IMPOSSIBLE ATTEMPTS IN CRIMINAL LAW

BY B. BUVENASUNDARAM*

1 INTRODUCTION

In England, except in the case of high treason, attempt seems to have been a later development tacked on to the criminal law In the Sri Lankan Penal Code the offence is at the end of the text. In analysing attempt we plough a small field. But within these narrow confines, there are important principles and issues that are so intractable that even the most eminent legal minds, judicial and academic, have not succeeded in resolving them.

The law of attempt has many facets. The *actus reus* of attempt determines when the offender has moved out of the area of preparation and into the field of attempt. In relation to the *mens rea*, attempt requires in some respects a higher mental state than that of the corresponding complete offence. Impossible attempts arise where the offender sets out to commit a crime which, either by physical or legal circumstances does not amount to the full offence. For example, A slips his hand into B s pocket hoping to find something valuable to steal but finds it empty or A takes away an Umbrella from a stand, believing it to be B s and intending to steal B's umbrella, but the umbrella turns out to be his own.

In *Anderton* v *Ryan*[1] Lord Bridge of Harwich, when interpreting the Criminal Attempts Act 1981 which was enacted to settle the uncertainty that prevailed under the common law of England, observed,

> "My Lords there is no more fertile field of legal controversy in the criminal law than that concerned with attempting the impossible...If one thing emerges clearly from the literature on the subject, it is that there is no consensus as to what the law ought to be, let alone as to what the law is" [2]

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* LLB (Hons); M. Phil (Colombo); Attorney-at-Law· Lecturer, Faculty of Law University of Colombo, Sri Lanka

1 [1985] 2All.E.R. 355

2 *ibid.* p. 365