

D. Chattaiah and Another

Vs

State of Andhra Pradesh

Criminal Appeal No. 20 of 1972

(R. S. Sarkaria, P. S. Kailasam JJ)

21.07.1978

JUDGMENT

SARKARIA, J. -

1. The appellants were tried and acquitted by the Magistrate in respect of a charge under Section 332, I.P.C. On appeal by the State, the High Court set aside their acquittal and convicted and sentenced them under Section 332, I.P.C. to three months' rigorous imprisonment each.

2. They have come to this Court by special leave granted under Article 136 of the Constitution.

3. At the material time, the complainant Shaikh Masthan was a Typist of the Panchayat Samiti, Ipur. In the same office, appellants 1 and 2 and the accused, Guravareddy, were working as Health Inspector Lower Division Clerk and Health Worker respectively, attached to the Primary Health Centre, Ipur.

4. The charge on which the accused were tried ran as follows :

That you, on or about November 29, 1968, in the Panchayat Samiti Office at Ipur, caused hurt to Typist, Shaikh Masthan of the same office, which in discharge of his duties as such public servant was same office, which in discharge of his duties as such public servant was with intent to deter him from discharging duties and thereby committed an offence punishable under Section 332, I.P.C.

5. It will be seen that substantially, the charge as framed, was under the second part of Section 332, I.P.C., of which "the intent to prevent or deter public servant from discharging his duties as such public servant" is an essential ingredient.

6. Counsel for the appellants has taken us through the records including the copies of the statements of material witnesses. It is urged by him the no case under Section 332, I.P.C., was made out against the appellants. In this connection, he has drawn our attention the F.I.R. which, according to him, does not contain any allegation that the assault on the informant was with intent to prevent or deter him from performing his duty as public servant, or that it was the consequences of or related to anything done by him in the discharge of his official duty.

7. We find force in this contention.

8. In the F.I.R. it has not been alleged that the incident was the outcome of anything connected with the performance of the complainant's duty as public servant. There is not even an obliquitous

allegation suggesting that he was assaulted with intent to prevent or deter him from doing his official duty. All that was alleged by him in the F.I.R., (Ex. P-5) was that while he was attending to despatch work in the office on November 29, 1968 afternoon, the three accused (who work in the same office) approached and questioned him as to why he had abused them. On the informant's denial of the accusation, they beat him. In so assaulting the informant Nannapu Reddy used a stick and scissors.

9. In his evidence at the trial, the complainant (PW 1) disclosed other facts which put it beyond doubt that the incident was the sequel of a private quarrel which took place between the complainant and the accused on the preceding day when the complainant was returning home from Samiti Office, and was abused by the accused. In regard to the occurrence, the complainant's version at the trial was that while he was at his work at about 1.00 p.m. appellant 1 came, demanded an explanation why he was carrying on propaganda against family planning and abusing him. The complainant denied, Thereupon A-1 slapped him and then A-2 hit him with a ruler and a A-3 with a stick. The complainant caught hold of the stick. A-3 then picked up a pair of scissors from the complainant's table and hit him below the left eye.

10. It was thus manifest that the assault on the Typist (PW 1) had no real nexus or causal connection, or consequential relation with the performance of his duty as public servant. There was not even a scintilla of evidence from which it could be reasonably inferred that the intent of the assailants was to prevent or deter PW 1 from the discharge of his duty as such public servant.

11. In view of the above, the charge as laid under Section 332, I.P.C. and the conviction of the appellant on that count, cannot be sustained. The appellants could, at the most, be held guilty under Section 323, I.P.C., the injuries caused being simple.

12. We would, therefore, partly allow this appeal and alter the conviction of the appellants to one under Section 323, I.P.C. As regards the sentence, we are told that the complainant (PW 1) has compounded this case. To verify this we had issued notice to the complainant. But he had not in response to that notice, put in appearance either in person or through counsel. Nor has he sent any information to verify the assertion made by the appellants at the bar.

13. We will, therefore, proceed on the basis that there has been no move to compound the case on behalf of the complainant. We are told that the appellants have already been in jail as under trial and after conviction for more than a month. In any case they have undergone sufficient expense and agony of protracted criminal proceedings extending over a period of about 8 or 9 years. We, therefore, while altering their conviction to one under Section 323, I.P.C., sentence them to pay a fine of Rs. 200 each or in default to undergo one month's R.I. The fine, if realised, shall be paid as compensation to the complainant.

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