
(1971) 01 KL CK 0014
In the High Court Of Kerala
Case No : Criminal R.P. No. 430 of 1970

Srinivasan

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 11-01-1971

Acts Referred:

Electricity Act, 1910 — Section 39, 40, 41, 42, 43
Penal Code, 1860 (IPC) — Section 279, 304A, 338

Citation : (1971) 01 KL CK 0014

Hon'ble Judges : Sadasivan, J

Bench : Single Bench

Advocate : V.N. Achutha Kurup, for the Appellant; State Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Sadasivan, J.—The revision Petitioner has been convicted by the Additional First Class Magistrate, Trivandrum, u/s 304A, Indian Penal Code, and sentenced to rigorous imprisonment for 1 year, u/s 338, Indian Penal Code, to rigorous imprisonment for 3 months and u/s 279, Indian Penal Code, to rigorous imprisonment for one month: the sentences are to run concurrently. In addition he has been convicted u/s 46 of the Indian Electricity Act and sentenced to a fine of Rs. 50. The accused has also been directed to pay to the Electricity department a compensation of Rs. 178 for causing the loss of an electric post by dashing his, vehicle against it.

2. The accused-Petitioner was a police constable functioning as driver of the police van. On 7th April, 1967 at about 2 p. m. he drove the van No. KLT 6278 from west to east along the Vattiyurkavu-Vellayakkadavu road in a rash and negligent manner under the influence of liquor and dashed against a murukku tree which stood on the southern side of the road. Then the vehicle was swerved to the left and in so doing it dashed against an electric post which stood on the northern side of the road. The electric post was very badly damaged. After the

impact with the electric post, the van proceeded further northward and hit against P.W. 2, a shop-man, who was sitting on the pattara of the shop which was at the western-most end of the shops. P. W. 2 sustained very severe injuries and was thrown into the road. Damage was caused to the shop room also. The vehicle then moved further and bit against one Prabhakaran Nair who died at the spot. The vehicle also knocked down one Ramachandran, causing very serious injuries to him. Both Prabhakaran Nair and Ramachandran were standing on the verandah of the shop. Ramachandran was immediately taken to the medical college hospital, Trivandrum, where he succumbed to the injuries at about 10-40 in the night. The van finally came to a standstill on the road in front of the shop. The accused immediately got out of the van, pulled out and broke the brake-fluid pipe and tried to run away from the scene ; but he was caught hold of by the people who gathered around and handed him over to the police. On these facts charges were framed against him under Sections 304-A, 338 and 279, Indian Penal Code and u/s 46 of the Indian Electricity Act (IX of 1910). The accused denying the charge stated that he was, at the time, in his wife's house, which is close by and was attracted to the road by the noise and commotion that came from there. As nobody was seen at the time by the side of the van he was forced to stand there to watch the van ; but later he was made the accused and the case was foisted on him. The learned Magistrate as well as the learned Additional District Judge, in appeal, have accepted the prosecution case in full and have entered the conviction.

3. On a consideration of the evidence and probabilities of the case I am satisfied that the conviction has rightly been entered by the Courts below. The occurrence is well proved by the eye witnesses P. Ws. 1 to 3. P.W. 1 is one Rasheed, who was proceeding on his bicycle towards the Vattiyurkavu junction. At that time the police van was coming from the junction at dangerous speed. He was frightened by the speed, of the van and at once he got down from the bicycle and stood by the side of the road. Just then he saw the van hitting against the murukku tree, then the lamp-post and then getting into the shop and causing hurt to P.W. 2 and the two deceased persons. He also swears to the breaking of the brake-fluid pipe by the accused. The accused then tried to escape from the scene; but was caught hold of by the people who had collected there. P.W. 2 is the injured shopman. He was seated on the pattara of the shop when the vehicle came all of a sudden and hit against him. P.W. 3 is one Vasudevan who owns a shop at the junction where Vattiyurkavu road turns towards Vellayakkadavu. The murukku tree which was the first target stood in front of this witness's shop. Seeing the commotion the witness got out of the shop and looked up and saw rest of the occurrence also. The breaking of the brakefluid pipe and his attempt to run away from the scene have also been spoken to by this witness. No circumstances whatever have been brought out in the cross-examination to discredit any of these eye witnesses and both the Courts below have accepted their evidence in full. I see no justification to interfere with the finding of the Courts below regarding the manner in which the occurrence took place, relying on the

evidence of these witnesses.

