

Romesh Roy Vs. the King

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Court : Kolkata

Decided On : Sep-10-1948

Reported in : AIR1952Cal228

Judge : Sen, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Section 499

Appeal No. : Criminal Revn. No. 708 of 1948

Appellant : Romesh Roy

Respondent : The King

Advocate for Pet/Ap. : Ajit Kumar Dutt, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Sen, J.

1. The petitioner has been convicted of having defamed the complainant and thereby committed an offence punishable under Section 500 of the Indian Penal Code. He has been sentenced to pay a fine of Rs. 200/- in default to undergo simple imprisonment for three months.

2. The facts giving rise to this case briefly are as follows: There was a meeting held in the Paikpara area by the local residents to consider the conduct of the residents of No. 6 Raja Manindra Road. These residents were Radhanath Ghose, one Muktakeshi and a young girl named Panchi alias Puspa. After the meeting some 42 members of the locality presented a petition to the Deputy Commissioner of Police stating that Radhanath Ghose was living an immoral life and that Muktakeshi was not his wife but his mistress and further that they were using the girl Puspa as a prostitute and living on her earnings. The police made an enquiry but declined to take action. Thereafter Radhanath Ghose filed a petition before the Chief. Presidency Magistrate charging six persons, some of whom were signatories and others not, with having defamed him by alleging that he was living with a person who was not his wife and by alleging that he was living on the immoral earnings of Puspa. He stated that Muktakeshi was his wife and Puspa was his daughter through Muktakeshi. He denied that Puspa was being prostituted. Upon this complaint being filed only two persons were summoned namely Tolaram Bothra and the petitioner Ramesh Chandra Roy. Tolaram has been acquitted but Ramesh has been convicted. The defence of Ramesh was that the allegations were true and that he acted in good faith when he made an accusation against the complainant to the police. On his behalf the provisions of the Eighth Exception of Section 499 of the Indian Penal Code were relied upon. Evidence was given by the complainant and also on behalf of the accused petitioner. The learned Magistrate after considering the evidence has convicted the petitioner who has now obtained this Rule.

3. The learned Advocate for the petitioner urges that the learned Magistrate has entirely misconceived the import of the Eighth Exception of Section 499 of the Indian Penal Code and that his misconception has misled him into convicting the accused. He further says that the learned Magistrate has rejected the defence evidence on grounds which are not tenable and upon the assumption of certain facts regarding which there is no evidence.

4. In my opinion the contentions urged on behalf of the petitioner are sound. A part of the case made out by the defence has been virtually accepted by the learned Magistrate. He has found that Muktakeshi is not the wife but the mistress of

Radhanath Ghose and that Puspa is not Radhanath's daughter but the daughter of Muktakeshi by her husband since deceased. He has therefore disbelieved the evidence of the prosecution in this respect. In discussing the ground taken by the defence namely that the case fell within the Eight Exception of Section 499 of the Indian Penal Code the learned Magistrate has fallen into serious error. Exception VIII is in these terms.

'It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation'.

It is quite clear from the wording of this Exception that an accused person is not bound to prove that the allegations made by him are true. It is sufficient if he proves that on reasonable grounds he believed the allegations to be true and in that belief he made the accusation to the lawful authority mentioned in the Exception. This principle has been laid down as long ago as 1878 in the case of 'Shibo Prosad Pandah, 4 Cal. 124' where Markby and Prinsep JJ. held that.

'the proper point to be decided is not whether the allegations put forward by the accused in support of the defamation are in substance true but whether he was informed and had good reason after due care and attention to believe that such allegations were true'.

The learned Magistrate, however, seems to think that unless the accused can prove that his allegation was true he cannot rely upon the Eighth Exception. He says that there is no direct evidence to support the allegation that the girl was being used for the purposes of prostitution and adds that unless the accused can prove 'circumstances and probabilities giving rise to an irresistible conclusion in support of the allegation' the Court is bound to find in favour of the prosecution. Now, this is an entirely wrong view. All that the accused has to do is show that there were reasonable grounds for believing in the allegations and that he acted in the bona fide belief that the allegations were true.

5. In dealing with the defence evidence the learned Magistrate has held that the evidence cannot be relied upon for two main reasons (1) The witnesses who gave

evidence to show that the allegations were true were not examined by the police when they were investigating the petition presented to them by the 42 members of the locality. Now the fact that these persons were not examined by the police is no ground for disbelieving them. The police may have failed to examine these persons on various grounds, and the effect of the failure of the police to examine them cannot be visited upon the accused. (2) Next, the learned Magistrate says that two very respectable persons namely Sri Bimala Ganguly, some time Political Secretary to the Chief Minister of this Province and an Inspector of Police live in a portion of the premises occupied by the complainant. . He points out that it was the duty of the defence to examine these persons to show that the allegations against the complainant are true. This is what he says:

'We have it in evidence that some very respectable people live at No. 6, Raja Manindra Road including Sri Bimala Ganguly, sometime Political Secretary to the Chief Minister and an Inspector of Police Had it been true that the complainant was carrying on prostitution in the house by his foster daughter, they would have been the first to set the law in motion against him and they would certainly not have hesitated to come forward in support of the defence in this case.'

Now there is no evidence to show that these two persons live in these premises. This point was taken in the application for this Rule specifically. The learned Magistrate in his explanation has not dealt with this question. In fact he has given no explanation at all and merely stated that he has nothing to add to his judgment. Thus it is quite clear that the learned Magistrate has depended upon circumstances which are not in evidence and relying very strongly on those circumstances he has disbelieved the defence case. In my opinion the decision of the learned Magistrate regarding the credibility of the defence witnesses has been greatly influenced by the two circumstances mentioned above, namely the failure of some of the witnesses to appear before the police and the failure of the defence to examine Sri Bimala Ganguly and an Inspector of Police. As I have pointed out above the fact that the witnesses were not examined by the police is no ground for disbelieving the defence witnesses and the finding namely that Ganguly and the Inspector live in this house and did not complain against the mode of life of the complainant is based upon no evidence.

6. Had the learned Magistrate looked at the case from the correct angle his conclusion would I am sure have been different. The petitioner merely signed this petition filed by 42 members of the locality. No enmity has been proved between him and the complainant and no motive has been ascribed as to why he should defame the complainant in this manner if he did not really believe in the allegation contained in that petition. The fact that a large number of the residents of the locality were of opinion that the complainant was living on the immoral earnings of Puspa has not been given its true significance by the learned Magistrate. All he says about this is that if a person signs a document acting in the belief that the others in signing the document are speaking the truth that will be no help to that person if it turns out that the allegation in the document is not true. This is not a correct proposition of law. On the other hand, the fact that a large number of persons made these allegations is a circumstance which lends support to the plea of good faith. The accused relied upon the fact that the statements were made by such a large number of local residents and it cannot be said that he acted hastily or with any improper motive. In my opinion the accused has succeeded in establishing good faith and therefore he is entitled to the benefit of the Eighth Exception of Section 499 of the Indian Penal Code.

7. Accordingly I set aside the order of conviction and sentence and make this Rule absolute. The fine, if paid, shall be refunded. The accused, if in custody, shall be released forthwith.