Shyamlal

Vs

State of Uttar Pradesh

Criminal Appeal No. 9 of 1962

(Syed Jafar Imam, K. Subba Rao, J. R. Mudholkar JJ)

13.02.1963

JUDGMENT

IMAM, J. -

Appellant Shyamlal was convicted by the Honorary Railway Bench Magistrate Tundla Bench Agra, exercising first class powers, for an offence punishable under s. 121 of the Indian Railways Act and was sentenced to pay a fine of Rs. 60/-, and in case of default in the payment of fine, to two months' rigorous imprisonment. His appeal to the II Additional Sessions Judge, Agra was dismissed and his conviction and sentence were confirmed. He then filed Revision No. 971 of 1961 in the High Court of Judicature at Allahabad, but the same was also rejected by Mr. Justice Brij Lal Gupta. Against the Judgment of the High Court he obtained special leave from this Court and has filed this appeal.

The appellant Shyamlal was a pointsman at Achhnera Railway Station. He bore grudge for some time against Hukam Chand Chaturvedi, P.W. 2, who was a Guard. The latter had taken in 1955 objection to a bed being carried on a passenger train by the appellant. Hukam Chand had also detected the appellant taking Railway line sleepers in a compartment, a portion of which was protruding of the compartment, and made a report against the appellant, as a result of which he was transferred. It is alleged that on November 30, 1959, Hukam Chand was on duty as a Guard on 20 Down train standing at the platform at Achhnera Railway Station at about 4-50 p.m. Suddenly the appellant came out from behind a compartment, armed with a scythe, and waiving it in his hand in a menacing way told Hukam Chand that he would cut his neck, and hurled abuses on him thereby causing an obstruction in the discharge of his duty.

P.W. 2, Hukam Chand Chaturvedi, narrated the entire prosecution case and his statement was corroborated in full by P.W. 3 R. L. Pandey, P.W. 4 Chanda Ram, P.W. 8 Maharaj Dutt and P.W. 9 Nisar, who were all independent witnesses, and there is nothing at all to show that they are inimical to the appellant. On a careful consideration of the evidence, the Additional Sessions Judge, Agra came to the conclusion that the prosecution have been successful in establishing its case and the appellant came out from behind a compartment, abused Hukam Chand and waived the scythe towards him in a menacing way shouting that he would cut his neck with it.

Section 121 of the Indian Railways Act states :

> "If a person wilfully obstructs or impedes any railway servant in the discharge of his duty, he shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both."

Mr. D. S. Golani, Counsel for the appellant, contended that as the prosecution had failed to prove as to what duty was being actually performed by Hukam Chand, the appellant cannot be convicted under s. 121 of the Indian Railways Act. In support of his contention the counsel relied on Radha Kishan v. Emperor [A.I.R. (1923) Lah. 71.], Mohinder Singh v. The State [A.I.R. (1953) S.C. 415.], Jawand Mal v. The Crown, [(1923) I.L.R. 5 Lah. 467.]. In the matter of Baroda Kant Pramanik [(1896) 1 C.W.N. 74.] and Emperor v. Popatlal Bhaichand Shah [(1929) I.L.R. 54 Bom. 326.]. He also relied upon Rules 113, 114, 115 and 137 of the Rules framed under the Indian Railways Act. The facts of all these cases were different from those of the present case and they can be easily distinguished. They have therefore no bearing on the decision of the present case.

From the facts stated above it is evident that the act alleged to have been done by the appellant was done by him, actuated by malice by reason of the fact that Hukam Chand had not spared him in the past for his lapses. It would follow, therefore, that this act was wilful within the meaning of s. 121 of the Indian Railways Act. Further, Hukam Chand was on duty as a guard of train 20 Down, which was then standing at the platform, and as a Guard he had to discharge multifarious duties at the time while the train was standing at the platform, e.g. he had to look after the loading of the parcels in the luggage van and to see that nothing untoward happened at the platform. Thus, it is clear, that during the time that the incident took place, viz., for about 15 minutes, he was obstructed from discharging his duty by this deliberate and wilful act on the part of the appellant, as it is not only when the train is in motion that a Guard is on duty, but also while the train is standing at the platform. We are, therefore, of the opinion that the appellant has wilfully created obstruction in the discharge of the public duty by Hukam Chand as a Guard.

