

Jayappa Vs. Shamegowda

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Court : Karnataka

Decided On : Jan-11-1983

Reported in : ILR1985KAR680

Judge : Patil and ;Ramakrishna, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 499, 500 and 520

Appeal No. : Crl. Appeal No. 391 of 1983

Appellant : Jayappa

Respondent : Shamegowda

Advocate for Def. : Ravivarma Kumar, Adv.

Advocate for Pet/Ap. : Kadidal Manjappa, Adv.

Disposition : Appeal dismissed

Judgement :

Patil, J.

1. These two appeals by special leave are directed against the judgment and order of acquittal dated 22-8-1983 passed by the Additional J.M.F.C, Tarikere, in C.C. No. 666 and 667 of 1982, respectively, whereby the Magistrate has acquitted the accused of the charge of the offence punishable under Section 500 IPC.

2. The appellant L. S. Jayappa being a resident of Lakkavalli in Tarikere Taluk of Chikmagalur District is a licensed money lender. Accused N. S. Shamegowda and Jayashankar are father and son and residents of Kenchikoppa village. In the year 1978, Jayappa had advanced a sum of Rs. 2000/- as loan to Shamegowda. When he failed to repay the amount borrowed, Jayappa brought Small Cause Suit No. 61/81 against him and obtained a decree and filed Execution Petition No. 12/81 and got arrested Shamegowda. But, on his undertaking to pay the amount on the next pay, he was released. Thereafter, on 10-8-82, at about 12 noon, when Jayappa was standing on the pail outside his house, the accused, father and son, went upto his house and abused him saying 'SOOLE MAGANE COURTININDA NINAGE KODABEKADA HANAVANNU WARRANT TARIS' VASOOLI MADIDDIYA BOLI MAGAN', as a result there was lot of commotion. 10 to 12 people also collected there. The P.S.I. also went there, dispersed the people. On the complaint given by him (complainant), the P.S.I. also prosecuted the two accused persons, both father and the son, for the offence punishable under Section 92(O) of the Karnataka Police Act. It is not disputed both the accused were tried of the said offence in C.C. 445/82 and on their pleading guilty they were also released on due admonition.

3. Since according to the complainant - Jayappa, the abusive words 'SOOLE MAGANE-BOLI MAGANE' were not only defamatory, but he was also much pained due to the abusive words used by the accused and the accused were guilty of the offence punishable under Section 500 IPC, he filed a complaint before the Magistrate, The learned Magistrate, after taking cognizance of the offence alleged proceeded with the trial and on the basis of the evidence before him and having regard to the fact that the accused had also pleaded guilty in the other criminal case instituted against them thought the accused had so abused the complainant Jayappa. But he however concluded that such abusive words 'SOOLE MAGANE - BOLI MAGANE' are commonly used by the villagers and, therefore, they could neither be regarded as defamatory nor they were used with such intention to defame him (complainant). In that view, he having acquitted the two accused- Respondents in these appeals, the complainant Jayappa has filed this appeal.

4. Mr. Kadidal Manjappa, learned Counsel appearing for the appellant, vehemently argued not only the abusive words used by the accused were per se defamatory, but having regard to the background under which the accused went upto the house of the complainant Jayappa and abused him showed their intention was to defame and bring him in disrepute and the learned Magistrate was not justified in acquitting the accused. In support of his contention, he also placed reliance on some decisions of this Court as also decisions of other High Courts.

5. Mr. Ravivarma Kumar, learned Counsel appearing for the respondents, on the other hand, argued supporting the order of acquittal passed by the Magistrate that apart from the fact that the say of the complainant the two accused had abused him using particular abusive words, as stated by him in the complaint and sworn to by him In his evidence, appears to be artificial in as much as they could not be expected to use the same abusive words, simultaneously in a chorus ; however vituperative the words used, the abuses by themselves cannot constitute an offence of defamation unless it is proved that the accused used those abusive words with such intention of defaming the person, abused. In support of his contention, he also placed reliance on some decisions.

'Defamation' as defined under Section 499 IPC means --

'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, so said, except in the cases hereinafter excepted, to defame that person.'

There are various exceptions provided, but we are not concerned with any of those exceptions here in as much as the accused have not raised any such defence bringing their case under any of the exceptions provided. However, Explanat-ion-1 under Section 499 IPC which is relevant here reads :

'It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.'

From this it also follows that any imputation of bad character to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to hurt the feeling of his family or other near relatives, is defamation within the meaning of Section 499. 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. It is not necessary that actual harm should be caused. It is sufficient if harm to the reputation of the person to whom the imputation is directed was intended. Thus, before a person is found guilty of the offence of defamation punishable under Section 500 IPC, not only the prosecution has to prove the imputations, verbal or written, made by the accused, but it also has to prove that the accused made such defamatory imputation with intention of defaming, ridiculing or undermining the reputation of the person complaining of the defamation. Although the words like 'SOOLE MAGANE - BOLI MAGANE' said to have been used by the respondents - accused are grave and serious imputations in as much as they have tendency of suggesting either illegitimacy of the complainant or unchastity to the mother of the complainant, that is to say, his mother was merely a mistress of the father of the complainant and not married to him, but to say that they are per se defamatory sufficient to constitute an offence of defamation punishable under Section 500 IPC, it appears, cannot be sustained, unless it is proved that the accused intended to convey, by so publishing or publicly abusing, so as to make all others to believe literally that the complainant or his mother was so. The background and the circumstances under which such imputations were made are relevant to arrive at a conclusion whether the imputations were intended to be literally conveyed or they were only hurled as abuses. There must be something more than mere abuses from which it could be possible to infer that the imputations were made with such intention of defaming directly or indirectly the person complaining of. In the absence of any such proof or material, however, vituperative the abuses may be, the abuses by themselves may not be sufficient to constitute an offence of defamation punishable under Section 500 IPC.

