

(1962) 12 AHC CK 0003

Allahabad High Court

Case No: None

Laloo Pd.

APPELLANT

Vs

Kedarnath Shukla and Another

RESPONDENT

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**Date of Decision:** Dec. 4, 1962**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 341, 451

**Citation:** (1963) CriLJ 543**Hon'ble Judges:** Kailash Prasad, J**Bench:** Single Bench**Final Decision:** Partly Allowed

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**Judgement**

Kailash Prasad, J.

This is an appeal against an order of acquittal.

2. Mahadeo Prasad filed a complaint against Dr. Kedarnath Shukla on the allegations that the complainant had taken a shop on rent from Dr. Shukla at the rate of Rs. 5/-per mensem which was subsequently raised to Rs. 8/- per mensem, On 29th August, 1960 at about 5 p.m. Dr. Shukla came to the shop of the complainant and asked him to vacate it. The complainant refused to do so. Thereupon Dr. Shukla forcibly took away the key of the shop. The complainant then locked the door of the shop and went to the police station to lodge a report. When he returned from the police station, he found that Dr. Shukla was putting another lock at the shop. The complainant protested against this conduct of Dr. Shukla, but the latter did not pay any heed to it Next morning, that is on 30th August, 1950 at about 8 a.m. the complainant came to the shop and wanted to open it, but the accused was standing at the shop with two or three associates of his. They threatened the complainant with dire consequences if he attempted to open the shop.

3. Dr. Shukla denied the allegations made against him. He stated that Mahadeo Prasad had fallen into arrears or rent as his business had gone slack. When Dr.

Shukla made a demand for the arrears of rent, the complainant handed over the key of the shop to Dr. Shukla and requested him that the goods in the shop worth about Rs. 35/- should be taken by Dr. Shukla in partial adjustment of the arrears and the remaining amount would be paid by the complainant in easy installments. Dr. Shukla further stated that in view of this arrangement he put a lock on the door of the shop with the consent of the complainant. Dr. Shukla denied that he held out any threats to the complainant on 30th August, 1950 in the morning.

4. The learned special Magistrate, who tried the case, found Dr. Shukla not guilty. He, therefore, dismissed the complaint and acquitted Dr. Shukla.

5. Being dissatisfied with the judgment and order of the magistrate, Mahadeo Prasad, complainant, presented an appeal in this Court along with an application for special leave to appeal u/s 417 (3) Cr. P. C. The Court granted special leave and admitted the appeal. Thereafter Mahadeo Prasad died. His son Lallu Prasad made a prayer to the Court that the appeal be decided on merits and the Court may permit to hear him in support of the appeal.

6. On behalf of the respondent, Dr. Shukla, a preliminary objection was raised that the appeal abated on the death of Mahadeo Prasad and decision of the appeal on merits was not called for. He also objected that the son of the appellant should not be permitted to be heard in support of the appeal.

7. The learned Counsel for the respondent argued that there was no provision in Cr. P. C. for the continuance of the appeal by the legal representatives of the deceased complainant and so the appeal must be treated to have abated.

The learned Counsel pointed out that the only provision in Cr. P. C. for the continuance of a criminal proceeding by the legal representatives of a deceased party was in respect of proceedings u/s 145 and there was no provision to that effect with respect to any other criminal proceeding. This made it clear that the legislature never intended the continuance of a criminal proceeding other than one u/s 145 Cr. P. C. by the legal representatives of a deceased party.

8. A crime, in the strict legal sense of the word, is an act forbidden by law under pain of punishment. A crime in any civilised state of society is an event recognised as one which is to be prevented and at all events punished upon public grounds. The victim of a crime may be a private individual, but in the legal concept a crime is not to be regarded as a private wrong. Proceedings in respect of a crime consists of two steps -- accusation and trial. Accusation may be brought before the Court by submission of a charge-sheet by police which is an agency appointed by the State to bring criminals to book, or an accusation may be brought in the form of a complaint by an individual. Complaint, as defined in the Code of Criminal Procedure, means allegations made orally or in writing to a magistrate, with a view to his taking action under the Code, that some person whether known or unknown, has committed an offence but it does not include the report of a police officer. A person who files a

complaint is called the complainant. Section 190 Cr. P. C. lays down generally how a Magistrate is to take cognizance of offences. One of the manners for taking cognizance of offences enumerated therein is upon receiving a complaint of facts which constitute an offence.

There is nothing in Section 190 to limit the power of filing a complaint only to the person aggrieved by the offence. It is, therefore, clear that generally any person, whether aggrieved or not by a particular offence, can give information thereof to a Magistrate with a view that action may be taken against the offender.

