

Emperor Vs. Rustam Karanjia

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Court : Mumbai

Decided On : Aug-10-1945

Reported in : AIR1946Bom115; (1945)47BOMLR986

Judge : Bavdekar and ;Divatia, JJ.

Appeal No. : Criminal Appeal No. 153 of 1945

Appellant : Emperor

Respondent : Rustam Karanjia

Disposition : Appeal dismissed

Judgement :

Divatia, J.

1. This is an appeal by Government against the order of the Chief Presidency Magistrate of Bombay acquitting the editor and publisher of a weekly newspaper in Bombay called 'Blitz' of the offence under Section 27B of the Bombay Children Act (Bom. XIII of 1924).

2. One Dr. Talati was arrested on March 31, 1944, for ill-treating his daughter named Zarine, and charged for causing hurt to her, under Section 324 of the Indian Penal Code read with Section 9 of the Bombay Children Act. He was therefore placed before the Magistrate for remand on April 15, 1944. But before

that date, a report was published in the newspaper 'Blitz' on April 8, purporting to be from the woman editor of that paper. In that report certain facts were stated, the substance of which was that one girl named Zarine, exactly five years of age, winsome, frail and sickly, the daughter of a Parsi medical practitioner, whose age was somewhere in the forties, was cruelly ill-treated by her father, and was lying in the ward of the Jerbai Wadia Hospital. Thereafter, the father, Dr. Talati, gave a notice to the editor of 'Blitz' through his advocate that he contemplated taking proceedings against the paper for publishing the report. On April 29 the notice given by the advocate was published verbatim in the paper with a note from the editor to the effect that the notice was the outcome of a report published in 'Blitz' about the charge against Dr. Talati, a medical practitioner, for mercilessly beating his five years old daughter, that the editor knew his business, and was perfectly aware of the legal implications of the case, and refused to be intimidated by such gratuitous warnings.

3. In June, 1944, the Public Prosecutor filed a complaint against the editor of the 'Blitz' under Section 27B of the Bombay Children Act, which runs thus:

No report in any newspapers or news-sheet of any offence by or against a child or of any proceedings in any Court relating to such offence shall disclose the name, address or school, or include any particulars calculated to lead to the identification of any such child nor shall any picture be published as being or including a picture of any such child.

4. The case came up for trial before the learned Chief Presidency Magistrate. He was of the opinion that prima facie the case came within the provisions of Section 27B, which was applicable to the facts of the case. He further observed that the contents of the report were dangerously near the border line; but, in his opinion, the name of the child as well as the particulars given in the report were not calculated to lead to the identification of the child. According to the learned Magistrate, 'calculated to deceive,' as observed in the Stroud's Judicial Dictionary, implied something inherent in the deception and on the same reasoning 'calculated to lead to the identification ' would not be just a mere clue that would, without other extraneous assistance, lead to the identification of the child, but

something which inherently without such assistance would lead to such identification. Applying that test, the learned Magistrate was of the opinion that there were a number of Parsi medical practitioners in Bombay, and he was not prepared to say that the particulars disclosed in that report would lead to the identification of the child. On that ground he acquitted the respondent.

5. The words 'calculated to lead to the identification' in Section 27B, which were inserted in the Bombay Children Act in 1926, seem to have been borrowed from Section 39 of the English Act known as Children and Young Persons Act of 1933, where the words are that the Court may direct that no newspaper report of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any child or young person concerned in the proceedings. There is no legal definition of the words 'calculated to lead to the identification' and we have, therefore, to go to the dictionary meaning of the word 'calculated.' In Oxford English Dictionary the word 'calculated' is stated to mean two things: firstly, reckoned, estimated, or thought out; secondly, fitted, suited, apt, that is, proper or likely to lead. The instance of the first kind is given as speaking with a calculated caution, and that of the second kind is given as disguises not calculated to deceive. In our opinion, the second meaning is more appropriate here, where 'calculated' is followed by the word 'to', and that also seems to us to be the intention of the Legislature. The intention is that the future of a child should not be marred by any report which is likely to lead to its identification. Applying that test, it seems to us that the material words in the report were likely to lead to the child's identification, though not by a large section of the public, at least by the relations and friends of Dr. Talati's family. We think, therefore, that the first report of April 9 comes within the wording of the section. In any case, there is no doubt that the second report of April 29 does come within the section, because the name of the father, Dr. Minocher M. Talati, which is given in the notice given by his lawyer is published, and it is also published in the editor's note that the previous report had reference to the accused, Dr. Talati, mercilessly beating his five years old daughter with a sharp instrument. We may take it that the editor honestly thought that he was fulfilling his duties as a journalist in bringing to the notice of the public a very heinous crime committed by a medical practitioner against his own daughter. We are not, however, concerned with his motive, however laudable

it may be, but with the object of the section, which aims at protecting the child against whom the offence is committed.

