

# ORISSA HIGH COURT

Dhruba Charan Khandal

Vs

Dinabandhu Patri

Criminal Appeal No. 143 of 1964

(R.K. Das, J.)

31.03.1965

## JUDGMENT

**R.K. Das, J.**

1. This is a complainant 's appeal against an order of the Magistrate, 1st Class, Jajpur, acquitting the respondent of an offence under Section 500, Indian Penal Code.

2. The complainant is the Sarpanch of Barundai Gram Panchayet and the accused is the President of Radhamohan Grain Gola Cooperative Society P.W. Khageswar Naik, a sub-assistant registrar of Co-operative Societies, Cuttack Circle, called for a meeting of the aforesaid Grain Gola Co-operative Society on 24-11-1963, and requested the B. D. O. (P.W. 4) to inform all members by beat of drum to be present at the said meeting. The B. D. O. in his turn asked the complainant to give notice of the meeting is diverted by P.W. 1. The complainant. P.W. 3 accordingly gave notice of the meeting and he himself attended the meeting though he was not a member of the Radhamohan Grain Gola Co-operative Society.

3. It is the prosecution case that the meeting commenced at about 2 p.m. on 24-11-1963 in the Barundi Rest Shed in the presence of a large number of persons including P.W. 1. P.W. 2 the Co-operative extension officer and P.W. 4, the B.D.O. Korai and a constable. The accused Dinabandhu Patri who was the President of the Grain Gola Co-operative Society, presided over the said meeting. in course of meeting, a question arose regarding the correct disbursement of the amount collected by the accused as some people complained that they had not received the full amount in spite of their executing necessary documents. At this the accused became furious and abused the complainant as "Sala". "Chora" Sarpanch. At this abuse of the accused, disturbance prevailed in the meeting and it could not proceed. Thereafter the complainant (P.W. 2) filed a regular complaint in the Court of the Sub Divisional Magistrate, Jajpur and the accused was duly summoned and charged under section 500, I.P.C. the case against him being that he defamed the complainant Phrubacharan Khandei of making certain imputations against him by spoken words such as 'Sala ' 'Chore ' and 'Rakshyasa ' intending thereby to harm his reputation.

4. In support of the prosecution case, the complainant examined four witnesses including the

three officers, P.Ws. 1, 2 and 4.

5. The accused denied the occurrence. His case was that the complainant while giving notice of the meeting by beating of drums, made certain false allegations against him and in one previous meeting held on 5-11-1961 the B. D. O. abused him as nonsense and he had brought this matter to the notice of the higher authorities. He was not pulling on well with B D. O. and it is on account of this grudge, the B. D. O. with the connivance of the complainant has started this false case against him. He also examined himself as D.W. 1 and examined three others in support of his plea. He did not take any protection under any of the Exceptions under Section 490 I.P.C.

6. On a perusal of the evidence, the learned Magistrate held as follows :

"No doubt at witnesses including the official witnesses speak that the accused abused and defamed P.W. 3 in the meeting. But it is to be seen the circumstances which led to such abuse by the accused. There was no such circumstance as to enrage the accused by P.W. 3 who was sitting calmly in the meeting without opening his mouth etc."

The learned Magistrate rejected as unreliable the defense version that B.D.O. abused the accused as nonsense though he held that there was some ill-feeling between the B.D.O. and the accused but he however, held that the non-examination of the constable and some independent witnesses who were present at the meeting was fatal to the prosecution case. He accordingly acquitted the accused under Section 258(1) Cr P.C. It is against this order of acquittal, the complainant has preferred this appeal.

7. It cannot be disputed that in an appeal against the acquittal, the High Court can review the entire evidence to examine the correctness of the conclusion arrived at by the lower court. [Then after discussing evidence (Paras 7 to 9) His Lordship proceeded.] It must, therefore, be held that the accused abused the complainant with the aforesaid words such as Sala, Chora, Rakshyasa, etc. in the said meeting, in the presence of large number of persons. The accused merely denied to have said so and did not seek protection under any of the exceptions of Section 499, Indian Penal Code. The onus of proving such exceptions being on the accused.

