

1952

Present : Swan J.

CALDERA, Appellant, and IMBULDENIYA (S. I. Police), Respondent

*S. C. 1,131—M. C. Colombo, 18,314**Criminal intimidation—Threat to cause death or grievous hurt—Jurisdiction of Magistrate's Court—Penal Code, ss. 483, 486.*

A Magistrate's Court has jurisdiction to try a case of criminal intimidation if the threat was to cause death but the accused was unarmed and not in a position to cause death or grievous hurt and the threat could not have been uttered with any other intent than to cause alarm.

APPEAL from a judgment of the Magistrate's Court, Colombo.

M. M. Kumarakulasingham, with *J. C. Thurairatnam*, for the accused appellant.

Cecil Goonewardene, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

March 21, 1952. SWAN J.—

The accused-appellant was charged in this case with criminal trespass and intimidation under Sections 434 and 486 of the Penal Code. He was found guilty on both counts and sentenced to one month's rigorous imprisonment on the first count and to four months' rigorous imprisonment on the second count, the sentences to run concurrently.

The only point taken by learned Counsel for the appellant was that the Magistrate had no jurisdiction to try the charge of intimidation inasmuch as the threat was to kill the husband of the woman who was intimidated. I shall quote the exact wording of the second charge :—

“ 2. At the same time and place aforesaid the above-named accused did commit criminal intimidation to J. Carline Perera of Hokandara North by threatening to kill her husband with intent to alarm, and thereby committed an offence punishable under Section 486 (Chapter 15). ”

The point taken is by no means new. It was raised, as far as I can gather, before Grenier J. in the case of *Simeon Appukamy v. Velun Singho*¹. Said His Lordship :—

“ In the schedule to the Criminal Procedure Code, I find that the District Court and not the Police Court has jurisdiction to try a case

¹ (1911) 5 S. C. D. 56.

of intimidation if the threat be to cause death or grievous hurt. In the present case the threat was clearly to cause death and the Police Court had therefore no jurisdiction. ”

Grenier J. quashed the conviction and sent the case back “ for proceedings to be taken according to law ”.

It should be noted that the threat to kill was made to the complainant Simeon Appuhamy.

The next reported case involving the same point is *Peter Gunaratne v. Allis Sinno*¹, where de Sampayo J. held that a threat to shoot which proceeds from a person who is not armed with a gun does not amount to a threat to cause death or grievous hurt within the meaning of Section 486.

In the course of his judgment Sampayo J. remarked :—

“ It is argued on this evidence that this is a threat to cause death or grievous hurt to the complainant within the meaning of the latter portion of Section 486, but the circumstances do not seem to indicate that the threat was of that description. The accused, as a matter of fact, had no gun or weapon in his hand, but his attitude would seem to have caused alarm to the complainant and made him believe that accused was determined to do some sort of bodily injury to him but not necessarily kill him or cause grievous hurt ; and after all the gist of the offence is threatening another with injury to his person with intent to cause alarm. The element necessary in this connection was supplied by the evidence and there is no necessity to emphasise the fact that the words used by the accused were that he would shoot. On the whole I think the case has been sufficiently dealt with, and I am unable to interfere with the conviction either upon its merits or upon the objection taken.

I dismiss the appeal. ”

We now come to the case of *Fernando v. de Vas*², where the objection taken was double-barrelled, so to say. It was contended that if the threat to kill was serious the Police Court had no jurisdiction ; if it was not taken seriously it would not amount to intimidation. Lyall-Grant who heard the appeal observed :—

“ I think, however, that there is a *via media* by which a threat of the kind used in this case can be dealt with under the Section. Although the accused admittedly was proved to have used the words ‘ I will kill you ’, he was not armed and it is a reasonable inference from the evidence that the complainant was not under the apprehension of death or of grievous hurt. At the same time, the fact that the man so obviously lost his temper that he came in front of the shop and abused the complainant for some minutes and uttered threats was sufficient to cause alarm ; the act must be construed as having been done with intent to cause alarm, and that being so, it is an act within the definition of criminal intimidation under Section 483 of the Penal Code. ”

¹ (1913) 1 Cr. A. R. 16.

² (1928) 9 C. L. Rec. 67.

In the present case the threat complained of by Carline Perera was to kill not her but her husband. The facts reveal that the husband was not there when the threat was uttered nor is there any evidence to show that the accused was armed, or to put it in other words, that he was in a position to cause death or grievous hurt either to Carline Perera or her husband. In the circumstances the threat could not have been uttered with any other intent than to cause alarm to Carline Perera. In my opinion the charge was properly laid in the Magistrate's Court. The objection therefore fails.

The appeal is dismissed.

Appeal dismissed.
