

Emperor Vs. Alex Pimento

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Court : Mumbai

Decided On : Jul-07-1920

Reported in : (1920)22BOMLR1224

Judge : Shah and ;Crump, JJ.

Appeal No. : Criminal Application for Revision No. 117 of 1920

Appellant : Emperor

Respondent : Alex Pimento

Judgement :

Shah, J.

1. Two points have been raised in support of this application: first that the offence of defamation, of which the petitioners have been found guilty, is not complete as there is no proof in this case that the defamatory words actually caused harm to the reputation of person with reference to whom they were used, and secondly that certain evidence on behalf of the prosecution was improperly admitted by the trial Court after the defence evidence was closed.

2. As regards the first point Mr. Thakor has relied upon Explanation 4 of Section 499 of the Indian Penal Code and upon the judgment of Mr. Justice Davar in Emperor v. Anandrao Balkrishna (1914) 17 Bom. L.R. 82. Apart from the

decisions, it seems to me that the words of the section lend no support whatever to the contention urged on behalf of the applicants. The words of the section material to the point under consideration are that 'whoever...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 to defame that person'. Explanation 4 points out as to when an imputation is said to harm a person's reputation within the meaning of this section. But what is necessary to complete the offence is that there must be an imputation with reference to a person intending to harm, or knowing, or having reason to believe that such imputation will harm the reputation of the person against whom the imputation is made. The expression used in the section is 'intending to harm or knowing or having reason to believe that such imputation will harm' and not 'harming'. There is an obvious difference between the meanings of these two expressions and the argument based upon Explanation 4 involves the result that there is no difference between the two expressions. Such a result cannot be accepted. If the Legislature intended that it was an essential part of the offence of defamation that harm should be caused to the reputation of the person against whom the imputation was made, the words 'intending to harm or knowing or having reason to believe that such imputation will harm' could have been omitted and the word 'harming' could have been easily substituted therefor to convey the meaning which is now sought to be put upon the section.

3. I do not say that the question of actual harm to the reputation of a person can never be relevant in determining the question of intention or knowledge or belief required by the section, In some cases it may be very useful to know whether any actual harm has resulted in determining whether the person making the imputation had the necessary intention or knowledge. But the proof of actual harm is not essential.

4. All the decided cases, except the one which has been relied upon by Mr. Thakor, are against his contention. In the case relied upon by him undoubtedly Mr. Justice Davar took the view which is in his favour. Mr. Justice Beaton took a different view in that case; and I expressed no opinion on the point as I did not consider it necessary for the purpose of the decision in that case to do so. The

point, however, has been raised now and the view which found favour with Mr. Justice Davar has been relied upon before us. I have carefully considered all the reasons stated by Mr Justice Davar in his judgment. With great respect I am unable to agree with Davar J. and agree with Heaton J. on this point. I think that the offence in this case was complete without any proof of actual harm to the reputation of the person defamed.

5. The words used in this case are clearly defamatory. The words found to have been used by the first petitioner are these; 'What a liar you are, you are a worthless chap, you are a shameless priest, a robber, you have cheated Government.

6. The second petitioner is found to have used these words: 'You have cheated Government, you have robbed Rs. 500 from Juvem.' There can be no doubt that the person who used the words intended to harm the reputation of the person with reference to whom they were used.

7. The second point relates to the recording of evidence after the defence was closed in this case. It does not appear from the record whether this evidence was called by the Court under Section 540, Criminal Procedure Code, and it must be taken for the purposes of the point which has been urged before us that it was adduced on behalf of the prosecution and not called for by the Court under the powers vested in the Court under Section 540 of the Code of Criminal Procedure. Taking that to be the fact, it is not shown from the nature of the evidence recorded that it has any bearing upon the question as to whether the defamatory words were in fact used. Both the Courts in this case have found that the defamatory words were used by the accused; and it is difficult to see how the recording of this additional evidence at the stage at which it was recorded can be said to have prejudiced the accused. It is also important in connection with the point of prejudice to remember that no objection was taken at the time on behalf of the accused. There is no allegation that this evidence was recorded in the absence of the accused. No objection was taken in the lower appellate Court as regards this evidence. These facts support the inference that there was no prejudice in this case to the accused from the evidence thus recorded. At the same time I desire to

point out that the procedure laid down in the Code with regard to the trials must be strictly followed. In the present case the procedure applicable was that provided for the trial of warrant cases by Magistrates, and the scheme of the provisions relating to such trials must be followed subject to the special provisions of Section 540 of the Code of Criminal Procedure. The special powers under Section 540 may be exercised under proper circumstances. But I do not think that the recording of evidence on behalf of the prosecution after the defence evidence is closed can be justified. It is undoubtedly an irregularity; and though in this particular case it is condoned under Section 537, Criminal Procedure Code, it is desirable to remember that it is an irregularity, which may at times necessitate retrial and which ought to be avoided,

8. I would discharge the rule,

Crump, J.

9. So far as concerns the interpretation of Section 499 of the Indian Penal Code it appears to me that the interpretation contended for in this case leads to a contradiction between the body of the section and the 4th Explanation appended thereto. According to the body of the section an imputation made with the intention to cause harm amounts to defamation, but if explanation 4 is to be given the force which has been given to it in the decision relied upon, the result would be that it would be necessary to prove that harm was actually caused, whereas the intention to cause harm is sufficient under the first portion of the section. It is a cardinal principle of statutory interpretation that a section should be read as a whole and that contradictions between portions of it should be avoided if possible. It seems to me that the meaning is really plain and that explanation 4 is, what its name implies, an explanation and nothing more, being intended to define within certain limits the meaning of the words 'an imputation intended to harm'. Therefore I agree with the judgment of Heaton J. in *Emperor v. Anandrao Balkrishnan* and also with the decision of the Allahabad High Court in *Queen-Empress v. McCarthy* I.L.R. (1887) All. 420. It follows that the first point which is based upon the fact that no evidence has been adduced to prove actual harm must necessarily fail.

10. As to the second point I have little to add to the observation of my learned brother. It is, I think, sufficient for the purposes of this case to say that the irregularity such it was, is cured by the provision of Section 537 of the Code of Criminal Procedure and even if it be not so cured the result, if we expunge from the record the evidence which was improperly admitted, will be precisely as it is so far as concerns the point before us. The conviction of the accused would, so far as we are concerned, rest upon precisely the same footing as if that evidence had been taken into consideration.

11. For these reasons I concur in the order proposed.

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