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Court : Mumbai

Decided On : Oct-01-1951

Reported in : 1952CriLJ1191

Judge : Hemeon and ;V.R. Sen, JJ.

Appellant : The State Government

Respondent : Rangaswami

Judgement :

1. The respondent Rangaswami. J.C.O.. Ammunition Depot., Amla, who was prosecuted under Section 304 A of the Indian Penal Code and Section 19(e) of the Indian Arms Act, was acquitted by the First Class Magistrate, Betul, in respect of the former offence but convicted and sentenced to pay a fine of Rs. 20/- under Section 19(e) of the Indian Arms Act. The State Government, Madhya Pradesh, has now appealed against his acquittal and filed as application for the enhancement of the sentence awarded to him under the Indian Arms Act.

2. During the forenoon of the 9th July 1950, when the respondent Jemadar Menon (D.W. 1), Subedar Chaitnath (D.W. 2), Subedar Thadius and J.S.O. Verma were playing cards in J.S.O.'s quarter No. 11, the respondent went to relieve himself. On his return shortly afterwards, he reported that the hyena which had been roaming about in the vicinity on the previous day had come back; and he indicated to his companions a moving object near a tree about 200 feet from them. They all

believed that it was a tiger or hyena; and jemadar Menon went to the bungalows of Ordnance Officers Gulabsingh (P.W. 2) and Gurumukhsingh (P.W. 3) and told them that there was a tiger near the J.C.O.'s quarters.

3. The Ordnance Officers went there with their guns; and as Gulabsingh was not a good 'shikari', he gave his loaded 12 gun to the respondent who went towards the object from one direction, while Gurumukhsingh and Chaitnath approached it from the opposite direction. Shortly afterwards, the respondent fired at the object from a distance of 158 feet; and, to the horror of all, this was followed by the cry of a human being in pain. When the respondent and others went to the place where he was prostrate, they found that he was in a precarious condition; and Major M.T. Chati (P.W. 1), Station Commander, on arrival saw that he was dead. He accordingly sent the report Ex, P-1 to the Police Station where it was received by K.K. Baxi (P.W. 10), station officer.

4. After the corpse had been identified as that of Kachrya and the inquest had been held, the corpse was sent to Betul where Shri S.S. Soni (P.W.4), Assistant Medical Officer, who performed the autopsy, found that Kachrya had been shot through the right lateral aspect of the chest three inches below the arm-pit by a bullet from the 12 bore gun produced by the police and that the bullet had emerged between the 9th and 10th ribs on the left side of the back.

5. The scene of the shooting was part of an area which was auctioned annually for the cutting and removing of grass, but Kachrya's agreement Exhibit P-12 thereto with the Garrison Engineer, Amla, terminated on the 31st May 1950; and Shri H.G. Raghavachary (P.W. 6) pointed out that neither Kachrya nor any other person was entitled to cut and remove the grass from that area from the 1st June 1950 until the next auction which took place in July 1950 after the shooting had occurred, Shridhar (P.W. 7) had been Kachrya's partner for the cutting and removing of the grass and he admitted that the contract had ended before the date of Kachrya's death. He further admitted that entry into the area in question was not permissible without a pass and that the passes issued to Kachrya and himself had been returned on the termination of the contract.

6. The respondent in examination admitted that he had fired as the object with Gulabsingh's gun, because he was under the Impression that it was the same hyena which had been seen in the vicinity of his quarters on the previous day. He also pointed out that at the time of the shooting he was falling, and in defence he added that he had not expected a human being to be at the place in question and that the object at which he aimed had had a brown covering, in short, his case was that Kachrya's death was due to an accident.

7. The prosecution evidence, including that of the station officer K.K. Baxi showed that at the material time drizzling was in progress, the sky was overcast with clouds, there was no sunshine and visibility was poor. There were bushes around the place where Kachrya was shot and he was wearing a gunny-bag at that time. In fact, the gunny-bag article D, which had been found beneath the corpse, was blood stained and contained a tear which indicated that the bullet had passed through it.

A hyena had been seen prowling in the locality on the previous day; and when on the morning in question the respondent reported to his companions that it had re-appeared, they looked towards the object referred to by him and were of the opinion that it was a wild animal.

8. In fact, Jemadar Menon (D.W. 1) and Subedar Chaitnath (D.W. 2) thought that it was a tiger; and the former so reported to Ordnance Officer Gurumukhsingh (P.W. 3). That Special Officer H.S. Verma (P.W. 5) shared the opinion, of the respondent, Jemadar Menon and Subedar Chitnath is clear from the following passage of his evidence:

On seeing towards the object, I did not think that it is a human being. It seemed that some animal of brown colour was moving. From the movements I thought that it might be some wild animal. Myself and all other members of the party sitting there saw it.

