DINGIRI BANDA

v.

THE ATTORNEY-GENERAL

COURT OF APPEAL.
SIVA SELLIAH, J. AND GOONEWARDENA, J.
C. A. APPEAL 289/83.
M. C. MAWANELLA 15067.
MARCH 26, 1986.

Criminal Law – Intoxication – Penal Code, section 79 – Imputation of knowledge–Mischief–Penal Code, section 410–Charge–Accused charged from plaint – Code of Crimial Procedure Act, section 182 – Offences Against Public Property Act No. 12 of 1982, section 2 – Sentence.

Where intoxication of the accused when he committed the crime is voluntary the law imputes to the drunkard the knowledge of a sober man where knowledge is an essential element of the crime and where intent is an essential element of the crime the law imputes to the drunkard the knowledge of a sober man in so far as that knowledge is relevant for the purpose of determining his intention.

For the offence of mischief knowledge is sufficient and hence voluntary intoxication is not a defence.

Charging the accused from the charge sheet would be in strict compliance with s. 182 of the Code of Criminal Procedure Act. Failing to charge from the charge sheet but informing the accused from the plaint that he had committed the offence of mischief under s. 410 of the Penal Code may be allowed where no failure of justice is occasioned and the accused has not been misled or prejudiced thereby.

The Offences Against Public Property Act No. 12 of 1982 has not enlarged the punitive jurisdiction of the Magistrate but invoking s. 2 of the said Act he can impose a sentence falling within his general jurisdiction yet adhering to the minimum sentence prescribed by the said Act.

Cases referred to:

(1) *The King v. Rengasamy–(1924) 25 N.L.R. 438.*

(2) *Bhoor Singh v. State of Punjab–(1974) 4 SCC 754, 1974 SCC (Cri) 664.*

(3) *Willie Stanely v. State of M.P.–(1955) 2 SCR 1140.*

(4) *Nanak Chand v. State of Punjab–(1955) 1 SCR 1201.*

(5) *Kahan Singh v. State of Haryana–(1971) SCC (Cri) 426, (1971) 3 SCC 226.*

APPEAL from judgment of the Magistrate's Court of Mawanella.

H. M. P. Herat for accused-appellant.

Mrs. Kumudini R. de Silva, S.C. for Attorney-General.

Cur. adv. vult.

May 8, 1986.

GOONEWARDENA, J.

This case instituted against the accused in the Magistrate's Court was with respect to a charge which though in Sinhala rendered into English by reference to the plaint filed would read as follows:

"On 15.09.1982 in the Magistrate's Court of Mawanella.

In terms of section 136 of Chapter XIV of the Code of Criminal Procedure Act No. 15, I, Sub-Inspector Wickremasinghe, Officer-in-Charge of the Crimes Branch of the Mawanella Police, do hereby report this day to Court that Gondiwela Ralalage Dingiri Banda of Hingula, Mawanella did on or about the 26th day of August 1982 at Mawanella within the jurisdiction of this Court cause damage to the value of Rs. 7,056 by striking the front windscreen of lorry No. 28 Sri 257 property in the possession of

Wijesinghe Etampolage Gunatilleke of Girandurakotte, Mahiyangana of the Mahaweli Authority and thereby committed an offence punishable under section 410 of the Sri Lanka Penal Code read with section 2 of the Offences Against Public Property Act No. 12 of 1982".

The events which led to this prosecution were very briefly as follows: This lorry belonging to the Mahaweli Authority was proceeding along the main road at Mawanella when the accused who was after liquor compelled it to be brought to a halt, wrenched off its windscreen wiper and with it belaboured the windscreen causing damage to it estimated at Rs. 7,056. The accused's version in evidence was that he was being attacked by some persons and with a view to escape them he attempted to climb on to this lorry. His evidence did not exclude the possibility of the windscreen wiper having come off as a result, but he had stated that he did not at any stage contemplate causing damage to the lorry.

The learned Magistrate at the conclusion of the trial found the accused guilty of the charge and whilst sentencing him to undergo a term of one years rigorous imprisonment also imposed upon him a fine of Rs. 21,168 being three times the amount of the loss or damage caused under the provisions of section 2 of the Offences Against Public Property Act No. 12 of 1982 and it is against this conviction and sentence that this appeal has been preferred.

There do not appear to me to be any valid reasons for interfering with the Magistrate's conclusion on the facts, nor were any reasons seriously urged before us at the hearing. However, the accused's Counsel addressed an argument which appeared to suggest that in view of the intoxicated state of the accused he was not responsible in law for this act. The accused's evidence was not that his state of intoxication was involuntary. Indeed his evidence had been that he consumed this liquor of his own volition. What then was the extent of his responsibility for this act?

Section 79 of the Penal Code states thus:

"In a case where an act done is not an offence unless done with a particular knowledge or intent a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated unless the thing which intoxicated him was administered to him without his knowledge or against his will".

