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Court : Allahabad

Decided On : Sep-09-1929

Reported in : AIR1930All277

Appellant : Emperor

Respondent : Bindeshwari Singh

Judgement :

Young, J.

1. Bindeshwari Singh was convicted by a Magistrate of the First Class under Section 384, I.P.C. for having extorted Rs. 10 from one Balle Halwai by holding out threats to him of physical injury and of the institution of legal proceedings charging him with the commission of a criminal offence. The learned Magistrate gave him the sentence of one year's rigorous imprisonment and a fine of Rs. 100.
2. The learned Sessions Judges reversed the decision of this trial Court and directed the acquittal of Bindeshwari Singh.
3. The Local Government has filed an appeal to this Court.
4. The complaint which gave rise to these proceedings was instituted by one Balle Halwai of Deogaon on 29th August 1928. The story of the Crown is shortly this: Bindeshwari Singh purchased puris and sweets from the shop of Balle Halwai and

owed him Rs. 10. A demand was made for the money. Bindeswari Singh took offence at this and told Balle

I shall set you right. I shall get a false case brought against you and shall cause you to be sent to jail.

5. On 30th March 1926, one Jamna Prasad filed a complaint against Balle, his wife Mt. Kishen Dei and Ganga Barnwar under Section 498, 1. P.C. in the Court of a Special Magistrate of Deokali, in the District of Ghazipur. The allegation was that Mt. Kishen Dei was the wife of Jamna Prasad and that Balle and Ganga Barnwar had taken or enticed away the wife with intent that she may have illicit intercourse with them. Summonses were issued but could not be served. Warrants were applied for and were duly executed and 15th May 1926 was the date fixed for the hearing of the complaint. On that date the complainant did not appear in Court and the complaint was dismissed.

6. In the meantime, on some date between 8th May and 15th May 1926, Bindeshwari Singh came to the shop of Balle Halwai and told him that it was now time for him to realize the insecurity of his position, as a complaint under Section 498 had already been launched against him and the only thing which remained to be done was to press the complaint and send Balle Halwai to jail. Bindeshwari Singh told Balle that if he was anxious to enjoy his liberty, he ought to pay him Rs. 50. A settlement was arrived at for a sum of Rs. 10 and Balle paid Rs. 10 to Bindeshwari Singh. The above is proved from the evidence of Balle and is supported by the depositions of Misri Halwai, Bishnath Kalwar, Jattan and Kunder Kandhu.

7. There is also very strong corroboration of this evidence in the fact that the complaint of Jamna Prasad came to nothing as the complainant allowed the complaint to go by default.

8. Balle Halwai is the complainant in this case and his statement ought to be carefully scrutinised. The complaint had been instituted after a very long time. Balle may be presumed to have a natural partiality in favour of his own complaint. The unusual delay in the institution of the complaint had got to be explained.

9. Balle had been subjected to a lengthy cross-examination and has not broken down in the least. His statement is clear and consistent. The delay in the institution of the complaint, has been accounted for. Bindeshwari Singh is a bully and evidently the complainant was afraid of him. It was not till proceedings were initiated against Bindeshwari Singh under Section 110, Criminal P.C. that Balle could venture to come forward against such, a formidable opponent.

10. The statement of Misri Halwai has been rejected by the Court below upon the ground that he was the brother of Mahabir, who filed the complaint in the connected case. That is not a sound reason for discrediting the statement, but it ought to have been a good ground for scrutiny. It does not appear that any portion of the statement of Misri is intrinsically improbable, nor does his statement conflict with the statement of Balle or those of other witnesses for the prosecution. We are of opinion that the learned Sessions, Judge has discredited the statement of Misri upon grounds flimsy and insufficient.

11. No reason whatsoever has been assigned for not accepting the statements of Bishnath, Jattan and Kundar who appear to be thoroughly independent witnesses. We are not surprised bearing in mind the character of Bindeshwari Singh that the demand was made at a public place in broad day light and in the presence of many witnesses. Bindeshwari Singh believed that he was the master of the situation and was running no risks.

12. We consider that on the evidence for the prosecution the case against Bindeshri Singh has been clearly established.

13. The defence in this case is exactly the same as was put up in the connected case of Mahabir. There is no evidence to support this defence, It has not been made out that Rai Sahib Dindayal Sahu had engineered this case to satisfy his malice against Bindeshwari Singh. The case set by the defence is that there was a widespread conspiracy and that the, police and the district authorities had made common cause with Rai Sahib Dindayal. This defence was absolutely false and baseless.

14. In a great majority of cases, the plea urged in defence is the stereotyped plea of enmity. The plea is characterised by a wanton disregard of truth and in spite of laborious attempts, no malice is established between the accused and the Crown witnesses including the complainant. It ought to be generally known that a false defence of this character has a tendency to aggravate the offence and is factor which may effect the question of sentence.

15. Three witnesses were examined for the defence; of those Munshi Ramanad Lal and Babi Swami Nath Singh had appeared as witnesses for Bindeshwari Singh in the connected case. They say no more than this that there was a contest between Raghuraj Bali Sahu, nephew of Sahu Dindayal and certain other persons for a seat in the Distict Board of Azamgarh. They do not state that there is an enmity between Bindeshwari Singh and Sahu Dindayal. The third witness Babu Sham Narain Singh is a mukhtar and member of District Board. He states that four five mouths ago when he was sitting in Bar Library at about 11 a.m. he was called by Bindeshwari Singh who told him that the police daroga was getting a complaint written against him by Balle Halwai. He did not go near them but he saw Balle and daroga together when the complaint was being written. We do not believe a word of this and we are of opinion that this witness is not only false but radiates falsehoods.

16. The judgment under appeal appears to us to be extremely unsatisfactory. We are sorry to note that the findings of the learned Judge in this and the connected case, Criminal Appeal No. 560 of 1929, are against the weight of evidence and no serious attempt has been made to meet the excellent reasons given by the primary Court.

17. In the result, we allow the appeal, set aside the order of the Sessions Judge dated 18th April 1929, and convict Bindeshwari Singh under Section 384, 1.P.C. We maintain the sentence of fine passed by the trial Court and sentence him to two years' rigorous imprisonment, The sentences in the two cases are to run consecutively. Bindeshwari Singh must surrender to his bail. The complainant ought to be paid Rs. 50 out of the fine if realized. If the fine is not recovered from Bindeshwari Singh, he must undergo three months' rigorous imprisonment in

addition.

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