

State of Gujarat Vs. Samaj

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Court : Gujarat

Decided On : Feb-06-1968

Reported in : AIR1969Guj337; 1969CriLJ1498; (1969)GLR1000

Judge : N.G. Shelat, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 173, 231A, 345 and 439; [Indian Penal Code \(IPC\), 1860](#) - Sections 320(8), 324, 326, 345(2) and 345(6)

Appeal No. : Criminal Appeal No. 208 of 1966

Appellant : State of Gujarat

Respondent : Samaj

Advocate for Def. : D.V. Shah, Adv.

Advocate for Pet/Ap. : A.H. Thakar, Asstt. Govt. Pleader

Disposition : Appeal dismissed

Judgement :

N.G. Shelat, J.

1. This appeal arises out of an order passed on 14-12-65 by Mr. S. C. Shah, Judicial Magistrate, First Class Jambusar in Criminal Case No. 1010 of 1965

whereby the accused-respondent came to be acquitted under Section 345 (2) of the Criminal Procedure Code in respect of an offence under Section 324 of the Indian Penal Code.

2. The accused-respondent was charge-sheeted by the police for an offence under Section 326 of the Indian Penal Code in the Court of the Judicial Magistrate, First Class at Jambusar, for having voluntarily caused grievous hurt with a knife to one Raising Dipsine, the servant of the complainant Dahyabhai Haribhai, on the evening of 16th July 1965 at the village of Kavi in Jambusar Taluka. Then on a consideration of the documents placed by the prosecution in the case before him, the learned Magistrate passed an order Ex. 3 on 3-9-65 saying that the offence disclosed therefrom was one under Section 324 of the Indian Penal Code and that way framed a charge accordingly on 29th October 1965 against the accused. To that charge he denied to have committed any offence. Thereafter on 14-12-65 the complainant, the accused and the injured person Raising Dipsing appeared before the Court and presented a joint statement inter alia saying that with a view to foster communal harmony and to prevent communal disturbances in the town, permission to compromise the matter may be accorded. That was opposed by the learned Police Prosecutor as per the application Ex. 11 given by him to the Court. In that application he stated that the learned Magistrate has committed an error in framing the charge against the accused under Section 324 of the Indian Penal Code and that since the injured Raising had in fact remained, in hospital for treatment of his injuries for more than 20 days, it was essential to record the deposition of the Medical Officer who treated him before considering as to whether the permission sought for the compromise should be accorded. The learned Magistrate rejected that application inter alia observing that the charge was framed against the accused long before by passing an order so far back as on 3-9-65 and that it was not sought to be set aside by filing an application in revision against the same. He has then stated that the offence under Section 324 of the Indian Penal Code was compoundable with permission of the Court and as per the reasons stated below Ex. 10 he granted the permission for the same and then passed the final order accepting the compromise arrived at between the parties, and in the result, acquitted the accused under Section 345(2) of the Criminal Procedure Code. Feeling dissatisfied with that order, the State has come in appeal.

3. The contention of Mr. Thakar, the learned Assistant Govt. Pleader for the State, is that the papers, on the basis of which the learned Magistrate chose to frame the charge against the accused, disclosed an offence as one of grievous hurt contemplated under Section 320 Clause (8) of the Indian Penal Code and that, at any rate, it was the duty of the learned Magistrate to have the evidence of the Medical Officer recorded in that regard before granting the permission sought for the settlement between the accused and the injured person in respect of the offence under Section 324 of the Indian Penal Code. The appeal is against an order of acquittal passed by the learned Magistrate under Section 345(2) of the Criminal Procedure Code. The charge against the accused-respondent as it stood then was one under Section 324 of the Indian Penal Code and that offence was compoundable with the permission of the Court with the person to whom the hurt was caused. The learned Magistrate took into account the reasons stated in the application Ex. 10 and granted the permission sought for compounding the said offence. As observed by the learned Magistrate, the permission deserved to be granted in order to foster communal harmony and to prevent communal disturbances. Then in the end, he has observed that to maintain public peace and communal harmony, the permission is granted. At the same time he rejected the application No. 11 given by the learned Police Prosecutor for examining the Medical Officer so as to show to the Court that the charge that would stand against him would be one under Section 326 of the Indian Penal Code and that since that offence was not compoundable, the application for composition of the offence should be rejected. That application came to be rejected and it was then that he passed the order under Section 345(2) of the Criminal Procedure Code and acquitted the accused under Section 345(6) of the Criminal Procedure Code. Thus, the order passed in the case cannot be said to be in any way illegal or improper. Since the charge, as I said above, was one under Section 324 of the Indian Penal Code and that way compoundable with the permission of the Court, there was nothing wrong with granting permission on the grounds stated in the order.

