(1963) 08 KL CK 0026

In the High Court Of Kerala

Case No : Criminal Appeal No. 289 of 1962

A.M. Kuttysankaran Nair — APPELLANT

Vs

P.V. Kumaran Nair and Others — RESPONDENT

Date of Decision : 02-08-1963

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 342, 423
Evidence Act, 1872 — Section 105, 3
Penal Code, 1860 (IPC) — Section 499

Citation : AIR 1965 Ker 161 : (1965) CriLJ 699

Hon'ble Judges : P. Govinda Menon, J

Bench : Single Bench

Advocate : P. Subramanian Potti and S.A. Nagendran, for the Appellant; V.R. Krishna Iyer and V.M. Naranar, for Respondents Nos. 1 to 12, 14 to 16 and 18 to 20 and State Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P. Govinda Menon, J.—This is an appeal by special leave tinder Section 417(3), Cri. P. C., against the order of acquittal passed by the Munsiff-Magistrate of Pattambi on a private complaint filed by the appellant. His case was that the respondents got printed and published a leaflet Ex. P-1 containing false and baseless allegation against him with intention to harm his reputation and to lower him in the estimate of others and thereby his reputation had been considerably lowered and he had fallen in the estimate of his mends and the public in general and the accused have thereby committed an offence punishable u/s 500 of the Penal Code.

Ex. P-1 is the printed copy of the leaflet. Among other things it is stated in Ex. P-1 that the appellant who is the manager of K. P. R. P. Secondary High school, Kongad was from the very beginning, been in the habit of withholding a portion of the salary due to the teachers and that even alter the system of direct payment of the salary through, the head masters was introduced by the

Government the manager wanted a certain amount from each of the teachers and had induced the head master to deduct a portion of the amount from their salary.

2. The fact that the notice complained of was got printed and was published by the respondents has been amply proved by the prosecution and was, in fact, admitted by the defence not only in the reply which they sent through the lawyer to the notice sent by the appellant but in their statement u/s 342, Cri. P. C. The learned Magistrate who tried the case found the allegation in Ex. P-1 to be per se defamatory. That the pamphlet is on the face of it calculated to harm the reputation of Pw 1 can admit of no doubt, for what the notice says is that the manager was misappropriating for himself a portion of the salary of the teachers and if the imputation is false it would be highly defamatory of the appellant. The learned Magistrate considered the evidence that was led regarding the plea of justification by truth and acquitted the accused on the ground that the imputation made by the accused were true and would come within exceptions 1 and 9 to Section 499 of the Penal Code. The correctness of the conclusion arrived at by the learned Magistrate is challenged in this appeal.

3. To appreciate the scope of the exception it is necessary to read the relevant provisions. Section 499 reads:

"Whoever by words either spoken or Intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except In the cases hereinafter excepted, to defame that person." We are not concerned with the explanations. Then follow the exceptions. Exception 1 is in the following terms:

"it is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact."

Exception 9 reads;

"it is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or OF any other person, or for the public good."

4. it cannot be disputed that the burden to on the accused to make out that their case would come under any one of the exceptions. In this connection 1 may refer to Section 105 of the Evidence Act. It reads:

"When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code (XLV of 1880) or within any special exception or proviso contained in any other part of the same code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

5. What is the nature and degree of proof required on the part of the accused to bring the defamatory imputations within exceptions 1 and (sic) is the next question to be decided. A large number of decisions were cited at the Bar, but it is enough to refer to one of the latest decisions of the Supreme Court K.M. Nanavati Vs. State of Maharashtra, . Dealing with the legal impact of the said provisions of Section 105 on the question of burden of proof Subba Rao, J., has stated:

"In India, as it is in England, there is a presumption of innocence in favour of the accused as a general rule, and it is the duty of the prosecution to prove the guilt of the accused; to put it to other words, the accused is presumed to be innocent until his guilt is established by the prosecution, but when an accused relies upon the General Exceptions in the Indian Penal Code or on any special exception or proviso contained in any other part of the Penal code, or in any law defining an offence, Section 105 of the Evidence Act raises a presumption against the accused and also throws a burden on him to rebut the said presumption. Under that section the Court shall presume the absence of circumstances bringing the case within any of the exception, that is, the court shall regard the non-existence of such circumstances as proved till they are disproved."

