

Emperor Vs. Tarak Das Gupta

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Court : Mumbai

Decided On : Nov-04-1925

Reported in : (1926)28BOMLR99

Judge : Fawcett and ;Madgavkar, JJ.

Appeal No. : Criminal Application for Revision No. 336 of 1925

Appellant : Emperor

Respondent : Tarak Das Gupta

Judgement :

Fawcett, J.

1. The petitioner has been convicted of an offence under Section 509 of the Indian Penal Code, and sentenced to suffer three months' simple imprisonment. The main facts are that he sent by post to the complainant, an English nurse, a letter containing indecent overtures and suggesting that the complainant should take certain action in order to show whether she accepted the terms mentioned in this letter. The complainant went to the Police, and in consequence of what they did, the accused was found to be the person who had sent the letter. He did not dispute this at the trial. The letter is described by the Magistrate as containing the most lewd and filthy suggestions and showing a wholly vicious and depraved mentality of the writer. In the circumstances, we entirely agree with the Magistrate

that an inference arises that the accused intended to insult the in desty of the complainant, who is an unmarried woman, who had no previous acquaintance with the accused, and was not of a loose character.

2. The only point of substance that has been urged by Mr. Sopher for the petitioner is that the case does not come under the words 'exhibits any object' contained in Section 509, which is the part of the section on which the conviction rests. No doubt, the word 'exhibit' does ordinarily express the idea of actually showing a thing to a person. On the other hand such showing need not be immediate. It was admitted by Mr. Sopher that 'exhibit' was practically equivalent to the word 'expose,' and a thing can be exhibited or exposed to a person, although at first it may be wrapped in something which prevents that person from actually seeing the object contained in the wrapper. Thus it has been held in England that the words 'exposed for sale,' contained in Section 6 of the Margarine Act, 1887, are not limited to such an exposure as would enable purchasers to see the margarine itself, but would cover the ease of margarine which is wrapped in paper so as to be invisible to the purchaser: *Wheat v. Brown* [1892] 1 Q.B. 418 . In the present case, the accused did not himself go to the complainant and show her the letter, but he employed the agency of the Post Office for the purpose of securing its receipt by her. The natural result of his posting the letter would be its receipt by the addressee and her opening the envelope and seeing its contents. In my opinion, the fact that the accused used these means for letting the complainant see the letter, instead of himself taking it and showing it to her, is immaterial. The maxim *qui facit per alium facit per se* is one entirely applicable to the present circumstances; and the mere fact that the letter was in a closed envelope before it reached the complainant, and that the accused did not himself tear open that envelope but that this was done by the complainant, does not prevent it being a case falling within the meaning of the words 'exhibits any object.' Therefore, I think the view taken by the Presidency Magistrate is quite correct, and I entirely agree with the very clear reasoning contained in his judgment.

3. We are asked to say that the sentence passed upon the accused is excessive, but the act was one of a disgusting nature, and, in my opinion, fully deserves the sentence that has been passed upon the accused.

4. I can see no sufficient reason to interfere and would reject the application.

Madgavkar, J.

1. The applicant sent by post a letter to the complainant containing improper proposals. There can be no question, and it has not been disputed before us, that he must have thereby intended to insult her modesty. The only point remaining, therefore, is whether his sending the letter falls within the purview of the words 'exhibits any object' in Section 509, Indian Penal Code. The letter is undeniably an object and to the word 'exhibits' one of two meanings may be attached. If it meant exhibition in a public place, the argument for the appellant would have some substance. But it is clear from the other words of the section 'shall be seen'... or 'intrudes upon the privacy of such woman' that this is not the meaning of the word 'exhibits' in the section. The only other meaning that can attach to it is 'displays or causes to be seen' by the woman, not necessarily in a public place. Therefore what the accused did by posting to her the letter appears to my mind to be an action which falls within the purview of the section. To quote the words of this Court in *Mahomed Kassam Chisty* (1911) *Ratanlal and Dhirajlal's Law of Crimes*, 9th Edn., p. 1113, 'it would be making a farce of the law, if we were to say that the conduct of the appellant did not amount to an offence and that the Magistrate has taken an incorrect view of the section of the Indian Penal Code under which the accused has been convicted and sentenced.'

2. As regards the sentence, I entirely agree with my learned brother. I am unable to accept the argument that the applicant's age or education are an extenuation of the offence. On the contrary I would hold that education is, if at all, aggravation and not extenuation.

3. The application must be dismissed.

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