

ABEYAKOON v. SODALAYANDI ACHARI.

1900.
July 13.

D. C., Kegalla, 21,367.

*Penal Code, s. 183—Obstructing public servant in discharge of public duty—
Meaning of voluntary obstruction—Punishment for such offences.*

Where a Deputy Fiscal, entrusted with a writ of possession, informed the accused, who was in possession of the house, that he had come to place the purchaser in execution in possession, but the accused in an excited state said in anger to the Deputy Fiscal. "It would be either my life or your life; you will have to cut my throat before I am sent out;" and the Deputy Fiscal, apprehending something serious, did not give effect to the writ of possession:

Held, that the conduct of the accused, though devoid of physical resistance, amounted to criminal intimidation, and therefore to voluntary obstruction.

In the absence of special circumstances of aggravation, the punishment in such cases should not be greater than that which may be inflicted under section 326 of the Civil Procedure Code, namely, simple imprisonment, or a fine.

THE accused in this case was found guilty under section 183 of the Penal Code of obstructing the complainant as a public servant in the discharge of his duty as Deputy Fiscal of Kegalla, of putting the purchaser at a sale in execution in possession of certain lands described in the writ of possession which was issued from the District Court of Kegalla. The evidence of the complainant as regards the nature of the obstruction was as follows:—

"I entrusted the writ of possession to a subordinate officer of mine to put Muttyah Chetty, the purchaser, in possession; he reported that the accused refused to leave the land. I went to the land myself in consequence in December last. The defendant refused to vacate the premises. I went again on the 16th April last, reaching the land at about 9 o'clock. I saw the accused's wife, but the accused himself was absent. She refused to go away. I came to the land again at 3 P.M. Both husband and wife were in the house. I explained to them that I came to place Muttyah Chetty in possession. The accused asked me not to step into his house, and he threatened me if I came there something serious would happen. He said it would either be my life or your life; you will have to cut my throat before I am sent out. He was very angry and in an excited state. I apprehended that something serious would happen, and I was therefore unable to put Muttyah Chetty in possession."

Accused appealed.

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Bawa, for appellant.—It is not proved that accused barricaded his doors or assaulted the Deputy Fiscal, or took any active step to oppose the execution of the writ of possession. “ Voluntary obstruction ” in section 183 implies use of physical force. It cannot be said that the words used by the accused amount to such physical resistance (*Queen-Empress v. Sommanna*, I. L. R. 15 Madras 221), and it has been held in *Queen-Empress v. Hussain* (I. L. R. 15 Bombay 564) that an oral statement to a bailiff that he would not be allowed to take away the articles does not amount to an offence under the corresponding section of the Indian Penal Code. [BONSER, C.J.—The first case cited only shows that the owner of the goods sought to be inventorized simply remained inside his house with his closed doors; and in the second case cited a person claiming certain goods which were lying on the road in front of the judgment-debtor’s shop, which was sought to be attached, the owner told the bailiff that he would not let him take them away unless he entered them as the claimant’s property. But in the present case there is evidence of intimidation, owing to which the Deputy Fiscal says he was obliged to desist from his duty.] But there was no physical resistance here.

The sentence of three months’ imprisonment is much too severe. A fine would be more consistent with the facts of the case.

Rāmanāthan, S.-G., for respondent, was not called upon.

BONSER, C.J.—

This is an appeal against a conviction under section 183 of the Penal Code for voluntarily obstructing a public servant in the discharge of his public duties. It appears that the appellant was the owner of a house and land which had been seized in execution in a suit by the creditor and sold and purchased by the creditor. The purchaser obtained a delivery order and went with the Deputy Fiscal to be put in possession. They went first at 9 o’clock in the morning. At that time the appellant was absent; his wife and children were there. The Fiscal tried to remove the wife and seized her by the arm to pull her out of the house. But as she refused to go, they desisted from using more force.

The Deputy Fiscal and the purchaser returned in the afternoon and found the appellant in the house. The Deputy Fiscal explained to the accused that he had come to put the purchaser in possession. Thereupon the appellant told the Deputy Fiscal not to step into the house, and said that if he did so it would be “ either my life or yours.” The Deputy Fiscal would have to cut his throat before he went out. The Deputy Fiscal says that the

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man was very excited and angry, and that he was afraid that he would do him some harm if he carried out the order of the Court. That being so, he was unable to put the purchaser in possession, and they went away and reported the matter to the Court. The appellant at the trial denied that he was there at all but the Magistrate disbelieved him, and it has not been attempted to show that the Magistrate was wrong.

But it was urged that on the facts proved there was no obstruction within the meaning of section 183: that there must be some physical act of obstruction to bring the case within that section, and two cases from the *Indian Law Reports* were cited as authorities for that proposition. One was *Queen-Empress v. Sommana (15 Madras 221)*. In that case a search warrant had been issued to search a house, and when the person deputed to execute the warrant arrived at the house the owner shut the door and took no notice of the Commissioner. The Court held there was no obstruction in that case, for all that the man did was, when the Commissioner asked to search the house, to shut the door and refuse to make any answer. The judgment states that his object apparently was not to obstruct, but to gain time for the compromise which later on in the day was effected; and that the use of the word "voluntary" implied some active conduct, and the Legislature did not intend to render penal mere passive conduct. In the present case there was something more than passive conduct. There were threats; and threats coming from an excited and angry man might not unnaturally lead the officer to believe that they would be followed by action.

The other case, *Queen-Empress v. Hussain (15 Bombay 564)*, was under a different section, i.e. under the section which answers to our section 181.

In that case the accused was charged with offering resistance to the taking of property by the lawful authority of a public servant, and the only evidence against him was that, when the baliff went to the property, he said, "I shall not let you seize it unless you enter it as my property." This was held not to be resistance.

There is no case which decides that criminal intimidation such as existed in the present case is not obstruction.

It seems to me that the previous section 182 throws some light on the question, for there it is made an offence to obstruct a sale of property which is offered for sale by lawful authority, and it seems to me the most obvious way to obstruct a sale would be by threatening bidders or would-be bidders with personal violence if they made bids. I am of opinion that the conviction was right.

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Then, as to the punishment, the Police Magistrate has inflicted the full amount of punishment, which is three months' rigorous imprisonment.

Had the matter been referred to the District Court and this obstruction complained of to the District Judge, the District Judge might have dealt with it under section 326 of the Civil Procedure Code; but under that section the utmost punishment which he could have inflicted would have been thirty days' simple imprisonment. I am of opinion that in a case like this the punishment should not, if the case is brought under section 183, exceed the punishment prescribed by the Civil Procedure Code in the absence of special circumstances of aggravation.

I think that in the present case the justice of the case will be met by a fine of Rs. 10, or in default a fortnight's imprisonment.

