Mohammad Sabed Ali Vs Thulesvar Borah

Court: Gauhati High Court

Date of Decision: May 28, 1954

Acts Referred: Penal Code, 1860 (IPC) â€" Section 438, 500, 504, 95

Citation: AIR 1955 Guw 211 : (1955) CriLJ 1318

Hon'ble Judges: Ram Labhaya, J; Deka, J

Bench: Division Bench

Judgement

Ram Labhaya, J.
This petition of revision is directed against an order of Mr. S. C. Das, Magistrate, 1st Class, dated 17-8-1953 by which

he acquitted Tahuleswar Bora, accused, of an offence u/s 504, 1. P. C. The complainant Md. Sabed Ali, Munshi is the petitioner before us. The

validity of the order of acquittal is assailed by him.

2. The prosecution case was that on 1-1-1953, a constable from Dhing Police Station informed the complainant that ho should keep witnesses in a

murder case ready as Thuleswar Bora, Inspector of Police, would be coming to investigate the case. The witnesses were therefore kept ready. In

the afternoon at about 3 P. M. another constable came aac1 asked the complainant to take the witnesses to Batabari a neighbouring village. The

complainant could not comply with this direction. According to him, the witnesses declined to go to that village nut of (ear. A short while later, the

accused came, lie had with him a Daroga and two constables. The complainant approached him. The accused, started abusing him, called him a

dog and addressed him as follows:

You man, what is your name? Are you Abed Munshi by name? You dog, how long have you been in Assam? You want to teach me law. I can

make one hundred Munshis like you, come and go by seizing them by the ears.

He was also brandishing a stick.

3. The accused denied his guilt and pleaded not guilty. Five witnesses were examined on behalf of the prosecution. The accused did not produce

any defence witness. On the; evidence made available by the complainant, the learned Magistrate came to the conclusion that the accused had

insulted the complainant. He had done so intentionally and thereby caused provocation to him. He was however doubtful if in the circumstances of

the case, it could be said that the accused had the intention or the knowledge which is necessary for the offence u/s 504, IPC

His doubts were obviously due to observations made in three cases that were cited before him. These cases are Abdul Aziz Vs. (Moulana) Syed

Mohammad Arab Saheb, K. Devarajulu Naidu Vs. C. Ethirajavathi Thayaramma by power-of-attorney agent C. Ranganayakulu Chetty and

Others, and "Subbiah v. Venkata Subamma" AIR 1942 Mad 672 .

The requirement of Section 504,1. P. C, is that there should be an intentional insult which causes provocation. The provocation should be intended

or known to be likely to cause the person insulted to commit breach of public peace or to commit any other offence. It is clear that mere abuse or

even hurling of intentional insults and causing provocation thereby would not constitute an offence u/s 504, IPC

It is necessary that insults by which provocation is caused should either be intended or known to be likely to lead to a breach of the public peace

or the commission of some other offence by the person insulted. The intention is a very necessary part of the offence. Without it, the insults,

however provocation they may be, will not bring the offender" within the mischief of Section 504, IPC

4. In Abdul Aziz Vs. (Moulana) Syed Mohammad Arab Saheb, the contention was that an offence u/s 504, IPC was committed by insulting

language used in a letter. It was observed that it was very difficult to make out that the accused gave the alleged provocation to the complainant

intending or knowing it to be likely that it would cause a breach of the peace. It was recognised that such an intention may be inferred from the

circumstances attending the insult.

But it was observed that an offence u/s 504, IPC does not depend upon the mere sensitive feeling of the offended but upon the intention of

knowledge of the offender. In the circumstances at the case, it was found that the prosecution had tailed to prove such intention or knowledge on

the part of the accused.

The ratio of the decision was that such provocation as may lead tile person insulted to cause a breach of the peace could not have been intended

and could not even be regarded as likely when he insult is conveyed by a letter. It was presumably regarded as improbable that the person

receiving the letter would go to the writer of the letter and then commit breach of the peace or some other offence. The decision is not helpful as it

is obviously distinguishable on facts.

It does not lay down any general rule, the application of which may help us in the decision of this case. The next case reported in Hukumchand

Mishrilal Mehta and Others Vs. Chandmal Bhagwan Mehta, is important. This appears to have misled the learned Magistrate, The accused was

convicted u/s 504, IPC The language used by him has not been brought out in the judgment. The case came before the High Court on a reference.

The learned Judge, Mehta J. thought that the complaint was not well founded. It has been filed some nine days after the commission of the offence.

It was against the entire family. There was no reference in the complaint about some of the accused having abused the complainant. The evidence

adduced did not inspire confidence. After stating all these facts, the learned Judge observed that it is a case of mere vulgar abuse and following

Philip Rangel Vs. Emperor, he held that mere vulgar abuse does not amount to an insult or offence u/s 504.

He added that even if it was a technical offence u/s 504, the matter was covered by Section 95 barring cognizance by Courts in view of its

triviality. In Philip Rangel Vs. Emperor, the accused was in a meeting of a certain limited company consisting of some fourteen members. He

muttered the words ""You damn bloody bastards and cads.