Rules 93 to 103 of the Rules framed under certain sections of the Indian Railways Act, 1890, deal with the attendance, discipline and equipment of Staff Working Trains. In Rule 95, it is stated that the Guard shall be in charge of the train in all matters affecting stopping or movement of the train for traffic purposes. It is, therefore, clear that Hukam Chand was on duty as a Guard right up to the time when he was to be the Guard of the train, and the act of the appellant amounted to wilfully creating obstruction in the discharge of the public duty by Hukam Chand. The appellant was, therefore, rightly convicted under s. 121 of the Indian Railways Act.

The appeal is accordingly dismissed.

RAGHUBAR DAYAL J. -

I am of opinion that the appellant is not guilty of the offence under s. 121 of the Indian Railways Act, but is guilty of the offence under s. 506 I.P.C.

The finding of fact about the appellant's conduct at the time cannot be challenged before us in this appeal by special leave. The only question to determine is whether he, by his conduct, committed an offence under s. 121 of the Act which reads :

> "If a person wilfully obstructs or impedes any railway servant in the discharge of his duty he shall be punished with fine which may extend to one hundred rupees."

To establish the offence it is necessary to prove that the appellant acted wilfully and that his wilful action obstructed or impeded Hukam Chand in the discharge of his duty. The expression 'in the discharge of his duty' is not equivalent to the expression 'when on duty.' The obstruction or impediment, caused to the railway servant in the discharge of his duty, should result in an

obstruction or impediment in the execution of the duty he was performing at the time. There is nothing on the record to indicate what Hukam Chand was doing at the time and, consequently, there is nothing on the record to show that what he was doing at the time amounted to his discharging some duty as a guard. The fact that he was on the platform about 40 minutes before the departure of the train does not necessarily lead to the inference that he must have been discharging some duty which he had to perform as a guard of that train.

In this connection the Magistrate stated :

> "..... there is not the least doubt that his conduct amounted to interference with the duties of the guard who was ready to go with the train and much of his time was wasted in writing complaints."

The observation is based not only any findings, both with regard to the duties which were interfered with and with regard to the time taken in writing complaints. The report which Hukam Chand submitted to the station master is a brief one. It does not even give the time of the incident. It could not have taken long. The learned Sessions Judge said in his judgment :

> "So far as the question of obstruction is concerned it may be noted that Shri Hukam Chand was on duty as a Guard on train 20 Down, which was then standing at the platform. As a guard he had to discharge multifarious duties at a time while the train was standing at the platform e.g., he had to look after the loading of the parcels in the luggage van and to see that nothing untoward happened at the platform. Thus during the time that the incident took place viz., for about 15 minutes, he was obstructed from discharging his duty by this deliberate and wilful and wilful act on the part of the appellant."

Again, there is no reference to any particular duty which Hukam Chand was performing at the time. There was, according to Hukam Chand's deposition, a luggage guard with the train. Ram Lakhan Pandey was the luggage guard. It would be his duty to look to the loading of the luggage and not of Hukam Chand, the guard of the train. It is too vague a statement to say that the guard had to see that nothing untoward happened on the platform. Any way, the behaviour of Shyam Lal at the station in no way affected Hukam Chand's not discharging such a duty. He could go to the Senior Accounts Officer to make complaint to him and so he could have given effective orders or instructions in case anything happened at the platform.