4. The defence put forward was, as already indicated, that the accused is innocent of the crime and that the police van was driven by somebody else. The accused's wife's house is close to the scene of crime and while he was resting in his wife's house he heard a hub-hub at the scene and rushed to the place to know what it was about. He was then arrested by the police and the responsibility for the occurrence was placed on his shoulders. In the light of the clear evidence given by the eye witnesses this story has only to be disbelieved. The witnesses have stated in clear terms that the van was driven by him and after the final impact when the vehicle came to a stand-still he got down in all hurry and broke the brake-fluid pipe and tried to run away from the scene. But he was prevented from doing so by the infuriated mob who had collected at the scene. The mob could not normally have turned against him if, in fact, he were an innocent on-looker like various other persons who had collected there. The breaking of the fluid pipe cannot but be a deliberate act to escape liability on the contention that the occurrence took place due to the accidental collapse of the brake-fluid pipe. He was first arrested under the Prohibition Act as he was found to be under the influence of liquor. Only sometime after that he was made the accused in the crime and arrested again. From this circumstance, the learned Counsel argued that at 2-30 p.m. when the accused was arrested under the Prohibition Act it was not known to the police that he was the culprit in respect of this occurrence also and it was on reports collected at the spot from interested persons that the crime was foisted on him. I do not see any basis for any of these contentions. The case under the Prohibition Act was recorded first and then only the main charges u/s 304-A and the connected sections was registered.

5. The contention was also raised that even granting that the vehicle was driven by the accused, it is not possible to say that the death and the injury to P.W. 2 were the direct results of the rash and negligent act committed by the accused. The point sought to be made out is that the collision with the murukku tree was the only direct result of the rash and negligent act and the rest of the occurrence was not the direct result of any such rash or negligent act on the part of the accused. By hitting against the murukku tree the vehicle went out of control and no amount of care on the part of the accused could have saved the situation. The argument can only be characterised as desperate, not based on any logic or reason. It is true that to impose criminal liability on the accused it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must have been the proximate and effective cause without the intervention of another's negligence. The act must have been the *causa cansans*, it is not enough that it may have been the *causa sine qua non*. But what is the intervening negligence in the present case ? By the rash and negligent driving, the van went off its gear and dashed against the murukku tree which stood on the southern side of road, which is the wrong side for the vehicle driven by the accused, which was proceeding from east to west. The prosecution has a case that the accused was at the time under the influence of drink. From

the above fact that the vehicle had gone very much into the wrong side and dashed against the tree, which stood farther south it could very well be inferred that the accused on account of his drunken state had lost his equilibrium. By the force of the contact with the murukku tree the vehicle took a turn suddenly towards the north and ran into the shop after smashing the electric post that stood on the northern extremity of the road. In these circumstances it is too much to say that the accused if at all could be held responsible for his collision with the murukku tree only and not for the subsequent collision. If the impact against the murukku tree is traceable to the rashness and negligence of the accused, the subsequent collisions could also be traced to the same negligence or rashness of the accused ; the one is proximate with the other and not in any way remote. In *Kanji Juma v. Emperor* AIR 1938 Sind 100, a lorry driver was driving a lorry loaded with wooden sleepers through a gateway. He drove the lorry several times without any accident. On one occasion, when the lorry was overloaded and was not being driven fast, one projecting sleeper struck a stone pillar which fell upon a person standing behind it and resulted in his death. It was held:

It could not be said that death was not caused directly by the act of the driver. The fact that it was not the lorry itself but part of its load which struck the pillar was a matter of no consequence. Similarly, the fact that it was not the sleeper itself but a stone in a pillar which struck the deceased did not make the act of the driver merely the indirect and remote cause of the deceased's death.

