

1922.

CHANDRIKA  
KAM KAMARv.  
KING-  
EMPEBOB.

COOTES, J.

the occurrence seems more consonant with innocence than with guilt for when the Sub-Inspector went to arrest him he found him asleep in his house.

Further the prosecution case does not by any means eliminate the possibility of the crime having been committed by someone other than the accused. The woman's father deposes that when she left him she was wearing more ornaments than were found on her person when she was first seen by the Sub-Inspector and Rs. 4 out of Rs. 5 which her father had given her when she left the house had disappeared. It is not suggested that either the ornaments or the money were taken by the accused so that someone must have robbed her and it is not impossible that the robber was the person who wounded her. Further the prosecution case clearly indicates another person besides the accused being implicated for a second man is said to have gone to Keshwar's house with the accused when he went to fetch his wife and unless we accept the gestures of the woman in pushing her head back as indicating the part taken by the second person, which we cannot do for the reasons I have given, this second man might very well be the person who committed the murder

In the result then I am not satisfied that the case against the accused has been established and I would set aside the conviction and sentence and acquit him.

Ross, J.—I agree.

*Accused acquitted.*

## APPELLATE CRIMINAL.

*Before Dawson Miller, C. J., and Ross, J.*

GOVERNMENT ADVOCATE, BIHAR AND ORISSA,

v.

GOPABANDHU DAS.\*

1922.

March, 1.

*Defamation—allegation concerning unidentifiable persons, whether punishable—Penal Code, 1860 (Act XLV of 1860), sections 499 and 500.*

\* Government Appeal No. 1 of 1922, from an order of S. C. Bose, Esq., Deputy Magistrate of Khurda, dated the 21st November, 1921.

1922.

Where the accused published in the paper of which he was the publisher and printer an account of an outrage on a woman alleged to have been perpetrated by two constables within the jurisdiction of the Begunia thana, in which four constables were stationed, *held*, that in the absence of proof that it was intended to charge any particular and identifiable constables with the alleged offence, the accused could not be convicted under section 500 of the Penal Code.

An action does not lie for defamatory words written concerning one or other person out of a particular class unless his identity can be established.

*Sir John Bourn's case*<sup>(1)</sup> and *James v. Rutlegh*<sup>(2)</sup>, referred to.

If the words complained of contain no reflection upon a particular individual or individuals but may equally apply to others although belonging to the same class an action will not lie.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C. J.

*H. L. Nandkeolyar*, (Assistant Government Advocate), for the Crown: The Magistrate acquitted the accused because in his opinion the libel could not be interpreted to mean constables attached to Begunia Thana. I submit he erred in relying only on his own interpretation. If people in the locality, those who knew of the existence of the thana at Begunia, or those who knew the complainant, on a reasonable construction of the article, thought that it referred to the Begunia constables, then each one of the police constables attached to Begunia Thana has been defamed. Refers to *Jones v. Holton Company*<sup>(3)</sup>, *Holton Company v. Jones*<sup>(4)</sup>, *Le Fanu v. Malcomson*<sup>(5)</sup>, *Latimer v. Western Morning News*<sup>(6)</sup>, *Haramba Chandra Maitra v. Kali Prasanna Kabaibishard*<sup>(7)</sup> and *Raj Narain Sein v. Dergabur Pal*<sup>(8)</sup>

GOVERNMENT  
ADVOCATE,  
B. & O.  
v.  
GOPABANDHU  
DAS.

(1) *Cited Croz. Eliz.* 497; 78 F. 12 747 and Hob. 268; 80 E. R. 413 (414).

(2) (1599) 4 Rep. 117.

(3) (1909) 2 K. B. 444.

(6) (1871) 25 L. T. 44.

(4) (1910) A. C. 20.

(7) (1896-97) 1 C. W. N. 465.

(5) (1848) 1 H. L. C. 636.

(8) (1870) 14 W. B. (Cr.) 22.

1922.

GOVERNMENT  
ADVOCATE,  
B. & O.  
G. PABANDHU  
DAS.

DAWSON  
MILLER,  
C. J.