A leading case with regard to the meaning of this section was, *The King v. Rengasamy* (1). There it was pointed out that section 79 is intended to deal with two classes of cases–

(*a*) cases in which knowledge is an essential element of the crime, and

(*b*) cases in which intent is an essential element of the crime.

It was held by the majority of the judges (Bertram, C. J. and De Sampayo, J.) that in the first of these cases it imputes to the drunkard the knowledge of a sober man and in the second of them it also imputes to the drunkard the knowledge of a sober man in so far that knowledge is relevant for the purpose of determining his intention.

Now mischief is defined in the Penal Code in section 408 as follows:

"Whoever with intent to cause or knowing it is likely to cause wrongful loss or damage to the public or to any person causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously commits mischief".

If therefore one applies the view of the majority of the judges in *Rengasamy (supra)* to the case before us (assuming the accused was intoxicated) it is clear that if one is considering the knowledge of the accused (as appearing in the definition of mischief) we would have to impute to him the knowledge of a sober man whereas if one is considering the intention of the accused (again as appearing in the definition of mischief) we would have to also impute to him the knowledge of a sober man in so far as that knowledge is relevant for the purpose of determining his intention.

In the same case Garvin, A.J. placed a narrower construction that the imputation of knowledge authorised by section 79 should be confined to those cases in which knowledge and intention are specifically stated as alternative mental elements of an offence. It will be seen having regard to the definition of the offence of mischief that even in such narrower view that accused cannot escape liability assuming again that he was intoxicated. This assumption as to his state of intoxication itself is I think without proper foundation although adopted for the purposes set out above. The accused's own evidence was that he

was in possession of his senses. Thus if he did not possess the requisite intention he had at least the requisite knowledge so as to make him liable for the act he committed. Accordingly the defence based upon intoxication I think must fail.

Counsel for the accused at the hearing complained that his client had not been properly charged and he appeared to refer to the absence of what is commonly called a charge sheet. At the commencement of his judgment the Magistrate had referred to the accused having been charged in accordance with the plaint, to which he had tendered a plea of 'not guilty'. The journal entry of 15.09.1982 shows a rubber stamp impression which though not clearly decipherable indicates inter alia that the trial of the case had been fixed for the 11th of October 1982. Anyone possessing a reasonable degree of familiarity with the working of a Magistrate's Court specially a busy one would appreciate the usefulness in its fight against time to resort to the use of this type of rubber stamp and would also realise from the context that the unclear words before the space intended for the insertion of the trial date would indicate that when the charge was read to the accused his plea did not amount to an unqualified admission of guilt. The very impression of the rubber stamp unlike something written by hand would indicate what these words are and the Magistrate's explanation that the accused had pleaded 'not guilty' upon being charged puts the matter beyond doubt. The legality of charging an accused person in the manner in which it was done in this case may then be examined. The proceedings against the accused were instituted on a written report (commonly called a plaint) by a police officer under section 136(1)(*b*) of the Code of Criminal Procedure Act No. 15 of 1979 (section 148 (1)(*b*) of the old Criminal Procedure Code). The next step was for the Magistrate to charge him under section 182(Section 187 of the old Code). It is the usual practice in Magistrate's Courts to charge an accused person with reference to a charge sheet on which the plea of the accused is recorded as well. Such practice in my view is a very desirable one and is a strict compliance with the provisions of section 182 of the Code of Criminal Procedure Act. This charge sheet as a matter of practice is more often than not tendered to Court by the Peace Officer filing his report under section 136 (1)(*b*) (plaint) and is virtually worded in terms identical with the plaint (corrected by the Magistrate if necessary). The question then is whether as in the case before us the absence of such a charge reduced to writing as appears

to be the requirement of section 182 of the Code of Criminal Procedure Act No. 15 of 1979 invalidates the trial. Upon a careful consideration of the circumstances and being mindful of the actual day to day working of Magistrate's Courts, I venture to state that the answer to that question should be in the negative unless the failure to reduce the charge to writing occasioned also a failure of justice. In the case before us it cannot I think be said that there was such a failure of justice. The accused faced his trial and cross examined the witnesses on the basis of the charge which he then must be deemed to have understood, and even tendered his own evidence on that basis. Thus, I take the view that the accused was not misled or prejudiced in his defence. The Indian Courts in certain cases appear to have taken a view akin to mine as the following passage from page 164 of "The Criminal Court Handbook" by P. L. Malik (17th Ed.) indicates:

> "The object of charge (sic) is to give to the accused notice of the matter he is charged with and does not touch jurisdiction. If necessary information is conveyed to him in other ways and there is no prejudice, the trial is not invalidated by the mere fact that the charge was not formally reduced to writing. The essential part of this part of law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. *Bhoor Singh v. State of Punjab* (2), *Willie Stanely v. State of M.P.*(3) relied on. See also *Nanak Chand v. State of Punjab* (4) and *Kahan Singh v. State of Haryana* (5)".

