

Emperor Vs. Parwari

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Court : Allahabad

Decided On : Jan-03-1919

Reported in : (1919)ILR61All311

Judge : George Knox

Appellant : Emperor

Respondent : Parwari

Judgement :

Knox, J.

1. This is a case in revision. The Sessions Judge of Saharanpur had before him an appeal by a woman one Musammat Parwari, so called at any rate. The appellant had been convicted of the offence of defamation and sentenced under Sections 499 and 500 of the Indian Penal Code to two months' rigorous imprisonment. The complaint had been instituted against her by one Chhajju Singh. Chhajju Singh, according to the prosecution was step brother of one Musammat Parwari, Rajput by caste, and Musammat Parwari was the wife of Pirthi Singh, also Rajput, Parwari, some two years before the complaint was lodged, had gone to the house of Umrao Singh, her sister's husband. There she fell ill and died on the 21st of June, 1916. After her death, Pirthi Singh gave it out that she was still alive, and that Umrao Singh's story that she was dead, was false, and the woman was really in concealment in Umrao Singh's house. Parwari's husband and relations had

wanted, so the complainant says, to out-caste him and his family and in order to effect this had put up the appellant who was in fact a Chamar woman, to pretend to be his wife: that, in pursuance of this conspiracy, the appellant had been induced to go to the courts at Dehra and to make a false statement to the effect that she was Pirthi Singh's wife and had been kept in seclusion as above mentioned. As a result of this, the complainant, his parents and Umrao Singh have been out casted. The complaint went on to say that the feelings of the complainant had been further outraged by statements made by the appellant. Those statements were certainly statements, if true, to the prejudice of the complainant and his relations. All these statements were said to have been made by the woman appellant to a Sub-Inspector of police stationed at Rikhikesh, and when the charge sheet was drawn up the woman was charged with having on the 26th of February, 1918, at Rikhikesh, by words spoken, to the Sub-Inspector, published an imputation of incestuous connection with different persons knowing that such imputation would harm the reputation of Musammat Parwari, if living, and intended to harm the feelings of the near relatives such as her father and brother. The statements are then set out in the charge sheet; and it is added that she had thereby committed an offence punishable under Section 499, read with Section 500, of the Indian Penal Code. The record, as it stood, was, as I pointed out in my order of the 2nd of December', 1918, so meagre, that it was difficult to-decide from it the precise circumstances under which the statement of the 26th of February said to have been made by the appellant came into existence. In order to ascertain these circumstances, I summoned Sub-Inspector Indarjit Singh, the Sub-Inspector concerned, to ascertain these circumstances as far as possible. His evidence has been recorded, and I cannot say that it is at all satisfactory. Taking it as it stands, he says that the statement contained in Exhibit H was a statement made under the authority of Section 154 of the Code of Criminal Procedure, 1908. As' to the statements contained in Exhibit I and J, he found it difficult to say positively how those statements came to be made. Eventually, however, he deposed that they were statements made in consequence of action taken by him under Section 155 of the Code of Criminal Procedure. He is not a novice in police work, for he says he has been Sub-Inspector for five years, but he left it rather doubtful whether he did intentionally and knowingly act under the authority of Section 155 of the Code

