

State of Madhya Pradesh Vs. Devendra Kumar Bhagwat Sharan Sharma

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Court : Madhya Pradesh

Decided On : Feb-09-1993

Reported in : 1993(0)MPLJ498

Judge : S.K. Chawla, J.

Acts : Indian Penal Code (IPC) - Sections 448 and 506

Appeal No. : Cri. Appeal No. 221 of 1989

Appellant : State of Madhya Pradesh

Respondent : Devendra Kumar Bhagwat Sharan Sharma

Advocate for Def. : Anil Mishra, Adv.

Advocate for Pet/Ap. : V.G. Khot, Deputy Government Adv.

Disposition : Appeal allowed

Judgement :

S.K. Chawla, J.

1. The State has filed this appeal challenging the acquittal of the respondent of the offences under Sections 448 and 506, Indian Penal Code.

2. On 18-1-1983 at about 1 p.m. a student of Science College, Shivpuri, named Devendra Kumar Sharma (respondent herein) barged into laboratory class room of his College. The zoology students of B.Sc. Part II were taking practicals in that room under the guidance of Professor S.C. Mower (P.W.1). Assistant Professor N.K. Sethi (P.W.2) and Lecturer R.D. Shrivastava (P.W.3) were also present with Shri Mowar in the laboratory class room. The respondent proceeded and stood amidst the girl students doing the practicals. Professor Mowar felt annoyed and asked the respondent how he had entered the laboratory room without seeking his permission. The respondent told menacingly that Professor was nobody to ask him, that he had been coming in that fashion and if he was prevented, he would 'see' the Professor and if the Professor further said anything the Professor would have to lose his life. The exact words uttered by the respondent were : --

^rqe dkSu gksrs gks iwNus okys eSa blh rjgvkrk gw] ;fn eq>s vkus ls jksdksxs rks eSa rqEgsa ns[k ywxk vkSj vf/kddqN dgksxs rks rqEgs tku ls gkFk /kksuk iM+sxkA**

Assistant Professor Sethi and Lecturer Shrivastava thereupon asked the respondent to go out, whereupon the respondent gave filthy abuses to them and uttering threats left the room. Professor Mowar was totally upset. He was taken by Sethi and Shrivastava to the Principal's room. The police was telephoned and on arrival of the police, Professor Mowar made a written report, Ex. P-1.

3. The prosecution examined, among other witnesses Professor Mowar (P.W.1) Assistant Professor N.K. Sethi (P.W.2) and Lecturer R.D. Shrivastava (P.W.3). The learned trial Magistrate observed that although Assistant Professor Sethi stated in his evidence that the respondent had uttered threats at Professor Mowar he did not remember the exact words in which the threat was given. Some more discrepancies in the evidence of witnesses were noticed. All the same, the learned trial Magistrate held, and rightly, that the prosecution story was established. Still the learned trial Magistrate acquitted the respondent taking the view that Professor Mowar had admitted in his cross-examination that students often gave threats to their Professors. It was further observed that criminal intent required in the commission of the offence of trespass was not established. It was also not

established that the accused had purposely and intentionally given threats of causing death. Professor Mowar could have also no reasonable apprehension that the accused would translate his threat into action. The accused had not indulged in actual violence nor attempted to take the life of the Professor at any time after the alleged incident. On that view the learned trial Magistrate acquitted the respondent of the offences under Section 448 and 506, Indian Penal Code.

4. It is no doubt true that intent is the essence of the offence of criminal trespass. The intention must be to commit an offence or to intimidate, insult or annoy a person in possession of the property. That intention must be the main intention in the action, and not any subsidiary intention that may also be present. It must be the dominant intention; namely, the object for which effort was made. The mere fact that the natural consequence of the entry was known to be such as would annoy the person in possession would not necessarily show that the entry was made with intent to annoy. See *Smt Mathri v. State of Punjab* in AIR 1964 SC 986. In that case, certain persons armed with warrants of delivery of possession entered into fields with police party and a Magistrate to secure possession. They were attacked by tenants of those fields and other villagers. In that tragic incident 12 persons lost their lives. It was found that the date for execution of the warrants for possession had expired. The Supreme Court held that the party which took the warrants for execution could not be said to be committing the offence of criminal trespass because their main intention in entering the fields was to get the warrants executed. They could not reasonably be expected to know that the warrants on account of expiry of the date had ceased to be executable in law. It is possible that they knew that annoyance would result from their action, but that was not their main intention. As such, the accused party which used force to resist their entry was an unlawful assembly.

