ALOYSIUS SILVA

v.

UPALI SILVA

COURT OF APPEAL
ABDUL CADER, J., AND ATUKORALE, J.
C.A. (SC) 16/76 – M.C. MINUWANGODA NO. 2/M.
SEPTEMBER 3, 1982

Delict – Rylands & Fletcher Rule – Should substance that escapes be intrinsically dangerous?

The respondent was owner of a paddy field called Galakumbura. The appellant was the owner of land to the north of this paddy field on which he had a coconut and fibre mill.

The respondent alleged that the appellant had caused dirty water accumulated on his land to flow into the respondent's field and damage his crops.

The Magistrate found that dirty water flowed from the appellant's land to the respondent's land and damaged his crops. Applying the Rule in *Rylands v. Fletcher* the Magistrate awarded damages to the respondent. The appellant appealed against this award.

Held –

The appellant is liable for the consequences of his act in damming up and storing the dirty water on his land regardless of whether he is guilty of negligence or not.

Case referred to:

(1) *Rylands v. Fletcher L.R.H.L. 1868, English and Irish Cases, Vol. 3, 330*

APPEAL from judgment of the Magistrate of Minuwangoda.

Nimal Senanayake S.A. with *Miss S.M. Senaratne* and *M.A. Ghazalli* for the appellant.

J.W. Subasinghe S.A. with *D.J.C. Nilanduwa* for the respondent.

Cur.adv.vult.

October, 29, 1982

ATUKORALE, J.

The respondent filed this action against the appellant for, inter alia, the recovery of a sum of Rs.750/- being damages caused to a portion of the paddy crop standing on the field called Galakumbura, of which he was the tenant cultivator. The appellant who is the owner of the land to the north of the field runs a coconut and a fibre mill on his land. The respondent alleged that the appellant has wrongfully and unlawfully caused the coconut and dirty water accumulated on his land to flow into the respondent's field as a result of which the paddy plants standing on a part of the field perished. The defence taken up by the appellant was that he had constructed tanks and trenches in his land to prevent the flow of this water but that owing to the heavy rainfall experienced in the area during the month of November, 1973, this water overflowed and as such the damage, if any, was due to causes beyond his control. He also maintained that coconut water was not harmful to paddy plants and that he mixes coconut water with fibre dust and uses the mixture as a fertiliser for coconut, paddy and vegetable cultivations.

After hearing the evidence the learned Magistrate entered judgment for the respondent in a sum of Rs.300/-. In the course of his judgment he stated that the main questions for his determination were whether

dirty coconut water flowed from the appellant's coconut and fibre mill to the respondent's field and, if so, whether the appellant was liable to pay damages for the loss sustained by the respondent. On the evidence led he came to the finding that dirty coconut water flowed from the appellant's land to the respondent's field and that thereby damage was caused to the paddy plants in one section of the field. He also held, applying the principle laid down in *Rylands v. Fletcher* (1) that the appellant's liability for the damage done was one of absolute liability and awarded the respondent the said sum of Rs. 300/- as damages.

Admittedly no issue on negligence was framed at the trial. Learned counsel for the appellant, whilst not disputing that the rule laid down in *Rylands v. Fletcher* (1) is part of our law, submitted to us that the learned Magistrate erred in the application of this rule to the facts of this case. He contended:

(a) that there was no evidence of an accumulation of dirty coconut water by the appellant on his land;
(b) that even if there was such an accumulation, dirty coconut water was not a substance that was naturally or inherently dangerous; and
(c) that there was no evidence to show that this water escaped from the appellant's land to the respondent's field.

He therefore maintained that the judgment of the learned Magistrate was wrong.

