhansi they had not contravened Section 4 of the Order and since they were taking the grains for sale at the nearest grain market, they would be entitled to protection under Clause (vii) of Section 6.

The State of Madhya Pradesh, in this appeal, have challenged the above findings. Therefore, the points for decision in this appeal are:?

(1) Whether the apprehension of the respondents with grain in the river bed of Pahuj river amounted to an attempt to export wheat to another zone.

(2) Whether the respondents contravened the provisions of Section 4 of the Order.

(3) Whether the respondents were protected under Clauses (iii) and (vii) of Section 6.

Before the evidence is discussed, it will be essential to state the law to precisely know the difference between "preparation" and "attempt".

In *Premlal v. State of M. P.* 1969 Jab LJ 29, the following observations have been made:?

It is settled law that in order to constitute an offence both "actus reus" and "mens rea" must be established. As stated in "Russell on Crimes", at page 177, the prosecution must prove:?

(a) that the offender's physical conduct reached the point which the law prohibits (the actus reus), in other words, there must be proof of something done by the offender, a deed, which the law regards as marking the commission of this particular offence, and

(b) that in pursuing this line of conduct he was actuated by the intention the mens rea), to go further and to achieve a definite end which is a specific crime (i. e. which is another actus reus). There never is much difficulty in defining "mens rea" of attempt; but no infallible and certain test has so far been devised to help us in deciding what constitutes the "actus reus" of attempt.

In the words of Baren Parke in *R-v. Eagleton* (1855) Dea 515.

Acts remotely leading towards the commission of the offence are not to be considered as attempts to commit it, but acts immediately connected with it are.

In *Hope v. Brown* (1954) 1 WLR. 250 Lord Goddard, C. J. said:?

There might be a sudden change of heart, or an intervention by the master, which would have prevented any attempt being made to sell this meat to the customers. In all these cases where it has been held that there has been an attempt the Court has always found that the crime would have been committed but for the intervention of someone.

According to "Kenny's Criminal Law", the practical test for the actus reus in attempt is that the prosecution must prove that the steps taken by the accused must have reached the point when they themselves clearly indicate that was the end towards which they were directed.

According to Granville Williams in his "Criminal Law" P. 621, "three or possibly four rules govern the act of attempt:?"

- (1) It must be sufficiently proximate to the crime attempted.
- (2) It must aim towards a crime, not towards non-criminal conduct.
- (3) It need not be an act capable of bringing about the crime intended; in other words; the crime intended need not be possible-
- (4) There is a doubt whether the act must be such that the accused can be said to be 'on the job'.

Enunciating the proximity rule, Turner in his "Modern "Approach" says:?"

If the example may be permitted, it is as though a cinematograph film, which had so far depicted merely the accused person's acts without stating what was his intention, had been suddenly stopped, and the audience were asked to say to what end those acts were directed. If there is only one reasonable answer to this question then the accused has done what amounts to an "attempt" to attain that end. If there is more than one reasonably possible answer, then the accused has not yet done enough.

According to Holmes J. "there must be dangerous proximity to success.

In *Abhaynand Mishra Vs. The State of Bihar*, dealing with the case u/s 511 of the Penal Code distinction between "attempt" and "preparation" was laid down as follows:?"

The question whether a certain act amounts to an attempt to commit a particular offence is a question of fact dependent on the nature of the offence and the "steps necessary to take in order to commit it. No exhaustive precise definition of what would amount to an attempt to commit an offence is possible.

There is a thin line between the preparation for and an attempt to commit an offence. Undoubtedly, a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence-Attempt to commit an offence, therefore, can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence.

A person commits the offence of "attempt to commit a particular offence" when (i) he intends to commit that particular offence; and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission, such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that

offence.

In Gour's Penal Law of India (Volume 4, 8th edition 1967), the implications of "attempt" have been stated as follows:?

