

Bishambher vs Roomal And Ors. on 3 November, 1950

Equivalent citations: AIR1951ALL500

ORDER

P.L. Bhargava, J.

1. This is an application in revision against an order of acquittal. It has been filed after a similar application to the Sessions Judge of Meerut has been rejected. Such an application can be entertained only in exceptional cases; and it was admitted having regard to the special circumstances of the case, because, at the time of its presentation, it was thought that, on the facts found, a question of law of general importance to the community arose in the case. After hearing the learned counsel for the parties, and after going through the record, I find that the only question which arises for consideration in this revision is whether the accused persons were entitled to and were rightly allowed the benefits of the exceptions mentioned in Sections 81, 87 and 88, Penal Code.

2. Ruml Singh, Fateh Singh and Balwant Singh, Khacheru, Mansukh and Nathu were prosecuted for offences punishable under Sections 323 and 506 read with Section 114, Penal Code. They were tried by the Bench Magistrates of Meerut Cantonment and were found guilty of the offences with which they were charged. Accordingly, they were convicted and sentenced. They preferred an appeal, which was heard by the Assistant Sessions Judge of Meerut. The appeal was allowed and the conviction of and the sentence imposed upon each of them were set aside; and they were acquitted. Bishambhar Sahai, the complainant, filed a revision against the order of acquittal in the Court of the Sessions Judge of Meerut. The revision, which came up for hearing before the Additional Sessions Judge of Meerut, was rejected.

3 The facts found by the learned Assistant Sessions Judge are these. The complainant, Bishambhar, had molested a Chamar girl, named Nathia. Khacheru, Mansukh and Nathu, who were among the accused persons, are related to Pooran, the father of the girl. On account of the indecent assault on the girl, the Chamars were very much agitated; and, having armed themselves with lathis, about 200 Chamars had collected near the house of one Ghasita Chamar. They were determined to punish the complainant, and had caught hold of him. Ruml Singh, Fateh Singh and Balwant Singh had intervened and tried to bring about a settlement. They along with other accused, who were the relations of the girl, had, in good faith, collected a Panchayat; and with a view to avoid other harm to the complainant and with his consent, the Panchayat had decided, in the interest of and for the benefit of the complainant, to blacken his face and to give him shoe-beating. In pursuance of the decision of the Panchayat the complainant's face was blackened and he was given a shoe-beating.

4. The complainant's version that, on the day of the occurrence in the morning, Ruml Singh, Fateh Singh and Balwant Singh had gone to the house of the complainant to demand a subscription of Rs. 50 in connection with the Mela, to be held at Gagol on the Independence Day, and that on account

of his refusal to pay more than Rs. 5, the complainant was threatened with dire consequences and was surrounded and attacked the same evening by the accused persons, at whose instance his face was blackened by Khacheru Chamar and Khacheru Sweeper had given him shoe-beating five times, was absolutely false except to the extent indicated above.

5. Learned counsel for the complainant has contended that the self-constituted Panchayat had no justification whatsoever to subject the complainant to a kind of treatment which was meted out to him, viz., taking him round the village with a blackened face and giving him a shoe-beating; and that such a conduct, on the part of the miscreants, should not be allowed to go unpunished. In ordinary circumstances such a conduct would not be tolerated; and those responsible for it would be dealt with according to law. But, in a case like this, when the accused persons acted bona fide, without any criminal intent, in order to save the complainant from serious consequences, resulting from his own indecent behaviour, with his consent obtained in writing and for his benefit, the position is entirely different.

6. Under Section 81, Penal Code, nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property. As a result of his having been paraded with a blackened face and given a shoe-beating, the complainant was, no doubt, subjected to humiliation and disgrace; but the accused persons had not done so with any criminal intention. The accused were charged with offences punishable under Sections 323 and 506, Penal Code; and in both these offences intention is an important factor to be determined. As has already been stated, in this case it has been found that the accused had intervened in good faith; and but for their intervention grave consequences might have ensued.

7. Section 87, Penal Code, lays down that nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death, or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause to any person above 18 years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm. It is true that if an act is unlawful in the sense of being in itself a criminal act, it cannot be rendered lawful because the person to whose detriment it is done consents to it; but there are many acts the commission of which in the circumstances mentioned in the section may not amount to an offence.

8. In the present case, admittedly the complainant had affixed his signature on a paper. His contention that at the time when he affixed his signature, the paper was blank has not been accepted by the Assistant Sessions Judge. The writing on this paper shows that the complainant had given his consent to the decision of the Panchayat being carried out. Having already suffered humiliation and disgrace in consequence of his indecent conduct being found out, in order to avoid physical violence to his person, he consented to suffer further humiliation and disgrace. In the circumstances in which he was placed, he thought it was the best course for him to adopt; and having given his consent he cannot complain of the consequence which ensued.

9. The next Section 88, Penal Code, provides that nothing, which is not intended to cause death, is an offence by reason of any harm, which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm. This section allows infliction of any harm provided it is for the benefit of the person to whom it is caused; but it contemplates case of a different nature.

10. There was hardly any regular Panchayat, in fact, there could be no such Panchayat because Rumal Singh is a Gujar, Fateh Singh is an Ahir and Balwant Singh is a Brahmin while others present were Chamars, including the relations of the girl who had been molested. As already stated, Rumal Singh, Fateh Singh and Balwant had intervened in this affair, if I may use that expression, to pull the complainant out of fire. Through the good office of these people the Chamars, who had caught hold of the complainant, were persuaded to release him on condition that those who had assembled would punish him suitably. In villages to blacken the face of a person, who has committed an indecent assault on a girl or woman, and to give him a shoe-beating, in order to deter him and others from behaving in that manner again, is not uncommon; consequently, the accused considered in good faith that as the complainant had outraged the modesty of a girl of the village, he should suffer that disgrace. For this they might have been held liable but for the findings which have been recorded by the Assistant Sessions Judge regarding their bona fides and their having acted in the interest and for the benefit of the complainant with his consent. In the circumstances the accused cannot be described as miscreants; they had intervened in the affair to avert serious consequences to the complainant.

11. For the reasons stated above, I am of opinion that the learned Assistant Sessions Judge was justified in giving the accused benefit of the exception contained in Sections 81 and 87, Penal Code and to acquit them. The allegations in the complaint being false, it was rightly dismissed. I, therefore, see no reason to interfere with the order of acquittal passed in this case. The revision is, accordingly, rejected.