9. In cases where the right of instituting prosecution has been confined to a particular person or persons, specific provisions to that effect have been made in Cr. P.C. Secs. 195 to 199 contain those provisions. These sections are exceptions to the general rule that any person whether aggrieved or not can file a complaint in respect of an offence. In view of the legal concept of crime the general rule that a complaint can be filed by any one whether or not he is aggrieved by the offence, it becomes perfectly clear that criminal proceedings started on a complaint cannot terminate on the death of the complainant.

10. Reference to the provisions of Section 145 Cr. P. C. is not relevant to the question of abatement before us. That section contains special provision for determining the question of possession, which is an incidence of civil rights to property, by a criminal Court for purposes of preventing an apprehended breach of peace between the parties over the possession of some immovable property. Proceeding u/s 145, therefore, partakes of the nature of an inquiry into a sort of civil dispute between the parties. Those provisions have no application to criminal proceedings by way of prosecution of an accused for an alleged crime. As Section 145 deals with disputes of a civil nature, provision has been made in that section for substitution of the legal representatives of a deceased party.

11. The Cr. P. C. contains a provision for the abatement of an appeal. Section 431 lays down that every appeal u/s 411-A, Sub-section (2) or Section 417 shall finally 1963 (2) CrL. L. J. D.F. 35. abate on the death of the accused and every other appeal except an appeal from a sentence of fine shall ordinarily abate on the death of the appellant. This provision clearly shows that the legislature did not overlook the question of abatement of appeals. In the case of an appeal against acquittal, the legislature provided that such appeals would abate on the death of the accused. In the case of other appeals against conviction, except an appeal from a sentence of fine, the legislature provided that it would abate on the death of the appellant. In other words there is provision for the abatement of appeal only on the death of the person who is charged with an offence. Since the legislature did not provide for the abatement of an appeal on the death of the appellant, it is clear that an appeal is not to abate on the death of the complainant. This is as it should be keeping in view the legal concept of crime. Punishment for a crime is not awarded by way of remedying a private wrong. Punishment is awarded on public grounds to prevent

the criminal from repeating the crime and to warn other citizens by making an example of the criminal

12. The learned Counsel for the respondent relied upon [Hafiz Nehal Ahmad Vs. Ramji Das](#), where an appeal u/s 476B of Cr. P. C. was held to abate on the death of the appellant, because that section did not provide that any legal representative of the deceased appellant could file the appeal. That case is distinguishable from the present case, Section 476B is in Chapter XXXV of the Code of Criminal Procedure. Section 431, which deals with abatement of appeals, is in Ch. 31, The considerations that flow for not providing for the abatement of an appeal on the death of the complainant in Section 431 are not applicable to an appeal u/s 476B.

13. The view that a criminal proceeding does not terminate on the death of the complainant finds support from the decisions of the High Courts at Bombay, Nagpur and Patna. In [Mahomed Azam Vs. Emperor](#), it was held that maxim Action Personalis Moritur Cum Persona in civil law confined to torts, does not apply in the case of an offence instituted upon a complaint and the trying magistrate has discretion in proper cases to allow the complaint to be continued by a proper and fit complainant, if the latter is willing.

14. In AIR 1932 72 (Nagpur) it was held that in a summons case where the complainant's son appears and states that his father is dead but asks that the case should be proceeded with, the Court can properly grant his request.

15. In [Bansidhar Marwari Vs. P.W.D.](#), the Court held that there is nothing in Cr. P. C. to warrant the view that there is abatement of a criminal proceeding on the death of the complainant. Though a case may be started on the complaint of any particular individual and though that case may be compoundable, it is erroneous to compare the case to a civil action where the cause of action is personal to the plaintiff. The cause of action for a civil suit bears no analogy to an offence; once a criminal case is started, be it upon a complaint or not, the proceedings must be carried on according to the provisions of the Criminal Procedure Code.

16. It is well recognized that an appeal is a continuation of the proceedings started in the trial Court. The complainant made certain allegations to the Magistrate against Dr. Shukla that the latter had committed an offence. The complainant was aggrieved by the decision of the Magistrate. By filing this appeal he brought to this Court the allegations, which he had already made to the Magistrate, to be examined by this Court, It is true that the right of appeal is the creation of the Statute and an appeal can only be filed by a person who is authorised under the law to do so. Section 417 (3) gives the right of an appeal to a complainant against an order of acquittal if the complainant had died before filing the appeal no one else could file it. But once the appeal is filed by the complainant and the allegations made by the complainant in the trial Court are thus brought before the appellate Court, the death of the appellant will on the analogy of the death of the complainant in the trial

