

(1957) 08 OHC CK 0007

In the Orissa High Court

Case No : Criminal Revision No. 235 of 1956

Nityananda Mohanta and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 29-08-1957

Acts Referred:

Penal Code, 1860 (IPC) — Section 504

Citation : (1958) 24 CLT 299

Hon'ble Judges : Rao, J

Bench : Single Bench

Advocate : G.K. Misra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Rao, J.—The four Petitioners were convicted by Shri L.P. Mohanty, Magistrate, First Class, Karanjia of an offence punishable u/s 504 I.P.C. and were sentenced to a fine of Rs. 20/. each. The first Petitioner Nityananda and the second Petitioner Ramdas are brothers. The third Petitioner is the son of the first Petitioner and the fourth Petitioner is the wife of the first Petitioner.

2. The Prosecution case is that the first Petitioner Nityananda was asked to construct a well financed by the Govt. in village Anagarpada; that as the whole of the Government contribution was not available in time, the complainant and some other tenants of the village had arranged some paddy loan for completion of the work from a local man, that it was arranged that the complainant and other villagers should be sureties for the paddy and that when Government money would be received by the Petitioner Nityananda, they would get money from him and repay the paddy to the creditor. But it appeared that in the month of Kartik in 1955 the complainant and others came to know that Nityananda had already obtained the Government money and went to ask for the loan from him, when Nityananda denied having received any loan and began to abuse the complainant. Petitioner No. 2 Ramdas also Came there at the time and it is stated in the complaint that Ramdas also started to abuse him and asked

Nityananda to drive away the complainant. The son and the wife of Nityananda also joined in abusing.

3. Mr. G.K. Misra, the learned Counsel for the Petitioners contended that the conviction of the Petitioners is contrary to law and that as far as Petitioner No. 2 Ramdas is concerned, there is no finding that he abused. Mr. Misra contended that the prosecution, to make out an offence u/s 504 I.P.C., should prove not only that the insult was intentional but also that accused must intend or know it to be likely that the provocation will cause him to break the public peace. Mr. Misra contends that the words of abuse found to have been used by Petitioners 1, 3 and 4, even assuming they were used, amount to only words of vulgar abuse and cannot be intentional insult. The words said to have been used by the Petitioners are "Nankapuda", "Bad mas", "Joginikhia", "Ghuakha" and "Mutakha". It may be mentioned that the words "Ghuakha" and "Mutakha" are not mentioned in the complaint petition as being the words of insult used by the Petitioners. These words are generally used wherever persons quarrel. It cannot be said that by using those words the persons using those words really intend that the persons abused by those words are really such persons as conveyed by the words. To constitute "intentional insult" a person using the words must intend to convey that he is really what is meant by the words used. I do not think that when the Petitioner used the word; like "Ghuakha" and "Mutakha", he intended to convey that he really meant that the person abused is one who eats faeces or drinks urine. There are merely used as words of vulgar abuse. In support of his contention, Mr. Misra relied upon a decision in the case of Philip Rangel Vs. Emperor, in that case the words; of the alleged insult were "You damn bloody bastards and cads". Chief Justice Beaumont observed that all the 40 members who were present in the meeting of whose antecedents the accused presumably knew nothing at all, by using the word "bastards" the accused meant literally that they were all persons born out of wedlock and that it was more probable that he was using a mere term of vulgar abuse. It is also held in this case, as is clear from the section also, that it is necessary to show that the accused intentionally insulted and thereby provoked some person", intending or knowing it to be likely that such provocation would cause him to break the public peace or commit any other offence. The use of words as alleged by the prosecution, in my opinion, does not amount to intentional insult, but are words of vulgar abuse. Chief Justice Beaumont observed ;

"Section 504 does not make it an offence to use abusive language may lead to a breach of the public peace. There must be an intention. The words must amount to something more than what in English called "mere vulgar abuse".

Further it may be noted that there is no finding in the judgment of the Magistrate that the insulting words were used with the intention of or knowing it to be likely that there is a likelihood of a breach of peace. In an ordinary abuse it cannot be presumed that the persons using those words used those words knowing the natural consequences of what those words mean.

6. The learned Magistrate himself observed that though six persons were alleged to have been present at the time of the abuse, none of them was examined by the prosecution. The learned Magistrate also found that it was only Petitioners 1, 3 and 4 that used the abusive language and that Ramdas did not use any words of abuse himself.

7. For the reasons stated above, I am of opinion that the words used by the Petitioners 1, 3 and 4: are mere words of vulgar abuse that they did not intend, by using those words, to insult the complainant and that the prosecution failed to prove that the words were used with the intention or with the knowledge that a breach of peace will be likely. I would therefore set aside the convictions and sentences of all the four Petitioners and acquit them of the offence u/s 504 I.P.C. The fines, if paid, shall be refunded.

Revision allowed.