

Arjunsingh Vs. the State

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Court : Rajasthan

Decided On : Nov-15-1957

Reported in : AIR1958Raj347

Judge : D.S. Dave, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 425 and 429; [Motor Vehicles Act, 1939](#) - Sections 116 and 131

Appeal No. : Criminal Revn. No. 148 of 1956

Appellant : Arjunsingh

Respondent : The State

Advocate for Def. : Kan Singh, Deputy Government Adv.

Advocate for Pet/Ap. : Kastoormal, Adv.

Disposition : Petition allowed

Judgement :

ORDER

D.S. Dave, J.

1. This is an application in revision by accused, Arjunsingh, who has been convicted by the Magistrate, First Class, Udaipur, under Section 429, I.P.C. and

Section 116 of the Motor Vehicles Act and sentenced to an aggregate fine of Rs. 350/-. In default of payment of the fine, he has been sentenced to undergo further rigorous imprisonment for 4 months. He went in appeal to the Court of the learned Sessions Judge, Udaipur, but was unsuccessful and therefore he has come to this Court in revision.

2. The prosecution case against the petitioner was that on 26-7-54 he was driving a truck No. RJY 347. He was going from Udaipur towards Bhakra Ghati and when he was passing over a bridge some cattle were coming from the opposite side. It was alleged that he was driving at a dangerous speed with the result that his truck struck against one buffalo belonging to one Mst. Umaid Bai. The buffalo fell down the bridge and received various injuries which resulted in her death 8 days after. The accused denied in the trial Court that he was driving the said truck or that his truck had struck against Umaid Bai's buffalo. The trial Court, however, believed the prosecution story and convicted and sentenced him as mentioned above. The appellate Court has also believed the prosecution story to the effect that (1) the accused was driving truck No. RJY 347 and (2) that it had struck against Umaid Bai's buffalo. Since these are questions of fact, I see no ground to interfere with the finding of the Courts below on these two points in revision.

3. Learned counsel for the petitioner has urged that even if it be conceded that Umaid Bai's buffalo was hit by the truck of the accused when he was driving it, it cannot be said that he had committed an offence either under Section 429, I.P.C. or Section 116 of the Motor Vehicles Act. It is contended that in order to establish an offence under Section 429, I.P.C. the prosecution has to prove that the accused had committed mischief by killing the buffalo. It is pointed out that in order to prove an offence of mischief, it was necessary for the prosecution to establish that the accused intended to cause or that he knew that he was likely to cause wrongful loss or damage to the public or to Mst. Umaid Bai and since these ingredients of the offence have not been proved, the Courts below have committed grave mistake in convicting the accused under Section 428, I.P.C.

4. As regards the offence under Section 116 of the Motor Vehicles Act it is contended that the prosecution had failed to prove if it had complied with the

provisions of Section 131 of the said Act. Secondly, the prosecution had failed to prove that the accused was driving recklessly or dangerously.

5. So far as the conviction of the petitioner under Section 429, I.P.C. is concerned, it has been conceded by learned Deputy Government Advocate that he is unable to support the judgment of the Courts below. The trial Court as also the appellate Court appear to have found the accused guilty under Section 429, I.P.C. simply because the buffalo was injured by the truck of the accused having struck against her body and she died 8 days after. In order to prove an offence of mischief however it is necessary for the prosecution to establish that the accused had an intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person.

In the present case, it was not the allegation even of the complainant that the accused had any grouse against her and that he intended to cause or that he knew that he was likely to cause wrongful loss or damage to her or to the public. Moreover, it cannot be said by any stretch of imagination that the accused had committed mischief by killing the buffalo as envisaged by Section 429, I.P.C. It was only accidentally that his truck struck against the buffalo and she fell down from the bridge. Whatever may be the responsibility of the accused to compensate Mst. Umaid Bai for the loss of property caused by him to her in a Civil Court, it cannot be said with any justification that he has committed a criminal offence under Section 429, I.P.C.

It is significant that even in the charge which was framed against the accused, it was not mentioned that the accused intended or knew that he was likely to cause wrongful loss or damage to the public or to any person. The prosecution had examined two eye-witnesses, namely, Bhaira and Bhanwarlal and the ingredients of this offence were not brought out even in their statements. Under the circumstances, I agree with the appellant's learned counsel and the learned Deputy Government Advocate that the offence under Section 429, I.P.C. is not established and the accused must be acquitted of that charge.

6. Now, as regards the offence under Section 116 of the Motor Vehicles Act, it would be proper to first set out that section and also Section 131 on which the

objection of the petitioner's learned counsel is founded. They are as follows :

'116 -- Driving recklessly or dangerously.--Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable on a first conviction for the offence with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, and for a subsequent offence, if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both'.