His Lordship has referred to the leading decision on the subject namely Woolmington v. Director of Public Prosecution, 1935 AC 462

"As in England so in India, the prosecution must prove the guilt of the accused, i.e., it must establish all the ingredients of the offence with which he is charged. As in England so also in India, the general burden of proof is upon the prosecution; and if, on the basis of the evidence adduced by the prosecution or by the accused, there is a reasonable doubt whether the accused has committed the offence, he is entitled to the benefit or doubt, In India, if an accused pleads an exception within the meaning of Section 80 of the Indian Penal Code, there is a presumption against him and the burden to remit that presumption lies on him. In England there is no provision similar to Section 80 of the Indian Penal Code, but Viscount Sankey, L. C. makes it clear that such a burden liea upon the accused if his defence is one or insanity and in a case where there is a statutory exception to the general rule of burden of proof. Such an exception we find in Section 105 of the Indian Evidence Act."

6. Therefore, by virtue of Section 105 of the Evidence Act the court is bound to presume the absence of circumstances which would bring the offence within any of the special exception contained in Section 499, I. P. C., and the burden would primarily rest on the accused to show that the exception applies. But it is well Known that the burden cast on the accused in a criminal case by virtue of Section 105 of the Evidence Act is not so onerous as the primary burden cast on the prosecution to prove the offence beyond reasonable doubt.

7. Even in England in Rex v. Carr-Briant, 1943 KB 607 where u/s 2 of the Prevention of Corruption Act, 1988 on a charge under the Act, it is provided that

a consideration shall be deemed to be given corruptly unless the contrary is proved, the court of appeal ruled as follows at p. 612:

"in any case where, either by statute or at common law, some matter is presumed against an accused person ''unless the contrary is proved'', the Jury should be directed that it is for them to decide whether the contrary is proved, that the burden of proof required is less than that required at the hands of the prosecution in proving the case beyond a reasonable doubt, and that the burden may be discharged by evidence satisfying the jury of the probability of that which the accused is called upon to establish."

To the same effect is the decision in R. v. Dunbar 1957 3 WLR 330. Chief justice Lord Goddard, referring to the earlier decision in 1943 KB 607 (cited supra) stated as follows:

"That case, which is binding on us, decided that where either by statute or at common law some matter is presumed against an accused person unless the contrary Is proved the jury should be directed that it is for them to decide that the contrary is proved and that the burden of proof required is less than that required at the hands of the prosecution in proving the case beyond a reasonable doubt and that this burden may be discharged by evidence satisfying the jury of the probability of that which the accused is called to establish. This is often cited as showing that where an onus is placed on an accused person it may be discharged by proving what would be enough to support a verdict in a civil action and that to use the words of Willes, J., in Cooper V. Slade, 1856-6 HLC 746 "in civil case the preponderance of probability may constitute" sufficient ground for a verdict."

This is the rule in India also. If a fact is to be held ''proved'' the Court must either believe it to exist or consider its existence so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it did exist, so it is sufficient if the accused who pleads an exception satisfies the court of the probability of what he has been called upon to establish. If on the evidence it appears provable that the defence set up is true he is entitled to a decision in his favour even though he may not have succeeded in proving the truth of his version beyond reasonable doubt.

8. A faint attempt was made to argue that in a case like this where the accused has pleaded that he is protected under exception 1 he need not prove the truth of the imputation and that it is enough if the accused is able to create a doubt that the statement may or may not be true and if that be so it could be considered that the accused has discharged the burden cast on him u/s 105 of the Evidence Act. A similar contention was negatived by Harries, C.J., in the case in Lalmohan Singh v. The King, AIR 1960 Cal 339. His Lordship stated:

"It is to be observed that exception 1 requires that the allegation is true and if Mr. Dutt''s argument is accepted exception 1 should read: "It is not defamation to impute anything which may or may not be true", I do not think that the principle of the Allahabad Full Bench case can be made to apply in the present case. To say something of a person which holds him to contempt is defamatory. If what is said is true then that in defence. On the other hand if there is doubt as to whether it is true or not, there is no defence at all and as the matter tends to bring the person defamed into contempt it is defamatory u/s 500, Penal Code."

I am in respectful agreement with this view and I have no hesitation In holding that unless the defence is able to prove that the allegation is true exception l will not apply.

9. Having stated the legal principles, I will now consider how far the accused have succeeded in proving the truth of the imputations so as to come within the protection afforded by exception 1.

