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Court : Allahabad

Decided On : Nov-06-1925

Reported in : AIR1926All237

Appellant : Beni Ram

Respondent : King-emperor

Judgement :

Sulaiman, J.

1. This is an application in revision from a conviction of the accused under Section 500 of the Penal Code and a sentence of fine. The facts are not now much disputed. The complainant has a nephew whose daughter is of marriageable age. The accused wanted his son to get married to this girl but the complainant refused to comply with his request. The Courts below have found that this refusal was the cause of a malicious feeling in the mind of the accused. That finding has to be accepted. The accused arranged the betrothal of the girl with a relation of one Babu Lal and the marriage was about to take place. The complainant heard from various persons that the accused had been defaming him and telling people that he was keeping a woman Brahmin by caste as his mistress and was a bad character, and that if the marriage of his nephew's daughter were to take place the members of his caste would not join. The complainant accordingly sent for the accused on 16th November 1924, in the presence of several persons who were

sitting there and challenged him. The accused, in the presence of every one, made the following statement: 'Hira Lal is a bad character and keeps a woman as his mistress and if he will join in the marriage of the girl of his nephew the biradari will not join.' On this the complaint was filed. The accused originally denied having made any such statement and the trying Magistrate not only admitted evidence as to this statement having been made, but also allowed evidence to come on the record as regards some previous defamatory statements made by the accused, though he was charged only with the statement made by him on 16th November 1924. The accused further led evidence to substantiate the defamatory statement that the complainant was keeping a Brahman woman. The Magistrate, however found that though a woman was employed by the complainant she was employed as a maid-servant and that it was not proved that she was a kept woman of the complainant. He pointed out that the witnesses for the defence were making statements on presumption and that there was no direct evidence to prove the truth of the accused's statement.

2. In appeal the position taken up by the accused that he had not made the defamatory statement was abandoned, and the learned vakil who appeared for him passed only the plea of justification and privileged occasion. With regard to this the learned Judge first remarked: I am doubtful whether such a charge can be sustained as a matter of law, in spits of the observation of a single Judge of the High Court in Umed Singh v. Emperor AIR 1924 All 694 (1) in which he did not purport to lay down any principle of law.' With regard to this passage in the judgment I must remark that a subordinate Court is bound by the ruling of a superior Court however unsound it may appear to it unless it is expressly contrary to any statutory provision of law which was not brought to the notice of the superior Court, or unless it has been overruled. It may however be pointed out that the plea of justification urged by the accused was not altogether a new plea inasmuch as evidence had been led by him at the trial to substantiate the statement allowed to have been made by him; but it may be that the learned Judge had in his mind the plea of a privileged occasion.

3. I must accept the finding of the appellate Court that the accused had a malice against the complainant and that he made the statement which he has not been

able to substantiate. The accused cannot be protected merely because he may imagine that he had some ground for believing that his statement was justified.

4. The learned Counsel for the applicant has urged that inasmuch as the accused's statement was made in answer to a question put to him by the complainant he cannot be held guilty. This contention cannot be accepted. If the accused made the statement in the presence of a number of persons even if he had been challenged by the complainant he made that statement at big peril.

5. Lastly it has bean contended that the defence evidence, which has not been rejected by the Courts below, suggests that the statement might have been justified. I am however bound by the finding of the appeal Court that the truth of the statement has not been substantiated. I accordingly dismiss this application.

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