
(1975) 07 AP CK 0004

In the Andhra Pradesh High Court

Case No : C.R.P. No. 312 of 1975 and C. R. C. 360 of 1974

Magam Chinna Subbarayudu

APPELLANT

Vs

State S.H.O. Nandyal Town P.S.

RESPONDENT

Date of Decision : 10-07-1975

Acts Referred:

Penal Code, 1860 (IPC) — Section 159, 160

Citation : (1975) 07 AP CK 0004

Hon'ble Judges : Madhusudhana Rao, J

Bench : Single Bench

Advocate : Susheela Devi and Mr. Ramamohan Rao, for the Appellant;

Final Decision : Allowed

Judgement

Madhusudhana Rao

1. This revision is directed against the order of conviction passed by the learned Additional Munsif Magistrate Nandyal in S. T. C. No. 66 of 1974 on the file of his court. The petitioner is the first accused in the case. He and another (the second accused have been convicted u/s 160 I. P. C. and each has been sentenced to pay a fine of Rs. 25. The police, Nandyal charge-sheeted the two accused for an offence u/s 160 I.P.C. alleging that the two accused were found quarrelling and behaving in a disorderly and indecent manner on a public road at about 5 p.m. on 26-1-74 A. 1. pleaded that the allegation against him that he and A. 2 quarreled with each other is false, that on the other hand A. 2 beat him and that it was he (A, 1) who reported to the police against A. 2 stated that the evidence of P.W.1, who deposed that he (A. 2) and A. 1 quarreled in a public place is true. On a consideration of the evidence of the traffic constable (P.W.1) as also the evidence of the head-constable of the town police station, Nandyal examined as P.W. 2 the learned Magistrate convicted both the accused and sentenced them as stated above.

2. Miss Sucheela Devi, the learned counsel for the petitioner contends that, in

the light of the finding of the trial court itself the conviction of the petitioner U/s 160 I.P.C. is not sustainable and that the petitioner has to be acquitted. Relying on Reddi v. Rarsi Reddi AIR 1938 Mad 924 she urges that the gravamen of an offence u/s 160 I.P.C. is fighting in a public place, that fighting means exchange of blows between two parties and that it is not the case of the prosecution that the two accused fought with each other.

3. Section 159 I.P.C. reads as follows:

When two or more persons, by fighting in a public place disturb the public peace, they are said to "commit affray".

4. The first basic ingredient of an offence of affray is fighting between two or more persons. The next ingredient is that the fighting should have been in a public place and the last ingredient is that the fighting should have disturbed the public place. The only eye witness (P.W.) stated: "I found both the accused abusing each other in vulgar language at about 5 p.m. on 26-1-74 on the public road near Kalpana Hotel, Nandyal There was traffic jam because of the galata and the traffic was obstructed". There can be no doubt that the evidence of P.W.I. satisfied the second and third ingredients. The question is whether the first ingredient of fighting is satisfied. Dealing with this aspect, the learned Magistrate observes as follows:--

"A literal meaning of the word "fight" may mean to include the exchange of blows by those who quarrel. But the absence of the blows by the persons that quarrel does it not by itself stop causing the annoyance and obstruction to public. The essential ingredients in the affray are the second and third which are concerned to the public due to the act of the persons quarrelling. Even though there are no blows or injuries on the person of the accused they are said to be quarrelling and if there are blows the aggrieved party is at liberty to file a private complaint against the aggressor.

5. No doubt as pointed out by the learned Magistrate the essence of an offence of affray is causing disturbance to public peace but the basis requirement is fighting in a public place. Every act and any act committed in a public place resulting in the disturbance of public peace does not constitute affray. The offensive act is fighting in a place and there can be no question of affray without the fundamental requirement of fighting. In Rami Reddy v. Narsi Reddy AIR 1938 Mad. 924 it was pointed out that fighting connotes necessarily contest or struggle for mastery between two or more persons against one another. The expression "fighting" in section 159 I.P.C. is used in its ordinary sense and it means a combat or quarrel involving exchange of some force or violence if not blows Mere verbal quarrel or vulgarly abusing sans violence cannot be construed as fighting which contemplates bilateral use of violence by two competing parties. Even if there is no exchange of blows, there should be exchange of some violence between the two contending parties before it can be said that the parties are fighting. If one person uses violence against another and the other

person merely remains passive, it cannot be said that there is a fighting between the two persons. So also if neither person uses violence against the other but both the persons merely indulge in verbal abuses, it does not amount to fighting. In the instant case admittedly, there was no exchange of blows or violence between A. 1 and A. 2. What all P.W. 1 stated is that both the accused were abusing each other in vulgar language. The view of the learned Magistrate that even a verbal quarrel in a public place disturbing the public peace is affray, is unsustainable. The conviction and sentence awarded to the petitioner by the lower court are therefore set aside and the petitioner is acquitted. In the result, the revision is allowed. If the petitioner has already paid the fine, it shall be refunded to him.