9-10. (After discussing the evidence His Lordship concluded that the accused have proved the truth of the imputations made by them. He then proceeded:)

11. The next question that arises is whether it was for the public good that the imputation was made, and published. It is clear that to come within the exception the imputation should not only be proved to be true, but It must also be proved that it was for the public good that it was published. No amount of truth will justify a libel unless its publication was for the public good. To understand whether it was for public good it is necessary to find out the circumstances that led to the publication of Ex. P-1 the impugned pamphlet. aS stated already the appellant is the manager of the school. P. W. 3 is the head master and accused 4, 5, 6, 8 and 15 are teachers in the school. The other accused are persons resident in the village. The first accused is the president of the panchayat board and also the president of the local Congress Committee. The seventh accused is the secretary of the Communist Party at Kongad. Accused No. 13 is the secretary of the teachers Union at Parli and the fourteenth accused is the vice president of the union. Accused 10, 11 and 14 are teachers of other schools. Accused 2, 3 and 17 are relations of Pw. 1. 18th accused is the agent of Madhruboomi and 19th accused is an advocate of Palghat. All these persons are interested in the proper working of the school and they formed themselves into a committee called the Defence Committee, The evidence of Dw. 2 shows that the manager sent word through him that the fourth accused may resign from the school and go away and that the fourth accused did not agree to the proposal. It is the case of the fourth accused that because of this enmity the appellant had got a Harijan, woman to file a false complaint against him.

On 27-8-61 there was a staff meeting in the school and according to Pw. 3 it was convened at the instance of the fourth accused to consider some of his grievances. At the meeting the fourth accused complained about the manager, getting a Harijan to file a false complaint but it is stated that Pw. 3 left the meeting and went away. The students of the school who had a liking for the fourth accused took sides and started an agitation by boycotting the classes and examinations. On the day the staff meeting was being held the students convened a meeting in the school premises and took out a procession as a protest raising slogans. The next day the students did not attend their classes. On 28-3-61 all the teachers of the school sent up a petition Ex. D-22 to the District Educational Officer giving a clear account of the events that led to the petition and mentioning about the salary cut. The next day morning orders were issued suspending seven of the teachers, of whom five are accused here. This act of the manager aggravated the situation and the students strike and boycott took a serious turn. On receiving the suspension order oh the morning of 29-3-61 all the teachers except the head master Pw. 3 walked out of the school as a mark of protest. Then followed publications and counter publications, Ex. D-16 is the printed notice published by the convener, Action Committee calling upon the public to find out ways and means to restore peace in the school and to redress the grievance of the teachers.

On 31-3-61 the students of the school issued a leaflet signed by six students including the school leader who were the Action Committee members. They also explained the reasons which led to their boycotting their classes and the examinations and reference has been made to the salary cut by the manager. Then different political parties also published notices appealing to the public to help the suspended teachers for getting reinstated and for getting their grievances redressed. It is unnecessary to, deal with all these publications. The manager then came forward with a publication addressed to the parents of the students Justifying the action taken by him and that, he need not be blamed for what was happening in the school. In answer to that the defence committee again published a notice wherein they reiterated that the whole trouble arose because the manager used to withhold part of the salary of the teachers and when the teachers started resisting against this the manager started victimising the teachers with false cases being trumped up against them and that every attempt should bo made to effect a settlement and appealing to the public for the support.. On 11-4-61 a public meeting was held and certain resolutions were passed. Thus It will be seen that the public were much agitated over the question of the school trouble and the students boycotting the classes and the examinations and how matters could be set right. Various versions were being placed before the public and to clear the doubt and, confusion on 3-5-61 the Defence Committee came forward with the notice Ex. P-1, Ex. P-1 itself explains the reason for the publication, it says that the pamphlet is intended to place before the public a correct and true picture of the situation and It goes on to give detailed narration of the events that led to the boycotting of the students and the teachers of the school, it narrates the steps so far taken by the Defence Committee to find out a settlement and their having failed in their attempt. It is, therefore, contended by the counsel for the defence that it was not with any motive of defaming the complainant or to cause any injury to him that they published Ex, P-1, but they were actuated by good motives to find out a solution to the problem and it is only in explaining the origin of the trouble that they happened to mention about the withholding of a portion of the salary by the manager.

12. When questioned u/s 342, Cri. P. C., the accused and particularly the first accused had stated that the teachers had given the Defence Committee a copy of Ex. D-22 which makes mention of the salary cut, that it was signed by all the teachers and therefore they honestly believed the teachers when they alleged that Pw. 1 was witholding a portion or the salary and they had also enquired and come to understand that the allegation was true. Learned counsel, therefore argues that there is complete good faith in what they had done and they would be protected by exception 9 as well.

