Emperor Vs. Yar Muhammad

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Court : Kolkata

Decided On : May-15-1930

Reported in : AIR1931Cal448

Appellant : Emperor

Respondent : Yar Muhammad

Judgement :

Costello, J.

1. This is a reference by the Sessions Judge of Rajshahi in respect of the conviction of a man named Yar Muhammad who was found guilty of an offence under Section 189, I. P.C., and sentenced to a fine Rs. 50 and in default to rigorous imprisonment for two months. The allegation against Yar Muhammad shortly stated was this: he had a brother of the name of Kasim, who had been placed under police surveillance by an order of the Superintendent of Police, dated 2nd April 1929. That order was apparently made under the provisions of or rather the directions contained in Regn. 491, Clause (a), Bengal Police Regulations, 1927. The two brothers apparently lived in the same house though they occupied separate huts. On the night of 5th April 1929 somewhere about 1 a. m., two constables, named Sital Singh and Afzal Khan, came to the house and called out the name of Kasim. In so doing they were apparently carrying out the kind of duty referred to in Regn. 495, Clauses (b) and (g). Upon hearing the constables,

according to the story of the prosecution, somebody inside the house replied telling them to wait and they accordingly did wait.

2. Then the accused Yar Muhammad came out of the house with a lathi in his hand and enquired why they came; and they thereupon explained that they were police constables and that they had come to enquire about the dagi Kasim. Upon that, the accused threatened that he would break their heads with a lathi when next they came to look for Kasim. While this was going on, Kasim himself came out and stood by. The constables then went away without making any further trouble and made a report to the head constable who in turn reported to the officer-in-charge. The defence put forward on behalf of Yar Muhammad was that the constables had knocked at the wrong door-that is the door of his house- and not the door of Kasim's house at all and that Yar Muhammad only objected to the loud shouts and that the whole story of threats or assault was a pure exaggeration. He also seems to have set up as an alternative defence that he was not at home on the night in question and that he was away at Milki on process-serving duty. The only witnesses called on behalf of the prosecution were the two constables assaulted, the town head-constable and two other officers from the English Bazar police station. There was no independent witness on behalf of the prosecution. On the other hand, the defence called two witnesses to support the alibi which Yar Muhammad had sought to set up. The Magistrate rejected the alibi as being false and believed the story of the police constables and accordingly convicted Yar Muhammad.

3. The learned Sessions Judge in submitting this case to us has raised two points: (1) that by reason of the decision of. the Madras High Court in the case of Dorasamy Filial v. Emperor [1904] 27 Mad. 52, the learned Magistrate in the circumstances of the case was wrong in convicting Yar Muhammad at all. In the Madras case, the facts were these:

A police constable at midnight entered upon the premises of a person 'who was regarded by the police as a suspicious character, and knocked at his door to ascertain if he was there, whereupon he came out and abused and pushed the constable and lifted a stick as if he were about to hit the constable with it.

4. On a complaint preferred being under Section 353 for using criminal force to deter a public servant in the execution of his duty, it was held that the offence had not been committed. Bhashyam Ayyangar, J., held:

The constable in entering upon the accused's dwelling house and knocking at his door at midnight with the intention of finding out whether the accused, who is regarded as a suspected character by the police, was in his house, was technically guilty of house trespass under Section 442, I. P.C. The course adopted by the constable was certainly one which would cause annoyance to the inmates of the house and is also insulting to the accused, and under Section 104 the accused was justified in voluntarily causing to the complainant the slight harm which he inflicted on him and the constable cannot be regarded under Section 99, I. P.C., as acting in good faith (vide Section 52, I. P.C.) under colour of his office though his act may not be strictly justifiable by law.

5. I must confess so far as I am personally concerned, that I find it difficult to understand what the learned Judge really meant. With all due respect to him, I cannot agree with the decision in that case. In my view, on the facts as there set forth the constable certainly was acting as a public servant and I doubt very much whether it can properly be said that he was in any way exceeding his duty merely because he knocked at the door of the accused for the purpose of ascertaining whether he was in fact . at home. But even upon the supposition that the Madras decision is right, it seems to me that it does not conclude the matter, because the facts there are so different from the facts of the present case as to enable us to say that the learned Sessions Judge was not correct in thinking that the decision of the Madras High Court was an authority for saying that the present applicant ought not to have been convicted. Upon the evidence as proved before the Magistrate in this case, it seems that the constables did not in any sense trespass upon the premises of the accused, as it is not suggested that they even knocked at the door of the house. All that they did was to call the name of Kasim while they were outside the house and apparently in the public street. It may be that what they did was not the best possible way of ascertaining whether Kasim was within his house, though in fact it did have that effect, as he himself and his brother came out forthwith. As far as I can see there was no justification at all for Yar

Muhammad threatening the constables in the way he did. I am of opinion therefore that he was rightly convicted under the provisions of Section 189, I. P.C.

6. The other point which the learned Sessions Judge has submitted to us has also no substance in it. He says, under the heading 'the grounds upon which in the opinion of such Court the orders should be reversed ' that the Magistrate's action in passing a non-appealable sentence in the face of the prayer of the accused for an appealable sentence was improper and open to serious objection. It appears that the accused when he realized or surmised that he was about to be convicted and fined prayed for an appealable sentence. Apparently, he did in fact put in a petition to that effect. The Subdivisional Magistrate thereupon, on the 3rd August, ordered: 'File with the record.' On 7th August 1929, the Magistrate made the following order: 'Orders not ready. Put up on 10th August 1929, for orders,' and on that date he made the order convicting the accused and passing the sentence which I have mentioned and from which there was no appeal. The use of the expression ' nonappealable sentence ' by the Session Judge is objectionable. It is quite true that the nature of the sentence does affect the question of whether there is an appeal from the decision of the Court which inflicted the sentence; but to say that the Court ought to take into consideration the prayer of the petitioner in deciding what is the proper sentence, is, in my opinion, wholly wrong and that so far from the Magistrate's action being 'improper and open to serious objection' as the learned Sessions Judge said, on [the contrary the view of the learned Sessions Judge himself upon the matter is 'improper and open to serious objection.' If the view of the Sessions Judge were correct, every person, when about to be sentenced, might apply for the passing of such a sentence as would be appealable. A Court, in passing sentence, should inflict such a sentence as the gravity or otherwise of the crime with which the accused has been convicted warrants and merits, irrespective of whether the sentence inflicted will involve a right of appeal or not. A Court should weigh the sentence with reference to the crime committed and the circumstances of the case and not with reference to anything which may happen subsequently. The second ground therefore put forward by the learned Sessions Judge, has no substance. We accordingly reject this reference.

Suhrawardy, J.

7. I agree.