[DAWSON MILLER, C. J.: The article refers to "two constables" and not to all Begunia constables.]  
I submit there is no want of certainty as these are two of the four constables attached to Begunia Thana, and all four have joined in the complaint.

DAWSON MILLER, C. J.—This is an appeal under section 417 of the Criminal Procedure Code against the acquittal of Gopabandhu Das who was tried before Mr S. C. Bose, Magistrate of the first class stationed at Khurda Subdivision in the Puri District. The charge upon which the respondent was tried was that of publishing a defamatory libel under sections 499-500 of the Indian Penal Code. The complainants are four constables stationed at the Begunia Police Station in the Puri District who allege that they have been brought into contempt and hatred and their characters seriously defamed by the publication of the libel in question. The respondent is alleged to be the editor and is proved to be the printer and publisher of a weekly newspaper named the *Samañ* printed in the Oriya language and published from Satyabadi in the Puri District. The article complained of appeared in the issue of the 13th August, 1921. It is headed 'Serious if True', and after stating,

"We hear that last week a boy with a labourer was going through Begunia taking his young adult sister to her mother-in-law's house,"

it proceeds to describe how the boy, just before evening, left his sister by the road side some distance from the Begunia *hat*, at the call of nature, and the labourer having also left her to purchase betel, two constables afterwards dragged the woman away and shut her up in a room not far off locking the door and sitting outside with the key in their possession. On his return the boy not finding his sister began to cry and make enquiries of various people. It then continues,

"Some boys were playing near by. They had seen the two constables drag the woman away. Having got the information from them, the brother went to the constables. On asking the constables about his sister they replied in the negative. He entreated them in various ways to open the door. The constables in return gave him a good beating. While the boy was coming crying after being beaten, he

saw Ajoy Babu, the Subdivisional Officer of Khurda, coming in a motor car. He ran to him, threw himself on the road and besought him. Ajoy Babu stopped the motor car and went to the place of occurrence. He asked the constables for the key to open the room. The constables having refused he broke open the door with kicks and entered into the room. He found the young woman naked and strangled to death by hanging herself with her wearing cloth. All this happened within an hour. He has sent up the dead body and the constables. We hear that certain higher police officers have been sent up. But we do not know the real facts of the case."

1922.

GOVERNMENT  
ADVOCATE,  
B. & O.  
v.  
GOPABANDHU  
DAS.

DAWSON  
MILLER,  
C. J.

There can be no dispute that this article contains very serious charges of misconduct against two constables which, if true, would shew that they were totally unfitted to act as such and were guilty of gross impropriety. On the evidence it is abundantly proved that there is not a word of truth from beginning to end in the whole of this story. The complainants contend that the article in question is an imputation against their character they being the only four constables stationed at Begunia thana. It is also proved that the immediate effect of this article was to lead people to believe that the misconduct referred to in the article had been committed by some or other of the police constables stationed at Begunia. The people at the *hat* treated them with contempt and, despite their disclaimer, would not believe that the allegations were not true, having been published in the *Samaj*. The constables in question also received numerous letters and post cards from their friends and relatives enquiring about the affair and asking if it were true. It is also certain that the publication of an article of this sort must have caused considerable anguish of mind to the complainants who undoubtedly were for some time at all events treated by many of the people in the neighbourhood with ridicule and contempt. If this was the object of the writer of the article there can be no doubt that from his point of view it was successful as the complainants were insulted and abused by the villagers for having committed an act for which there was no shadow of foundation in truth. As soon as it was brought to their notice the police made searching enquiries but could elicit nothing as to how the rumour got about.

1922.

GOVERNMENT  
ADVOCATE,  
B. & O.  
v.  
GOPABANDHU  
DAS.

DAWSON  
MILLER,  
C. J.

