Supreme Court of India
Cherubin Gregory vs The State Of Bihar on 31 July, 1963
Equivalent citations: 1964 AIR 205, 1964 SCR (4) 199
Author: N R Ayyangar
Bench: Ayyangar, N. Rajagopala

PETITIONER:
CHERUBIN GREGORY

Vs.

RESPONDENT:
THE STATE OF BIHAR

DATE OF JUDGMENT:
31/07/1963

BENCH:
AYYANGAR, N. RAJAGOPALA
BENCH:
AYYANGAR, N. RAJAGOPALA
SINHA, BHUVNESHWAR P.(CJ)
SHAH, J.C.

CITATION:
1964 AIR 205 1964 SCR (4) 199

ACT:
Criminal trial-Trespasser-Duty of owners towards trespassers
Indian Penal Code S. 99, 103, 304A.

HEADNOTE:
The appellant was charged under s. 304-A of Indian Penal Code for causing the death of a woman. The deceased was residing near the house of the accused. The wall of the latrine of the house of the deceased had fallen down about a week prior to the day of occurrence and so the deceased along with others started using the latrine of the accused. The accused protested against their coming there. The oral warnings however, proved ineffective and so he fixed up a naked copper wire across the passage leading upto his latrine and that wire carried current from the electrical wiring of his home to which it was connected. On the day of the occurrence, the deceased went to the latrine of the appellant and there she touched the aforesaid fixed wire as a result of which she died soon after. The trial and the appellate court convicted and sentenced the appellant under S. 304A of the Indian Penal Code. Hence this appeal.
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Held : (1) The plea of the right of private defence of

property was not sustainable for the reason that the type of injury caused by the trap laid by the accused could not be brought within the purview of S. 99 or 103 of the Indian Penal Code.
(2) A trespasser was not an outlaw, a caput lupinem. The mere fact that the person entering a land was a trespasser did not entitle the owner or occupier to inflict on him personal injury by direct violence and the same principle would govern the infliction of injury by indirectly doing something on the land the effect of which he must know was likely to cause serious injury to the trespasser.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3 of 1962.

Appeal by special leave from the judgment and order dated September 20, 1961 of the Patna High Court in Criminal Appeal No. 124 of 1960.

D. Goburdhan, for the appellant.

S.P. Ferma, for the respondent.

July 31, 1963. The judgment of the Court was delivered by AYYANGAR J.-This is an appeal by special leave against the judgment of the High Court of Patna dismissing an appeal by the appellant against his conviction and the sentence passed on him by the Sessions Judge, Champaran.

The appellant was charged with an offence under S. 304A of the Indian Penal Code for causing the death of one Mst. Madilen by contact with an electrically charged naked copper wire which he had fixed up at the back of his house with a view to prevent the entry of intruders into his latrine. The deceased Madilen was an inmate of a house near that of the accused. The wall of the latrine of the house of the deceased had fallen down about a week prior to the day of the occurrence-July 16, 1959, with the result that her latrine had become exposed to public view. Consequently the deceased among others, started using the latrine of the accused. The accused resented this and made it clear to them that they did not have his permission to use it and protested against their coming there. The oral warnings, however, proved inef-

fective and it was for this reason that on the facts, as found by the courts below, the accused wanted to make entry into his latrine dangerous to the intruders. Though some of the facts alleged by the prosecution were disputed by the accused, they are now concluded by the findings of the courts below and are no longer open to challenge and, indeed, learned Counsel for the appellant did not attempt to controvert them. The facts, as found, are that in order to prevent the ingress of persons like the deceased into his latrine by making such ingress dangerous (1) the accused fixed up a copper wire across the passage leading up to his latrine, (2) that this wire was naked and uninsulated and carried current from the electrical wiring of his house to which it was connected, (3) there was no

warning that the wire was live, (4) the deceased managed to pass into the latrine without contacting the wire but that as she came out her hand happened to touch it and she got a shock as a result of which she died soon after. On these facts the Courts below held that the accused was guilty of an offence under s. 304A of the Indian Penal Code which en- acts :