6. Mr. Vimadalal, who appeared for the respondent in this case, has urged that the section must be construed strictly in favour of the subject. But, in the present case, the subject is not merely the editor of the paper, who published the report, but also the child against whom an offence is committed, and this Court has to look to the effect of the report, not only with reference to the editor, but also to the child about whom the report is made ; and judging in that manner, we think the second report certainly comes within the prohibition.

7. As regards sentence we were told at the last hearing that this report was published in some newspapers in Bombay, before it appeared in 'Blitz' on April 8. We, therefore, adjourned the hearing of this case, in order to enable the respondent to file an affidavit, to prove that one or more reports of this incident were published. We now find from the facts deposed to in the affidavit, which has been filed before us on behalf of the respondent, that four days before the first report was published in 'Blitz', that is to say, on April 4, a report of these criminal proceedings being initiated in the police Courts was published in the Bombay Sentinel. There the name of the father, Dr. Minocher Manekji Talati, was given, and it was stated that he was charged with the offence of mercilessly beating his four years old daughter. There is no doubt, in our opinion, that this report was certainly calculated to lead to the identification of the girl. On April 3 there appeared in the Times of India a report, which, however, is quite general in its nature, relating to a medical practitioner giving a severe beating to his five year old daughter. That report seems to be entirely innocuous, but on April 18, when the hearing of the case against Dr. Talati was pending, there appeared in the Times of India a further report of this case in which it was stated that

A charge sheet had been filed in the Police Court against Dr. Minocher Manekji Talati aged 40, a medical practitioner of Khetwadi, who was arrested on the allegation that he had caused injuries to his five year old daughter, and he was subsequently released on bail.

That report certainly comes within the words of the section. We do not know what considerations prompted the Government to launch these proceedings against the newspaper 'Blitz' for an offence for which the Bombay Sentinel as well as the Times of India could have been also prosecuted ; but it does appear to us from the publication of the reports in these two papers that the identification of the girl, who was involved in this case, must have been known to a wide section of the public, when the first report was published by the Bombay Sentinel on April 4, 1944, and to a still wider section of the public, when the Times of India published the report on April 18. The publication of these reports no doubt does not afford any justification for the offence itself. But, in our opinion, it does affect the question of punishment to be awarded to the present respondent, because, at the time when the first report was published the public was already aware of the incident by its publication in the Sentinel; and at the time of the second publication of the report, the Times of India's report of April 18 had also been published. We think, therefore, that this is a mitigating factor in the matter of sentence.

8. There is another reason also, which must be taken into consideration in awarding the sentence. This Section 27B appears in the Children Act, and it is not unnatural that, in the mind of the public, which also includes the class of the journalists, it is thought, though erroneously, that what was prohibited was only a report connected with any proceedings pending in a Children's Court and not in any other Court.

9. In this connection, we might take an opportunity to note that the provisions of this section seem to be too wide and drastic as compared with those of the corresponding Section 39 in the English Act. In the latter section it is provided that, in relation to any proceedings in any Court, which arise out of any offence against, or any conduct contrary to, decency or morality, the Court may direct that no newspaper report of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification of the child. It would thus appear that the discretion is left to the Court to prohibit the publication of any newspaper report. In our Act there is no such discretion left to the Court, and it applies to all reports connected with any offence, either by or against a child, and of any proceedings in any Court. It may be that the Legislature, in making this

departure from the provision of the English Law, might have thought that, under the prevalent sentimental notions of Indian society with regard to children, it is better that such reports should be absolutely prohibited. Whatever that may be, we cannot help thinking that the section is expressed in too wide and general terms, and that the intention of protecting the interest of the child can well be achieved by restricting the scope of the offences included in this section to particular offences, which might have the effect of ruining the future welfare of the child, and leaving a discretion to the Court to allow the publication of reports of other than those specified offences. In our opinion, an amendment to that effect would sufficiently protect the interest of children.

10. These circumstances lead us to take a lenient view of the offence with which the respondent is charged, and although, therefore, we set aside the order of acquittal made by the learned Chief Presidency Magistrate, and convict the editor of the offence under Section 27B of the Children Act, we think that the ends of justice will be met by imposing on him a fine of Re. 1 only.

11. Accordingly, the respondent is convicted of the offence under Section 27B of the Bombay Children Act, and sentenced to a fine of Re. 1.

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