Neither the police nor any of the witnesses who were called at the trial ever heard of such a rumour before it appeared in the respondent's paper. The respondent who states that he is a leader of what is known as the non-co-operation movement in Orissa and that his paper the *Samaj* is considered an influential organ of the movement has not deigned to give any evidence as to how he came to publish this unfounded rumour in his newspaper or to disclose the source from which he derived the information. He takes up the attitude that to enter upon any defence in this case would be contrary to his principles as a non-co-operator. The tenets of the political creed to which he subscribes, however, have not prevented him from putting in a long written statement covering about three pages of closely-printed matter in which he admits printing and publishing the paragraph after reading it and seeks to justify his conduct on the ground that the discharge of journalistic duties requires that all cases of injustice and oppression should be published with a view to drawing to them the attention of the authorities and of the public to set matters right or to take such action as the situation may demand. It does not appear to have occurred to him that the publication of such an article was bound to have the effect of seriously injuring the reputation of the police in the neighbourhood and more particularly those stationed at Begunia and to subject them to insult and annoyance; nor does it appear that he ever stopped to consider whether there was any foundation of truth for the rumour which he alone and those connected with his newspaper appear to have heard. His attitude appears to be, judging from the argumentative matter disclosed in the written statement, that every rumour however ill-founded and however much pain it may give to those concerned, which comes to the ears of the editor of a newspaper should at once be published broadcast to the public provided the paper states it does not vouch for the truth of the story. This he contends is acting in good faith and for the public good in the discharge of his journalistic duties

as the publication of the paragraph, made in the manner in which it was, would lead people to doubt the truth of the report and would go a great way in saving the reputation of those who had been damaged by the wide currency of the rumour. The matter was drawn to the attention of the respondent by a letter from Mr. Guise, the Superintendent of Police at Puri, written on the 23rd August to the editor of the *Samaj* in which he states that he would be obliged if the editor could supply him with the name of the correspondent of the original report who brought the matter to his notice, this information being required for the purpose of a departmental enquiry into this serious allegation. The reply to this, written by the manager on the 1st September, was a regret that owing to the absence of the editor from the station a reply could not be sent in time but added that the paragraph referred to contained sufficient material for an enquiry either judicial or departmental for the disclosure of the whole truth about the report, and that the letter was being sent to the editor for a further reply. A further letter dated the 3rd September from Mr. Guise asking for further information in reply to the previous letter was answered by the Manager on the 24th September referring Mr. Guise to an article appearing in the issue of the paper of that date. This article refers to an earlier paragraph in the issue of the 27th August which stated that :—

“ The truth or otherwise of the rumour about the Begunia incident which appeared in the *Samaj* of the 13th last, has not yet been known. We are enquiring about it. On receipt of information we shall publish it in due time.”

The article of the 24th September then proceeds in a manner which, if anything, aggravates the original offence. It says,

“ We heard of the occurrence from various people. It was of course a rumour. But considering the form which this rumour assumed in various places in the mufassil, we thought it our duty to publish it in the paper to ascertain the truth or otherwise thereof. Rumours are not always unfounded. Indeed many hidden truths are often found in rumours. In publishing this rumour in the paper we expected that the real facts would be forthcoming from the local authorities and the

1922.

GOVERNMENT  
ADVOCATE,  
B. & O.  
G. GOPABANDHU  
DAS.

JAWSON  
MILLER,  
C. J.

1922.

GOVERNMENT  
ADVOCATE,  
B. & O.  
v.  
GOPABANDHU  
DAS.

DAWSON  
MILLER,  
C. J.

public. In the meantime, we, too, were not idle. However, it appears from our inquiries that this rumour originated in the following manner. At the time when this occurrence took place a Punjabi was found at Jatni taking away a woman of Begunia side and he went away leaving her there. A few days before this a murder had been committed in Bolgarh side. Babu Ajoy Chandra Das, the Subdivisional Officer of Khurda, was then inquiring into it. To a combination of these two events may be traced the origin of the rumour."

It apparently did not occur to the editor or publisher to ascertain the truth or otherwise of the rumour from the police station at Begunia or by making enquiries on the spot before jumping to the conclusion that it was their duty to publish it in order to find out the truth. The slightest enquiries on the spot and from the police would have put the respondent in possession of the facts which would at once have shewn him that his duty lay, certainly not in publishing the rumour, but in contradicting it, if any action at all on his part should appear necessary.

