

**(1963) 07 GAU CK 0003**

**Gauhati High Court (Agartala Bench)**

**Case No:** None

K.D. Upadhayaya

APPELLANT

Vs

Bhagabati Chouhan and Another

RESPONDENT

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**Date of Decision:** July 11, 1963

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 441, 447, 448, 504

**Citation:** (1965) CriLJ 86

**Hon'ble Judges:** T.N.R. Tirumalpad, J.C.

**Bench:** Single Bench

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### **Judgement**

T.N.R. Tirumalpad, J.C.

1. This is an appeal against the (acquittal of the two respondents under Sections 504 and 447, I.P.C.

2. The case of the prosecution was that on 19.4.60, at about 10-00 a.m., the two respondents entered the Verandhah of the dwelling house of the appellant and abused the appellant in filthy language like, bastard, pig, thief, shala etc. and challenged him to come out of the house and threatened to beat him with shoes, if he did so. The appellant was very angry at the abusive words, but the restrained himself so that there may be no breach of the public peace. After some time, the respondents went into the courtyard of the building and continued to abuse him. Thereupon some others like P.Ws. 2 to 4 came to the place and prevailed upon the respondents to leave the house. Thereupon, the respondents went to the road near the house and from there continued to abuse the appellant for about an hour and ultimately went away saying that they would come the next Sunday with more persons and recover the money due to them from the appellant. The appellant is a contractor and the respondents, who are husband and; wife were the suppliers of labour for such contract work at Teliamura and there was dispute between them about the payment of the dues due to the respondents and the respondents had

gone to the appellant's house claiming the dues from the appellant.

3. The defence of the respondents from their answers to the questions put u/s 342, Cri.P.C. was a denial that they used any such abusive language. They did not deny that they went to the appellant's house on that day. They also made, a suggestion to P.W. 1 (the appellant) In cross-examination that when the respondents were in the appellant's house to claim their dues the appellant tried to push out Fulia Nunia, the second (respondent by catching hold of her neck when she demanded her dues and that the appellant used abusive language.

4. The prosecution examined 4 witnesses of whom P.W. 1 was the complainant and P.Ws. 2 to 4 were persons who arrived on the scene on fearing the noise of the quarrel. All the prosecution witnesses gave evidence that the two respondents entered the veranda of the dwelling house of the appellant and used abusive language to the appellant like bastard, pig, thief, shala etc., and threatened to beat him with shoes. There was also evidence that after the arrival of P.W. 2, the landlord of the house where the appellant was residing, P.W. 2 said that he heard them use the abusive language from the veranda and when he asked them not to make noise inside the residence, but to go out, the respondents went to the courtyard and continued to abuse the appellant as before and that thereupon P.W. 2 said that he would inform the Police. Then the respondents went to the road and from there continued to abuse the appellant for about an hour and ultimately went away threatening to come back with Goondas next Sunday to recover the amount due to them.

5. The learned Magistrate appears to have been satisfied from the evidence that the respondents entered the house of the appellant to demand-their dues and that they used abusive language as spoken to by the prosecution witnesses. But ha was of the opinion that no offence either u/s 504 or 447 I.P.C. was established against them. According to him, mere abuse unaccompanied by an intention to cause breach of the peace or knowledge that breach of the peace was likely will not come within the mischief of Section 504 I.P.C. He said that the intention of the respondents might be said to be to compel the appellant to make payment to them and not to provoke the appellant to break the peace. He said that the respondents were ordinary people and that it cannot be expected that they had the knowledge that their abuse would give provocation to the complainant to cause breach of the peace. With, regard to the offence u/s 447, the learned Magistrate said that the respondents had no bad intention at the time when they went to the house of the appellant and that it was only after their demand for money was rejected that they abused him, but that on being requested by P. Ws. 2 to 4 they left the place without any objection and hence there was no illegal stay after the lawful entry.

