

MYSORE HIGH COURT

K.S. Namjundaiah

Vs

Setti Chikka Thippanna

Criminal Revn. Petn. No. 179 of 1951-52

(Balakrishnayya, J.)

27.03.1952

JUDGMENT

Balakrishnayya, J.

1. In C. C. No. 123 of 1948-49 on the file of the Special First Class Magistrate, Chickballapur, the respondent was convicted for an offence under Section 500, Indian Penal Code and sentenced to pay a fine of Rs. 200/-. On appeal, the learned First Addl. Sessions Judge, Bangalore, acquitted the accused on the ground that no case is made out against him. The complainant has preferred this revision petition against that order.

2. Defamation is defined by Section 499, P. C. thus :

"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."

3. It is not disputed that the expression "black-marketeer" which is per se defamatory within the meaning of the aforesaid section was used by the accused in relation to the complainant in a public gathering which was presided over by a Government officer and in which besides the parties to this proceeding a large number of respectable persons of the locality were present.

4. The main ground upon which the accused has been acquitted by the learned Sessions Judge is that there is no satisfactory evidence regarding the exact words of imputation. In para 4 of his judgment, he states thus :

"Even regarding the exact words which were alleged to have been uttered by the appellant, there is no satisfactory evidence. Each witness has given his own version about the words that were uttered by the appellant. The learned Magistrate has discussed this

aspect of the case and has admitted that the evidence of the prosecution witnesses varied regarding the exact words used, but he was of the opinion that the one important factor common in the version of all the witnesses was that the appellant stated that Nanjundiah was dealing in black-market. In a case of defamation like the present one, it is absolutely necessary that the exact words uttered by the accused should be alleged and should be proved to have been uttered by him by consistent evidence and any discrepancy therein cannot go to the advantage of the respondent, but such a benefit should always be extended to the appellant. Therefore, from the consideration of the entire evidence, I am of the opinion that the respondent has not proved his case against the appellant conclusively and that the learned Magistrate was wrong in coming to the conclusion that the appellant was liable for an offence under Section 500, Indian Penal Code and convicting him."

It is rather difficult to understand what the learned Judge means when he says that "exact words" of imputation have not been reproduced consistently by all the witnesses. If it is meant that the witnesses should remember and reproduce the identical or the very same words in the order they were uttered and that even if there is some variation in the words used or trifling inconsistency in the words of different witnesses, such evidence should be discarded, it would be laying down rather a too broad or a too dangerous proposition. In our opinion, it is sufficient for the purposes of the section, if witnesses are agreed in a substantial measure on the words of imputation uttered as it is hardly possible or necessary to reproduce every word or expression used. In '*Bhola Nath v. Emperor*¹', King, J., remarked thus :

"It is unnecessary to prove the exact words used by the accused for the purpose of supporting a conviction for oral defamation. It is sufficient to prove the purport or substance of the defamatory imputations. No honest witness would profess to remember the exact words used by a person who has been speaking for even 15 minutes. At the most he may remember some striking phrase or expression. But a witness's failure to recall the exact words used, or the exact context in which they were spoken, is immaterial, provided that he can give a sufficiently clear account of the purport of the defamatory remarks."

Applying this test, it is clear that the appellate Judge has not correctly interpreted the provision of law, and the order of acquittal cannot be supported.

5. Again, it is sought to be argued in this Court that even if accused had uttered the words referring to the complainant as "black-marketeer" it was so done in a spirit of good faith actuated by a sense of social and moral duty and that no actual harm has been caused to the reputation of the person against whom the imputation is made. Ratanlal in his Law of Crimes has stated at page 1235 that in the words of the authors of the Code,

"the essence of the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable

sentiments of his fellow creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed."

¹ AIR 1929 All 1 At P. 9

It thus appears to be not necessary that actual harm should be caused, but it is sufficient, if it is proved that harm to the reputation of the person to whom the imputation is directed was intended. As observed by Doraswami Iyer, C.J., in '35 Mys CCR 397',

"it is sufficient, if the person who made the imputation did so with the intention of causing harm, or knowing or having reason to believe, that such imputation will harm the reputation of the other."

The learned counsel for the respondent brought to the notice of the Court the recent decision of the Supreme Court in '*Logendranath Jha v. Polai Lal Biswas*²', wherein it has been observed :

"Though sub-section (1) of Section 439, Criminal Procedure Code, authorises the High Court to exercise, in its discretion, any of the powers conferred on a Court of appeal by Section 423, sub-section (4) specially excludes the power to 'convert a finding of the acquittal into one of conviction'. This does not mean that in dealing with a revision petition by a private party against an order of acquittal the High Court could in the absence of any error on a point of law re-appraise the evidence and reverse the findings of facts on which the acquittal was based, provided only it stopped short of finding the accused guilty and passing sentence on him. By merely characterising the judgment of the trial Court as 'perverse' and 'lacking in perspective' the High Court cannot reverse pure findings of fact based on the trial Court's appreciation of the evidence in the case."

It is apparent from the above decision that where there is an error on a point of law, the revisional jurisdiction of the High Court under Section 439, Criminal Procedure Code is not excluded to prevent substantial injustice. A doubt has further been raised whether the High Court could interfere and reverse the order of acquittal passed by a Sessions Judge in appeal.

6. It is undoubted that under Section 439, Criminal Procedure Code the High Court can exercise in revision all the powers vested in a Court of Appeal under Section 423, Criminal Procedure Code subject only to a limitation of not converting a finding of acquittal into one of conviction. The High Court in revision is thus not precluded from interfering with an appellate judgment of acquittal or from reversing such order, and directing retrial in cases where it is found that there has been a failure of justice. The latter view finds support in a decision of a Full Bench of five Judges '*Queen Empress v. Balwarit*³', wherein it is laid down that "in reference to orders of acquittal passed by a Court of Session in appeal, the High Court may under Section 439, (Criminal Procedure Code) reverse such order and direct a retrial of the appeal." A similar view has been taken in other cases: vide '*Rameshwar v. Govind Prasad*⁴', and '*Satish Chandra v. Chinta Haran*⁵',

²1951 SCJ 503

⁴ AIR 1925 All 473

³9 All 134

⁵ AIR 1938 Cal 613

7. In the result, the order of acquittal in appeal of the learned Additional Sessions Judge is set

aside. The ends of justice will be served by remanding the appeal for retrial, in this instance by the Principal District and Sessions Judge, Bangalore, for disposal according to law.
Revision allowed.