

(1998) 07 MAD CK 0072

In the Madras High Court

Case No : Criminal R.C. No. 997 of 1995

Suyambu Nadar and three others

APPELLANT

Vs

State by S.I. of Police Tisayanvilai

RESPONDENT

Date of Decision : 02-07-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 425, 427, 429

Citation : (1999) CriLJ 394 : (1998) 3 CTC 82 : (1999) 1 LW(Cri) 57

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : Mr. N. Sankaravadivel, for the Appellant; Mr. C.M. Gunasekaran, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners A1 to A4 are the accused in C.C. No. 114 of 1993 on the file of the Judicial Magistrate, Nanguneri. They were convicted for

the offence punishable u/s 429 of the I.P.C. and were sentenced to pay a sum of Rs.2,500 each and in default to undergo rigorous imprisonment

for three months. They filed an appeal in C.A. No.4 of 1994 on the file of the learned Additional Sessions Judge, Tirunelveli who in turn confirmed

the judgment of the trial court. Hence this revision.

2. The facts are as follows:

On 16.9.1992 at about 1.30 midnight, in a garden which belongs to the Sivalinga Nadar Kizpandaram, the sheeps were kept in an enclosure and

at that time, 4 dogs which belongs to the petitioners entered into the garden and indiscriminately bit the goats. As a result of this, 28 goats died and

19 goats sustained serious injuries. The loss occurred to the owners of the goats was to the tune of Rs.17,000. On the complaint of the owner of

the goats, a case was registered against the petitioners by the police. After investigation, the Investigating Officer filed a charge sheet against the

petitioners for the offence punishable under sections 427 and 429 of the I.P.C.

3. On behalf of the prosecution, 15 witnesses were examined and 10 exhibits were marked. The petitioners pleaded not guilty. However on

consideration of the materials placed before the court, the learned Judicial Magistrate, Nanguneri convicted the petitioners for the offence

punishable u/s 429 of the I.P.C. and sentenced them as referred to above. As stated earlier, the learned Sessions Judge in the appeal filed by them,

concurred with the view expressed by the trial court.

4. In this revision, Mr. N. Sankaravadivel, learned counsel appearing for the petitioners would contend by pointing out the various portions of the

judgments of the courts below and reading out the deposition of the witnesses that the ingredients of section 425 and 429 of the I.P.C. have not

been made out and that the conviction imposed on the petitioners for the said section cannot be sustained. On the other hand, Mr.C.M.

Gunasekaran, learned Government Advocate would repel the said submissions stating that the prosecution has established those ingredients by

examining the eye witnesses, the local villagers and the owners of the goats and the doctor.

5. I have heard and given my anxious consideration to the submissions made on either side.

6. This revision filed by the petitioners has to be allowed on a short ground, which is as follows:

As per section 429 of the I.P.C. whoever commits mischief by killing any animal of the value of Rs.50 or upwards shall be punished. The word

mischief is defined u/s 425 of the I.P.C. This section provides whoever with intent to cause or knowing that he is likely to cause wrongful loss or

damage to any person so as to destroy or diminish it's value or utility commits mischief. In illustration (h) it is provided that "A" causes cattle to

enter upon a field belonging to "Z" intending to cause and knowing that he is likely to cause damage to the said crop, "A" has committed mischief.

So reading of the above section would make it clear that if any person who intends to cause or knowing that he is likely to cause damage, causes

the dogs to enter into the garden with an intention to cause injury to the goats

or to cause death to those goats knowing that he is likely to cause damage, then section 429 is attracted. There are three ingredients to be proved as against that person who is charged for the offence punishable u/s 429 of the I.P.C: (1) The accused committed mischief as defined u/s 425 of the I.P.C. (2) The mischief committed by killing or maiming or rendering useless. (3) A mischief committed on animal including the goats of the value of Rs.50 or upwards.

7. A plain reading of section 425 of the I.P.C. would reveal that the offence described in the said section imports the act done wilfully or with the knowledge that the said act is likely to cause injury. Therefore mere negligence or carelessness on the part of the accused is not sufficient to constitute the offence described in the section. In the light of these contents of the section, we have to see whether the act attributed to the petitioners was committed with intention or the knowledge, as stipulated in the sections.

8. It is no doubt true that P.Ws.1 and 2 specifically stated that the dogs which had bitten the goats belonged to the petitioners. The doctor has also stated that the death of the goats and the injuries sustained on the goats would have been due to the dogs bite. But the important ingredient which is missing in this case is the part played by the petitioners by allowing or causing the dogs to enter into the garden with an intention to cause damage or to cause injuries to the goats. Both the courts below have miserably failed to consider this aspect. On the other hand, they have come to the conclusion that the dogs involved in this case must belong to the petitioner merely on the reason that some of the witnesses had stated that the dogs which belong to the petitioners had earlier bitten the goats for which panchayat was held and they were fined. In my view, this cannot be the reason for coming to the conclusion that the petitioners have taken a direct role in the crime committed in this case.

9. Yet another aspect is this: There is no identification of the dogs which had bitten the goats. Admittedly, the occurrence had taken place in the mid night. In the absence of the identification of the dogs involved in this case, it cannot be concluded that the dogs belong to the petitioners alone and they have done this act of causing the dogs to bite the goats which led to the causing of the death and injuries to the goats. Furthermore, as

indicated earlier, there is no material whatsoever to show that the petitioners only caused the dogs to enter into the garden and to bite the goats.

10. While interpreting Section 425, I.P.C., the Tripura High Court in the decision in N.D. Tushnial and Others Vs. Abdul Rezak and Others, , held

that mere carelessness or negligence on the part of the accused without establishing the intention to cause damage or knowledge that their animals

were likely to cause damage would not attract the ingredients of the offence. The observation is as follows:-

Section 425, I.P.C. contains illustration (h) stating that if A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that

he is likely to cause damage to Z's crop, A had committed mischief. Here, in this case, there was no evidence to show that the petitioners caused

the cattle to enter upon the respondent's field. Nor was there any evidence to show that they intended to cause or that they knew that the cattle

were likely to cause damage to the respondent's crops. In fact, it was clear from the evidence of the respondent that the cattle of the petitioners

used to be sent with a cowherd for grazing and that on that particular day when the cattle entered the respondent's field, the complainant called out

for the cowherd, but the cowherd was not to be seen. It was thus clearly a case of the carelessness or negligence of the cowherd and the

petitioners cannot be held to have any intention to cause damage and knowledge that their cattle were likely to cause damage. In the case of

mischief, the master cannot be held vicariously liable if any damage which was caused by the conduct of his servant. It is clear therefore that no

intention or knowledge was proved against the petitioners. On this ground alone, the conviction of the petitioners ought to be set aside.

11. Here, in the case on hand, not even negligence or carelessness has been established. So, in view of what is stated above, I am of the view that

the findings given by both the Courts below are perverse, which are liable to be set aside.

12. In the result, the revision is allowed and the petitioner is acquitted. The fine, if any, paid is directed to be refunded to the petitioners.