10. The learned counsel for the respondent contended that there is a variance in the evidence of the different witnesses about the words actually used by the accused. It is pointed out that the evidence of P.W. 3 shows that the accused abused him as Sala. Chora and Rakshyasa. but P.W. 1 has deposed that the accused said "Chora." "Rakshyasn" and "Madua" whereas P.W. 4 B.D.O. has not referred to and such words of abuse but made in general statement that the accused said that "this Rkhhyasha (meaning P.W. 3) has spoiled this area and deserves nothing more than beating. It was contended by Mr. Dhal that the prosecution must establish by evidence the exact words used by the accused before any action under Section 500 is called for. Apart from the minor variation, it is however, clear from the evidence that the accused used such words as Chora, Rakhvasha, Madua etc. as has been mentioned in the charge. Moreover, there are authorities to show that it is sufficient for the purpose of an offence under Section 500 if witnesses are agreed in a substantial measure on the words of imputation uttered as it is hardly possible even for most honest witnesses to reproduce every such word or expression : (see a decision of the Allahabad High Court) in *Bholanath v. Emperor*<sup>1</sup>, and of the Mysore High Court

in *Najnundaiah v. Thipanna*<sup>2</sup>,

11. It was next contended that there is nothing in the evidence to show that by reason of such abuse the position of the complainant was lowered in the estimation of others. True, there is no such evidence in this case. This, however, is not essential the essence of the offence is that the person who makes an imputation, should do so intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person. To constitute the offence, under Section 500. I.P.C., it is not necessary that the evidence should show that the complainant has been injuriously affected by such alleged defamation. This was the view expressed by a Division Bench of the Calcutta High Court in *Govinda Prasad Pandey v. G.T. Garthas*<sup>3</sup>, Manoharlal, J. in a case of the Patna High Court in *Jagannath Misra v. Ram Chandra Deo*<sup>4</sup>, took the same view and held that it is not necessary that to make out the offence there must be some evidence to show that the words as found to have been used by the accused lowered the prestige of the complainant in the estimation of others. The Bombay High Court in a case, *ex Pimento v. Emperor*<sup>5</sup>, held that it is not essential part of the offence that harm should be caused to the reputation of the person against whom the imputation is made.

12. It was contended that the words used may at best be vulgar abuses and would not amount to an offence under Section 500, I.P.C. Reliance was placed on the aforesaid decision of the Patna High Court. There in it public meeting the accused called the Zamindar an "ungentlemanly barbarous and tyrannical" Manoharlal, J. held that the accused had a clear intention to insult the Zamindar and the words used were not intended to be defamatory and as such insult was likely to lead to. A breach of the public peace, he altered the conviction under Section 500 I.P.C. to one under Section 504. This however, is not an authority that in any context such words shall never be defamatory. In a case reported in *E. Smith v. Chandramani Mohanty*<sup>6</sup>, the accused used some offensive words as 'Haramjadi ' 'Bhusundi ' and some obscene words. The complainant prosecuted the accused under Rule 504. I.P.C. The accused was convicted in the trial court but was acquitted by the Sessions Judge in appeal on the ground that the words used are no more than mere abuses and no offence under Section 504 is made out. On a revision by the complainant, Panigrahi, J. set aside the order of acquittal and directed a rehearing of the appeal by the learned Sessions Judge. He held that the words attributed to the accused have to be considered along with the gestures that accompanied the words and the occasion when it was made to determine if a case under Section 504 is made out.

13. In a case reported in *Nityanauda Mahanta v. State*<sup>7</sup>, the petitioners were convicted under Section 504, I.P.C. Rao, J. set aside the conviction on- the ground that the words "Guhakhia" and "Mulapia" were used by the petitioners as mere words of abuse commonly used in village quarrels and these words were not used with any intention of provoking any breach of the peace.