In regard to the first and third contentions aforementioned there is, in my view, ample evidence to establish both the accumulation of this water by the appellant on his land as well as its escape into the respondent's field. The appellant himself during the course of his evidence conceded that he had built high embankments like tanks to store this water on his land. He did so, according to him, to preserve this water for the purpose of manufacturing a form of fertilizer by adding fibre dust thereto. In so far as the third contention aforementioned is concerned, the evidence of the respondent and his witnesses, which has been accepted by the learned Magistrate, proved beyond doubt that this water had escaped into the respondent's field. Wattegedera, the Grama Sevaka, called by the respondent, stated he saw this water coming into the field from the appellant's land. The evidence of Austin Fernando, the Chairman of the Janatha Committee, was to the same effect. Several other witnesses called by the respondent testified to the fact that on inspection they observed that this dirty water had entered the field and that it bore a dirty

stench and an oily character on its surface. The appellant himself admitted that this water had got into the field but he attributed it to the heavy rainfall which he stated occurred at the time. He stated that as his land was on a higher elevation than the field the tanks got filled up for the rains and the water flowed according to the natural gradient of the terrain into the respondent's field and as such he was not liable. The learned Magistrate has, however, rejected the appellant's evidence that there was heavy rainfall. It was also in evidence that the owner of this field had sued the appellant in 1953 claiming damages for the loss of his paddy crop due to the dirty water from the appellant's land flowing into the field. The appellant did not deny in that case that there was an accumulation of dirty water on his land. Nor did he maintain in that case that the flow was due to the rainfall. His defence was that he had acquired the right to let this water flow into the field by virtue of prescriptive user for over 30 years. In his answer (P3A) in that case he also averred that on receipt of a letter from the plaintiff's Proctor he diverted the water into a pit on his land. But even assuming that the flow of the dirty water into the field was due to the heavy rainfall as maintained by the appellant in this case, it appears to me that this is not a defence to the respondent's claim. The water is dirty water accumulated by the appellant by artificial contrivances built by him on his land. It is not surface rain water flowing naturally from his land into the field below. It is dammed up water being allowed to overflow into the field and comes within the principle enunciated in *Rylands v. Fletcher* (1).

Learned counsel for the appellant pressed for our consideration the third contention mentioned above, namely, that coconut and dirty water is not a substance that is by itself naturally dangerous and that being so, no liability would attach to him on the principle laid down in the above case. He submitted that to be held liable it is not sufficient that the substance accumulated is potentially dangerous but that it should be proved that it is intrinsically dangerous. He stated that coconut water may be deleterious to paddy plants but the test is whether it was in its nature dangerous by itself. If not, he contended, the rule in *Rylands v. Fletcher* (1) would have no application. I do not agree with this contention. Blackburn, J. in delivering the judgment of the Court of Exchequer in appeal laid down the doctrine of absolute liability in the following terms:

> "We think that the true rule of law is, that the person who for his own purposes brings on his lands and collects and keeps

there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default; or, perhaps, that the escape was the consequence of vis major, or the act of God; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient. The general rule, as above stated, seems on principle just. The person.....whose mine is flooded by the water from his neighbour's reservoir.....is damnified without any fault of his own; and it seems but reasonable and just that the neighbour, who has brought something on his own property which was not naturally there, harmless to others so long as it is confined to his own property, but which he knows to be mischievous if it gets on his neighbour's, should be obliged to make good the damage which it ensues if he does not succeed in confining it to his own property. But for his act in bringing it there, no mischief could have accrued, and it seems but just that he should at his peril keep it there so that no mischief may accrue, or answer for the natural and anticipated consequences. And upon authority, this we think is established to be the law whether the things so brought be beasts, or water, or filth, or stenches," – L.R., Court of Exchequer, Vol.1, at p.279.

The above statement of the law was expressly adopted by Lord Cairns, Lord Chancellor, in his judgment in the House of Lords which affirmed the judgment of the Court of Exchequer – L.R., 1868, English and Irish Cases, Vol.3, p.330. What was collected and stored in that case was water, a substance which cannot be considered to be dangerous by nature. The act that was considered to be dangerous was the act of the defendant in introducing and storing water on his land which was not a natural but a non-natural user of the land. He had thus brought upon his land a condition by artificial means which was dangerous and may have become mischievous if not kept under proper control. In the instant case, too, the appellant had "brought upon his land, collected and kept there something likely to do mischief if it escaped." The third contention of learned counsel for the appellant therefore fails. It appears to me that the appellant is liable for the consequences of his act in damming up and storing the dirty water on his land, irrespective of whether he was guilty of negligence or not. Under the circumstances it is

unnecessary to consider whether the evidence adduced establishes negligence on the part of the appellant and, if so, whether the respondent can seek to support the judgment of the learned Magistrate on that ground. The appeal is dismissed with costs.

ABDUL CADER, J.– I agree.

Appeal dismissed.