

Hanuman Vs. Bhonrilal

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Court : Rajasthan

Decided On : Jul-31-1953

Reported in : AIR1954Raj249

Judge : Bapna and; Ranawat, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 439

Appeal No. : Criminal Revn. No. 369 of 1950

Appellant : Hanuman

Respondent : Bhonrilal

Advocate for Def. : P.N. Datta, Adv.

Advocate for Pet/Ap. : D.M. Bhandari, Adv.

Disposition : Revision application dismissed

Judgement :

Bapna, J.

1. This is a revision against an order of acquittal.
2. The petitioner filed a complaint against the opposite party Bhonrilal in the Court of City Magistrate, Jaipur, on 24-9-1949, on the allegations that the complainant

was the pujari of the temple of Shri Sitaramji and Shri Laxminarainji situated near Ghat Gate and the accused also lives close by. It was alleged that the accused had enmity towards the complainant & had been telling people that the complainant does not perform sewa puja properly and had kept a brothel in the temple which had accordingly disgraced him in the eyes, of the people. It was also alleged that the accused had on more than one occasion abused him filthily and had threatened to beat him. The complainant wanted the Court to take action against the accused under Sections 504, 503, 352, I. P. C., and Sections 108, Criminal P. C. The complaint was passed on to the First Assistant City Magistrate and it appears that in that Court the complainant restricted his complaint to a statement by the accused before the Charity Department on 16-9-1949 in which besides making a complaint as to neglect of the complainant in performing sewa puja it was alleged, that the doors of the temple remained closed during the day and there was 'addabazi' in the temple-inasmuch as one person went there and another came out of it. It was further stated that the complainant had illegal connection with his son's wife. The accused admitted having made the statement in the Charity Department but pleaded that it was true and that he had done so in the interest of the public.

3. The trial Court after evidence held that the insinuation about irregularity in sewa puja or the existence of 'addabazi' was not defamatory but as regards the third insinuation, although the accused had not been able to prove that the accusation was true, yet there were reasonable grounds for the accused to believe it to be true and that in making the statement before the Charity Department he had done so in public interest, and, therefore, he was protected by exception 9 of Section 499, I. P. C. He was accordingly acquitted.

4. Learned counsel for the respondent has argued that it would only be in exceptional cases that the High Court would interfere in revision against acquittal where the matter was of general public importance or interference was demanded in the interests of public justice. Reliance was placed on -- 'Gova Ladha v. Devraj Thakarshi', AIR 1953 Sau 87 (A); -- 'D. Stephens v. Nosibolla', AIR 1951 SC 198 (B); and -- 'Gulzar Chamar v. Uggam Chamar', AIR 1952 Pat 242 (C).

5. Learned counsel for the applicant argued that although the general rule was as above, cases in which private wrongs were being vindicated stood on a different footing, for, in those cases the Government would not be interested in filing appeals against acquittals and the only remedy open to the complainant would be to file a revision against the order. Reliance was placed on the observations of Sir Lawrence Jenkins C.J. in-- 'Faujdar Thakur v. Kasi Chowdhury', AIR 1915 Cal 388 (D) where personal cases were held to be an exception to the general rule. That case was followed by the same High Court in -- 'Ashutosh Das Gupta v. Purna Chandra', AIR 1923 Cal 11 (E). Some High Courts which have accepted that view have, however, not gone beyond setting aside the order of acquittal. They have refused to order a retrial. In -- 'Talangare Mammunhi v. P. Abdul Rahiman', AIR, 1949 Mad 524 (f), for instance, the Court held that in cases of defamation or such cases the High Court would only declare that the order of the lower Court was wrong. The Nagpur High Court, however, did order a retrial in --'Hittu Bansi v. Sheolal Dinaji', AIR 1948 Nag 243 (G).

6. In our opinion, while as a general rule the High Court will not interfere in revision against orders of acquittal unless there was a gross error of law, and it was necessary to do so in the interests of public justice, cases of defamation and like offences in which the Government cannot be expected to be interested stand on a somewhat different footing and the High Court should interfere if there is any gross error of law or procedure which may have resulted in injustice.

7. In the present case, the finding of the lower Court is based on the evidence of certain witnesses that on a particular day the wife of the complainant had come out of the temple and had created a row and was heard and seen shouting that the complainant had misconducted with his daughter-in-law. Learned counsel for the applicant's contention is that there is an error of law an the procedure of the trial Court inasmuch as it did not allow the complainant to produce his wife and daughter-in-law as witnesses to contradict the evidence for the accused. It was further contended that the complainant's request to have their statements recorded under Section 540, Criminal P. C. was wrongly refused.

In order to appreciate these arguments it is necessary to mention that the complainant did not mention this specific act of humiliation in the complaint and it had only developed in the course of the statement of the complainant and was alleged to have arisen out of the statement made by the accused before the Charity Department. That statement is Ex. P. 1 on record and seems to have been taken down in the Charity Department with full opportunity to the complainant for cross-examining the accused. Curiously enough, no question was put to the accused as to his source of knowledge, while the accused at the end of his statement did name various witnesses who were acquainted with the conduct of the complainant which was the subject-matter of the complaint before the Charity Department.

Of the witnesses, produced by the accused in defence, there are several, at least four, who were named as witnesses in support of the allegations against the complainant in the Charity Department. The complainant, therefore, should have known well ahead what he had to prove in his case and leaving aside his wife for the moment the daughter-in-law was an important witness, and the trial Court rightly rejected the complainant's request to allow her to be produced as a witness after the close of the evidence.

As regards the wife of the complainant, while it is true that the complainant could not know what evidence will be led in defence, he was in a position to call her as a witness as an inmate of the temple in support of his denial of the imputation made against him. The complainant, as stated earlier, could have very well known the defence if he had cross-examined the accused on the point when he appeared as a witness in the Charity Department. The complainant himself is to blame if he did not put any more evidence than his own statement to rebut the imputation made against him. Moreover, assuming that the lady was permitted to appear as a witness her statement in favour of her husband would be received with caution and it cannot be said that the finding would be materially affected, for, it would depend more on the credibility of those witnesses as compared to the statements of the complainant and his wife. In the circumstances, we do not see that any illegality was committed by the lower Court which requires to be rectified at this stage.

8. Learned counsel for the applicant argued that the evidence of the defence witnesses is hearsay and inadmissible in evidence. This is not quite correct, for, the relevant defence accepted by the lower Court is that the accused had reasonable grounds to believe in the truth of the imputation and these grounds were that the accused and the witnesses had heard it from the mouth of the complainant's wife herself as to what the accused had done in secrecy, which could only be known to the inmates of the house and particularly the wife.

9. The revision has, therefore, no force and is hereby dismissed.

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