It was held that a mere breach of good manners does not constitute an offence u/s 504. Insult may be offered by words or conduct. When the

charge is an insult by words, the words must amount to something more than what in English law is called ""mere vulgar abuse."" If abusive language

is used in such circumstances that the Court comes to the conclusion that it cannot possibly have been intended, and cannot have been understood

by those to whom it was addressed to have been intended, to be taken literally, the language cannot be held to amount to an intentional insult.

Beaumont C. J. had no doubt that the use of abusive language may form an integral part of insult by conduct but he found that in the case before

him, there was nothing insulting in accused"s conduct apart from the language used. He did not adopt a loud and insolent tone and indeed did not

intend his remarks to be heard.

In these circumstances, the intention to insult was not imputed to him. He further held that the insult was not known by the accused to be likely to

lead to a breach of public peace or any other offence. Ho did nut consider it likely that the persons present at the meeting would so far lose control

of themselves as to commit a breach of the public peace when they had got the chairman of the meeting in control and capable of dealing with the

matter".

From a careful perusal of the two cases, it is clear as to what was meant when it was said that mere vulgar abuse does not amount to an insult or

offence u/s 504. I he more important ingredient of the offence is the requisite intention or knowledge. The intention was to emphasise that without

the requisite knowledge or intention, mere utterance of vulgar abuse would not constitute an offence. In Philip Rangel Vs. Emperor, the expression

vulgar abuse"" was taken in its technical sense under the English law.

Quite apart from that, the circumstances of that case influenced the decision that the act of the accused did not fall u/s 504. The two cases are no

authority for the proposition that even if the provocation is caused by abusive language which insults with the intention or knowledge that the

person insulted would cause a breach of the peace or any other offence, the case is outside the purview of Section 504, IPC The emphasis was

really on the point that intention or knowledge required by the section was a very essential ingredient of the offence and that could not be ignored.

I am fortified in this opinion by what was held in AIR 1942 Mad 672 , which is the third case to which reference has been made in the judgment of

the learned Magistrate, Horwill J. held that.

even a gross abuse is not an offence in itself u/s 504. What is punished under this section is something very much graver than that.

The offence contemplated in the section is a serious one, as is indicated by the fact that it is made punishable with a term of two years'' rigorous

imprisonment. It is obviously intended to deal with persons who are responsible for breaches of peace or the commission of offences as those who

openly abet or incite them.'' In the case before him, the learned Magistrate had not realised the nature of the offence. He had nowhere discussed

whether the insults of the petitioner were intended to provoke a breach of the peace or the commission of an offence or whether the petitioner

knew that it was likely that such provocation would cause a breach of the peace.

The Magistrate evidently thought that an insult at any rate a gross insultas an offence in itself. The entire judgment of Horwill J. brings out that it is

not the insult alone that constitutes an offence however gross it may be and since there was no finding about the requisite intention, the learned

Judge quashed the conviction.

He was obviously not laying down that insults or gross insults have nothing to do with an offence u/s 504 or they did not form an element o? the

offence. This case supports the view that I have taken of Section 504, IPC above. The learned Magistrate thought that vulgar abuse was

something which could not under any conceivable circumstances result in an offence u/s 504. The authorities relied on by him do not support that

contention.

In ''Bakhtawar Lai v. Emperor'' AIR 1922 Lah 459 , the words ""beiman"" and ""badmash"" were used. The learned Judge observed that the offence,

if any, would fall u/s 504 and not u/s 500. "Guranditta v. Emperor" AIR 1930 Lah 344 (2) (F) an important principle was brought out. It was held

that

in dealing with Section 504, the Court has not to judge the temperament or the idiosyncracies of the individual concerned, It should try to find out

what in the ordinary circumstances would have been the effect of the abusive language used.

Where there is no doubt that the abusive language used might ordinarily have resulted in broken limit, or at least in an affray and consequent breach

of the peace an offence u/s 504 is committed."" Quite apart from the ingredients of offence on which emphasis is laid, this case is an authority for the

proposition that what has got to be seen is what in ordinary circumstances would have been the consequences of the use of abusive language.

Section 504 does not require any abusive language to be used.

All that is necessary is that there should be insult causing provocation. Abusive language can certainly be insulting. It also leads to provocation. The

intention or knowledge would depend on the surrounding circumstances and on that point no rule of general application could be laid down. In

"Emperor v. Goolab Ilasul" 5 Bom LR 597 the complainant was addressed as "soowar". lie was convicted u/s 504.

In "Queen Empress v. Jogayya" 10 Mad 353 (II), the accused abused the complainant to such an extent as to reduce her to a state of abject

terror, it was held that the law makes punishable the insulting provocation which, under ordinary circumstances, would cause a breach of the peace

to be committed. The same view was taken in AIR 1930 Lah 344 on the strength of tills decision.

5. From a consideration of these authorities, it will appear that it cannot be laid down as a rule that use of a particular kind of language or the mere

use of abusive language puts the case outside he ambit of Section 504. If the words used are insulting and cause provocation, the offence would be

constituted if the requisite intention or knowledge is proved by the circumstances of the case.

