[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

ANDREAS GEORGHIOU PROTOPAPAS,

*Appellant*

*v.*

THE POLICE,

*Respondents.*

*(Criminal Appeal No. 2463).*

*Criminal Law—Evidence in criminal cases—Trespass with intent to annoy—Criminal Code, Cap. 154, section 280—Intent to annoy necessary ingredient of the offence—Proof of—Evidence—The rule in Rex v. Steane (1947) K.B. 997, p. 1004—*

*Sentence—Medical report—Abnormal person.*

The appellant was convicted of the offence of entering into the yard of the house in the possession of one Thompson Barre, with intent to annoy and sentenced to one year's imprisonment, on the evidence of Thompson Barre and his wife. The wife's evidence was to the effect that on a certain night at about thirty minutes after midnight, whilst she was getting ready to have her bath and as she was coming out of the bathroom she saw the appellant outside the window in the yard looking through the window. The husband was alerted; he chased him and eventually caught him. The defence put up by the appellant at his trial was an *alibi*. On this evidence the trial Court convicted the appellant as charged. It was argued on behalf of the appellant that the conviction was bad in that: (1) the prosecution failed to prove the intent to annoy required by the section of the Criminal Code, (2) the trial Judge failed to direct his mind to this ingredient.

*Held*: (1) With regard to the question of intent, on the authority of *Rex v. Steane* (1947) K.B. 997, at page 1004, if the prosecution prove an act the natural consequence of which would be a certain result and no evidence or explanation is given, then a jury may, on proper direction, find that the prisoner is guilty of doing the act with the intent alleged.

(2) In this case the defence was, as already stated, that the accused was not there at all and the trial Judge, on the evidence which he accepted, was entitled to find that the natural consequence of the act of the appellant in looking through the

window into the bathroom of the complainant, would be to annoy the lady in the bathroom.

No evidence or explanation was given by or on behalf of the appellant and on the totality of the evidence there was no room for more than one view as to the intent of the appellant.

(3) Consequently, on the evidence which was accepted by the trial Judge, the intent to annoy was proved and the finding of the Court was amply supported.

(4) As to the other point taken, that the trial Judge did not advert in his judgment to the question of intent, the defence was not directed to the question of intent but to the question that the accused was not there at all. Once the trial Judge accepted the evidence of the prosecution that the accused was in the yard looking through the window of the bathroom, then on that evidence the finding of the Court was a reasonable one.

(5) On the question of sentence we observe that the appellant has several similar convictions for entering houses with intent to annoy, and we are of the opinion that before we deal with that aspect of the case a medical report should be made available to this Court by the Government Mental Specialist. (Subsequently, the High Court, having considered the medical report affirmed the sentence).

*Appeal dismissed.*

Cases referred to :

*Rex v. Steane* (1947) K.B. 997, at p. 1004.

**Appeal against conviction and sentence.**

The appellant was convicted on the 4/12/61 at the District Court of Limassol (Cr. Case No. 10012/61) on one count of the offence of trespass wth intent to annoy, contrary to s. 280 of the Criminal Code, Cap. 154 and was sentenced by Kakathymis, D.J. to one year's imprisonment.

*Lefkos N. Clerides* for the appellant.

*A. Frangos* for the respondent :

The judgment of the Court was delivered by :—

JOSEPHIDES, J. : The appellant was convicted by the District Court of Limassol of the offence of entering into the

yard of the house in the possession of one Thompson Barre, of Limassol, with intent to annoy, and he was sentenced to one year's imprisonment. He now appeals against conviction and sentence.

The evidence before the trial Court was mainly that of Thompson Barre and his wife. The wife's evidence was to the effect that on the night of the 15th September, last, at about 30 minutes after midnight, she was getting ready to have her bath and while she was coming out of the bathroom she saw outside the window in the yard a person, looking through the window, whom she recognised to be the appellant. The husband was alerted ; he chased him and eventually caught him. On this evidence the trial Court was satisfied that the offence had been proved.

The defence put up by the appellant before the trial Court was that he did not enter the yard of the complainant's house and that he was not there at all. Two points were taken on behalf of the appellant in this case by the learned counsel before us to-day, namely, that (1) the prosecution failed to prove the intent to annoy, required in this case, and (2) that the trial judge did not direct his mind to this ingredient which is one of the essential ingredients of the crime.

With regard to the question of intent, on the authority of *Rex* v. *Steane* (1947) K.B.997 at page 1004, *if the prosecution prove an act the natural consequence of which would be a certain result and no evidence or explanation is given, then a jury may, on proper direction, find that the prisoner is guilty* of doing the act with the intent alleged.

In this case the defence was, as already stated, that the accused was not there at all and the trial judge, on the evidence which he accepted, was entitled to find that the natural consequence of the act of the appellant, in entering the yard of the complainant and looking through the window into the bathroom of the complainant, would be to annoy the lady in the bathroom. No evidence or explanation was given by or on behalf of the appellant and on the totality of the evidence there was no room for more than one view as to the intent of the appellant.

Consequently, on the evidence which was accepted by the trial judge, the intent to annoy was proved and the finding of the Court was amply supported.

As to the other point taken, that the trial judge did not advert in his judgment to the question of intent, the defence was not directed to the question of intent but to the question that the accused was not there at all. Once the trial judge accepted the evidence of the prosecution that the accused was in the yard looking through the window of the bathroom, then on that evidence the finding of the Court was a reasonable one.

For these reasons the appeal against conviction is dismissed.

On the question of sentence we observe that the appellant has several similar convictions for entering houses with intent to annoy, and we are of the opinion that before we deal with that aspect of the case a medical report should be made available to this Court by the Government Mental Specialist.

We therefore direct that the case be put in the list within 15 days from to-day to enable the Mental Specialist to file his report. The appeal is accordingly adjourned to the 5th April. Meantime the appellant will remain in prison. If the Mental Specialist will be unable to prepare his report by the 5th April, we are prepared to reconsider this and give him more time.

WILSON, P. : Mr. Justice Josephides will give the concluding part of the judgment in this case.

JOSEPHIDES, J. : This Court has given careful consideration to the report prepared by the Mental Specialist, and is of opinion that no useful purpose would be served if you were now discharged to undergo treatment out of prison. It appears from your previous convictions that you are a man who has repeatedly committed this kind of offence and that, despite the fact that on previous occasions you were given the opportunity to reform, you did not avail yourself of that opportunity. Three years ago you were sentenced to nine months' imprisonment for a similar offence. No doubt, you are not a normal person but the Court cannot allow you to go on committing this kind of offence as it has a duty to protect society. We would advise you to undergo treatment when you come out of prison if you really wish to be cured.

I should add that the Court has seriously considered the question of increasing your sentence to two years, but it has

finally decided not to do so ; but I would like to give you a warning that if you appear before the Court again on a similar charge, then it is likely that you will receive the maximum punishment provided by law.

The appeal against sentence is also dismissed. Sentence to run from the date of conviction.

*Appeal dismissed.*

1962
Mar. 15, 23,
Apr. 5, 16

ANDREAS GEORGHIOU PROTOPAPAS
v.
THE POLICE

Josephides, J.