6. I am afraid, I cannot accept the finding of the Magistrate in respect of either of the charges. I shall first deal with the charge u/s 504, I.P.C. The fact that the respondents entered the house of the appellant on the day in question and used

filthy and abusive language like bastard, pig, thief, shala, etc., to the appellant has been accepted by the Magistrate. It may be that they went to the place for claiming their dues and that it was after the appellant refused to pay them that they used such abusive language. But the words used by them are certainly words, which normally would provoke any person to whom they were addressed. There can be no doubt that the words used amount to insult. The fact that the words were used when the appellant refused to pay them shows that it was intentional insult and the words are such that they would provoke the person to whom they are used. The appellant gave evidence that he had to restrain himself considerably with great difficulty and that he entered inside the house and closed the doors and that still the respondents continued to abuse him from outside and that on the intervention by others, they went to the courtyard and from there continued to abuse him and that later on they went to the road and even from there they were using such language against him for about an hour. This evidence was also supported by P.Ws. 2 to 4. It is clear from this that the intention of the respondents in using such insulting language was to provoke the appellant so that he may come outside and break the peace. The appellant is a respectable man, a contractor, with, some social standing, while the respondents, as stated by the Magistrate are ordinary people, who were of less standing in society. If a quarrel ensued as a result of the abusive language, the respondents did not have much to lose, whereas the appellant would be brought down in the estimation of the public. It is clear that the respondents were taking advantage of such a situation and wanted to provoke the appellant to make him come out and quarrel with them for using the abusive language. The fact that the appellant restrained himself and only requested them not to make him lose his respect by abusing him will not show that the intention of the respondents was not to provoke the appellant or that such provocation will not cause the appellant to break the peace. On the other hand, the continued use of the abusive language first from that veranda of the house, next from the courtyard and finally for about an hour from the road in spite of the appellant's restraint would appear to be clearly intended to make the appellant come out of the house and break the peace, I am satisfied that the charge u/s 504, I.P.C. has been clearly made out against the respondents. The finding of the Magistrate to the contrary is clearly perverse and cannot be allowed to stand. The acquittal of the appellant u/s 504 I.P.C. is, therefore, set aside and both of them are convicted of the offence under the said section and each of them is sentenced to pay a fine of Rs. 100/- and in default to R.I. for two months.

7. There is no doubt that the acquittal u/s 447, I.P.C. is equally perverse. In actual fact, the charge should have been u/s 448, I.P.C. as it was a case of house trespass and the Magistrate was wrong in having framed the charge u/s 447, I.P.C. But the charge as framed gives all the particulars necessary for a house trespass and it is only the section quoted in the charge which is wrong. It may be true as stated by the Magistrate that the respondents entered the residence of the appellant lawfully for

the purpose of demanding their dues and that therefore at the time of entry there was no criminal intention. But Section 441, I.P.C. states that whoever having lawfully entered into or upon such property in the possession of another unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence is said to commit criminal trespass. Having entered the house for claiming their dues, the respondents began abusing the appellant from the veranda of the house when he refused to pay the dues. The appellant's case was that they had already been paid whatever was due to them. The respondents should go to a civil Court to settle this dispute. If, instead, they start abusing the appellant from inside the house, their only intention in doing so was to insult, intimidate and annoy the appellant. The learned Magistrate says that when the witnesses who came on the scene requested them, they left the place. But this statement is not correct. After they abused the appellant from the veranda of the house, they went into the courtyard of the house and continued to abuse him and it was only when P.W. 2 threatened to inform the Police that they left the courtyard. Even then, they did not go away, but only went to the road and continued to heap abuse on the appellant. It is clear from this conduct that the intention of the respondents in continuing to stay in the veranda and in the courtyard and in using abusive language was clearly to insult, intimidate and annoy the appellant. They must have felt that if they persisted in such abuse, the appellant will be intimidated and either pay them their dues or will be provoked and come out, in which case they thought they could deal with him.

8. It is a clear case of criminal house trespass and they should be convicted u/s 448, I.P.C. Their acquittal is set aside and they are convicted u/s 448, I.P.C. But as they have been already sentenced for their conviction u/s 504, I.P.C. on the same occurrence, I do not propose to inflict any further sentence for their conviction u/s 448, I.P.C.

9. In the result therefore the acquittals of the respondents under Sections 504 and 447, I.P.C. are set aside and the respondents are convicted under Sections 504 and 448, I.P.C. and they are sentenced to a fine of Rs. 100/- each u/s 504, I.P.C. and in default to R.I. for 2 months. But no separate sentence is given for the conviction u/s 448, I.P.C.