

Bucha Lal Vs. Rex

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Court : Allahabad

Decided On : Jul-08-1948

Reported in : 1949CriLJ20

Judge : Seth, J.

Appellant : Bucha Lal

Respondent : Rex

Judgement :

ORDER

Seth, J.

1. The applicant Bucha Lai is the owner of Motor truck No. U. P. C. 1612. He was tried along with the driver of the truck named Tota Ram for an offence under Section 72/124, Motor Vehicles Act, 1939, the charge against him and Tota Ram being that they had carried or allowed to be carried on the aforesaid motor truck a load in excess of what was specified in the certificate of registration on various dates namely, 3rd March, 6th March and 8th March 1948. Tota Ram pleaded guilty to the charge but the applicant denied his guilt. He pleaded that he was ill, that he knew nothing about the excess weight having been carried and that it was Tota Bam who used to engage vehicle for the load.

2. I am not concerned with the conviction of Tota Ram because it is Bucha Lai alone who has come up in revision to this Court against the order of the learned Sessions Judge of Allahabad, maintaining his conviction under 8, 72/124, Motor Vehicles Act. One of the points urged before the learned Sessions Judge was that there was no legal evidence on the record to prove that Bucha Lai was aware that the truck was being overloaded and that consequently he should not be held to have committed the offence charged against him. This objection was overruled by the learned Sessions Judge on the following ground:

Section 72 (3), however, lays down that 'No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer' which infringes any of the registered specifications concerning weight. The owner of a vehicle is liable under this section if he merely allows his vehicle to be driven with an excess load, and there is nothing in the section to suggest that the prosecution was under any obligation to produce evidence to the effect that the owner had specific knowledge of the overloading.

3. The learned Counsel for Bucha Lai has urged before me that the view taken by the learned Sessions Judge is erroneous and that proof of mens rea was necessary for the conviction of the applicant. Before considering this question of law it may be pointed out that the learned Counsel holding the brief of the Assistant Government Advocate has not been able to point out any evidence on the record to prove that Bucha Lai was aware that his servant Tota Bam, the driver of the motor truck, was in the habit of carrying excess weight on the motor truck or that Bucha Lai, in any way, instigated Tota Ram to carry excess weight or even that Bucha Lai ever connived at this illegal activity of Tota Ram. .

4. The question of mens rea, when a master is sought to be made liable for the acts of his servants came up for decision before their Lord-ships of the Privy Council in the case of *Srinivasa Mall Bairoliya and Anr. v. King Emperor* 1947 A.L.J. Rule 497 : A.I.R. (34)1947 P. C. 135). Lord DuParcq who delivered the Judgment the Judicial Committee observed as follows:

The High Court took the view that even if appellant 1 had not been proved to have known of the unlawful acts of appellant 2 he would still be liable, on the ground

that 'where there is an absolute prohibition and no question of mens rea arises, the master is criminally liable for the acts of his servant With due respect to the High Court, their Lordships think it necessary to express their dissent from this view. They see no ground for saying that offences against those of the Defence of India Bales here in question are within the limited and exceptional class of offences which can be held to be committed without a guilty mind. See the judgment of Wright, J. in *Sherras v. De Button* : 1898) 1QB 918). Offences which are within that class are usually of a comparatively minor character and it would be a surprising result of this delegated legislation if a person who was morally innocent of blame could be held vicariously liable for a servant's crime and so punishable 'with imprisonment for a term which may extend to three years.' Their Lordships agree with the view which was recently expressed by the Lord Chief Justice of England, when he said: 'It is in my opinion of the utmost importance for the protection of the liberty of the subject that the Court should always bear in mind, unless the statute either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, a defendant should not be found guilty of an offence against the criminal law unless he has got a guilty mind.' *Brenn v. Wood* (1946) 175 L. T. 306).

5. The learned Counsel holding the Crown brief has drawn my attention to the case of *Harish Chandra v. Emperor* Cri. Revn. no. 994 of 1944 decided on : AIR1945 All90 . I have been unable to discover that the law has been laid down in this case differently from the law laid down by their Lordships of the Privy Council. It has been decided in this case that the question whether mens rea is a necessary element of an offence depends upon the language and the scope of an enactment as well as upon the object which the statute was intended to serve. According to both the authorities it is necessary to look into the language of the various provision of an enactment to find out whether mens rea is a necessary element of an offence defined in that enactment unless that statute either expressly or by necessary implication rules out mens rea as a constituent part of crime, the accused should not be found guilty of an offence against a criminal law unless he has got a guilty mind.

6. I have examined the relevant section of the Motor Vehicles Act. from this point of view. According to Section 72 (4) -

Where the driver or person in charge of a motor vehicle or trailer driven in contravention of Sub-section (2) or el. (a) of Sub-section (3) is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

It is thus dear that this presumption of know, ledge can arise only in oases of the contravention of Section 72 (2) or Section 72 (3) (a) and inasmuch as the presumption has been definitely applied to these two cases only it is permissible for me to infer that the legislature did not intend to apply this presumption to a case falling under Section 72 (3) (b) The applicant has been convicted of having contravened the provisions of this Section 72 (3) (b). Instead of there being an indication by implication that mens rea was not a necessary element of this offence there is a clear indication to the contrary. The sections set out above dearly indicate where mens rea will be presumed to exist and it is not indicated that it shall be presumed to exist in the case of the offence charged. Section 124, Motor Vehicles Act, provides foe the punishment for contravening the provisions of Section 7a of the Act as follows:

Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of Section 72 or of the conditions of any. permit issued thereunder ... shall be punishable ...

7. It is clear in the present case that the applicant did not drive the motor-truck. It is further clear that the applicant did not cause the motor truck to be driven in contravention of the provisions of Section 72. Can it be said that h& allowed the motor truck to be driven in contravention of the provisions of Section 72 In my opinion, in the absence of any evidence of knowledge on the part of the applicant, it cannot be said that he did so. The section does not contemplate that a person who does not know that his driver is contravening certain provisions of law 'allows a vehicle to be drawn in contravention of the provisions' of the law. It amounts to no more than 'allowing a vehicle to be driven'. In my opinion, there, fore, the applicant has not been proved to have committed an offence under Section 72

read with Section 124, Motor Vehicles Act. on the evidence on the record of the case.

8. I allow this application in revision and set aside the conviction and the sentence passed upon the applicant. The fine, if realised, shall be refunded.

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