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Court : Allahabad

Decided On : Mar-11-1957

Reported in : AIR1957All636; 1957CriLJ1041

Judge : Chowdhry, J.

Acts : Railways Act, 1890 - Sections 120

Appeal No. : Criminal Revn. No. 1939 of 1955

Appellant : Lalit

Respondent : State

Advocate for Def. : H.N. Seth, A.G.A.

Advocate for Pet/Ap. : K.M. Sinha, Adv.

Disposition : Application allowed

Judgement :
ORDER

Chowdhry, J.

1. The applicant Lalit, who was a porter and a, railway servant within the meaning of that term under Section 3(7) of the Indian Railways Act, 1890, at the railway station of Gorakhpur, was convicted by a learned first class Magistrate of that

place under Section 120 (a) of that Act for having been upon a part of the railway, i.e. on the railway platform, in a state of intoxication and sentenced to a fine of Rs. 25/-, or 10 days simple imprisonment in default of payment of fine. The sentence not being applicable, he went up in revision to the learned Sessions Judge of Gorakhpur, but the revision was rejected. He has now come up in revision to this Court.

2. His defence was that he had taken brandy on its being prescribed by a doctor for colic pain, and that he was not on duty at that time but had been called from leave of absence on account of that ailment. The learned Magistrate did not deal with the latter portion of his defence at all, and he did not accept the evidence of a doctor produced in defence in support of the former. The learned Sessions Judge considered only the defence which had not been dealt with by the trial court, namely, that the applicant was not on duty but had been called by his officers from his quarter and in doing so he committed an error of record: he remarked that the argument had no force since the Magistrate had found that the applicant was on duty at the time in question. As noticed already, no such finding had in fact been arrived at by the Magistrate. In view of this confusion with regard to facts it appears to be necessary to be certain in respect of them, to begin with.

3. The doctor produced in defence stated that on the forenoon in question the applicant went to him and complained of colic pain, and that he prescribed two tea-spoonfuls of brandy as a palliative. The statement of the applicant as that the prescribed dose was in fact taken by him. Now, it is admitted by the prosecution witness Sashi Bhushan Transhipment Cleric, who was the immediate superior officer of the applicant, that the applicant had gone away after taking leave for half an hour or so from him on the ground that he was suffering from colic pain.

This statement lends support to the evidence of the doctor produced in defence and to the statement of the applicant. His defence that he had taken two tea-spoonfuls of brandy under medical advice should therefore have been accepted. As regards the other portion of his defence, namely, that he was called from his quarter by his officer, that appears also to be well-founded since it finds support from the admissions of the aforesaid prosecution witness and of another

prosecution witness. Claims Inspector Peter P.W. 4.

It has therefore to be seen whether in view of the correctness of the defence set up by the applicant he could still be held liable for the offence for which he had been convicted. There was a preliminary objection taken by the learned counsel for the applicant, and it was to the effect that the applicant, being a railway servant, could not legally have been convicted under Section 120 of the Railways Act. In support of his argument he relied upon two decisions : Mulchand v. Emperor, AIR 1929 Sind 249 (1) (A); and Gurunath Shankar v. Emperor, : AIR1937 Bom357 .

As against this it has been held in A. P. Cuffly v. Muhamadali Mahomed Ibrahim, AIR 1919 Mad 971 (2) (C); Appal Swamy v. Emperor, AIR 1934 Pat 52 (1) (D); and Dinanath v. Emperor, AIR 1946 Nag 150 (E) that the provisions of Section 120 are wide enough to make any individual, including a railway servant, liable thereunder. True, there is another section of the Act, Section 100, which penalises drunkenness of a railway servant, so that the applicant could well have been prosecuted under that provision.

It is however noteworthy that Section 100 does not cover all the acts which have been penalised under Section 120, viz., the acts of committing nuisance, or acts of indecency or use of obscene or abusive language or wilfully or unlawfully interfering with the comfort of any passenger. There is no other section in the Act penalising these acts where such acts are committed by a railway servant. Obviously therefore for these acts conviction of a railway servant would have to be had under Section 120.

The mere fact that the concluding portion of Section 120 speaks of forfeiture of fare and removal of the culprit from the railway by any railway servant should not necessarily lead to the inference that the section could not be applicable to a railway servant. Firstly, even a railway servant may have paid fare for travelling (since he may not always be entitled to a pass), and he would not be exempt from removal from the railway by any railway servant should ho commit any of the acts contemplated by the section.

On the other hand, the aforesaid portion of the section also speaks of the forfeiture of pass, which would seem to show that a railway servant was also in contemplation of the framers of section. Otherwise, there is nothing in the section which excludes its application to a railway servant since it purports to apply in the case of 'a person,' which should mean any person whether he be a railway servant or not. For these reasons I respectfully agree with the view expressed in the aforesaid Madras, Patna and Nagpur decisions and hold that a railway servant can be prosecuted under Section 120 of the Railways Act.