So also in the present case it is not possible to argue that the collision with the murukku tree alone could be attributed to the negligence of the accused and not the subsequent collisions which also were in fact, the direct or proximate result of the initial negligence which resulted in the breaking of the murukku tree. The fact cannot be denied that the vehicle was being driven by the accused at breakneck speed in a most careless manner. Had the vehicle been driven at moderate speed he could have controlled it even after its impact against the murukku tree. The Motor Vehicles Inspector has sworn that the brake system of the van was perfect at the time.

6. I see no other point worthy of consideration. The occurrence has been proved to the hilt and the accused has rightly been convicted by the Courts below. I see no reason to interfere with the sentence also. The revision petition is hence dismissed. But the conviction u/s 46 of the Indian Electricity Act, I think must go. Causing destruction to the electric post, is no doubt an offence falling u/s 46 of the Act. Prosecution for such an offence can be initiated, only at the instance of the government or an Electric Inspector or a person aggrieved by the same as provided in Section 50 of the Electricity Act. Section 50 reads:

No prosecution shall be instituted against any person for any offence against this Act or any rule, licence or order thereunder except at the instance of the Government or an Electric Inspector or of a person aggrieved by the same.

The Supreme Court dealing with this question observed in *Avtar Singh Vs. State of Punjab*, .

The heading which governs Sections 39 to 50 of the Act is "Criminal Offences and Procedure". Obviously, therefore, the Legislature thought that Section 39 created an offence, Sections 48 and 49 indicate that in the Legislature's contemplation Section 39 provided for a punishment. That section must, there also have been intended to create an offence to which the punishment was to attach. The word "offence" is not defined in the Act. Since in the Legislature's view Section 39 created an offence, it has to be held that that was one of the offences to which Section 50 was intended to apply. The object of Section 50 is to prevent prosecution for offences against the Act being instituted by any one who chooses to do so because the offences can be proved by men possessing special qualifications. That is why it is left only to the authorities concerned with the offence and the persons aggrieved by it to initiate the prosecution. There is no dispute that Section 50 would apply to the offences mentioned in Sections 40 to 47. Hence it would be impossible to make any distinction between Section 39 and any of the sections from Section 40 to Section 47. Thus Section 40 makes it an offence to maliciously cause energy to be wasted. If in respect of waste of energy Section 50 is to have application, there is no reason why it should not have been intended to apply to dishonest abstraction of energy, made a theft by Section 39.

It is thus clear that the prosecution can be launched, only at the instance of a person named in the section. In the present case, the prosecution was initiated by the police without being requested by the Electricity Department or by any other person mentioned in Section 50. The learned appellate Judge has quoted an Allahabad decision *Vishwanath v. Emperor* AIR All. 742 to validate the prosecution. But there, the officers of the company discovered the theft and they reported it to the police to make an investigation. In the circumstances, the Court inferred that the department intended that a prosecution should follow the result of the investigation. But in the case in hand the evidence does not show that any steps were taken by the department to book the offender or initiate the prosecution. True that on getting report about the loss of the lamp-post the Junior Engineer went to the spot and estimated the loss ; but nothing further was done. The prosecution was started by the the police only, and along with the charge u/s 304-A, 279 and 338, Indian Penal Code, a further charge u/s 46 of the Electricity Act was also laid. That is no compliance of Section 50 of the Electricity Act; the prosecution was not initiated by one or other of the agencies referred to therein. I hold, therefore, that the prosecution u/s 46 of the Electricity Act is vitiated by non-observance of the mandatory provision of Section 50 of the Electricity Act and as such it is invalid.

7. Learned Magistrate has awarded a compensation of Rs. 178 to the Electricity Department recoverable from the accused. I do not know under what provision of law such a direction which virtually is in the nature of a decree of a civil Court

has been made. By an action in court, damages might be recoverable ; but that is possible only by means of a civil action. The Magistrate has, in the instant case, usurped the functions of a civil Court which he ought not have done.

8. In the result, the conviction and sentence entered u/s 46 of the Electricity Act are set aside ; fine if paid will be refunded. Direction to recover damages of Rs. 178 is also vacated. The conviction and sentence passed under Sections 304-A, 279 and 338, Indian Penal Code, are confirmed. The revision petition is allowed to the extent indicated and dismissed in other respects.