Phudki vs State on 15 June, 1954

Equivalent citations: AIR1955ALL104, 1955CRILJ278

ORDER

Mukerji, J.

1. This is an application by Phudki who has been convicted by one of the learned Additional Sessions Judges of Meerut under Section 186, Penal Code and sentenced to undergo rigorous imprisonment for a period of three months.

2. The facts giving rise to this criminal revision briefly stated were these: On the 7th of April, 1949, Sub-Inspector Himmat Singh of police station Garhmukteshwar started an investigation in regard to a dacoity case. He decided to arrest the applicant that night, and in order to give effect to that decisions of his, he asked his second officer Richpal Singh to go down with two constables to the house of Phudki and to arrest him. When S. O. Richpal Singh and the constables reached the house of Phudki, Phudki, somehow, got scent of their arrival and actually opened a back door and ran for liberty. The police officer and the two constables chased him and while so chasing him, the police constable fired a pistol shot at Phudki, Phudki shouted for help saying that he was being killed. Thereupon several villagers turned up and they assaulted the police officer and the two constables. In the meanwhile, Himmat Singh, the Sub-Inspector, also arrived on the scene and there was some sort of a fight between the police and the villagers and some villagers were injured while the two constables sustained some minor injuries.

3. Fifteen persons were put up for trial under Section 332, I. P. C., including the applicant. They were all convicted by the Magistrate under Section 332 and awarded a sentence of two years' R. I. and a fine of Rs. 100/- each, or in default of payment of fine to undergo a further period of six months' R. I.

4. On appeal, the learned Judge came to the conclusion that the evidence against the fourteen out of the fifteen accused was thoroughly insufficient to warrant their conviction under Section 332, I. P. C. The view that the learned Judge took was that it could not be said with certainty, on the evidence, that these men took part in the assault on the police that particular night. The learned Judge actually found that on the evidence it could not be said in regard to Phudki also that he took any part in assaulting anybody or in any manner showing force in making his escape as at that stage there was no question of any escape for Phudki, inasmuch as, Phudki was not in the custody of the police for the police had not caught Phudki before the fight started with the villagers. On the aforementioned findings, the learned Judge acquitted fourteen of the appellants before him but chose to convict Phudki under Section 186, I. P. C.

5. Section 186, I. P. C. is in these words:

> "Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with Imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

6. Before this section can be made applicable, the prosecution has to prove that there has been voluntary obstruction of a public servant in the discharge' of his public functions. In this case, on the findings it cannot be said that there was any voluntary 'obstruction' by Phudki, indeed the learned Judge found that Phudki had not been I guilty of any violence or even any show of violence against the police party. All that has been found against him was that he ran away from arrest, or that he did not actually submit to being arrested.

7. The question that arises is whether such conduct can amount to voluntarily obstructing a public servant who wanted to arrest Phudki in the discharge of his public functions. In my judgment it cannot be so said for the word 'obstruction' connotes some overt act in the nature of violence or show of violence. It cannot be said that a man obstructed another if that man runs away from the other.

8. In a very old Full Bench decision of the Bombay High Court of the year 1865, a Bench of three Judges held that escaping from lawful custody is not obstructing a public servant in the discharge of his public functions within the meaning of Section 186, I. P. C. This proposition was laid down in the case of -- 'Reg v. Poshu ', 2 Bom HCR 128 (A). A similar view was taken by Tek Chand J. of the Lahore High Court in the case of --'Jamna Das v. Emperor', AIR 1927 Lah 708 (B). Tek Chand J. observed that running away and shutting himself up in a room and refusing to come out is not voluntary obstruction. Accord-Ing to this learned Judge such conduct was no more than a mere "passive resistance" or at best an attempt to evade the process of the Court and that such acts could not be described as obstruction.

9. In the case of -- 'Emperor v. Aijaz Husain', AIR 1916 All 53 (C), Mr. Justice Sundar Lal held that:

> "In order to constitute an offence under Section 225B, I. P. C., something more is required than an evasion of arrest or a mere assertion by the person sought to be arrested that he would not like to be arrested or that a fight would be the result of such arrest."

10. In the case of -- 'Emperor v. Tohfa', AIR 1933 All 759 (D), a Bench of this Court approved of the dictum of Mr. Justice Sundar Lal in the aforementioned case. In -- 'Tohfa's case (D)', it was pointed out that the question whether an offence under Section 186, Penal Code, has or has not been committed must depend upon the peculiar facts and circumstances of each case. It was pointed out in that case that threats to violence made in such a way as to prevent a public servant from carrying out his duty might amount to an obstruction of the public servant, particularly if such threats are coupled with an "aggressive or menacing attitude" on the part of the person uttering the threats.

Merely running away from arrest cannot, in my judgment, amount to obstruction in any sense of that word. Obstruction connotes some positive act, which would deter the man obstructed from carrying out his intentions; the act of running away does not do any such thing. It may, however, have the effect of baulking a man or cheating him of his intentions but that would not amount to obstruction.

11. For the reasons given above, I must hold that the conviction of the applicant under Section 186, I. P. C., was unjust. I, accordingly, allow this, application in revision and set aside the conviction & the sentence passed on the applicant. The applicant is on bail. He need not surrender to his bail.