4. Coming now to the relevant provisions of Section 120, the following facts had to be proved in order to render the applicant liable : (1) that he was upon any part of a railway, (on the platform in the present case) and (2) that he was in a state of intoxication. Now, there is no doubt that if this was all that the prosecution need have proved the conviction of the applicant would be unassailable. The aforesaid defence taken by the applicant however implies that the actus revs of the section was not the only thing which had to be established for his culpability.

And this contention appears to be wellfounded since it is well established that before a person could be held liable for any offence three things have to be established : (1) that the impugned act was a criminal act, (2) that it was the act of the accused and (3) that it was an act committed with a guilty mind. In other words, it has to be established that the accused intentionally did the forbidden act with knowledge of all the wrongful circumstances which the status seeks to prohibit.

5. Now, statutory offences may be classified under three heads for purposes of consideration of the aforesaid principle. In one class the offences are so worded as to indicate clearly that mens rea is an essential ingredient of the same. This is usually done by the use of such words as 'knowingly', 'wilfully', 'fraudulently' etc. There are other offences, called offences of strict or absolute liability, where the maxim of mens rea is excluded expressly or by necessary implication.

There is a third class of cases, and the present appears to belong to this category, where the language used is such that it neither, expressly includes nor avowedly excludes the ingredient of mens rea. Section 120 of the Indian Railways Act does

not speak of the criminal acts in question having been committed wifully or knowingly. Nor on the other hand, have any words been used therein wherefrom it could be inferred that the ingredient of mens rea has been excluded therefrom. The question is : What is the principle to govern such cases? A classic exposition of the relevant principle is to be found in the following view expressed by Wright, J, in Sherras v. De Rutzen (1895) 1 QB, 918, at PP. 921-922 (F) :

'There is a presumption that mens rea, an evil intention, or a knowledge of the wrongfulness of the act is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject matter with which it deals, and both must be considered.'

The same view finds expression in the following observation of the present Lord Chief Justice of England in Brend v. Wood, (1946) 62 TLR 462, at p. 463 (G). :

'There are statutes ...... in which parliament has seen fit to create offences and make people responsible before criminal courts although there is an absence of mens rea, but it is certainly not the court's duty to be acute to find that mens rea is not a constituent part of a crime. It is of the utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, unless a statute, either clearly or by necessary implication, rules out mgns rea as a constituent part of a crime, the court should not find a man guilty of an offence unless he has a guilty mind.''

The above view was endorsed by the Privy Council in Srinivas Mall v. Emperor, AIR 1947 PC 135 (H). and by the Supreme Court in Hariprasada Rao v. State. : 1951 CriLJ768 . Neither the wordings of Section 120 nor the subject-matter with which it deals displaces the presumption of mens rea. It may however be argued that the presumption of mens rea stands displaced here if Section 120 is considered in the context of the other offences contained in Chapter IX of the Indian Railways Act. A number of other offences enumerated in that Chapter use the words 'wilfully' or 'knowingly.' It might well be contended therefore that the omission of these or such terms from Section 120 leads to the inference that the presumption of mens rea was impliedly excluded therefrom. And such was the argument put forward in the aforesaid case of Sherras v. De Rutzen (F), since

whereas the epithet 'knowingly' was missing from Sub-section (2) of Section 16 of the Licensing Act, 1872, whereunder the prosecution of the accused in that case was founded, that epithet appeared in relation to another offence which was described in Sub-section (1) of the same section. Rejecting this argument, Day, J. stated that the absence of 'knowingly' from Section 16 (2) only shifted the onus of proof so that it was for the defence to prove lack of knowledge and not for the prosecution to prove that there was knowledge.

Again it wag held by Brett, J. in R. v. Prince, (1875) 2 CCR 154 (J), that 'the ultimate proof necessary to authorise a conviction is not altered by the presence or absence of the word 'knowingly' though by its presence or absence the burden of proof is altered.' The same was the view expressed by the present Chief Justice of England Lord Goddard in Reynolds v. G. H. Austin and sons, Ltd. (1951) 2 KB 135 (K). There appears to be some divergence of view in regard to the matter of the shifting of onus of proof since, while endorsing the rest of the aforesaid views, Delvin, J, expressed himself as follows in Roper v. Taylor's Central Garages Ltd., (1951) 2 TLR 284, at P. 288 (L) :

'All that the word 'knowingly' does is to say expressly what is normally implied and if the presumption that the statute requires mens rea is not rebutted I rind difficulty in seeing how it can be said that the omission of the word 'knowingly' has, as a matter of construction the effect of shifting the burden of proof from the prosecution to the defence.'