14. In the case reported in *Sarat Chandra Das v. State*<sup>8</sup>, the two petitioners were convicted under Section 500 for having used the word "Chandal" against the complainant. Panigrahi J. took the view that the mere use of the word "Chandal" in a fit of temper cannot be the basis of an action under Section 500. In that case the charges against both the petitioners were clubbed together and each accused was not given notice in the charge of the allegation made against him. That also was one of the grounds for setting aside the conviction as the learned Judge was of the opinion that the defective charge had prejudiced the accused persons in a fair trial. In that case the two

accused prevented the complainant from performing certain puja ceremony in a temple, on the ground that he mixed with some people of the untouchable class like washerman. The learned Judge was of the view as already said that the word 'Chandal' was merely used as a word of abuse in a fit of anger. Reliance, was placed on a part of his judgment where it was said that the practice words uttered against the complainant should find place in the charge, but the present charge does not suffer from any such deficiency.

15. The intention of a person has to be gathered from various circumstances and can-not possibly be established or any direct evidence. The occurrence took place in a meeting presided by the accused himself and attended by a large number of persons including some officials like P.Ws. 1, 2 and 4. There is nothing in evidence to show that the complainant gave any provocation to the accused. His own witness D.W. 1 admitted that there was no talk between the complainant and the accused. The Trial Court also found that the complainant was calmly sitting in the meeting when he was abused. If the complainant was not a member of the society, he should have been asked to quit the meeting. On the other hand, nil these words of abuses were used against him and the situation became so disturbing that the meeting has to be postponed. The accused being a responsible man with some education, he must have known the client and the implications of his abuse in a public place of Barundai where the complainant also holds a responsible office of a Sarpanch. The position might have been different in a different context in a petty village quarrel between some people or if the accused would have simply muttered some words not directly intended for anybody, as in the case reported in *Philip Bangel v. Emperor*<sup>9</sup>, where the accused was one of the persons who requisitioned a meeting of the share-holders of a credit co-operative Bank. It was proposed in the said meeting that the requisitionist should be expelled from the meeting. The accused when he was leaving the meeting became angry and said "You Sam, Bloody. Bastards and Cads". These words were not addressed to the meeting but were over-heard by some members who were present. The matter was brought to the notice of the Chairman who dealt with this matter. The accused was prosecuted and convicted under Section 504 Beaumont, C.J. set aside the conviction mainly on the ground that there is nothing insulting in the accused's conduct apart from the language used and the accused merely muttered these words in a fit of temper and indeed did not intend his remarks to be heard. Here it is not like that. Here the accused used such defamatory words as 'Chora' 'Madua'

etc. as against the complainant in a meeting and in a place where he is held in some esteem being a Sarpanch of the locality. The accused must have intended to defame or at any event must have known that such defamatory words would necessarily injure the reputation of the complainant and lower the position in the estimation of others. Persons in his position and dealing with the public are expected to use greater restraint in their language particularly when it is a place like a meeting of which the accused himself happened to be the President. His action undoubtedly comes within the mischief of Section 499, Indian Penal Code. I would accordingly, set aside the order of acquittal and convict the respondent under Section 500. Indian Penal Code, and sentence him to pay a fine of Rs. 100 (one hundred rupees) in default to undergo rigorous imprisonment for one month. The appeal is thus allowed.

Appeal allowed.

Cases Referred.

<sup>1</sup>30 Cri LJ 101 : ( AIR 1929 All 1)  
<sup>2</sup>1952 Cri LJ 1633 : (AIR 1952 Mys 123)  
<sup>3</sup>ILR 28 Cal 63  
<sup>4</sup> AIR 1945 Pat 450  
<sup>5</sup>22 Cri LJ 58 : (AIR 1920 Bom 339)  
<sup>6</sup>20 Cut LT 180  
<sup>7</sup>24 Cut LT 299  
<sup>8</sup> AIR 1952 Ori 351  
<sup>9</sup> AIR 1932 Bom 193