
(1960) 11 GUJ CK 0004
In the Gujarat High Court

Dadia Ottamchand Motichand and Another	APPELLANT
Vs	
Hemkunver Popatlal and the State	RESPONDENT

Date of Decision : 18-11-1960

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 504, 504

Citation : (1961) 2 GLR 196

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—This is a reference by the learned Sessions Judge of Jamnagar recommending that the conviction of two persons Dadia Ottamchand Moti-chand and Dadia Manharlal Ottamchand u/s 504, Indian Penal Code, by the Judicial Magistrate, First Class, Jamnagar, be set aside. The two persons were also convicted u/s 323, Indian penal Code by the learned Magistrate and the learned Sessions Judge observed that the conviction u/s 323, Indian penal Code was quite proper and did not justify any reference to the High Court. But, in regard to conviction u/s 504, Indian Penal Code, he made a reference holding that all that is proved is that the complainant who is woman by name Hemkunvar who is a tenant of the applicants was going to bring water from a common tap, and at that time Ottamchand tried to close the door and refused to allow her to go by that way. The woman however began to go inspite of the obstruction and thereupon both the applicants abused her using obscene words. The learned Sessions Judge therefore thought that abuses were given on a sudden petty quarrel between a landlord and a tenant in connection with drawing of water and that the intention in giving the abuses was not to insult the complainant and to provoke her into committing breach of public peace. He relied upon the case of Vaz v. Dias 32 Bom LR 103 and held that the ingredient of intention to insult was lacking in the case. He also held that the nature of the abuses was not known but observed that it is true that it would be virtually impossible for a woman to reproduce the exact words uttered in Court of Law. He observed that the Court must be placed in possession of material showing the nature of abuses used. The

learned Sessions Judge further observed that merely from the fact that obscene abuses had been given it was not possible for the Court to infer that the nature of the insult was such as to give provocation to the person insulted to cause breach of public peace. He therefore thought that the conviction u/s 504 Indian Penal Code is wrong and has therefore made a reference to the High Court to set aside the conviction u/s 504 Indian Penal Code.

2. For the commission of an offence u/s 504 Indian Penal Code (1) there must be insult (2) the insult must be intentional (3) by the insult the person insulting must give provocation to any other person and (4) he must have also intended or known it to be likely that such provocation will cause the person insulted to break the public peace or to commit any other offence. The insult may be by words or by conduct. Abusive words may amount to an offence u/s 504 Indian Penal Code if the other ingredients are present. If the other ingredients are not present mere abuses would not amount to an offence u/s 504 Indian Penal Code. This is merely what was held in 32 Bom LR 103 where it has been observed that mere abuse unaccompanied by an intention to cause a breach of public peace or knowledge that a breach of peace is likely does not come within Section 504. The section itself provides that in addition to intentionally insulting the person insulting must there by give provocation to another person intending or knowing it to be likely that such provocation will cause the person insulted to break the public peace or to commit any other offence. It is an important ingredient of the offence that the person must give provocation to another intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence. In 32 Bom LR 103 the fact that this is one of the ingredients of Section 504 Indian Penal Code was emphasised In addition it is observed that the insult may be of such a character that a person of ordinary temperament would not complain of the abuse and the abuse might come within the terms of Section 95 of the Indian Penal Code. Section 95 Indian Penal Code is a general exception and qualifies the provisions of all the sections of the Penal Code. In *Emperor v. Rangel* 34 Bom LR 282 the abusive words used were you damn bloody bastards and cads. The accused is stated to have used these words while leaving a meeting of the share-holders of a Co-operative Bank. It was held that the insult was not intentional but the abusive words were words of mere vulgar abuse. It was observed that the accused did not intend the abusive words to be heard and therefore it was held that there was no intention to insult. But the learned Judges of the Bombay High Court did not lay down am general proposition that the words you damn bloody bastards and cads can never be used without intention to insult. This decision is only helpful to show that even such words may in certain circumstances not amount to intentional insult. In the Bombay case (34 Bom LR 282) reference was also made to a Full Bench decision of the Calcutta High Court (Indian Law Reporter 26 Calcutta 653 where a person was convicted u/s 504 Indian Penal Code for using abusive words such as Sala Haramzada Soor Baper-beta etc. These two cases therefore do not lay down any general principle but are decisions depending on the particular facts of the cases

decided. Section 504 Indian Penal Code clearly lays down the ingredients to be proved before a person can be convicted under that section which are: (1) There must be an insult; (2) the insult must be intentional; (3) The person insulting must thereby give provocation to another person and (4) He must have intended or known it to be likely that such provocation will cause the person insulted to break the public peace or to commit any other offence.

3. In the instant case no doubt the precise abusive words stated to have been used are not on record. But there is no reason to reject the evidence of the woman that she was abused in obscene terms. If obscene words are used to a woman by a man who is her landlord it is difficult to avoid the conclusion that the man did intend to insult the woman and that he did give provocation to the woman or that he did intend or did know it to be likely that the provocation given will cause her to break the public peace. I cannot therefore agree with the learned Sessions Judge.

4. We must also note in this connection that there is another section in the Penal Code viz. Section 509 which reads as follows:

Whoever intending to insult the modesty of any woman utters any word makes any sound or gesture or exhibits any object intending that such word or sound shall be heard or that such gesture or object shall be seen by such woman or intrudes upon the privacy of such woman shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both.

To abuse a woman in obscene terms near a water tap would obviously amount to an offence falling u/s 509 Indian Penal Code and the persons concerned might have been convicted under that section. In these circumstances there is no need to interfere in revision.

The reference is therefore rejected.