6. In the case of K.S. Nanjundaiah -v.- S.C. Thippanna AIR 1952 Mysore 123 relied upon by Mr. Kadidal Manjappa, learned Counsel appearing for the complainant - appellant, where the expression 'black marketer' 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 the proceeding a large number of respectable persons of the locality were present, the expressions were held to be per se defamatory. There the circumstances proved were such as to show that the accused intended to harm the reputation of the complainant.

In the case of Ramdhara-v.-Phulvatibai, 1970 CrL.L.J. 286 where the defendant had abused the complainant in filthy language saying. 'Rand-Chhinal' in addition to saying she was in keeping of one Jagatram, it was held : It is of the essence of defamation that the words tend to be injurious to a person's character or reputation. The standard to be applied in determining whether a statement is defamatory or not is that of right-minded citizen, a man of fair average intelligence, and not that of a special class of persons whose values are not shared or approved by fair-minded members of the society generally. An imputation is defamatory, if it exposes one to disgrace and humiliation, ridicule or contempt. Proceeding further, it was observed :

'In the present case, if the defendants had merely uttered the word "chhinal", I would have held that the word did not convey its literal meaning, that is, a woman of easy virtue, but was only a vulgar abuse, which is not uncommon in villages when women quarrel among them-selves. Mere vulgar abuse, which does not tend to lower a person addressed in the estimation of others or to bring him into obloquy, contempt or ridicule, does not amount to defamation. In such a case, the abuse is uttered merely to put an affront upon the feeling of the person abused, or as an insult to his dignity or self-respect without other persons knowing of it or without producing such an impression in their mind as its natural meaning would convey. But where words are uttered in circumstances tending to lower the person addressed in the estimation of the people present and to bring him into contempt or contempt, they will constitute defamation and will be actionable.'

It is thus clear that there was a definite imputation upon the plaintiff's chastity in that case.

In the case of *K. Kanhai Singh -v.- R. Bhasker Single* AIR 1964 Manlpur 20 where one minor M.K. Sharangajit Singh alias Shivaji Singh and another M.K. Tutendrajit Singh were described as illegitimate half-brothers in the application made under the Guardians and Wards Act for appointment of guardian of the property of Maharaja, there being definite imputation of illegitimacy, it was held that the description of a person as illegitimate is a serious imputation to make and such an imputation affecting the reputation of the person against whom it is made, in as much as it means that the mother of the person, with reference to whom it is made was only a mistress of the person's father and not his married wife and it also affects the reputation of the mother of the person and the mother's father and the imputation harmed the reputation of the half-brothers and their mother amounting to an offence under Section 500 I.P.C.

In the case of *Dhruba Charan -v.- Dinajbandhu* : AIR1966 Ori15 where the accused, who was the President of Grain GolaCo-operative Society, while presiding over a meeting, during the course of the discussion, abused the complainant who was the Sarpanch of the Grampanchayat Committee as 'Sala - Chora' it was held, in the circumstances in which the abuses, were hurled by a responsible person like the accused, he must have intended to defame or at least must be taken to have known that such defamatory words would necessarily injure the reputation of the complainant and lower his position in the estimation of others and as such constitute an offence punishable under Section 500 IPC. The circumstances under which the abusive words used were clear indication there, of the intention of the accused in making the imputations. In the case on hand, although there is no doubt the accused having gone upto the house of the complainant Jayappa had started abusing him in filthy words, but the way in which they were questioning the complainant abusing at the same time, about his conduct in taking warrants for the arrest in execution of the decree, showed that they were merely giving vent to their displeasure and anger by so abusing. Therefore, merely because that led to commotion, people gathered and the people also did not relish it , is no reason to hold that the accused by so abusing intended

to defame the complainant or they did do so with the knowledge that they would thereby bring the complainant to disrepute, or they literally intended to convey that the complainant was illegitimate or his mother was merely a kept mistress and not married wife of the complainant's father.

In the case of Jagannath Misra -v.- Ram Chandra Deo, AIR (32) 1945 Patna 450 where the accused adopted a loud and insolent tone and was anxious that his remarks should be heard, and cried out loudly that the complainant was not only a liar but was ungentlemanly, barbarous and tyrannical, it was held that there was clear intention to insult the complainant. The accused ought to have known that the insult would be likely to lead to a breach of the public peace , which was avoided owing to the most commendable behaviour of the zamindar-complainant. The words used were not intended to be defamatory but amounts to insult.

In our considered view, therefore, the Magistrate was justified in acquitting the accused. The appeals therefore fail and they are accordingly dismissed.

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