Thus four officers whose power of vision must have been above the ordinary were convinced that the object was a wild animal but even at that stage, the shot was not fired. Indeed, the respondent and Subedar Chitnath left the quarter in order to

confirm their impression, and on return they informed Special Officer H.S. Verma (P.W. 5) and others that the object in question was a wild animal. All persons were then fully satisfied that the object¹ was not a human being and they were so apprehensive that they sent Jemadar Menon to the bungalows of the Ordnance Officers in order to return with their guns for the purpose of shooting the wild animal.

9. Nor was the area in question one in which the respondent might reasonably have anticipated the presence of a human being. The contract of Kachrya and his partners for the cutting and removal of grass had, as adumbrated, terminated) on the 31st May 1950; and the succeeding auction was held after the occurrence. The passes issued during the subsistence of the contract had been, returned on its termination. As the incident took place in the area for which passes were required, Kachrya was not entitled to be, or to graze his animals, in it at that time. It would, however, appear from the evidence of Shridhar that in spite of this their cattle were grazing in the military area; and, in fact, Shri S.G. Raghavachury stated that such grazing was not permitted at any time. The respondent had, therefore, no reason to suppose that the object might well be a man who was grazing cattle or cutting grass.

10. In the well-known case of *Empress of India v. Idu Beg* 3 All 776 Straight, J., differentiated between criminal rashness and criminal negligence in the following terms:..criminal rashness is hazarding a dangerous or wanton act with the knowledge that it so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

11. Holloway J. in *Reg. v. Nidamarti* 7 M HCR 119 said:

Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow but with the hope that they will not and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness, that the illegal and mischievous effect will follow, but in circumstances which show that; the actor has not exercised the caution incumbent upon him, and that, if he had, he would have the consciousness. The imputability arises from the neglect of the civic duty of circumspection.

12. These interpretations were approved in *H.W. Smith v. Emperor* 53 Cal 333 by a Division Bench which also referred to the following dictum of Alderson B. in *Blyth v. Birmingham Water Works Co.* (1856) 11 Ex 781 :

Each case must be judged in reference to the precautions, which, in respect to it, the ordinary experience of men has found to be sufficient, though the use of special or extraordinary precautions might have prevented the particular accident which happened.

Mukerji, J., in the Division Bench case then pointed out that the question whether the accused's conduct amounted to culpable rashness or negligence depended directly on the question as to what was the amount of care and circumspection which a prudent and reasonable man would consider to be sufficient upon all the circumstances of the case.

13. *Waryamsing v. Emperor* AIR 1926 Lah 554 in which it was held that an accused, who on a dark night in a cremation ground believed a man to be a ghost and inflicted injuries which caused his death, was not liable under Section 304A, the Division Bench pointed out that the accused had no reason to think that a human being would arrive or had arrived on the scene at such a time and place and that he probably thought that a ghost had actually appeared. The case was followed in *Bonda Kui v. Emperor* 43 Cri LJ 787 , to the extent that an accused who had been convicted under Section 304 of the Indian Penal Code was acquitted on the ground that she believed in good faith at the time of her attack that the object of the attack was not a living human being but a ghost or some

object other than a living human being, because the intention to do wrong or to commit an offence was not present in the case.

14. These are criteria with which we are in respectful agreement, and application of them to the instant case must result in the conclusion that the respondent was rightly acquitted in respect of an offence under Section 304A of the Indian Penal Code. The facts to which we have referred show unmistakably that the amount of care and circumspection taken by him was that which a prudent and reasonable man would consider to be adequate upon all the circumstances of the case. The whole affair was a pure accident and he was protected by the provisions of Section 80 of the Indian Penal Code. The fact that he used an unlicensed gun would not deprive him of the benefit of that immunity; and in *King Emperor v. Timmappa* 3 Bom LR 678, a Division Bench held that shooting with an unlicensed gun does not debar an accused from claiming immunity under that section, of the Indian Penal Code. The appeal against the acquittal is accordingly dismissed and the order of the trial Magistrate is upheld.

15. We are also of the opinion that there is no reason why the sentence awarded under Section 19(e) of the Indian Arms Act should be enhanced. The respondent was technically liable under that provision but no more; and all that he had done was to borrow for a few minutes a gun in order to kill, as he thought, a wild animal which might have attacked him and his comrades. The application for enhancement of the sentence is also dismissed.

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