Any overt act immediately connected with the commission of an offence, and forming part of a series of acts which, if not interrupted or frustrated, would end in the commission of the actual offence, is, if done with a guilty intent, an attempt to commit the offence. A person may be guilty of an attempt to commit an offence though that offence could not, in the circumstances, have been committed; but steps in the way to doing something which is in fact done, and which when done does not amount to a criminal offence, cannot be regarded as an attempt.

Turner in Kenny's Outlines of Criminal Law, Gardner v. Akeroyd (1952) 2 AH ER 306 and in a valuable article which he has contributed on "Attempts to commit crimes" in the "Modern Approach to Criminal Law", Vol. IV of "English Studies in Criminal Science" (Page 273 and following) observed:?

The actus reus of an attempt to commit a specific crime is constituted when the accused person does an act which is a step towards the commission of that specific crime, and the doing of such act cannot reasonably be regarded as having any other purpose than the commission of specific crime.

This formula may be amplified as follows:?

An act which does not contribute to the commission of the crime, cannot be counted as part of the actus reus. even though it may be excellent evidence of mens rea. If the acts of the accused, taken by themselves, are unambiguous, and cannot, in reason, be regarded as pointing to any other end than the commission of the specific crime in question, then they constitute a sufficient actus reus. In other words, his acts must be unequivocally referable to the commission of the specific crime. They must speak for themselves. It would be of assistance to the proper solution of difficult cases of alleged attempts, if not extrinsic evidence of the mens rea of the accused, e. g. such as a confession, were to be considered unless and until a sufficient actus reus has first been established.

An attempt in- order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof. For purposes of criminal liability, it is sufficient, if the attempt had gone so far. that the crime would have been completed but for extraneous intervention, which frustrated its consummation. (Page 3698 Gour's Penal Law).

The dividing line between "mere preparation" and "an attempt" is sometimes thin and has to be decided on the facts of each case. An attempt is a direct movement towards the commission after the preparation has been made. There is a greater degree of determination in "attempt" as compared with "preparation". Acts remotely leading to the commission of an offence are not to

be considered as attempt to commit it but acts which are immediately connected with it are attempts. The difference between mere preparation and actual attempt to commit an offence consists in the greater degree of determination in attempt as compared with preparation. An attempt to commit an offence is an act, or series of acts which leads inevitably to the commission of the offence unless something, which the doer of the act or acts neither foresaw nor intended, happens to prevent it. (Page 3698 Gour's Penal Law).

We will now proceed to examine if an attempt to export wheat in contravention of the Order has been established or not. We have perused the evidence of Govind Prasad (P.W. 1), Babulal (P.W. 2), Chandrabhansingh (P.W. 3) and A. S. I. Laxmansingh (P. W. 5). We agree with the lower Court's finding that the nine carts with the respondents therein laden with wheat were apprehended in the river bed of Pahuj river heading towards the village Chirgaon. Some of the respondents did not dispute that their carts were apprehended while they were taking the grain to village Chirgaon. Their only contention was that the carts were apprehended at village Kumharra in Uttar Pradesh and not in the river bed of Pahuj. The prosecution evidence conclusively established that the nine carts were apprehended in the sandy bed of river Pahuj and not at Kumharra. This finding could not thus be challenged before us.

It was, however, contended that accepting this finding of fact, the respondents still could not be held guilty of the contravention of the Order and reliance was placed on Malkiat Singh Vs. The State of Punjab, in which the following observations were made:?

The test for determining whether the act of the accused person constituted an attempt or preparation is whether the " overt acts already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless.

It was quite possible that the accused might have been warned that they had no licence to carry the paddy and they might have changed their mind at any place between Samolkha Barrier and the Delhi Punjab boundary and not have" proceeded further in their Journey.

In order to appreciate the above observations, it will be necessary to refer to the facts of the case. In this case, the truck carrying 75 bags of paddy was stopped at Samolkha Barrier which was 32 miles from Delhi. It was also not in dispute that the Delhi-Punjab boundary was at the relevant point of time, at about 18th mile from Delhi. It was, therefore, observed:?