5. In the present case, the facts proved were such that there could be no other dominant intention than to intimidate or annoy. Even if the accused was a student of the college, he was not a zoology student. He was a student of Maths and Science. He could have absolutely no business to enter into a Zoology laboratory room in which Zoology students were doing practicals under the guidance of Zoology Professor and the members of his staff. Acting like a Lothario, the

accused came inside and stood in the midst of girl students. He acted like a downright bully when on being properly questioned by the Professor as to why he had entered without seeking his permission, he used insulting language for the Professor and even threatened him with life. He persisted in that rowdy behaviour when Assistant Professor Sethi and Lecturer Shrivastava tried to intervene. He gave them filthy abuses and uttered threats while leaving the room. He created a terrible scene thoroughly. In the circumstances, what could have been his dominant intention except to intimidate or annoy? The accused in his defence gave no explanation for the entry but denied the entire incident altogether. There arose therefore no question that he could have a different dominant intention. Taking a hypothetical case, supposing for instance the accused upon being questioned by Professor Mowar, had answered that he had entered because he had urgent work with one of the students in the laboratory room, it could have been plausibly urged that although he entered into the room without seeking permission of the Professor, his dominant intention was to talk to one of the students, in connection with some urgent work and not to insult or annoy the Professor. But such was not the factual matrix in the present case. The case as established, as already seen, shows that the accused behaved like an unmitigated hoodlum and a rowdy element in the college. There could be no doubt that his dominant intention was to insult or annoy the Professor. The view of the learned trial Magistrate in acquitting the accused of the offence of criminal trespass was perverse. There is lot of indiscipline in educational campuses and if the view of the learned Magistrate were to prevail, there would be absolute anarchy.

6. The view of the learned Magistrate in acquitting the accused of the offence of criminal intimidation was equally perverse. If a person gets aroused and worked up and in that state of mind utters words of threat it may well be said on his behalf that he had no intention to intimidate or threaten and his words were no more than sound and fury. In the decision *Roshanlal v. State of M.P.*, 1966 MPLJ Note 172 the accused uttered in the course of assault on the complainant that he would kill and cut the complainant into pieces. It was held that the words were uttered in the heat of moment, more as a bravado than with intent to intimidate or threaten to cause death or grievous hurt. It was also observed in that decision that it is notorious fact that people in this country use words and utter threats at the

slightest provocation but which are well understood to be mere epithets of vulgar abuse conveying no well formed determination to carry the threat into execution. On this reasoning the accused was acquitted of the offence of criminal intimidation in that case. In the present case there was no occasion for the accused to get worked up or aroused. There was no question of his uttering words signifying no more than sound and fury. The accused without any pretext or justification deliberately and purposely gave threats to the Professor. There could be no doubt that he intended to intimidate and threaten the Professor. His threats also caused alarm to the Professor, who had to be taken by two members of his staff to the principal's room. The police was telephoned and when the police arrived the Professor gave written report. The entire conduct of the Professor shows that he was alarmed. The admission made by him in the witness box that students often gave threats to their Professors, was also explained by him by saying that threats are not given for causing death, like the accused did. This could hardly be utilised by the learned Magistrate to support his conclusion that no offence was committed. On the other hand, this showed the kind of indiscipline prevailing in educational institutions and should have been a ground to take a more serious view. There was no doubt that the accused in purposely and calculatingly uttering threats to kill, committed the offence under Section 506, Part II, Indian Penal Code.

7. For the foregoing reasons, the judgment of acquittal cannot be allowed to stand and must be set aside. The offences under Sections 448 and 506, Part II, Indian Penal Code were fully brought home to the accused/respondent. Considering the fact that incident had occurred almost a decade back and reversal of acquittal would itself be a punishment, this Court holds the view that it will not be appropriate to sentence the accused to any substantive imprisonment. The ends of justice would be met if the accused is visited with fine. This Court is surprised to learn from the respondent's counsel that the respondent even after a lapse of 10 years from the time of the incident continues to be a student learning in M. A. class.

8. In the result, this appeal is allowed. The acquittal of accused/respondent Devendra Kumar Sharma of the offences under Sections 448 and 506, Part II,

Indian Penal Code is set aside. He is convicted of these offences. He is further sentenced to pay a fine of Rs. 200/- for the offence under Section 448, Indian Penal Code and to a further fine of Rs. 300/- for the offence under Section 506, Part II, Indian Penal Code. In default of payment of first fine, he shall undergo simple imprisonment for 2 (two) months and in default of payment of second fine, to further rigorous imprisonment for 3 (three) months. He is however given time to pay the fine. He shall pay the entire fine within 2 (two) months from the date of this judgment.

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