4. The contention made out by Mr. Thakar is that the charge framed by the learned Magistrate was defective on the face of the case-papers and that, therefore, the Court should allow the prosecution to examine the Medical Officer who had treated

the injured person in the case. Now the procedure adopted by the learned Magistrate was one contemplated under Section 231-A of the Criminal Procedure Code and there is nothing that can be said against the same. The learned Magistrate was justified in following that procedure, and if for any reason, the learned Police Prosecutor thought that the charge should be one under Section 326 of the Indian Penal Code on the basis of the documents referred to in Section 173 of the Criminal Procedure Code placed before the Court, his duty was to request the Court than to examine the Medical Officer in that respect. However, from the order passed at Ex. 3 in the case, no such request appears to have been made to the Court. The learned Magistrate went on the basis of the papers and took the view that by reason of his remaining in hospital merely for 20 days would not necessarily bring the case under Section 320 (8) of the Indian Penal Code. He found that the case papers merely disclosed an offence falling under Section 324 of the Indian Penal Code and framed the charge against the accused accordingly on 29th October 1965. If the order was in any way wrong and not borne out from the papers produced before the Court, it was perfectly open to the prosecution to have gone in revision before the High Court against the said order which was passed on 2-9-65, or, at any rate, after the charge was framed against the accused on 29th October 1965. Nothing was done and even the plea of the accused was recorded to that charge. It was, therefore, not open to the prosecution to request the Court to revise the charge by examining the Medical Officer at the stage when the application was given by the parties and the injured person on 14-12-65 under Section 345(2) of Criminal Procedure Code. That being so, the order of acquittal passed under section 345(6) of the Criminal Procedure Code cannot be said to be in any way illegal or improper requiring any interference by this Court in appeal.

5. Even if it was permissible to consider the question as to whether the charge framed by the learned Magistrate was correct or not, on the basis of the documents referred to in Section 173 of the Criminal Procedure Code, it can be said that the mere fact that the injured person remained in the hospital for 20 days would not bring the offence necessarily under Section 320 Clause (8) so as to say that the hurt caused to him was grievous hurt. Clause (8) refers to any hurt which endangers life or which causes the sufferer to be during the space of twenty days

in severe bodily pain, or unable to follow his ordinary pursuits. The learned Magistrate has considered that there was no material which suggested that the injuries were such as to endanger his life. He has also observed that there was no evidence before him to say that the injured person suffered any severe bodily pain during the period of those 20 days though he remained in the hospital for treatment. It was the last clause 'or unable to follow his ordinary pursuits' which was referred to by Mr. Thakar saying that when he was in hospital for 20 days, naturally or rather necessarily he would not be able to follow his ordinary pursuits. Now what is required to be established is that there must be hurt caused to the person and that he was unable to follow his ordinary pursuits during the space of 20 days. Both the ingredients have got to be established by the prosecution and it would not be enough to say that he remained in the hospital for 20 days. The mere fact that he remained in the hospital would not be enough to conclude that he was unable to follow his ordinary pursuits during that period. In that respect, a reference was invited by Mr. Shah for the respondent to a case of *Queen Empress v. Vasta Chela*, (1895) ILR 19 Bom 247, where in similar circumstances it was held that in the absence of any evidence that the injured person was unable to follow his ordinary pursuits during the space of twenty days, such an inference could not legally be drawn. Before a conviction can be passed for the offence of grievous hurt, one of the Injuries defined in Section 320 of the Indian Penal Code must be strictly, proved, and that the eighth clause is no exception to the general rule that a penal statute must be construed strictly. Then it has been said that proof of being in a hospital for the space of twenty days cannot be taken as equivalent to proof of grievous hurt. As in this case, the only material before the Court was that the injured person remained in hospital for the space of 20 days and an inference was sought to be drawn that he was during that period unable to follow his ordinary pursuits. Then it has been observed that in the absence of any evidence to that effect, such an inference cannot legally be drawn. They have then observed that an injured man may be quite capable of following his ordinary pursuits long before twenty days are over, and yet for the sake of permanent recovery or greater care or comfort be willing to remain as a convalescent in a hospital, especially if he is fed at the public expense. It follows therefrom that having regard to the material before the Court at the stage when the charge came

to be framed against the accused, the learned Magistrate was justified in taking the view that the papers disclosed an offence under Section 324 of the Indian Penal Code and the charge was accordingly framed. As I said above, if the prosecution was dissatisfied with that order passed on 3-9-65 or in respect of the particular charge later on framed on 29-10-65, it could have gone in revision against the same. Not having done so, it is not open to it now to say that the Medical Officer should be examined to ascertain as to whether the charge under Section 326 of the Indian Penal Code should be framed or not before granting permission sought for by the parties concerned under Section 345(2) of the Criminal Procedure Code.

6. In the result, the appeal fails and it is dismissed.

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