It is, therefore, evident that there has been no export of paddy outside the State of Punjab boundary. On these facts it was held that it was merely a preparation on the part of the appellants and there was no attempt to commit the offence of export. In the circumstances of the case, it was held that since the appellants were apprehended at the Samolkha Barrier, which was substantially at a long distance from the Punjab-Delhi border, the act was

construed as mere preparation and not "an attempt".

In our case, the boundary village of Khirvajhansi was left behind and was at a distance of about li or 2 furlongs. From the boundary river Pahuj. Nine carts one after another "loaded with wheat entered the river bed and were heading towards Uttar Pradesh border. They did not stop of their own accord and but for the intervention by the raiding party, they would have completed their act of crossing the boundary river e. g. entering the Uttar Pradesh border. In these circumstances, their act was in dangerous proximity to success and but for the intervention, they would have proceeded further and thus achieved their goal of reaching the Uttar Pradesh border. The respondents did not explain how they were in the bed of Pahuj river with their bullock carts poised for move towards the Uttar Pradesh border. On the other hand, their defence that they were apprehended at village Kumharra was found false and their intention, as is clear from their own statements, was to take the grain for sale to village Chirgaon. In these circumstances, the conclusion was irresistible that the respondents had the determination to move forward but for the unexpected intervention by the raiding party.

The steps, in loading their carts with grain from village Khiri-vajhansi. then yoking their bullocks then driving their carts for a distance of about two furlongs and then reaching the sandy portion of the boundary river and then proceeding towards the Uttar Pradesh border, taken by the respondents clearly indicated that they were directed towards the end i, e. the export of wheat to the other zone.

A similar case was dealt with in the State of Madhya Pradesh Vs. Ram Charan Kishan, which is on all fours with the case in hand. It was observed:?

Since the carts were seized after they had crossed the river bank into the river-bed itself, while nearing the border between the two States and although the carts were on this side within the State, they were seized while proceeding towards the boundary and it can hardly be denied that the seizure was effected while the accused were attempting to export the wheat from one zone to another.

It was contended before us that there is no evidence that Ramsingh and Jodhakaran Singh were in the carts or that they had absconded. In paragraph 13 of the judgment, the trial Court, after discussing the prosecution evidence concluded that the presence of the accused Jodha Karan Singh and Ramsingh was conclusively established. We have perused the -evidence and hold that this conclusion is well supported by the evidence of Govind Prasad (P. W 1) vide paragraphs 5 and 9, Babulal (P.W. 2) vide paragraph 3, Chandrabhan-singh (P.W. 3) vide paragraphs 2 and 7y and the A. S. I. Laxmansingh (P. W, 5) vide paragraph 16. The evidence of Chandrabhansingh (P.W. 3) is pertinent because he stated that he knew all the persons because they were living in nearby village and he had disclosed the names of all the accused persons before the Sub-Inspector (paragraph 7). Babulal (P.W. 2) stated that he knew the names of some of the respondents which he had disclosed. Govind Prasad (P.W. 1) stated

that he knew the respondents by and some of them were fully known to him. He identified the respondent Ramsingh by name and face (paragraph 7). He saw Rarosingh and Jodhakaran Singh running away pursued by a constable. "Ramsingh's father Chiman disclosed his name and Jodhakaran Singh's name was disclosed by Muratsingh in whose cart he was travelling. There is thus definite prosecution evidence that Ramsingh and Jodhakaran Singh were in the carts and escaped after the raiding party surrounded the carts. We agree with the lower court's conclusion on this point.

The respondents Ramsingh and Jodhakaransingh pleaded alibi but led no evidence to prove their defence. "Their presence in the carts is sufficiently established- Their running away at the sight of the raiding party indicated their guilty conduct.

It was contended that the respondents stood charged for exporting grain and, therefore, they cannot be -convicted for attempt to export it. The words of the charge were "found exporting wheat without any valid permit". This would cover an attempt to export. Even otherwise, if there is a charge for the substantive offence, a conviction can be legally recorded for an attempt to commit that offence u/s 238 (2a) of the Code of Criminal Procedure.