To show that the statement of the accused also may be considered in deciding whether the onus has been discharged, learned counsel brought to my notice a recent decision of the Supreme Court in State of Maharashtra Vs. Laxman Jairam, . In that case the respondent was arrested by the police and prosecuted u/s 68(b) of the Bombay Prohibition Act. In considering the onus of proof cast on the accused u/s 66(2) of the Act it was contended by the State following the observations of the Supreme Court in C.S.D. Swamy Vs. The State, at p. 11 that the mere statement of the accused is not sufficient for the discharge of the onus cast on the accused. Dealing with that contention their Lordships stated:

"All that the learned Judge there meant to say was that the evidence of the statement of the accused in the circumstances of that case was not sufficient to discharge the onus but that does not mean that in no case can the statement of an accused person be taken to be sufficient for the purpose of discharging the onus if a statute places the onus on nun. u/s 342 of the Criminal Procedure Code the Court has the power to examine the accused so as to enable him to explain any circumstances appearing in evidence against him. Under Sub-section (3) of that section the answers given by an accused person may be taken into consideration in such enquiry or trial. The object of examination u/s 342 therefore is to give the accused an opportunity to explain the case made against him and that statement can be taken into consideration in judging the innocence or guilt of the person so accused. Therefore, if the courts below have accepted this explanation it must be held that the respondent has discharged the onus which was placed on him by Section 66(2) of the Act."

It cannot be said that the publication was not made in public interest or for public good. A subject may become one of public interest if the public or a section of the public become interested in it. The documents produced in this case amply show that the public of different shades of opinion had interested themselves in the school affairs and were keen on a settlement of the disputes.

13. It was next argued on behalf of the appellant that even assuming that the imputation is true, the defence committee would have been only justified in bringing the fact to the notice of the educational authorities, because the Act and the Rules provide for sufficient remedies and that no good purpose can be served by distributing the defamatory matter among the public and that it would clearly

be a case of excessive publication which would take the case out of the privilege conferred by the exception. Reference was made to the decisions in Queen-Empress v. Janardhan, ILR 19 Bom 703 and Vinayak Atmaram v. Shantaram Janardhan, AIR 1941 Bom 410. Excessive publication, no doubt, would take the case out of the exception. But in this particular case it was in the interests of the public that the people should know the real situation concerning the school and what was the origin of the trouble and under what circumstances the teachers were suspended and the students resorted to strike, especially when the appellant himself had published a pamphlet justifying his action. It cannot, therefore, be stated that there is excessive publication or that the publication was not made for the public good.

It is true that the Magistrate has not specifically considered this question and recorded a finding regarding the public good but a reading of the entire judgment would go to show that the learned Magistrate bad come to the conclusion that under the circumstances of this case the publication was for public good.

14. The last argument of the learned counsel for the defence was that in an appeal against an order of acquittal the appellate Court would not ordinarily Interfere with the trial Court''s appreciation of the oral evidence of the witnesses unless there are strong grounds to show that the trial court has grossly misconducted itself in the appreciation of the evidence on record. The powers of the appellate Court in an appeal against acquittal Had been dealt with in the decision of the Privy Council in Sheo Swarup and Others vs. King Emperor . It was stated:

"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed.

No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusion upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court In disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this however is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of Justice."

These principles nave been subsequently affirmed and reiterated by the Supreme Court In a series of cases. In some of these cases, it Is true, their Lordships have emphasised the necessity of interference only on "substantial and compelling reasons". What really is "compelling and substantial reasons" has been made clear in a recent decision of the Supreme Court in Harbans Singh and Another Vs. State of Punjab, where Das Gupta, J., speaking for the Bench has observed as follows:

"But on a close analysts, it is clear that the principles laid down by the Court in this matter have remained the same. What may be called the golden thread running through all these decisions is the rule that in deciding appeals against acquittal the Court of appeal must examine the evidence with particular care, must examine also the reasons on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting Judge is clearly unreasonable. Once the appellate Court comes to the conclusion that the view taken by the lower Court is clearly an unreasonable one that itself is a "compelling reason" for interference. For, it is a court''s duty to convict a guilty person when the guilt is established beyond reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not so established."

15. When the expression "compelling reasons" is understood in the manner explained by the Supreme Court it is clear that the expression is not intended to place any restriction or to impose any limitation on the appellate Court''s powers white hearing appeals against acquittals. Even in an appeal against the acquittal the appellate Court has full power to review the entire evidence on record and to come to its own independent conclusion on the question as to whether such evidence is sufficient to conclusively establish the guilt of the accused.

16. Judged in the light of these principles, though no doubt this Court is entitled to go into the facts and arrive at its own estimate of the evidence, yet in a case where the case turns on oral evidence of witnesses the estimate of such evidence by the trial court cannot lightly be set aside. So on a careful consideration of the facts and circumstances of the case, I do not think I would be justified in holding that the court below has not taken a reasonable view of the facts of the case or has come to a wrong conclusion on the evidence. The order of acquittal is, therefore, confirmed and the appeal is dismissed.

