

**In Re: J.L. Samuel**

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**Court :** Chennai

**Decided On :** Dec-09-1969

**Reported in :** (1970)1MLJ492

**Appellant :** In Re: J.L. Samuel

**Judgement :**

ORDER

**N. Krishnaswamy Reddy, J.**

1. The revision petitioner was the Deputy Superintendent of Police, Armed Reserve, Palayamkottai. He was convicted under Section 304-A, Indian Penal Code, and sentenced to undergo Rigorous Imprisonment for six months and to pay a fine of Rs. 1,000 and also under Section 3 read with Section 25 (1) (a) of Indian Arms Act and sentenced to pay a fine of Rs. 300, by the Sub-Divisional Magistrate, Tuticorin. The Sessions Judge, Tirunelveli, confirmed his conviction and sentence.

2. This is a very unfortunate case where a Police Constable doing duty at the Police Station was accidentally hit by a bullet fired by the petitioner, resulting in his death. Both the Courts have found that the death of the Constable was caused by the rash and negligent act of the petitioner. It was also found that he used a fire arm unauthorisedly.

3. The petitioner, during the relevant period, was the Deputy Superintendent of Police, Armed Reserve, Palayamkottai. On 16th December, 1966 he directed D.W. 1, the Additional Reserve Inspector, Armed Reserve to send for rifle from Tuticorin Police Station for the purpose of cleaning and zeroing. Accordingly, the latter sent the same. On 28th December, 1966, the petitioner obtained permission from P.W. 21 the then Additional Superintendent of Police, Trinaveli to remain at Headquarters on that day, it being his Silver Jubilee Wedding Anniversary Day. At about 1-30 p.m. that day, the petitioner asked P. W. 1, a Police Constable attached to Armed Reserve, Palayamkottai, and who used to drive his private car, to get from the Armoury 22 rifle with the card board targets and also to accompany him with his own gun. The 22 rifle and two card board targets were accordingly brought by P.W. 1 and handed over to the petitioner. The petitioner secured a police lorry MDT 7403 from Palayamkottai for the purpose of going to Tuticorin at about 2-45 p.m., and he along with his brother, his children and P.W. 1 got into the lorry and proceeded for about five miles from Palayamkottai and then the lorry was stopped for the purpose of shooting some birds, probably for dinner. The lorry was driven by P.W. 1. The petitioner and P.W. 1 got down and shot some birds. From there, the lorry proceeded for about 1 1/4 furlongs west of Murappanad when the petitioner shot another bird on the northern side of the road. From there again, the lorry was taken towards east and it was stopped again at a place south of the Police Station at Murappanad as directed by the Petitioner. A crane was found moving from east to west on the ridge of a field in between the road and Murappanad Police Station on the north. The petitioner shot at it with MO. I rifle through the aperture provided therefore in the lorry from a height of about 15 ft., the bird being at a distance of about 115 feet. The shot missed the bird. The bird flew. The bullet flew into the Police Station on the north through the open window and hit Muthukrishnan P.C. 262 who was working there as Station Writer. He sustained an injury on the left side. The petitioner on being informed about this, took the injured to Dr. Tayal Gnanamuthu and then to the hospital at Palayamkottai. The constable, however died on 3rd December, 1966.

4. The petitioner contended that he shot a crane from the aperture, that he was not rash or negligent in doing so as he himself was trained in shooting and that he was a good marksman. He further contended that he had taken the rifle for the

purpose of zeroing and correct and, therefore, it cannot be said that he committed an offence under the Arms Act.

5. It is admitted that the petitioner shot the bird at a distance of 115 feet away from his and from a height of 15 feet through the aperture. It is clear that the bullet released from the rifle hit the deceased constable. The appellate Court found that the bullet did not hit the Constable directly after it was released from the rifle but it fell on the water, touched the water surface and got into it with a spin and the bullet ricocheted and flew from the water surface and hit the deceased. In spite of this finding, the appellate Court confirmed the conviction holding that he was rash in having shot the bird knowing that the Police Station was near by. The appellate Court has also discussed about the case law in respect of culpability of a person in such circumstances. It is quite irrelevant to look to case law as on the finding the Sessions Judge, it cannot be said at all that when the bullet had hit the deceased as a result of ricocheting, it was due to rash or negligent act. No one can foresee when he shoots a bird straight at it that the bullet were likely to fall on water and from the surface of water after a spin would rebuff and hit a person at the Police Station. If the shooting was done by an incompetent person at that place where the Police Station was so near, it can be said without any difficulty that the act by such a person will amount to a rash act. It is not the case of the prosecution that the petitioner is not trained in shooting. The very fact that he has been in the Armed Reserve, would indicate that he should have had very good training and experience in shooting. I am, therefore of the view that though the Police Station was near the scene of occurrence, yet, the petitioner being a trained man in shooting, if he had shot a bird, it cannot be said that he was rash or negligent in so doing. Ricocheting of the bullet from the water surface is a sheer unforeseen accident. It is of course unfortunate that the Constable died. In any event, the petitioner will be entitled to the benefit of doubt. He is acquitted under Section 304-A Indian Penal Code. Even under the Arms Act, I do not think that the conviction can be sustained. He is after all an official who is in charge of the Armed Reserve. He was celebrating his Silver Jubilee Wedding Anniversary Day. He had gone with his family and children for hunting birds and holidaying. Though it may be irregular for the petitioner to have used the rifle for hunting, it cannot be said that he had committed the offence. He is acquitted even under the Arms Act.

6. In the result, the revision petition is allowed and the petitioner is acquitted. His bail bond is cancelled. The fine amount, if paid, will be refunded to him.

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