It was then contended that persons who had simply occupied the carts cannot be held liable for the contravention of the Order. The carts left Khiriyajhansi at an unusual hour. 4.30 A. M. All the carts- were going in one direction and close to each other. The husband of respondent Phulan Dulaya is Netsingh who has cultivation in village Khiriyajhansi. The respondent Bhagwandas admitted that the grain belonging to respondent Ganeshi was in his cart which was being taken to Chir-gaon for sale. He also admitted that the respondent Atarsingh, his son, was also with him. The respondent Ramdas admitted that the grain belonged to him. The respondent Jodhakaran Singh appears to be a relation of the respondent Muratsingh. Respondent Ramsingh is the son of respondent Chiman. It is, therefore, apparent that some of the occupants of the carts were related to other respondents who were moving in a body towards Uttar Pradesh border. The presence of the respondents in the bullock carts at that unusual hour of the morning could not be accidental. In the absence of explanation how unconnected persons, together were going in one direction, the inference will be that all of them were intentionally going in the carts with one common view, i. e. exporting grain to Uttar Pradesh.

Relying on the State of Gujarat and Another Vs. Acharya D. Pandey and Others, etc., which held that the statement u/s 342 of the Code of Criminal Procedure cannot be split into various parts and accept a portion and reject the rest, the statement has to be accepted wholly or not rely on it, it was urged that whatever statements the respondents made u/s 342 of the Code of Criminal Procedure could not be taken into account. The prosecution case was that the respondents were caught in the sandy bed of the river Pahuj in attempting to export wheat into the territory of Uttar Pradesh. About this, there was no admission. But an

alternate case was stated that they were taking the grain from village Kumharra in Uttar Pradesh to the grain market Chirgoan in Uttar Pradesh. In the aforesaid case State of Gujarat and Another Vs. Acharya D. Pandey and Others, etc., the complaint was that the accused No. 1 withdrew certain sums from the trust fund, a fact admitted by him, but with the qualification that withdrawals were made from Hathu Khata, a Khata opened by him and his ancestors and he had put back that amount. The guilt of accused No. 1 was sought to be established on the aforesaid admission and, therefore, it was observed that the entire statement had to be taken as a whole. This is not the case here. The respondent pleaded an alternate case to that put up and proved by the" prosecution. That alternate case is that the bullock carts were seized at Kumharra but on scrutiny it was found to be false. If the incriminating facts or circumstances are established by the prosecution and if the accused fails to offer an explanation or gives a false statement, the Court would be entitled to draw an adverse inference against him. See, Pershadi Vs. State of Uttar Pradesh, . In these circumstances, it will be permissible to take into account the statement that the carts were going towards the territory of Uttar Pradesh for sale and the prosecution established that they were apprehended in river bed of Pahuj river.

In the aforesaid circumstances we hold that the respondents had attempted to export Wheat and as such contravened Sec- 3 of the Inter Zonal Wheat and Wheat Products (Movement Control) Order. 1964,.

As for the conviction of the respondents for contravention of Section 4 of the Order it has been brought to our notice by the learned Government Advocate that under similar circumstances two of the accused were adjudged guilty in State of Madhya Pradesh Vs. Ram Charan Kishan, Shri J. P. Gupta, learned Counsel for the respondents, however, argued that since the movement was within the same village the respondents are entitled to the benefit of exemption contained in Clause (iii) of Section 6 of the Order. In State of Madhya Pradesh Vs. Ram Charan Kishan, the accused were not held entitled to the benefit of exemption on the ground that the exemption relates only to such movement as is for purposes of sale or consumption therein. This construction of the exemption has been vigorously assailed by the learned Counsellor the respondent and we must say that it is not free from difficulty. We do not, however consider it necessary to go .into this question because we have held the respondents to be guilty of an offence u/s 3 of the Order for the same act for which contravention of Section 4 of the Order is alleged. The conviction and sentences of the respondents on one count alone will meet the ends of justice.