So far as the present case is concerned, the matter of the burden of proof is of no materiality since, as shown already, the defence set up by the applicant has been conclusively established not only by the testimony of the defence witness but also by the evidence of the prosecution witnesses themselves. On the main point, namely, that absence of the word 'knowingly' from the relevant penal provision does not necessarily exclude that ingredient of mens rea, there is a consensus of opinion in all the decisions cited above. . It follows therefore that neither expressly nor by necessary implication has the presumption of mens rea been excluded from the provisions of Section 120 of the Indian Railways Act. That being so, the conviction of the applicant could not be sustained merely because the actus revs

of the section stands established, namely, that he was found in a state of intoxication on the railway platform of Gorakhpur at the alleged time.

On the contrary, it will have to be established further that whatever he did was done by him with a guilty mind. That this should be the correct interpretation of Section 120 will appear from the following hypothetical case. Suppose a passenger, while travelling in a railway train, suddenly develops an ailment, like colic pain, and suppose that a fellow passenger, who happens to be a doctor, prescribes a dose of brandy as a palliative. Suppose also that in consequence of the taking of that dose the passenger gets intoxicated.

All the ingredients of Section 120 of the Indian Railways Act would thus seem to have been satisfied : there is a person in a railway carriage in a state of intoxication. It would however be absurd to hold that merely due to the existence of the aforesaid facts he would be liable for conviction under that section.

6. Now apart from the question of mens rea, the conviction of the applicant appears to be unsustainable on one other ground. As adverted to already, before an accused can be convicted of an alleged criminal act it must be an act capable of being attributed to him. For instance, an act could not be attributed to an accused if it be accidental or committed in a state of somnambulism or automatism. In other words, the conduct of the accused must be the result of the free and conscious exercise of his own will. See Kenny's Outlines of Criminal Law (16th edition) pages 23, 36 and 39.

In the present case neither the applicant's presence at, the railway platform nor his intoxication could be said to be the acts of the applicant. It may be stated here en passant that the fact that the applicant was found in a state of intoxication at the time in question does not appear to admit of any doubt since it has been proved by the testimony of a number of railway officers not only that he was smelling of alcohol but also that he indulged in abusive language. The evidence of the railway doctor who examined him soon after also lends support to that view. But could this intoxication be attributed to him.

The answer to that question should be in the negative since the alcohol which produced intoxication had not been imbibed by him of his own free will but under medical advice as a palliative to the colic pain from which he was suffering. The doctor produced in defence has opined clearly, _and without that opinion having been questioned in cross-examination, that two-spoonfuls of brandy were capable of keeping a man in a state of intoxication for about half an hour. Likewise, that act of the applicant being at the railway platform at the time in question cannot also be attributed to him since admittedly he was called from his quarter by his officers.

As noticed already, he had gone away after taking leave for about half an hour or so from his immediate officer on the ground that he was suffering from colic pain and had therefore to consult a doctor. True, that half an hour appears to have elapsed, but it is conceivable that had he not been sent for by his superior officers he would have prayed for extension of his leave on account of his ailment. In the circumstances the applicant was at the platform, not as a result of his own free will, but because he had to obey the summons of his superior officers.

These findings, the findings, that is, that neither his intoxication nor his presence at the railway platform were the acts of the applicant himself, are therefore sufficient for absolving him from the guilt of the offence for which he has been convicted. But from what is going to follow it would appear further that the acts for which he has been convicted could not also be said to have been committed with a guilty mind.

7. Judging the case from the view-point of mens rea even supposing that the taking of alcohol could be attributed to the applicant, the prosecution would have also to prove that he did that wrongful act with knowledge of its wrongful consequences. It the element of mens rea is to enter into the offence, it will not do merely to prove that the applicant had intentionally taken alcohol, but also that he knew that he was likely to set intoxicated thereby. In other words, it will have to be established that the applicant knew, or should have known, that the taking of two spoon-fills of brandy was likely to intoxicate him, or make him loose his self-control.

Such knowledge could perhaps have been attributed to him if it were possible to show that he was in the habit of taking alcohol, or even that Re had taken alcohol

of his own choice and free will. There is however no suggestion, let alone evidence, that the applicant was a habitual drunkard, and it has been seen that the taking of brandy could not be attributed to him. In these circumstances, he could not be expected to have known that the medically prescribed dose which he had to take was likely to produce intoxication. It follows therefore that the applicant cannot be said to have taken the aforesaid dose of brandy with a guilty mind.

8. Alike by reason of the acts for which theapplicant has been convicted not being acts attributable to him, and of the absence of guilty mindbehind those acts, I am clearly of the opinionthat the applicant did not commit the offence inquestion. The application in revision is therefore;allowed and his conviction and sentence are setaside and he is acquitted. The fine, should it havebeen realised already, shall be refunded.

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