K. Ari Vs. State

K. Ari Vs. State

SooperKanoon Citation : sooperkanoon.com/721918

Court : Kerala

Decided On : Jan-13-1958

Reported in : AIR1959Ker325; 1959CriLJ1182

Judge : Sankaran, J.

Acts : Prevention of Cruelty to Animals Act, 1890 - Sections 3 and 3A; Prevention of Cruelty to Animals (Amendment) Act, 1938

Appeal No. : Criminal Revn. Petn. No. 39 of 1957

Appellant : K. Ari

Respondent : State

Advocate for Def. : P. Govinda Menon (C), Adv.

Advocate for Pet/Ap. : V.M.B. Menon, Adv.

Disposition : Revision allowed

Judgement :
ORDER

Sankaran, J.

1. The accused in Summary Trial Case No. 1935/1956 on the file of the Honorary Special First Class Magistrate's Court at Kozhikode is the revision petitioner. The

prosecution against him was for' the offence punishable under Section 3(a) and Section 3-A(1) of the Prevention of Cruelty to Animals Act, Central Act XI of 1890 as amended by Act XIV of 1917 and Act XXV of 1938. The prosecution was launched by the S.P.C.A. Inspector at Kozhikode, According to him he noticed the accused driving a double bullock bandy along the Big Bazar Road at Kozhikode at 3 P.M. on 26-6-1956 and, on finding that the bandy was heavily loaded and that the bulls were struggling hard to move forward with such a load, he stopped the bandy and prepared a mahazar noting the total weight of the load in the bandy and also the weight of the bulls.

Since the load was in excess of the permissible limit, the charge was laid against the accused under the aforesaid sections. The accused pleaded not guilty to the charge. On behalf of the prosecution the S.P.C.A. Inspector and another independent witness were examined. This witness had attested the mahazar prepared by the Inspector which was also marked as Ext. P 1. The learned Magistrate accepted the evidence of the witnesses supported by the mahazar Ext. P 1 and convicted the accused under Section 3 (a) and Section 3-A (1) of the Prevention of Cruelty to Animals Act and sentenced him to pay a fine of Rs. 10 or in default, to undergo simple imprisonment for 7 days. The accused has come up in revision challenging the legality of the conviction entered against him.

2. What is made punishable under Section 3 (a) is 'overdriving, beating, or otherwise treating any animal so as to subject it to unnecessary pain of suffering'. From the manner in which this sub-section is worded, it is obvious that overdriving by itself is not made punishable. To constitute an offence under this sub-section, it must be shown that the overdriving was such as to subject the animal to unnecessary pain or suffering. The evidence adduced in this case does not satisfy this test. The witnesses examined in this case do not swear that the accused was seen overdriving the bulls. There is also no mention in the charge sheet filed by the S.P.C.A. Inspector that the accused was seen Overdriving the bulls.

On the other hand, the complaint was that there was overloading and that the bulls appeared to be weak and to be struggling hard to drag the overloaded cart. Overloading is not the same as overdriving. Even accepting the evidence of P.Ws.

1 and 2 that the bulls appeared to be weak and to be struggling hard to drag the cart, that is not sufficient to make out that the bulls were subjected to unnecessary pain or suffering. In fact the witnesses have not stated that it appeared to them that the bulls were being subjected to such unnecessary pain or suffering. Thus the essential ingredients of the offence contemplated by Sub-section (a) of Section 3 have not been proved in this case. The conviction under that section cannot, therefore, be sustained.

3. The legislature appears to have realised the difficulty that the prosecution may have to face in adducing satisfactory evidence to sustain a charge under Section 3 (a) and hence the new Section 3-A was added by the Amending Act (Act XXV of 1938). Under this new section, overloading by itself is made punishable. Clause (1) of Section 3-A runs as follows : 'If any person overloads any animal, he shall be punished with fine which may extend to Rs. 50/-, or with imprisonment which may extend to one month'.

The conviction of the accused under this section may stand if there is satisfactory evidence in support of the charge of overloading. The evidence on this point consists of the testimony of P. Ws. 1 and 2 and the mahazar Ext. P 1. On examining the load in the bullock cart driven by the accused, the weight of the load was estimated by P.W. 1 to be 2894 lbs. There were 10 bags of rice, 3 bags of grain flour and 4 bags of salt, as noticed in the mahazar Ext. P. 1. It is admitted by P.W. 1 that none of these bags was actually got weighed by him or at bis instance. On the other hand, the total weight was estimated by him by merely adding up the figures that were seen noted on each of the bags.

It is not known that these figures correctly represented the weight of the contents of these bags at that time. The learned Magistrate seems to have thought it could be so presumed. In a criminal prosecution there is very little scope for any such presumption being drawn. It will be wrong and unsafe to enter a conviction against the accused oh the strength of any such presumption. In a case like this where the charge is one for overloading, the prosecution has necessarily to prove the actual weight of the load. If the different bags in the three different groups consisting of rice, flour and salt were apparently of the same size, one bag at least from each

group could have been weighed and on the basis of such weight, the total weight of the entire load could have been calculated. Even this was not done.

Thus it is clear that the basis adopted for reaching the conclusion that there was overloading in the cart, was itself faulty, and for that reason alone the prosecution must fail. P.W. 1 has stated that the excess weight in the cart was 888 lbs. This figure has been arrived at by deducting from the total weight of the load the weight of the two bulls, which was ascertained as 2006 lbs. According to P.W. 1 the weight of the bulls was calculated by him by adopting a particular formula prescribed for that purpose. What that formula is, was not made clear by him. The accused who is to answer the charge of Overloading, was entitled to know the formula adopted by P.W. 1 and also that it is a formula sanctioned by law and that the same has been correctly applied. No evidence on these different aspects was adduced by the prosecution.

The Prevention of Cruelty to Animals Act does not specifically provide for any formula as mentioned by P.W. 1. The manner in which the question of overloading has to be determined had to be provided for by the rules to be framed under the Act. Section 15 of the Act empowers the State Government to make rules to carry out the purposes of the Act. The prosecution has not shown that the necessary rules in that direction have been made by previous publication in the official Gazette as required by Section 15. Thus it is not shown that in fixing the weight of the bulls at 2006 lbs., P.W. 1 was correctly following a formula sanctioned by any particular rule framed under the Act. For this reason also the prosecution has to fail.

The Prosecutor and the learned Magistrate appear to have been under the impression that in a prosecution under the Prevention of Cruelty to Animals Act the statement of the S.P.C.A. Inspector is in itself sufficient to sustain a conviction of the accused. This is an erroneous view. It may be that in a prosecution under this particular statute, there may not be much to be proved by any independent evidence. AH the same, the essential ingredients of the offence charged against the acsused must be proved to the satisfaction of the Court before it can enter a conviction against him. Strangely enough such evidence is absent in the present

case.

4. In the result, this revision petition is allowed and the conviction recorded against the accused by the learned Magistrate is set aside. The fine imposed on him, if realised, will be refunded.