Present: De Sampayo A.J.

1912.

DE VOS *v.* ERNST.

288—P. C. Matara, 3,146.

Criminal trespass—Entering the room of a lady by night for immoral purpose—Intention to intimidate, insult, or annoy.

A person who climbed up about midnight into the sleeping apartment of a young lady with the object of carrying out some immoral purpose was held (in the circumstances) to have been guilty of criminal trespass.

"If in such circumstances the accused intended to make improper proposals in which he could not possibly have hoped to succeed, and which he must have known would be resented by the young lady, then it is quite plain he thereby primarily intended to intimidate, insult, and annoy the young lady by such proposals."

THE facts are set out in the judgment.

A. St. V. Jayewardene, for the accused, appellant.—The facts disclosed do not prove that the accused had any intention to intimidate, insult, or annoy. The only intention of the accused was to carry out some immoral purpose. It has been held that an entry into a house for such a purpose does not constitute criminal trespass. See *Veronia v. Santia;*[1] *Balmakand Ram v. Ghansamram;*[2] *Queen Empress v. Rayapadayachi;*[3] *Mayne's Criminal Law, section 577.*

The intent mentioned in section 427 is the primary or main intent. *Pitche Bawa v. Abdul Cader.*[4] See also *In re Gobind Prashad.*[5] In this case the primary or main intent is not to annoy or insult.

F. H. B. Koch, for respondent.—Intention to intimidate or annoy will be presumed from foreknowledge that intimidation or annoyance will be the natural result of an act. *Suppaiya v. Ponniah et al.*[6] The accused must have known what the result of his act would be.

Cur. adv. vult.

May 15, 1912. DE SAMPAYO A.J.—

The case for the prosecution was that the accused on April 15, 1912, about midnight, climbed up from the street into a certain house at Matara and entered by the window an upper room in which

[1] *7 S. C. C. 35.*
[2] *(1894) 22 Cal. 391.*
[3] *(1896) 19 Mad. 240.*
[4] *(1909) 3 S. C. D. 47.*
[5] *(1879) 2 All. 465.*
[6] *(1909) 14 N. L. R. 475 4 Bal. 157.*

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two young ladies—Miss de Vos and Miss van der Smaght—were then sleeping; that he stooped over Miss de Vos's bed, touched her arm, and whispered something to her; that he bent over Miss van der Smaght and touched her on the arm; and that the young ladies being greatly frightened set up cries of alarm, whereupon the accused jumped out again and escaped into the street. The accused was accordingly charged with the offence of house trespass under section 434 of the Penal Code, and was convicted and sentenced to three months' rigorous imprisonment. It was contended for the accused in appeal that there was not sufficient identification of the accused as the person who was found in the bedroom on the night in question. The young ladies, it was argued, had not really identified the accused at the time, but had subsequently discussed the question between them and hit upon the accused as the likely person. There is no good ground for this suggestion. On the contrary, I find their evidence is very restrained and moderate. Miss van der Smaght did not recognize the accused, and said so in her evidence, only adding that the man was one like the accused. Miss de Vos, who was the first person roused, and had better means of identification, was quite sure that the accused was the man. An ayah, who came up at the uproar and went out of the house to look for the person who had just escaped, saw the accused in the street walking away with another man. There were certain minor contradictions which have been dwelt on as falsifying the evidence of these witnesses, but all these were urged in the Police Court and fully considered by the Magistrate, and he, in a well-considered judgment, has found that the accused was the person who committed the trespass. I have no reason whatever to differ from him on this point.

It was next contended that the charge failed because the intention to intimidate, insult, or annoy as required in the definition of the offence had not been proved. It was not denied that the natural consequence of the accused's conduct was to intimidate, insult, and annoy the young ladies, but it was urged that his primary and ulterior intention, which must alone be taken into account, was none of these things, but to carry out some immoral purpose. A number of decisions of the Indian Courts was cited to me on this point, but all these and many other Indian decisions were carefully examined by Wood Renton J. in *Suppaiya v. Ponniah et al.*,[1] *and* he expressed the view, in which I may be allowed to say I entirely concur, that we should not easily whittle away the law by curious refinements as to the primary or secondary intention of a trespasser, but that in criminal trespass, as in other cases, we should apply the ordinary rule of law and of common sense, that a man might fairly be held to have intended the natural consequences of his acts. Mr. A. St. V. Jayewardene, for the appellant, also cited to

[1] *(1909) 14 N. L. R. 475; 4 Bal. 157.*

me the case of *Pitche Bawa v. Abdul Cader*,[1] in which Hutchinson C.J. remarked that " the intention mentioned in section 427 is the primary or main intention ". The circumstances of that case are entirely different from this. The question after all is one of fact, and the learned Chief Justice himself gave the warning that we must not go by a rule of thumb but must examine the evidence in each case as to the real intention of the person charged. Now, looking at the case in this way, I have not the slightest doubt on the evidence that the accused's real intention was to intimidate, insult, and annoy. Take even what is said to be the ulterior motive of the accused. Here are two young ladies of respectability, refinement, and character; one is seventeen years and the other twenty years of age; they are socially total strangers to the accused; and the accused, a Burgher young man, but at the time wearing a cloth and banian, stealthily climbs up to their bedroom at dead of night and rouses them from sleep and behaves in a manner to outrage their modesty and cause them serious alarm. If in such circumstainces the accused intended to make improper proposals in which he could not possibly have hoped to succeed, and which he must have known would be resented by the young ladies, then it is quite plain to me he thereby primarily intended to intimidate, insult, and annoy the young ladies by such proposals. I may add that the remarks of Lawrie J. in *Veronia v. Santia*[2] are quite in accord with what I have just said.

In my opinion the conviction and sentence are right, and I dismiss the appeal.

Appeal dismissed.

[1] *(1902) 3 S. C. D. 47.*

[2] *7 S. C. C. 35.*