'Section 131 -- Restriction on conviction --No person prosecuted for an offence punishable under Section 115 or Section 116 shall be convicted unless --

(a) he was warned at the time the offence was committed that the question of prosecuting him would be taken into consideration, or

(b) within fourteen days from the commission of the offence, a notice specifying the nature of the offence and the time and place where it is alleged to have been committed was served or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence, or

(c) within twenty-eight days of the commission of the offence, a summons for the offence was served on him :

Provided that nothing in this section shall apply where the Court is satisfied that --

(a) the failure to serve the notice or summons referred to in this sub-section was due to the fact that neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time, or

(b) such failure was brought about by the conduct of the accused.'

7. It would appear from the language of Section 116 that in order to convict a person thereunder, it is necessary for the prosecution to establish that the accused was driving the motor vehicle at a speed or in a manner which was dangerous to the public. The speed of the vehicle, the manner of its driving and the danger to the public has to be determined after taking into consideration other circumstances including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be at the place. In the present case, P.W. Bhaira and P.W. Bhanwarlal have vaguely stated that the accused was driving very fast.

In the first instance, the Courts below ought to have scrutinized the evidence of these two witnesses cautiously, because they are not dis-interested persons. Bhaira was a shepherd and the buffalo was in his charge since he used to graze it. As the buffalo was injured, he had to give an explanation to its owner, Mst. Umaid Bai, and he would naturally throw the blame on the accused. The next witness Bhanwarlal was a boy of 14 years of age. He was only a chance witness and his statement also, therefore, needed scrutiny. As pointed out above, they have vaguely stated that the truck was going fast, but it has not been clearly brought out in their statements if the speed of the vehicle which was driven by the accused was so fast or that he was driving it in a manner which was dangerous to the public.

According to P.W. Bhanwarlal, there were 100 or 150 cows and buffaloes on the bridge. If the petitioner were really driving recklessly or dangerously then not only one but several cows or buffaloes would have been struck or at least more than one cattle would have fallen down the bridge having been startled by the speed and the reckless driving of the truck. The fact that only one out of 150 cattle was struck, shows that the vehicle could not have been driven recklessly or dangerously.

It is common knowledge that a buffalo belongs to that type of animal which is very slow to move or give way to a fast conveyance. It appears that no sketch-plan of the site where the occurrence is said to have taken place was prepared by the investigating officer. It has not been brought out what was the width of the bridge

where the truck had passed, where the buffalo was standing on the bridge and in what manner she got struck.

The injury report of the buffalo shows that even though she had fallen down from the bridge, she had not many injuries on her body. Ex. P-4 shows that there were bruises over the abdomen 1/4' long, and abdominal hernia inflammation about 6' and a punctured wound over the hip. It is clear from the above injuries that the animal was not run over, but only a part of her body was touched by the truck and it is not unlikely that she might have fallen down the bridge if she was standing on the edge. The mere fact that the buffalo was struck and she fell down, is not sufficient to hold against the accused that he was driving his vehicle recklessly or dangerously.

8. Learned counsel for the petitioner has next urged that there is no evidence to show that his client was warned at the time when the offence was committed that the question of prosecuting him would be taken into consideration. It is conceded by learned Deputy Government Advocate himself that Clauses (b) and (c) of Section 131 could not apply to the present case, because no notice was given to the accused within fourteen days from the commission, of the offence as contemplated by Clause (b); nor was he served with summons within 28 days of the commission of the offence as required by Clause (c).

His contention is that P.W. Bhaira had noted the number of the truck and P.W. Bhanwarlal also says that there was a quarrel between Bhaira and the accused and this should be taken as a warning to the accused that his prosecution would be taken into consideration, I have given due consideration to this argument and find myself unable to accept it. The mere fact that the number of the truck was noted by Bhaira cannot be taken to mean that he had warned the accused that the question of prosecuting him would be taken into consideration. P.W. Bhaira has not stated that he had told the accused that he would report against him in the police or that he would bring a complaint or that he would prosecute him, or that he would consider his prosecution. He only says that he noted the number of the truck when it came to a stop.

It may be that he might have noted the number to inform the owner of the buffalo about the accident or to bring a civil suit for damages in future. Unless we come to know what actual words he had uttered while he was noting the number, it cannot be said that he had warned the accused that his prosecution would be taken into consideration. P.W. Bhanwarlal also has not stated what words were uttered by Bhaira and whether he had given him the warning as required by law. It is clear that Section 131 bars conviction of a person prosecuted under Section 116, unless the prosecution is able to prove one of the three conditions mentioned in Clauses (a), (b) and (c). Since the prosecution has failed to prove them in the present case, the petitioner's conviction cannot be maintained.

9. The revision application is, therefore, allowed, the petitioner's conviction under Section 429, I.P.C. and Section 116 of the Motor Vehicles Act is set aside and he is acquitted of both the charges. The fine, if realised from him, would be refunded to him.

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