or of some authority given him by the Police Manual. If the statements resulted from action taken under Section 154 or under Section 155, they are privileged statements, and as such, should not have been used as evidence at all. [See Section 162 of the Code of Criminal Procedure and the case of *Manjaya v. Sesha Shetti* (1888) I.L.R. 11 Mad., 477 also *Queen Empress v. Govinda Pillai* (1892) I.L.R., 13 Mad., 235]. The Madras High Court is very positive and consistent upon the view that statements under these circumstances are privileged and cannot be made the foundation of a charge of defamation. I do not know what authority the Police Manual may give, but, whatever authority it may give, if it does give any authority, that cannot override the law. It is difficult to understand how the Sub-Inspector could have taken these statements at all. The probability is that he took them out of prurient curiosity and not in the course of any investigation made under Chapter XIV of the Code of Criminal Procedure. I mention this as what I am about to say might otherwise be considered obiter dictum. I have on previous occasions pointed out that in dealing with cases of criminal defamation]it is necessary to follow carefully the provisions made in the Indian Penal Code on the question of defamation. There is a marked difference between criminal liability for defamation under the English law and under the Indian law, arising no doubt from the fact that the English criminal law when dealing with defamation had mainly to consider whether the defamation was such as would result in a breach of the peace or the question whether the person who claimed punishment for defamation was a person aggrieved by the statements made. In the present case the defamation consisted of imputing matters which concerned a deceased person. The authors of the Code have themselves pointed out their intention that the penal law in India on this point, should differ from that in England. Their intention was that the essence of the offence of defamation should consist 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. This was the reason evidently why they attached to Section 499 the explanation marked 1. Section 499 by itself could not touch the present case. The imputation affected a deceased person. Explanation I expands Section 499 by adding that it may amount to defamation to impute anything to a

deceased person if the imputation would harm the reputation of the person if living and is intended to be hurtful to the feelings of his family or other near relatives. The learned Counsel who supported the case for the prosecution argued that in this case intention was proved if it was the probable consequence of the act done. I find myself unable to agree with him, ably as he put forward that argument, and I hold that in the present case it was incumbent upon the prosecution to prove not only that the statements made by the appellant would have harmed the reputation of Musammat Parwari as they undoubtedly would have, but also, that he had to prove that the statements were made with an intention to be hurtful to the feelings of Chhajju Singh, Chhajju Singh's family or other near relatives. Whether the words 'near relatives' would include Chhajju Singh is open to question. The evidence for the Crown is, however, that the appellant on the 26th of February made statements on which she has been convicted under these circumstances: A constable came upon herein a fair, she was at the time wearing a male attire. For some reason or other he suspected that she was not a male person but a woman in male attire. He took her to the thana of Rikhikesh. She was seen at once by the Sub-Inspector, Indarjit Singh. He questioned her and came to the conclusion that she was a woman masquerading in male clothes. The statements she made at that time were not statements to the prejudice, but if it can be so said, would have been to the credit of the family of Chhajju Singh, She described herself as a Brahmin and so forth. The Sub-Inspector sent her to another thana, Sahaspur. She left for Sahaspur under the conduct or the arrest of a constable. Soon after the Sub-Inspector went to the railway station, Rikhikesh road, with the intention of proceeding on four days leave. He there saw the woman again, and she then made statements which were to the derogation of the family aforesaid. The theory of the prosecution is that she made, these latter statements at the instigation of one Pirthi Singh and hence the derived malice that turns these statements into defamation, statements, made according to the Crown, with the object of aspersing the memory of the dead and with a design to injure the feelings of the relatives of the dead. The case of Queen v. Labouchere (1884) 12 Q.B.D., 320 is very instructive on this point, always bearing in mind that we must adhere strictly to the Indian law as laid down in Section 499 of the Indian Penal Code If the intention of the appellant was to aggrieve, if the word may be used, the feelings of

the relations, is it at all likely that the woman would not have done so on the first occasion she had a chance of doing it, namely, when she came to the Rikhikesh thana or later on as she is charged with doing,? A woman bent upon causing pain to the relations of Chhajju Singh would surely have done so when she had the first opportunity of doing it. We can easily imagine her blurting out a false story upon the first opportunity. It is difficult to imagine her designing to get credence to her false story by first stating matters to the c-of the family and then taking advantage of an unexpected interview with the Sub-Inspector to do the opposite. She did not know of the Sub-Inspector's intention to take leave or the probability of meeting him at the railway station. The improbability is so great that it amounts to my mind to an impossibility. Her intention was not to cause pain to the relatives of the deceased, but to get herself, if she could, out of the scrape into which she had come by going about in male attire with a large amount of jewellery. In any case I cannot hold that the intention has been proved; her statements therefore do not amount to defamation, The offence of defamation of which she has been convicted has not been established. I find her not guilty and direct her immediate release from custody; if on bail, as I understand she is, she should be instantly released and the bail bonds cancelled.