That the object of the charge is to give the accused the information he is entitled to have is clarified by section 165(6) of the Code of Criminal Procedure Act No. 15 of 1979 which reads "the charge shall.....be read to the accused in a language which he understands".

This argument too then does not succeed.

Another argument was adduced at the hearing before us that the charge was defective, in that it sought to make the accused liable for punishment under two different statutes. Counsel for the appellant claimed that this 'joinder' was defective. I have not been able to find any local cases dealing with this question and the matter must thus be examined without that aid.

The Offences Against Public Property Act No. 12 of 1982 states its object to be "to make provision in respect of certain offences committed in relation to public property and for matters connected therewith or incidental thereto". "Public Property" is defined to mean the property of the Government, any department, statutory board, public corporation, bank, co-operative society or co-operative union (section 12). The Act provides for certain punishments with respect to certain offences as one of the principal matters dealt with, provides for forfeiture of property to recover the value of fines imposed and also provides for the remanding of the accused in certain cases pending trial and after trial pending appeal. Now the offences dealt with by this Act are all known to the Penal Code and the description of such offences have all adopted the definition contained in the Penal Code, by the use of the words "has the same meaning as in the Penal Code" (Vide section 12). If then it is sought to be made known to an accused person that he is liable inter alia to the special punishment directed to be imposed by this Act how does one go about doing this. As a matter of argument one can say there are two ways of doing this, one by mentioning this Act (as here) and the other by not mentioning it. Can it be said logically that an accused sought to be subjected to the provisions of this Act would be misled or prejudiced in his defence by making a reference to the Act in the charge and would it be reasonable to say that the accused can be heard to complain about an inclusion of a reference to this Act in the charge while not being allowed to so complain about a non reference to the Act, when one has regard to the object of framing a charge against an accused person. In my view there can be only one answer to that and that is to say there must be a clear reference to that Act as well in the charge. Section 164 of the Code of Criminal Procedure Act sets out certain requirements relating to the charge. It provides that if the law which creates the offences give it in specific name the offence may be described in the charge by that name only. It also provides that the law and the section of the law under which the offence is said to have been committed is punishable shall also be mentioned in the charge. In the case before us the offence is one of mischief (to public property) and can therefore be described by that name only in the charge. It is punishable under

section 410 of the Penal Code and also punishable under section 2 of the Offences Against Public Property Act No. 12 of 1982. Since the definition in the Offences Against Public Property Act has specifically incorporated the definition in the Penal Code the clearest way to give an accused person notice of the matter with which he stands charged would be to refer to the Penal Code and the clearest way to give him notice of the law which renders him liable to punishment is to refer to both such laws. What was sought to be done here was to inform the accused that he had committed the offence of mischief as defined in the Penal Code for which he was liable to be punished under section 410 thereof. That had in fact been done. What was also sought to be done was to give the accused person notice that he had committed the offence of mischief as defined in the Offences Against Public Property Act No. 12 of 1982 for which he was liable not only to the punishment described in section 2 but also subjected to the other liabilities provided by the Act such as forfeiture of property. That too had in fact been done and in my view in the simplest and most effective way possible by a reference to both statutes.

I therefore take the view that the charge is not defective by reason of its reference to the provisions of both the Penal Code and the Offences Against Public Property Act No. 12 of 1982.

The only question remaining is whether the Magistrate had the jurisdiction in law to impose the punishment he did. Section 14 of the Code of Criminal Procedure Act provides as follows:-

"A Magistrate's Court may impose any of the following sentences:

(*a*) Imprisonment of either description for a term not exceeding two years;

(*b*) Fine not exceeding one thousand five hundred rupees;

(c) Whipping;

(d) Any lawful sentence combining any two of the sentences aforesaid;

Provided that anything in this section shall not be deemed to repeal the provisions of any enactment in force whereby special powers of punishment are given".

The Offences Against Property Act No. 12 of 1982 nowhere enlarges the punitive jurisdiction of the Magistrate's Court conferred by the said section 14. In the absence of clear words to the contrary I am of the view that the Magistrate's power was limited by this section. Instances are not wanting where when the legislature intended to enlarge such jurisdiction it did so by the use of words to that effect. When the Magistrate invoked the provisions of section 2 of the Public Property Act No. 12 of 82 in my view he came up against the barrier limiting his jurisdiction to the imposition of a fine not exceeding Rs. 1500, and could not impose anything beyond that. He of course acted completely within jurisdiction in imposing a term of one year rigorous imprisonment which by the said section he mandatorily had to impose and which in any event in my view was justified in all the circumstances of the case.

I would therefore affairm the conviction but vary the amount of the fine imposed by him to one of Rs. 1500 in default of payment of which the accused will undergo a further term of 3 months rigorous imprisonment which will be in addition to the one years rigorous imprisonment ordered by the Magistrate.

Subject to this variation the appeal is dismissed.

SIVA SELLIAH, J. – I agree.

Appeal dismissed.