

Mohd. Usman

Vs

State of Bihar

Criminal Appeal No. 134 of 1965

(S. M. Sikri, J. M. Shelat, V. Bhargava JJ)

12.03.1968

JUDGMENT

SIKRI, J.-

This appeal by special leave is directed against the judgment of the Patna High Court allowing the appeal filed by the State Government and convicting the appellant, Mohd. Usman, under s. 5(3)(a) of the Indian Explosives Act, 1884 (IV of 1884) - hereinafter referred to as the Act - and sentencing him to undergo rigorous imprisonment for two years and also to pay a fine of Rs. 2,000, in default to undergo rigorous imprisonment for a further period of six months. The High Court, however, agreed with the Magistrate that the appellant could not be held guilty under s. 304A, IPC. The High Court did not find the two other accused persons, Abdul Rahman and Abdul Aziz, guilty, and State appeals against them were dismissed.

The prosecution case, in brief, is that an explosion occurred in appellant's factory at Matkuria, PS Dhanbad, on April 28, 1960. As a result of the explosion Kashi Bhokta, Gobardhan Bhokta and Mohan Bour died. On that day, the appellant, who manufactures fireworks, had allowed minors (under 16 years of age), viz., Kashi Bhokta, Guhi Bhokta Gobardhan and Subhas Chamar to work in the manufacture of fireworks, thus contravening R. 16 of the Explosives Rules, 1940 - hereinafter referred to as the Rules - made under the Act, and had thereby committed an offence punishable under s. 5(3)(a) of the Act. The High Court, disagreeing with the Magistrate who tried the case, held that "the three minor boys, Kashi, Guhi and Subhas, were employed and Gobardhan, in any event, was allowed to enter the premises licensed under the Rules for manufacture of explosives" in contravention of R. 16, and convicted the appellant as already stated.

Section 5(3) of the Act reads thus :

"Any person contravening the rules made under this section shall be punishable -

(a) if he imports or manufactures any explosive in such contravention, with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both;

(b) if he possesses, uses, sells or transports any explosive in such contravention with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both; and

(c) in any other case, with fine which may extend to one thousand rupees."

Rule 16 of the Explosives Rules provides :

"16. Children and intoxicated persons - No child under 16 years of age and no person who is in a state of intoxication shall be employed on the loading, unloading or transport of explosives, or be employed in or allowed to enter any premises licensed under these rules."

The first question which arises is whether every breach of R. 16 falls under s. 5(3)(a) of the Act. In our opinion, the answer is in the negative. It will be noticed that cl. (a) of s. 5(3) deals with a person who imports or manufactures in contravention of the Rules; cl. (b) deals with a person who possesses, uses, sells or transports any explosive in contravention of the Rules; and cl. (c) deals with contraventions of the Rules in other cases. It seems to us that the scheme of this sub-section is to divide the contravention of the Rules into three categories. In the first category fall rules which a person must observe while he imports or manufactures. In other words, rules relating to the import or manufacture of explosives would fall in the first category. For example, clause 11 of the licence issued to the appellant provides :

"Not more than four persons shall be allowed at any one time in any one building or tent in which the explosive is being manufactured and only persons actually employed in manufacturing or superintending manufacture shall be allowed inside the place of manufacture."

Clause 12 of the Licence provides :

"No iron or steel implements shall be used in the manufacture. Only copper gun-metal or wooden tools are permissible."

Now, if the appellant had infringed the provisions of these clauses it could be said that the contravention would fall under cl. (a) of s. 5(3). We may mention that R. 81 provides that "no explosive shall be manufactured, possessed, used or sold except under and in accordance with the conditions of a licence granted under these rules", and a breach of the conditions would be contravention of R. 81. But suppose the appellant had contravened clause 2 of the licence - his licence is for the manufacture, possession and sale of 25 pounds of fireworks - which prescribes the modes in which the explosives shall be kept in the premises, i.e. "(a) in a building substantially constructed of brick-stone or concrete or in a securely constructed fire-proof safe; or (b) in an excavation formed in solid rock or earth.... ", he would be guilty under cl. (b) of s. 5(3) and not cl. (a) of s. 5(3). Similarly, a contravention of clause 18, which provides that "all sales of explosives under this licence must be effected on the premises described on the face of the licence, and an explosive shall not be sold to any person under the age of 16 years" would fall under cl. (b) of s. 5(3).

The learned counsel for the appellant contends that on the facts found by the High Court the conviction of the appellant under cl. (a) of s. 5(3) cannot be sustained. He says that there is no finding or evidence that the four minors were engaged to manufacture or were taking part in the manufacture of fire-works. We have gone through the evidence and we find that no witness states that these minor boys were employed by the appellant to manufacture fireworks. Subhas Chamar, P.W. 1, says that he "was working in the workshop of explosives at Matkuria owned by Usman.... We were working in the normal manner and in the same place at the time of occurrence." Puran Bhokta, P.W. 2, father of Kashi and Gobardhan, says that all his sons "worked in the explosive

workshop of Matkuria owned by Usman." He does not enlighten us about the nature of work done by his sons. Guhi Bhokta, P.W. 8, only states that "about 18 months ago, on a Thursday, I was working in the explosive shop in village Matkuria under the supervision of Rahman accused.... " There is no other evidence bearing on this point. From this evidence it cannot be definitely inferred that the four minors were actually employed in the manufacture of explosives on April 28, 1960. In fact, there is no evidence at all that any fireworks were being manufactured that day. It was for the prosecution to prove all the ingredients of the offence, and s. 106 of the Evidence Act does not, as contended by the learned counsel for the State, absolve the prosecution from proving its case.

There is no doubt that there has been a contravention of R. 16, inasmuch as the four minors were employed in or allowed to enter the premises licensed under the Rules. But R. 16 is a comprehensive rule and applies to employment of minors in the premises for various purposes - manufacture and sale of explosives it would also apply to employment of a minor to sweep floors and keep the premises clean.

If a minor is employed to keep clean the premises, would this contravention fall under cl. (a), cl. (b) or cl. (c) of s. 5(3) ? It seems to us that if cl. (a) and cl. (b) are read widely so as to cover every activity which might take place on the premises, cl. (c) would be rendered redundant. This is not a permissible way of reading statutes. It will be noticed that the legislature regards an offence under cl. (a) of s. 5(3) to be more serious than one under cl. (b) and an offence under cl. (b) to be more serious than one under cl. (c). Further, the rules are many; some regulate minor matters, and it would be absurd to treat the breach of every rule to be a breach of cl. (a) or cl. (b).

In our opinion, if there is a breach of a rule, it has to be ascertained in each case whether the rule or part of it relates to activities mentioned in cl. (a) of s. 5(3) or cl. (b) of s. 5(3). If it does not relate to any of the activities mentioned in cl. (a) or cl. (b) of s. 5(3), the breach of the rule would fall under cl. (c) of s. 5(3).

In this case the prosecution has not proved that the four minors were employed in any of the activities mentioned in cl. (a) or cl. (b) of s. 5(3). Nor has it proved that any manufacture of fireworks was done on April 28, 1960. It follows that the contravention of R. 16, on the facts found, can only come under cl. (c) of s. 5(3).

We may mention that the learned counsel for the appellant challenged the findings of fact made by the High Court, but, in our opinion, they are not vitiated in any manner.

In the result, the appeal is partly allowed. The conviction is altered to one under cl. (c) of s. 5(3) of the Act, and the appellant is sentenced to pay a fine of Rs. 1,000 and in default to undergo rigorous imprisonment for a period of three months. Fine, if paid in excess, shall be refunded.

Appeal partly allowed.##

</html