Having read the article complained of and the evidence in the case one is driven to the conclusion that its publication was altogether unjustifiable and cannot be excused on any supposed ground of journalistic duty. A very little reflection I feel sure ought to convince the respondent that to publish without regard to the feelings of those against whom it is directed every foul rumour that may be reported to him cannot be justified by any recognized standard of editorial duty; and especially is this the case when, as here, the untruth of the rumour could easily have been established by a few simple enquiries on the spot. I cannot help regretting that even after enquiries had been made and its untruth demonstrated there is no expression of regret either in the written statement or in the subsequent articles published in the newspaper for the publication of this false rumour. It does not follow however that its publication necessarily amounts to an offence under section 499 of the Indian Penal Code. However reprehensible and morally unjustifiable the words complained of may be, they must, to be actionable, contain an imputation concerning some particular person or persons whose identity can be established. That person must

1922.

GOVERNMENT  
ADVOCATE,  
B. & O.  
v.  
GOPABANDHU  
DAS.

DAWSON  
MILLER,  
C. J.

not necessarily be a single individual. An imputation against an association or collection of persons jointly may also amount to defamation within the meaning of the section but at the same time it must be an imputation capable of being brought home to a particular individual or collection of individuals as such. The article in question is not directed against the constables of the Begunia thana collectively so that they as a body could assert that each and all of them had been libelled. Nor can it be said that any two ascertained individuals have been the object of the attack. It is unnecessary that the person whose conduct is called in question should be described by name. It is sufficient if on the evidence it can be shown that the imputation was directed towards a particular person or persons who can be identified. In the present case the imputation complained of was directed against two constables only and it would be impossible in my opinion upon the facts disclosed to ascertain with any degree of certitude who those two constables were. They may have been and in fact were taken by the villagers to have been two constables attached to the Begunia thana but there is nothing to indicate which were the two in question. Had the attack been directed towards all four of the constables at Begunia so that they could be identified I think they would have had a collective cause of complaint which would have been sufficient to found a charge of criminal libel. It is not even certain that the persons aimed at were any of the constables stationed at Begunia but even could a legitimate inference be drawn to this effect it would in my opinion afford no ground for a charge of publishing a defamatory libel.

Certain cases have been drawn to our attention by the learned Assistant Government Advocate in support of this appeal to shew that, whatever the intention of a person charged, if the defamatory words can reasonably be considered as applying to a particular individual or individuals, an action will lie, but in each of those cases the individuality of the person or persons attacked has been proved and I am not aware of any



1922.

GOVERNMENT  
ADVOCATE,  
B. & O.  
v.  
GOPABANDEH  
DAS.

DAWSON  
MILLER,  
C. J.

modern case which has decided that an action will lie for defamatory words written concerning one or other person out of a particular class unless his identity can be established. The respondent has not been represented in this appeal and we have therefore not had the assistance of any argument on his behalf, but the old cases all seem to shew that an action will not lie for defamatory words which might apply equally to any one or more persons out of a larger class. In *Sir John Bourn's case*<sup>(1)</sup>, where a party in a cause said to three men who had just given evidence against him "one of you three is a perjurer", it was held that no action lay. In *James v. Rutleah*<sup>(2)</sup>, it was said if the defendant said to a master "one of thy servants hath robbed me" in the absence of special circumstances no one could sue, for it is not apparent who is the person slandered, and there are many other cases to the same effect. The rule is that if the words used contain no reflection upon a particular individual or individuals but may equally well apply to others although belonging to the same class an action will not lie. "So if the words reflect impartially upon either *A* or *B* or upon some one of a certain number or class and there is nothing to shew which one was meant no one can sue. Where the words reflect on each and every member of a certain class each or all can sue" (Odgers on Libel and Slander, 5th Ed. 147).

In the present case I am reluctantly driven to the conclusion that it is impossible in the circumstance for any two of the complainants to show that they were the individuals aimed at by the article in question, and however morally unjustifiable that article may be I think this appeal must be dismissed.

Ross, J.—I agree.

*Appeal dismissed.*

(1) *Oited Cris.* Eliz. 497; 78 E. R. 747 and Hob. 268; 80 E. R. 413 (414).

(2) (1599) 4 Rep. 117.