6. This takes us to the facts of the case. The evidence leaves no room for doubt that the complainant was abused in the manner stated by him. The

learned Magistrate has found in his favour. His evidence stands unrebutted. The accused had absolutely no defence to make. Ho did not offer any

justification for his conduct. It is attributable to intoxication of power that official authority produces in some persons. The conduct is liable to

censure.

There was not the smallest justification for the use of insulting language. If the complainant had failed in any legal duty or obligation, it was open to

the police Inspector (accused) to report him to the competent authorities. There can be no manner of doubt that the language is insulting. It has

been resented. It has also caused provocation. The only question is whether the accused had the requisite intention or knowledge.

It may be stated at once that the intention to provoke the breach of the peace cannot be attributed to the accused. He was there for the

investigation of the case. He has had a daroga and some constables with him. He is under an obligation to help the maintenance of public peace.

He had on personal reason for provoking a breach of the peace. It appears that he was annoyed by the failure of the complainant to bring

witnesses to the village from which he came.

The intention which forms a necessary ingredient of the offence u/s 504 therefore may not be attributed to him. But it cannot be said that he did not

know that the insult he was hurling at the complainant was likely to provoke him to commit a breach of the peace or some other offence. This

knowledge ought to be attributed to him in the circumstances of the case. He happens to be a police officer though one need not be a police officer

to know that insulting language of this character has resulted in broken limbs and even skulls.

He should therefore have known that the language that he used was likely to result in a breach of the peace or the commission of some other

offence. The complainant''s reaction to the insult is not material. He may be a law abiding citizen. He may have been terror-struck. He may have

found it difficult to retaliate. These circumstances do not determine whether it was known that the insult would be likely to lead to a breach of the

peace or not as held in 10 Mad 353 and AIR 1030 Lah 344 .

My conclusion therefore is that there is no escape from the conclusion that the accused knew it to be likely that the words that he used could

provoke a breach of the peace or lead to the commission of some other offence. In this view of the matter, an offence u/s 504 has been

committed.

7. The next question is whether the order of acquittal should be set aside merely because the learned Magistrate has, by reason of doubts created

in his mind by certain authorities, come to an erroneous decision. The error in the order of the Magistrate cannot be regarded as having crept into

the decision of a pure question of fact. The doubts that arose in his mind were more on a question of law than of fact.

It would be safe therefore to regard the disputed question as one of mixed law and fact. The normal rule for the High Court is not to interfere

ordinarily in revision with orders of acquittal whether on a reference u/s 438 or on the application of the complainant. The Government in this case

have not appealed. The complainant is undoubtedly interested in the vindication of his right and honour.

The necessary ingredients of the offence may be found to exist but it does not follow therefrom that the case is of such a serious nature that it is

necessary or essential to interfere with an order of acquittal in revision. Even an error of law does not make interference obligatory in all cases.

Where serious or substantial injustice is caused, by an error of law the order may be interfered with.

I am not inclined to regard the matter so serious as to necessitate a retrial. In "D. Gopala Phattar v. Sthaneekam Parthasaratlh lycngar" 1937 Mad

WN 19 , it was held that

it is a general rule that judgments of acquittal should not ordinarily be interfered with in revision; and this rule applies with greater force to cases

where the offence is one like defamation in respect of which there is a civil remedy available, which is in some respects more appropriate and

satisfactory than the remedy by way of criminal prosecution. Nevertheless, if the interests of justice require it, the judgment of acquittal could be

declared wrong though it need not be set aside in revision.

The circumstances of this case are such that they attract the course that was followed in ibis Madras case, I would therefore declare that the order

of acquittal passed by the learned Magistrate was erroneous though in view of the existing state of the law, on the point, it is not surprising that he

tell into this error. This declaration that there has been an error in the order affords ample redress to the wrong done to the complainant. He also

stands completely vindicated.

8. It is difficult to say that the offence is so trivial that it attracts the application of Section 95, Penal Code, but it may be regarded as technical.

Setting aside of the acquittal is not all that would happen if there is interference. A retrial has to be ordered. I do not think it is necessary to go to

that length in revision against an order of acquittal. The petition is dismissed.

Deka J.

9. I agree. I would only like to add that the approach of the learned Magistrate is not very happy nor do 1 commend the sort of judgment that is

written by forking out few lines from the cases that have, been placed before him. It cannot be assumed at a proposition of law that the police

never means it or can intend an offence u/s 504, IPC, simply because the man abused or insulted may not take him to action.

But what the section signifies is that if the insult is of such a nature that it may give provocation which might rouse a man to action either at break

the public peace or to commit any other offence, the offence under the section is committed. In this view of things, the learned Magistrate was not

perfectly right in acquitting the accused on that hypothesis or in expressing the view that the nature of the insult was trivial as to avoid criminality but

as to whether a retrial should be ordered, I agree with my learned brother, as in my opinion he trial of the police officer has itself vindicated the

cause of justice and see no ground for retrial.