Assuming, however, that Hukam Chand was discharging duty at the time, the question is whether what the accused actually did amounted to wilfully obstructing him in the discharge of that duty. The appellant threatened Hukam Chand with a scythe and shouted abuses at him. This conduct was not intended to cause obstruction to Hukam Chand in the discharge of his duty. The section contemplates the wilfulness of the alleged culprit to be with respect to the act of obstruction and not with respect to any other act. Ordinarily, the acts done would be intentional and therefore wilful. The intention to do a certain act, in no way directed towards the obstruction of a railway servant, will not be an act of wilful obstruction of the railway servant. The appellant's conduct was directed against Hukam Chand personally and not against his performing any official act, in connection with the discharge of his duties. He was not threatened in order to prevent him from carrying out his duties and therefore the appellant cannot be said to have wilfully obstructed Hukam Chand in the discharge of his duty. Hukam Chand's conduct on being threatened in irrelevant for considering the nature of the appellant's wilful i.e., intentional act. What Hukam Chand did by way of making

complaints to the Senior Accounts Officer or to the Station Master - and which kept him away for a short time from discharging his normal duties as a guard at the station - cannot be said to be what was intended by the appellant.

I may now refer to some cases whose ration decidendi has a bearing on the present case.

In Empress v. Badam Singh [(1883) 3 All. W.N. 197.], the execution of a sale deed by the judgment debtor was held not to amount to an obstruction of the sale in execution of the decree since the sale was not obstructed and did actually take place.

In the present case, too, the train did of in time and there is no reason to suppose that Hukam Chand could not perform any of his necessary duties preliminary to the departure of the train.

In Kishori Lal v. Emperor [A.I.R. 1925 All. 409.], the patwari refused to allow the Kanungo to go through his books and check them. He, in fact, went away with his books. Such a conduct was not held to be an offence under s. 186 I.P.C. which makes voluntary obstruction to a public servant in the discharge of his public functions an offence. In that case, the Kanungo could not perform his duty on account of the conduct of the patwari and even then the patwari's conduct was held not to amount to a voluntary obstruction of the kanungo in the discharge of his duties. The rationale of the decision seems to be that the kanungo intended to perform his duties but was frustrated and that it was therefore not a case of any obstruction in the discharge of his duties.

In Bastable v. Little [(1907) 1 K.B. 59.], the accused, who had warned approaching cars about constables having measured certain distances on the road and being on the watch in order to ascertain the speed at which cars passed over measured distances with a view to discovering whether they were proceeding at an illegal rate of speed, was held to be not guilty of the offence of obstructing the constables when in the execution of their duty, within the meaning of s. 2 of the Prevention of Crimes Amendment Act, 1885. Lord Alverstone, C.J., said at p. 62 :

> "I think that the section points to something done in regard to the duty which the constable is performing..."

Ridley J., said :

> "I think that in order to constitute an offence under the section there must be some interference with the constable himself by physical force or threats. He must be either physically obstructed in doing his duty or at least threats must be used to prevent him from doing it."

In Betts v. Stevens [(1910) 1 K.B. 1.], the accused who had done what the accused in Bestable's Case [(1907) 1 K.B. 59.], had done, was held to be guilty of the offence under s. 2 of the Prevention of Crimes Amendment Act, 185, as the warning had been given to cars which were actually proceeding at an excessive speed at the time the warning was given and who were expected to cover the measured distance at some excessive speed. Lord Alverstone, C.J., said at p. 6 :

> "In my opinion a man who, finding that a car is breaking the law, warns the driver, so that the speed of the car is slackened, and the police are thereby prevented from ascertaining the speed and so are prevented from obtaining the only evidence upon which, according to our experience, Courts will act with confidence, is obstructing the police in the execution of their duty. This is exactly the kind of case that I had in

> my mind when the case of Bastable v. Little (1907 1 K.B. 59) was before us, and which led me, after Ridley J., had, as I thought, put too narrow a construction on the word 'obstruct,' to say that I could not agree in the view that physical obstruction or threats were the only kinds of acts that would come within the section. However, nothing that I now say must be construed to mean that the mere giving of a warning to a passing car that the driver must look out as there is a police trap ahead will amount to an obstruction of the police in the execution of their duty in the absence of evidence that the car was going at an illegal speed at the time of the warning given; but where it is found, as in this case, that the cars were already breaking the law at the time of the warning, and that the act of person giving the warning prevented the police from getting the only evidence which would be required for the purposes of the case, there I think the warning does amount to obstruction."