With regard to the sentence, the prosecution was launched in the year 1965 and about more than six years have since then elapsed. Jail sentence does not appear necessary. We. therefore, feel that the sentence of fine of Rs. 200/-each or in default rigorous imprisonment for four months would be proper sentence for each of the respondents.

In view of the above, the appeal succeeds and is allowed- The order of acquittal

of the respondents is set aside "and instead, they are convicted u/s 7 of the Essential Commodities Act, 1955, for contravention of Section 3 of the Inter Zonal Wheat and Wheat Products (Movement Control) Order. 1964 and each of the thirteen respondents (Muratsingh. Jodhakaran Singh, Bhag-wandas, Chhiman, Ramsingh, Ramdas, Ramsahai. Mst. Phulan Dulaya Kripara, Atarsingh, Ganeshi, Mansharam and Chapla) is sentenced to pay a fine of Rs. 200/- or in default to undergo rigorous imprisonment for four months.

S.M.N. Raina, J.

I agree with my learned brother that the appeal should be allowed to the "extent and on the terms as proposed by him, I would however, like to add a few words of my own- . " .

It is not disputed that the case of the drivers of two bullock carts out of nine which was considered by this Court in State of Madhya Pradesh Vs. Ram Charan Kishan, s in no way distinguishable from that of the drivers of the other bullock carts in the present case. In fact all of them were going together. Shri Gupta, learned Counsel for the appellant, agreed that if the view taken by this Court in State of Madhya Pradesh Vs. Ram Charan Kishan, is maintained the accused (respondents in this case) Who were driving the bullock carts may be adjudged guilty of attempt to export wheat. His main contention, however,, was that that decision needs to be reviewed in the light of the decision of the Supreme Court in Malkiat Singh Vs. The State of Punjab, On the authority of that decision he urged that the act of the accused merely amounted to preparation and not an attempt to export.

My learned brother has dealt with the law relating to" attempt comprehensively and I can hardly add anything useful to it. As for the decision of the Supreme Court in Malkiat Singh Vs. The State of Punjab, it is, in the first instance, distinguishable on facts because in that case the accused was arrested about 18 Miles from the boundary while here in this case the accused have been arrested very close to the .boundary almost within a few feet from the boundary. As regards the observations of their Lordships on-which Shri Gupta relies and which, have been referred to in the judgment of my learned brother all that I would like to add is that they should be read along with other observations made by their Lordships in that case. Their Lordships quoted with approval the following definition of attempt as given in the Digest of Criminal Law by James Stephen:?

An act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted. The point at which such a series of acts begins cannot be defined, but depends upon the circumstances of such particular case.

From the above definition it is clear that the point at which the preparation ends and attempt begins is a question of fact in each case. As pointed out by their Lordships in paragraph 4 of the judgment the sufficiency of actus reus is a question of law which has led to considerable difficulty because of the necessity

of distinguishing between acts which are merely preparatory to the commission of a crime, and those which are sufficiently proximate to it to" amount to an attempt to commit, it- Thus the proximity of an act to the commission of an offence is the determining factor. In other words, where the act of the accused is sufficiently proximate to the commission of an offence so as to give rise to a reasonable inference that the offence would have been committed if the act had not been interrupted by an external agency, the act would amount .to an attempt. Illustration given by their Lordships pointed out that where a person approaches a haystack with the matches in his pocket, bends down near the stake and lights a match which he extinguishes on perceiving that he is being watched, he may be guilty of an attempt to burn it.

In the instant case it is clear that the accused when arrested were moving towards the U. P. boundary and were so close to it that they were bound to cross it within a very short time if they had not been interrupted by the police. They are, therefore, clearly guilty of an attempt to export.

I, therefore, agree that the accused are guilty of an offence of an attempt to export wheat in contravention of Section 3 of the Inter Zonal Wheat and Wheat Products (Movement) Control Order, 1964, and that the appeal should be allowed as proposed by my learned brother.