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In Re: Babu Rao

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Court : Chennai

Decided On : Jun-25-1968

Reported in : (1969)1MLJ88

Appellant : In Re: Babu Rao

Judgement :
ORDER

N. Krishnaswamy Reddy, J.

1. The petitioner was convicted under Section 332, Indian Penal Code,, and sentenced to pay a fine of Rs. 100, in default to undergo rigorous imprisonment for four months, by the Fifth Presidency Magistrate, Madras, in C.C. No. 9425 of 1965.

2. The charge against the petitioner is that he voluntarily caused hurt to P.W. 1 Kuppuswamy, a lineman and Palani (P.W. 2), a helper in the Madras Electricity System at about 10 a.m. on 1st June, 1965, with a view to deter them from doing their duty, namely, inspecting the main switch in the petitioner's house at No. 5, Pillayar Koil Street, Triplicane, Madras.

3. The facts of the prosecution case are briefly these. P.W. 5, J.S. Victor, the Supervisor in the Madras Electricity System, Mount Road, Madras, received at ele-phonic message on 1st June, 1965, from P.W. 3 Annamalai Chettiar regarding failure of current in his shop at about 9-40 a.m. Thereupon he sent for P.W. 1

Kuppuswami, a lineman, P.W. 2 Palani, a helper and P.W. 4 Ganapathy, a wireman to go to the premises in a van and accordingly, they reached the petitioner's house in a van and informed him that they had come for testing the main in his house as failure of current was reported in the neighbouring premises, Nilgiris Coffee Works. The petitioner allowed them to see the main. They checked the main. As there was no defect in the main, P.Ws. 2, 3 and 4 wanted to check the main switch. While they were checking the main switch, the petitioner asked them not to touch it; but P.Ws. 2, 3 and 4 had told him that according to M.E.S. procedure, they had the right to test the main switch and submit a report accordingly. While P.W. 1 was. telling the petitioner that he need not get angry and that he would explain to him in detail as to why they were testing the main switch, the petitioner brought a wooden ruler and hit on the left elbow of P.W. 1 twice or thrice causing him swelling and bleeding. The petitioner brought scissors and caused bleeding injury to P.W. 2 Palani on his left thumb. Thereafter, P.W. 1 Kuppuswamy came out of the house and sent to P.W. 5 a telephonic message about the petitioner having assaulted them P.W. 5 proceeded to the house of the petitioner and took P.Ws. 1 and 2 to the Zam Bazaar Police Station. P.W. 1 gave a complaint (Exhibit P-1) to the police.

4. P.W. 6, Dr. G. Deivasigamani, the Casualty Medical Officer, Government Royapettah Hospital, Madras, examined Kuppuswamy (P.W. 1) and found on him (1) a contusion over the left forearm; and (2) abrasion superficial over the left forearm; and issued a certificate Exhibit P-2 in respect of the injuries sustained by P.W. 1. The injuries were simple in nature. P.W. 6 similarly examined Palani (P.W. 2), the same day and found on him an abrasion over left palm and issued the certificate Exhibit P-3. The injury was simple in nature. P.Ws. 1, 2 and 4 are witnesses to the occurrence.

5. When questioned under Section 342, Criminal Procedure Code, the petitioner stated that he did not assault P.W. 1 or P.W. 2 and that he could not say for what purpose the witnesses had come to his house. He further added that P.Ws. 1 and 2 were pulling out a wire from a box containing private sub-meters. He asked them not to touch his property. They said they would touch it and would demand money for testing it. Thereupon, he got upon the bench and closed one door of the box in

which the meters were kept and immediately a man standing behind him hit him on his hip with spanner and he turned about and asked them whey they should beat him. They wanted to remove the sub-meters. He stopped them from doing it. One of them hit him with a screw driver on his neck. When the petitioner raised alaram, P.Ws. 1, 2 and 4 ran away.

6. The petitioner examined two witnesses on his side, Krishnamoorthy (D.W.1) and Sankaramoorthy (D.W. 2). They, in substance, corroborated the story of the petitioner. But, however, they were unable to say as to how P.Ws. 1 and 2 sustained injuries on their person.

7. The learned Fifth Presidency Magistrate accepted the evidence of P.Ws. 1,2 and 4 that P.Ws. 1 and 2 were assaulted by the petitioner and further found that P.Ws. 1 and 2 were assaulted while they were discharging their duties as public servants and, therefore, convicted the petitioner under Section 332, Indian Penal Code.

8. On facts, I do not find any infirmity in the evidence of P.Ws, 1, 2 and 4. P.W. 1 gave complaint immediately after the occurrence. P.Ws. 1 and 2 had injuries on them. The petitioner was unable to explain as to how P.Ws. 1 and 2 sustained injuries.. Therefore, there cannot be any doubt that P.Ws. 1 and 2 were assaulted by the petitioner as spoken to by them. P.W. 4 corroborated the evidence of P.Ws. 1 and 2.

9. The main point that has been urged by the learned Counsel for the petitioner is that the conviction under Section 332, Indian Penal Code, cannot be sustained for the reason that it could not be said that while P.Ws. 1 and 2 were testing the main switch, the property belonging to the petitioner, they were discharging their duties as public servants. He further contends that though P.Ws. 1 and 2 may have a right to test the main, they will not have the right to test the main switch without the permission of the petitioner. There seems to be susbstance in the point. The learned Counsel depends upon Section 20 (2) (b) of the Indian Electricity Act which reads thus:

A licensee or any person authorised as aforesaid may also, in pursuance of special order in this behalf made by a Magistrate of the First Class or in a Presidency Town, by a Presidency Magistrate and after giving not less than twenty-four hours' notice in writing to the occupier enter any premises to which energy is to be supplied by him, for the purpose of examining and testing the electric wires, fittings, works and apparatus for the use of energy, belonging to the consumer.

10. There is no doubt that the main switch sought to be tested by the witnesses belongs to the petitioner. Strictly speaking, the witnesses would not have a right to test the main switch without complying with the provisios of Section 20 (2) (b) of the Act. Therefore, it cannot be said that while they were testing the main switch they were discharging their duties as public servants. The conviction under Section 332, Indian Penal Code, cannot, therefore, be sustained.

11. But, however, the petitioner would not have had the right of private defence to assault P.Ws. 1 and 2 even when they were not strictly acting under law while they were testing the main switch belonging to the petitioner. Section 99, Indian Penal Code, says that there is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

12. It is, therefore, clear that though the act done by P.Ws. 1 and 2 were not justifiable in law, yet, since in this case, there was not even a suggestion to show that the petitioner apprehended grievous hurt or death from the public servant, the assault by the petitioner in those circumstances cannot be justified. He will, therefore, be liable under Section 323, Indian Penal Code, for having caused simple hurt to P.Ws. 1 and 2. I, therefore, alter the conviction under Section 332, Indian Penal Code, to one under Section 323, Indian Penal Code. The conviction and sentence under Section 332, Indian Penal Code, are set aside.

13. So far as the sentence under Section 323, Indian Penal Code, is concerned, taking into consideration the circumstances of the case, I am inclined to release the petitioner under Section 4 of the Probation of Offenders Act. I, therefore, direct

that the petitioner be released on his entering into a bond in a sum of Rs. 100 with one surety for a like amount, to keep peace and be of good behaviour for a period of six months, to the satisfaction of the Fifth Presidency Magistrate, Madras, and to appear and receive sentence when called upon during such period. The fine amount, if paid, will be refunded to him. The petitioner shall not suffer disqualification attaching to this conviction as provided under Section 12 of the Probation of Offenders Act.

14. The revision petition is partly allowed, with the modification mentioned above.

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