Darling, J., said at p. 8 :

> "The appellant in effect advised the drivers of those cars which were proceeding at an unlawful speed not to go on committing an unlawful act. If that advice were given simply with a view to prevent the continuance of the unlawful act and procure observance of the law. I should say that there would not be an obstruction of the police in the execution of their duty of collecting evidence beyond the point at which the appellant intervened. The gist of the offence to my mind lies in the intention with which the thing is done."

It is not necessary for me to say how far the view expressed in this case about the commission of the offence is correct. I have made reference to these observations to indicate that a necessary element of a person's wilfully obstructing a public servant in the discharge of his duties is that person's actual intention in doing the act which is alleged to constitute the offence and the intention must be to prevent the public servant from discharging his duty. The result of the act should be that the public servant is actually obstructed in the discharge of his duty, i.e., the public servant is not able to perform his duty. I am therefore of opinion that an offence under s. 121 of the Act is committed only when an accused commits an act with the intention of preventing the public servant from discharging hid duty and the act does prevent him from doing so.

It has been further urged for the appellant that threats of violence cannot amount to obstructing Hukam Chand in the discharge of his duty. The appellant merely uttered threats and therefore committed no offence under s. 121 of the Act. I am of opinion that threats of violence can amount to obstructing a public servant in the discharge of his duty, if the attitude of the person holding out the threats in indicates that violence would be used if the public servant persisted in performing his duty, and approve of what was said by Costello, J., in Nafar Sardar v. Emperor [(1932) I.L.R. 60. Cal. 149, 160.], and was approved in Emperor v. Tohfa [A.I.R. 1933 All. 759.], whose facts were similar.

In Nafar Sardar v. Emperor [(1932) I.L.R. 60. Cal. 149, 160.], the naib nazir deputed to execute the decree against the accused by attachment of their moveable property, proceeded to enter their house in order to attach the moveables. A number of persons collected and some of them, including the accused, declared that they would kill or break the head of anybody coming into their house to attach the moveables. Due to such attitude, no attachment could be effected. In holding the accused guilty of the offence under s. 186 I.P.C. Costello, J., said :

> "No doubt, in some instances, mere threats may not of themselves be sufficient. The real question is whether the action or attitude on the part of the persons alleged to have obstructed a public servant in the performance of his functions was of such a nature as to obstruct, that is to say, to stand in the way so as to prevent him in carrying out the duties which he had to discharge. Where it is solely a matter of threats, they must be of as so to affect the public servant concerned as to cause him to abstain from proceeding with the execution of his duties. It seems to me obvious that threats of violence, made in such a way as to prevent a public servant from carrying out his duty, would easily amount to an obstruction of the public servant, particularly if such threats are coupled with an aggressive or menacing attitude on the part of the persons uttering the threats and still more so if they are accompanied by the flourishing or even the exhibition of some kind of weapon capable of inflicting physical injury. Threats made by a person holding an offensive weapon in his hand must be taken to be just as much an obstruction as that caused by a person actually blocking a gateway or handling a public servant in a manner calculated to prevent him from executing his duty."

In view of the facts of the present case, the appellant's conduct in giving threats to Hukam Chand, the guard, at the station does not amount to an offence under s. 121 of the Act but makes out an offence under s. 506 I.P.C. I would therefore alter the conviction of the appellant for an offence under s. 121 of the Act to one under s. 506 I.P.C., and maintain the sentence of Rs. 60/- fine in default of payment of which he would undergo rigorous imprisonment for two months.

Appeal dismissed.

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