Court, not result in the termination of the proceedings or the abatement of the appeal. The appellate Court can proceed to examine those allegations on merit and give a decision thereon. In order to get assistance for proper determination of the case on merits, the appellate Court can permit any one, whom it deems fit, to place before it all the relevant facts and evidence in the case so that no aspect of the matter escapes the Court's notice. Continuation of the appeal and the Court's permitting some suitable relative of the deceased complainant to assist in a proper determination of the case, is not to be confused with the substitution of the legal representative of the deceased as a party. In the present case the son of the complainant wants to argue the case on behalf of the deceased. he seems to be a proper person for being permitted to do so. This does not mean that he is being substituted as a party to the appeal in place of the deceased complainant. In the absence of any provision for such substitution, the son of the deceased complainant cannot be made a formal party to the appeal. His appearance is analogous to that of a "amicus curiae" to assist the court therefore hold that the appeal did not terminate on the death of the complainant and will have to be decided on merits. The son of the complainant is permitted to help the Court in the proper determination of the case.

17. Coming to the merits of the case, I am of the view that the charge u/s 451 I.P.C. is not made out. The complainant's case was that the respondent entered into the shop and asked the complainant to vacate it and latter's expressing inability to vacate, the former took away the key of the lock that was fitted into the door of the shop. The defence version of Dr. Shukla was that he went into the shop to demand arrears of rent and as the complainant was not in a position to pay the rent, he willingly handed over the key of the shop to Dr. Shukla. It is in evidence that the complainant was keeping ill for some time and for that reason his business had gone slack. In the circumstances it appears probable that Dr. Shukla went to the complainant in the shop to demand arrears of rent. As the complainant's business was deteriorating, it was very likely that he was not able to pay the rent and then Dr. Shukla asked him to vacate the shop. To demand arrears of rent and on the tenant's inability to pay up the dues, the landlord's making a demand for vacating the premises does not amount to any offence, The essential ingredient of offence u/s 451 Cr. P. C. is that trespass is committed with an intention to commit an offence. Dr. Shukla Went there with the intention to realise arrears of rent. This was a perfectly lawful intention. As Dr. Shukla did not trespass into the shop of the complainant with the intention of committing any offence, no offence under Sec, 451 is made out.

18. The learned Magistrate found that after the complainant had closed the shop, Dr. Shukla put another lock on the shop. The learned Magistrate rightly rejected the defence evidence that the complainant wanted to give up the shop and had willingly agreed that Dr. Shukla should put his lock on the shop. By putting his lock on the shop. Dr. Shukla restrained the complainant from going into in shop. The learned

Magistrate dismissed the charge u/s 341 on the ground that the complainant was merely a licensee and not a tenant. This finding of the learned Magistrate is perverse. It is against the admitted case of the parties, The complainant's case was that he was a tenant in respect of the shop in question. In his examination u/s 364 Cr. P. C. Dr. Shukla admitted that the complainant was his tenant. Tenancy does not come to an end on a demand of the landlord to vacate the premises. When Dr. Shukla put his lock on the shop, the tenancy of the complainant had not terminated and the complainant was entitled to enter the shop and use it. By putting a lock Dr. Shukla wrongfully restrained the complainant from going into the shop. He is, therefore, clearly guilty of the offence u/s 341 I.P.C. In the circumstances of the case a fine of Rs. twenty only will be the proper punishment.

19. In his judgment the learned Magistrate has given directions that the station officer of any police station other than police station Chowk or any independent person chosen by the parties, shall get the shop opened in their presence and restore the shop to Dr. Shukla and the goods in the shop shall be given to the complainant. As the complainant is dead, his son is obviously entitled to the goods in the shop. His son, however, made a request that the possession of the shop should also be restored to him. It was the complainant Mahadeo Prasad who was dispossessed from the shop and not his son. The son cannot, therefore, be given possession of the shop in these proceedings. His claim that on the death of his father he inherited the tenancy rights cannot be examined and determined in this appeal. Under the circumstances the proper course appears to be this that three weeks' time is given to the son of the complainant to seek his remedy in a civil Court and obtain from that Court such orders with regard to the possession of the shop as it may deem fit to make. In the meantime the shop shall remain closed as it at present is. If no orders with regard to the possession of the shop are made by a civil Court during that period, the Magistrate shall direct the station officer of the police station concerned to get the locks, which the parties have put on the door, opened and after handing over the goods in the shop to the complainant's son, deliver possession of the shop to the respondent, Dr. Shukla.

20. The appeal is partly allowed. The acquittal of the respondent u/s 451 I.P.C. is maintained, but his acquittal u/s 341 I.P.C. is set aside. He is convicted u/s 341 I.P.C. and is sentenced to a fine of Rs. Twenty, In default of payment of fine, he shall undergo rigorous imprisonment for a period of one week.