

Kinkar Ray Vs. the State

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Court : Kolkata

Decided On : Dec-22-1964

Reported in : AIR1965Cal635,1965CriLJ741

Judge : D.N. Das Gupta and ;A.K. Das, JJ.

Acts : Railway Act, 1890 - Sections 100 and 120

Appeal No. : Criminal Revn. No. 990 of 1962

Appellant : Kinkar Ray

Respondent : The State

Advocate for Def. : Prasun Ch. Ghose and ;Dipti Kana Bose, Advs.

Advocate for Pet/Ap. : S.S. Mookerjee and ;Samar Roy Choudhury, Advs.

Judgement :

D.N. Das Gupta, J.

1. This Revisional petition is directed against the order of a learned Magistrate of the First Class, Vishnupur, convicting the petitioner under Section 120(b) of the Indian Railways Act.

2. The case for the prosecution is that on the 12th July, 1961, at about 7 O'clock in the morning Birendra Nath Singh, Assistant Station Master of Sonamukhi Railway

Station, went to the quarters of Amal Kumar Roy, Sub-Inspector of Way and Works, that the accused petitioner Kinkor Roy and another person Pativam Jadav who are railway servants abused Birendra Nath Singh uttering the abusive word 'Sala', and that the accused threatened to assault Birendra. Birendra gave information to the police. A prosecution report was submitted by the police against the accused persons under Section 120(b) of the Indian Railways Act. The learned Magistrate acquitted Patiram Jadav but convicted the present petitioner under Section 120(b) and sentenced him to pay a fine of Rs. 25 in default to suffer simple imprisonment for five days.

3. The accused persons pleaded not guilty. The defence was that on account of Trade Union rivalry the accused were falsely implicated.

4. Mr. Mookerjee, learned Advocate for the petitioner, contends that Sections 99 to 105 of the Indian Railways Act prescribe the offences in respect of which a railway servant can be convicted and that a railway servant cannot be convicted under Section 120 of the Indian Railways Act. Section 120 is quoted below:

'If a person in any railway carriage or upon any part of a railway-

(a) is in a state of intoxication, or

(b) commits any nuisance or act of indecency, or uses obscene or abusive language, or

(c) wilfully and without lawful excuse interferes with the comfort of any passenger or extinguishes any lamp, he shall be punished with fine which may extend to fifty rupees, in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.'

5. A 'railway servant' which is defined in Section 3(7) of the Act means any person employed by a Railway Administration in connection with the service of a railway. Chapter IX of the Act deals with 'Penalties and Offences' and there are four divisions in the Chapter under four heads, namely, 'Forfeitures by Railway Companies', 'Offences by Railway Servants', 'Other Offences' and 'Procedure'.

The sections under the first and the last heads are not relevant for the purpose of this case. Sections 99 to 105 come under the head: 'Offences by Railway Servants' and Sections 106 to 130 come under the head 'Other Offences'. Sections 99 to 105 deal with offences by railway servants while on duty. Mr. Mookerjee contends that the offences for which a railway servant can be proceeded against are those which are enumerated in Sections 99 to 105, that Section 120 does not apply to a railway servant and, that the word 'person' in Section 120 does not include a railway servant. In other words a railway servant cannot be proceeded against under Section 120 although all the ingredients of the section may be proved. In support of his contention Mr. Mookerjee relies on the decision reported in *Gurunath Shankar v. Emperor*, AIR 1937 Bom 357. In that case an Assistant Station Master while on duty abused a passenger. A preliminary objection was taken that Section 120 did not apply to acts done by a railway servant when acting in his official capacity. Beaumont, C. J. sitting with N. J. Wadia, J. gave his views in the following words:

'In my opinion taking the sections of the Act as a whole, there can be no doubt that Section 120 is not intended to include any act done by a railway servant acting as such.'

In the instant case the offence is alleged to have been committed by a person who is a railway employee but who was not on duty when the offence was committed. The principal question for determination in this case is whether the word 'person' in Section 120 includes such a railway employee. Now the word 'person' is wide enough to include such a railway employee. I do not find any reason why the word 'person' in Section 120 should exclude such a railway employee. Certain provisions in Sections 100 and 120 appear to be similar but that can be no ground for thinking that Section 120 was enacted to apply to persons not covered by Section 100. Being in a state of intoxication is an offence under Section 100 for a railway servant while on duty, and it is an offence under Section 120(a) for a person to be in such a state in any railway company or upon any part of a railway. Therefore, if a railway servant is in a state of intoxication while on duty he is punishable under Section 100 but if he is in such a state while not on duty (either in a railway company or upon any part of a railway) he is punishable under Section

120. The scope of Section 120 is wider. There are decisions of various High Courts in support of the view that Section 120 is wide enough to include a 'railway servant'. In the case of A. F. Cuffiy v. Muhammadali Mahomed Ibrahim, 19 Cri LJ 313: (AIR 1919 Mad 971 (2)) it was held that the word 'person' in Section 120 includes railway officials, that the section applies to acts mentioned therein even if they are committed by railway servants and that a railway guard who had removed two gosha ladies from a first class compartment in which they were entitled to travel and forced them to occupy another compartment was guilty of an offence under Section 120. A similar view was taken in the case of Appal Swamy v. Emperor, AIR 1934 Pat 52(1). In the Patna case Saunders, J. held that Section 120 applied to railway servants and that the word 'person' includes an employee of the railways. In another Madras case reported in In re, Venkataswami : AIR1950 Mad406 the same view was taken. It was held in the case of Durga Prosad v. State that Section 120 applied to railway servants. In our view Section 120 applies to railway servants and that in a proper case where all the ingredients of an offence under Section 120 are satisfied a railway servant can be convicted under Section 120.

6. On the facts of this case, however, it is not possible to uphold the conviction and sentence. The prosecution case is that the petitioner abused the complainant by uttering the abusive word 'Shala'. The evidence is rather discrepant on vital points. No doubt the complainant has said that the petitioner used abusive language by uttering 'Shala'. But another prosecution witness P.W. 3 Badal Ruidas has deposed in his evidence that the petitioner did not say 'Shala' but merely threatened the complainant asking him to get out or else his head would be broken. Indeed that is the story in the general diary. In the general diary the story of abusive language being used by the petitioner is not mentioned. The earliest version as appears from the diary is that the accused persons tried to assault the complainant. On the evidence therefore it is not possible to hold that the prosecution has succeeded in proving that the petitioner used abusive language as alleged by the prosecution. Therefore, the conviction and sentence are set aside and the accused-petitioner is acquitted.

7. The Rule is made absolute as above .

Das, J.

8. I agree.

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