

Yadali Vs. Emperor

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Court : Kolkata

Decided On : Jul-30-1929

Reported in : AIR1929Cal779

Appellant : Yadali

Respondent : Emperor

Judgement :

Mukerji, J.

1. The petitioner has been convicted under Section 500 I.P.C., and sentenced to pay a fine of Rs. 40 in default to undergo rigorous imprisonment for one month. There were two items forming the subject-matter of the charge One of them was certain imputations made orally as against the complainant and the other consisted of certain statements made in a petition which the petitioner had filed before the Sub-Divisional Magistrate of Barrackpore. As regards the first of these items the evidence that was brought to establish it was not accepted as reliable by the trial Magistrate. The conviction is based upon the statements contained in the petition to which I have referred. Those statements are to the effect that the complainant was threatening the petitioner with assault and also with murder, imprisonment and so forth ; and that the complainant was giving out that he would institute civil as well as criminal cases against the accused and further that the complainant belonged to a gang of bad-mashes and goondas and the members of

that gang were all conspiring together for the purpose of putting the petitioner into trouble and that for all these reasons the petitioner was apprehensive of his safety.

2. The learned Magistrate has recorded certain findings in his judgment in which he has dealt with the whole case very clearly and elaborately and to these I shall now refer. One line of defence taken by the petitioner was that he had himself heard the complainant and others hatching a plot against him. The learned Magistrate has held that the direct evidence that the accused gave for the purpose of establishing that he overheard a plot being hatched against him by the complainant was not reliable. The substance of the other line of defence was that there was enmity between the parties and the petitioner had reasonable ground for believing that there was such a plot. The learned Magistrate had observed, so far as this line of defence is concerned that

there was no doubt that the petitioner had some reason for filing the petition, because it is probable that the petitioner feared something in the way of a litigation.

3. At the same time the learned Magistrate was of opinion that the petitioner ' had no justifiable grounds for wording the petition in the way that he did or at least that the contents of the petition were gross exaggerations.'

4. The learned Magistrate appreciated fully the difficulty of sustaining a charge under Section 500, I.P.C., upon a petition of this character presented before a Magistrate and has pertinently observed thus:

As regards the written defamation the responsibility of the accused for stating that the complainant meant to kill him is a problem of great difficulty.

5. He appreciated also that the motive of the complainant in instituting the present case was 'not to vindicate himself but to injure the accused'. In the result, however, he held that the accused did not use due care in wording his petition in the way in which he had done and being of opinion that the accused had overstepped his privilege convicted him under Section 500, I.P.C.

6. In convicting the accused on the findings to which I have referred the learned Magistrate in my opinion has not given due weight to two important matters. In the first place it seems that there is a body of evidence proceeding from the witnesses who were examined on behalf of the defence and which to a certain extent showed that from time to time threats were uttered by the complainant or his associates, though not exactly of the same nature as was alleged in the petition which the accused filed. It may be that the witnesses who have deposed to these threats are people in whom not much confidence may be placed. This I say because of the fact that the learned Magistrate has not thought fit to make any particular reference to the evidence of these witnesses. Even then the question remains as to whether these witnesses who have now come before the Court to speak to these threats did not supply to the petitioner the information which formed the foundation of his petition and which information was to a certain extent exaggerated for the purpose of making out that there was a threat to murder the petitioner and so on. This in my opinion, is not an altogether unreasonable assumption to make and if these witnesses communicated the information to the petitioner and the petitioner apprehending that there was some risk of his life or his safety exaggerated the information that he received and put in the petition in matters which ultimately brought about this case. I am very doubtful as to whether a conviction under Section 500, I.P.C., would be maintainable.

7. The other matter is the important principle which should guide a Court in the matter of a case under Section 500, I.P.C., when it is said to rest upon allegations made in a complaint to a Court. That principle has been laid down in a series of decisions amongst which I propose to refer to only a few. In the case of *Emperor v. Abdool Wadood* [1907] 31 Bom. 293 the High Court of Bombay in dealing with Excep. 9 to Section 499, I.P.C., and following an earlier decision of that Court in the case of *Bhawoo Jivaji v. Mulji Dayal* [1888] 12 Bom. 377 observed thus ;

Good faith in the 'Excep. 9 requires not, indeed, logical infallibility but due care and attention. But how far erroneous actions or statements are to be imputed to want of due care and caution must, in each case, be considered with reference to the general circumstances and the capacity and intelligence of the person whose conduct is in question. It is only to be expected that the honest conclusions of a

calm and philosophical mind, may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to habits of precise reasoning.

8. This principle has been accepted as well-founded by Suhrawardy, J., in the case of *Promotho Nath Mukhopadhaya v. Emperor* A.I.R. 1923 Cal. 470. In determining whether due care was taken by the accused allowances, therefore, have got to be made for the intelligence of the accused, his capacity to reason, the circumstances under which he was placed and the occasion which necessitated his making the imputations. Bearing this principle in mind, I am of opinion the learned Magistrate in considering the question as to whether there was due care and caution on the part of the accused has applied to the case a rather too exacting standard. In view of the findings to which I have referred I think this is a case in which I might say adopting the words of Markby, J., as used in the matter of a petition in *Sibo Prosad Pandah*, In the matter of [1879] 4 Cal. 124 that the facts seem to me to show that the accused, a comparatively ignorant and timid man apprehending harassment by the complainant did what a man of superior intelligence and knowledge of the law could not have done, namely, presented a petition to the Magistrate but I have little doubt that he acted with a desire to protect himself by an appeal to the Magistrate rather than to injure others. I am of opinion, therefore, that it would not be right to uphold the conviction of the petitioner under Section 500, I.P.C., in the circumstances to which I have referred.

9. The result is that the rule is made absolute, the conviction and sentence passed on the petitioner are set aside and ordered that the fine, if paid, be refunded.

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