

1948

Present : Basnayake J.

SAMARANAYAKE, Appellant, and JAYASINGHE (Police Sergeant, Ambalangoda), Respondent

S. C. 680— M. C. Balapitiya, 61,045

Penal Code—Criminal intimidation—Conditional threat—Offence committed—Section 483.

The offence of criminal intimidation can be committed even where the threat of injury is a conditional one.

APPPEAL from a judgment of the Magistrate, Balapitiya.

M. M. Kumarakulasingham, for accused appellant.

A. C. Alles, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

July 27, 1948. BASNAYAKE J.—

The accused-appellant (hereinafter referred to as the appellant) has been convicted of the offence of criminal intimidation punishable under section 486 of the Penal Code and sentenced to a term of six months' rigorous imprisonment. Learned counsel for the appellant contends that the facts proved against him do not establish the offence of which he has been convicted. It appears that on the date of the offence there

was a case regarding some land pending between one Warawita and the appellant in the court of Balapitiya. As Warawita passed the appellant at a place somewhere outside the precincts of the court-house the appellant dug Warawita in the stomach with his fist saying: "You come to enjoy the land I will draw your entrails out and hang them round your neck." Warawita says he was alarmed by the appellant's behaviour and complained to the court sergeant. Warawita's brother, who was with him, supports him as regards the incident but differs as to the actual words used by the appellant. According to him the accused said: "If you enter the land your entrails will be drawn out."

Learned counsel submits that a conditional threat such as that uttered by the appellant does not come within the ambit of section 483 of the Penal Code. I am unable to uphold learned counsel's submission. Whether the threat be of immediate or deferred injury, if the ingredients of the offence as described in that section are established, the offender would be guilty of criminal intimidation. The offence of criminal intimidation is committed by anyone who threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat¹.

A conditional threat of injury or a threat of future injury is not excluded from the description of the offence. A threat is a declaration of an intention to punish or hurt and to threaten is to give warning of the infliction of injury or to announce one's intention to inflict an injury as punishment or in revenge. Lord Trevethin's definition² of the word "threaten" in section 31 of the Larceny Act, 1916, though not exactly applicable to this context is not irrelevant to the present discussion. He says "threaten" means to "express an intention to" or "say that he will". The other material word "injury" is defined in section 43 of the Penal Code thus:

"The word 'injury' denotes any harm whatever illegally caused to any person in body, mind, reputation, or property."

The threat to cause injury must be with intent to cause alarm. Now what is alarm? It is a strong emotion of fear or apprehension, aroused by sudden danger and commonly inciting to defence or escape: anything that excites fear or terror³.

When one looks at the instant case, in the light of the above examination of section 483, one finds in it all the elements of the offence. There is the threat of injury to person, and there is not only clear evidence of intent to cause alarm but there is also evidence of actual alarm caused thereby. Although the gruesome part of the threat was to be carried out in the event of Warawita's entering on the land, the threat caused immediate alarm to Warawita, for, he forthwith sought refuge in the

¹ Section 483, Penal Code.

² *Rez v. Wyatt* (1921) 91 L. J. K. B. 402.

³ *New Standard Dictionary*.

court sergeant. Warawita says the appellant was in a fierce and angry mood. This fact is supported by the court sergeant who says that the appellant's attitude was such as to deter even him from recording his statement immediately. He says: "I sent for this accused and when he appeared before me I found that he was aggressive. I considered it safer to keep him in custody till I completed inquiries."

Learned counsel submits further that the words uttered by the appellant were words of braggadocio in which there is much stage-thunder, and should not be taken at their face value. I am unable to regard the threat uttered in this case in the light learned counsel wants me to understand it. The evidence does not show that it was uttered in a spirit of braggartry. For a threat to constitute the offence of criminal intimidation it is not necessary that the threatened injury should be capable of execution in all its details. Each case must be decided on its own merits. No abstract rule of general application can be laid down. In certain circumstances a threat may seem so unreal that it may not amount to the offence of criminal intimidation. But one cannot for that reason lay down a rule that where a threat is couched in highly extravagant language it is not an offence.

Learned Crown Counsel refers me to the case of *Balawandram v. Heenkende*¹. In that case the threats were not uttered in the hearing of the person whom the accused threatened to injure but they were conveyed to him by his servant and it caused alarm when he heard of them. During the argument I drew the attention of learned counsel for the appellant to the judgment of Justice Akbar in S. C. No. 239/P. C., Kandy 30,951, S. C. Minutes of April 15, 1930, as it seemed to be in his favour according to a note I had. I have since examined the judgment. Justice Akbar holds that no offence was committed because "the accused had no immediate intention of translating his words into action." I am unable to find anything in section 483 which supports the proposition that to constitute the offence of criminal intimidation the minatory words must indicate an immediate intention of translating words into action. I am therefore unable to follow that decision.

In the case of *Peter Guneratne v. Allis Sinno*² the accused who had no gun or weapon of any sort with him at the time he uttered the threat to shoot the complainant was convicted of the offence of criminal intimidation and de Sampayo J. in dismissing the accused's appeal observes, "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."

There is a dearth of authority under the corresponding provisions³ of the Indian Code. The case of *Priyanath Gupta v. Lal Jhi Chowkidar*⁴ is interesting in view of the argument of learned counsel for the appellant. It shows the sense in which section 503 of the Indian Penal Code has been

¹ (1942) 43 N. L. R. 401; 23 C. L. W. 17.

² 1 Criminal Appeal Reports, p. 16.

³ Sections 503 and 506.

⁴ 27 Calcutta Weekly Notes 479.

construed by the Indian High Court. In that case a certain president of a self-constituted Arbitration Court caused a notice to be issued over his signature to a certain person requesting the latter to be present on a given date and arrange for amicable settlement of a certain claim. The notice concluded with the statement that if the defendant did not give an answer (or file written statement) on that date, the suit would be decreed *ex parte*. Holding that the act of the accused constituted the offence of criminal intimidation, Newbould J. says at page 481 :

“ On a full consideration I hold that the lower Courts were right in deciding that the statement that a claim for Rs. 2,499 would be decreed *ex parte* against Lalji, if he did not answer the claim on the date fixed, amounted to a threat of injury to his property. The learned Sessions Judge has compared the petitioner's action to that of a bully who threatens to shoot a person though he has no licence to carry firearms. To my mind a better comparison would be that of a person who holds an unloaded pistol at the head of another. The fact that the pistol was unloaded would be no defence to a charge of criminal intimidation if the person threatened was ignorant of this fact. ”

Suhrawardy J. having disagreed with his brother judge, the matter was referred to Buckland J. who took the same view as Newbould J.

I am of opinion that in the present case the learned Magistrate has rightly convicted the appellant. The fact that the threats were uttered in the court premises appears to have been a factor that influenced the learned Magistrate in imposing the sentence of six months' rigorous imprisonment. The appellant has no previous convictions and I think the interests of justice will be served by the infliction of a shorter term of imprisonment. I accordingly alter the sentence to one of three months' rigorous imprisonment, and I order the appellant to execute a bond for keeping the peace for a period of six months after his return from prison, in such sum as the learned Magistrate may determine having regard to the appellant's means, with two sureties approved by him.

Sentence varied.