"304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

The accused made a suggestion that the deceased had been sufficiently warned and the facts relied on in this connection were two : (1) that at the time of the accident it was past day break and there was therefore enough light, and (2) that an electric light was burning some distance away. But it is manifest that neither of these could constitute warning as the conditions of the wire being charged with electric current could not obviously be de- tected merely by the place being properly lit. The voltage of the current passing through the naked wire being high enough to be lethal, there could be no dispute that charging it with current of that voltage was a 'rash act' done in reckless disregard of the serious consequences to people coming in contact with it.

It might be mentioned that the accused was also cliar- 14--2 S. C. India/64 ged before the learned Sessions Judge with an offence under section 304 of the Indian Penal Code but on the finding that the accused had no intention to cause the death of the deceased he was acquitted of that charge.

The principal point of law which appears to have been argued before the learned judges of the High Court was that the accused had a right of private defence of property and that the death was caused in the course of the exercise of that right. The learned judges repelled this defence and in our opinion, quite correctly. The right of private defence of property which is set out in s. 97 of the Indian Penal Code is, as that section itself provides, subject to the provisions of s. 99 of the Code. It is obvious that the type of injury caused by the trap laid by the accused cannot be brought within the scope of s. 99, nor of course of s. 103 of the Code. As this defence was not pressed before us with any seriousness it is not necessary to deal with this at more length.

Learned Counsel, however, tried to adopt a different approach. The contention was that the deceased was a trespasser and that there was no duty owed by an occupier like the accused towards the trespasser and therefore the latter would have had no cause of action for damages for the injury inflicted and that if the act of the accused was not a tort, it could not also be a crime. There is no substance in this line of argument. In the first place, where we have a Code like the Indian Penal Code which defines with particularity the ingredients of a crime and the defences open to an accused charged with any of the offences there set out we consider that it would not be proper or justifiable to permit the invocation of some Common Law principle outside that Code for the purpose of treating what on the words of the statute is a crime into a permissible or other than unlawful act. But that apart, learned Counsel is also not right in his submission that the act of the accused as a result of which the deceased suffered injuries resulting in her death was not an actionable wrong. A trespasser is not an outlaw, a Caput lupinem. The mere fact that the person entering a land is a trespasser does not entitle the owner or occupier to inflict on him personal in- jury by direct violence

and the same principle would govern the infliction of injury by indirectly doing some- thing on the land the effect of which he must know was likely to cause serious injury to the trespasser. Thus in England it has been held that one who sets springguns to shoot at trespassers is guilty of a tort and that the person injured is entitled to recover. The laying of such a trap, and there is little difference between the spring-gun which was the trap with which the English Courts had to deal and the naked live wire in the present case, is in truth "an arrangement to shoot a man without personally firing a shot". It is, no doubt true that the trespasser enters the property at his own risk and the occupier owes no duty to take any reasonable care for his protection, but at the same time the occupier is not entitled to do willfully acts such as set a trap or set a naked live wire with the deliberate intention of causing harm to trespassers or in reckless disregard of the presence of the trespassers. As we pointed out earlier, the voltage of the current fed into the wire precludes any contention that it was merely a reasonable precaution for the protection of private property. The position as to the obligation of occupiers towards trespassers has been neatly summarised by the Law Reform Committee of the United Kingdom in the following words:

> "The trespasser enters entirely at his own risk, but the occupier must not set traps designed to do him bodily harm or to do any act calculated to do bodily harm to the trespasser whom he knows to be or who to his knowledge is likely to be on his premises. For example, he must not set man-traps or spring guns.

This is no more than ordinary civilised behaviour." judged in the light of these tests, it is clear that the point urged is wholly without merit.

The appeal fails and is dismissed.

Appeal dismissed.