**KERALA HIGH COURT**

Kizhakkeppallikl Moosa

Vs.

State, (Kerala)

Criminal Appeal No. 303 of 1961, in S.C. No. 46 of 1961

(Anna Chandy and P. Govinda Menon, JJ.)

25.09.1962

**JUDGMENT**

**Anna Chandy, J.**

1. The three appellants together with four others were tried by the Sessions Judge of Kozhikode for the offences under Sections 147, 332, 307 and 477 of the I. P. C. The case against them was that they formed themselves into an unlawful assembly with the common object of assaulting certain officers of the Sales Tax Department who were conducting a surprise inspection of the shop belonging to one of the accused and in furtherance of that object they caused hurt to one officer and attempted to murder another and also snatched away the account books of the shop which had been taken by the officers for inspection. The learned Judge acquitted four of the accused persons and convicted the appellants for offences under Sections 332 and 477 sentencing each to rigorous imprisonment for a period of one year on the first count and four years under the second, the sentences to run concurrently.

2. The prosecution case briefly is this : Pws. 1, 2 and 3 are Intelligence Officers attached to the Kozhikode Circle of the Sales Tax Department. While conducting surprise inspections of shops to detect cases of Sales Tax evasion, they entered the shop of the first appellant (accused 1). P. W. 1 asked the accused to produce his account books for inspection, to which the latter replied that the books were not available in the shop. In the meanwhile P. Ws. 2 and 3 noticing an open bag with account books kept in another room entered the room and brought out the bag. They then began to examine the books. Accused 3 who had come to the shop by this time declared that the books were his and demanded their return. When the officers refused the demand and continued their examination, the third accused hit P. Ws. 2 and 3 on their hands causing them to drop the books on the floor. Then some of the persons who had gathered there began assaulting them while some others collected the fallen books and papers and handed them over to accused 3 who carried them away. During the assault P. W. 1 fell down on the floor. Then accused 1 got up on his chest and began to throttle him. P. W. 4 a peon who had accompanied the officers seeing them assaulted rushed up to the nearby police station and reported the matter to the Sub-Inspector. The latter immediately proceeded to the scene and dispersing the crowd, rescued the officers.
3. All the accused except accused 1 denied having had anything to do with the incident.

According to accused 1 when he was sitting in the shop - which he says does not belong to him - with a bag entrusted to him by accused 3, the three officers and P. W. 4 entered the shop. They took the bag and paying no heed to his protest they started to walk away with it. When he tried to snatch it from them, they assaulted him. Afterwards the police arrived there and arrested him.

4. Shri V. R. Krishna Iyer the learned counsel for the defense attacked the judgment on more grounds than one. We shall first deal with the contention that the conviction under Section 477, I. P. C. for having secreted 'valuable security' cannot be sustained in that the account books, the accused are alleged to have secreted cannot be considered 'valuable security'. It may be noted here that the books snatched away from the officers have not been recovered. Nor do any of the witnesses say that they can remember any of the entries therein. All that is alleged by the prosecution is that the books were account books and since the defense do not deny this, the arguments proceeded on the basis that the books concerned were the ordinary account books usually found in every place of business. The defense contention is that such books do not come under the definition of valuable security given in Section 30, I. P. C. The term valuable security is defined thus :

> "The words 'valuable security' denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right."

Put simply it means that to become a 'valuable security' the document itself should create the right or liability. Ordinarily speaking account books do not by themselves create any such right or liability, though they may evidence the existence of such rights or liabilities. Sets of figures showing that certain goods were sold and certain others were bought, or certain sums of money were paid out and others received do not by themselves create or extinguish any right or liability. The only value of such figures is that, if they are entered in a properly kept account book they may be called in support of a legal claim. In other words an account book generally speaking may be valuable evidence but is not valuable security within the definition given in Section 30. That is not to say that under no circumstances can an account book be considered valuable security. For instance, if the books involved here contained entries showing that certain amounts have been received from customers as sales tax which would be an acknowledgment by the dealer of his liability to turn over those amounts to the Sales Tax Department, then it can be rightly argued that the books themselves are valuable security. However, as there is no evidence before us regarding the contents of the books, it would not be proper to presume the presence of any such entries.

5. The learned Advocate General argued that even without knowing the contents of these books it is open to the Court to hold that they were valuable security because under the Sales Tax Act account books provide a dealer with a right to establish the correctness of his return. We are not impressed with this argument. All that Section 12 provides is that an assessing authority before making "a best of judgment" assessment, shall give the dealer an opportunity to prove the correctness of his return. The dealer's right to prove the correctness of his return is provided by the statute and not by the book which at best can only support his claim that his figures are correct. The decision cited by the learned Advocate General in support of his contention is also

not of much help to him. In *State v. Ratanchand*[1], - a bench of the Bombay High Court held that the 'K' Form of the Bombay Sales Tax Office comes within the definition of valuable security as given in Section 30, I. P. C. The form in question contained a declaration that the goods bought are for the purpose of resale and under the Bombay Sales Tax Act no tax is payable on sale of goods to a dealer who holds a licence and furnishes a certificate in Form 'K' to the selling dealer to the effect that the goods are for resale. Repelling the contention that it is the act which creates the right and not the certificate the learned Judge held that it is the declaration contained in the form that the goods are meant for resale, that creates the legal right in the purchasing dealer to get exemption from the payment of sales tax and as such the form is valuable security. We do not think this decision can be made to apply to account books which as we have seen do not by themselves create any right or liability.

6. The next point to be considered is whether the officers were acting within their powers in taking possession of the books and scrutinising them. The defence contention is that the acts of these officers amounted to seizure of the books as provided for in Section 17 (3) of the Act and as they were admittedly not empowered to proceed under that clause their action was illegal. The learned Advocate General on the other hand argues that the officers were acting under Section 17 (2) and the power to take possession of the books even against the wishes of the shop-keeper must be read into the power to inspect the books granted to them by Section 17(2). It is not necessary for the purposes of this case to examine the contention advanced by the Advocate General as in our opinion the facts brought out in evidence do not go to show that the books were taken possession of against the wishes of accused 1.

7. Seizure has been defined by the Supreme Court as taking possession contrary to the wishes of the owner of the property vide *Gian Chand v. State of Punjab*[2], - and we do not find any evidence in this case to hold that accused 1 expressed any wish that the officers should not take the books. The prosecution case is that when the officers entered the shop accused 1 who was sitting behind the counter and was acquainted with P. W. 1 received them and offered them seats. When P. W. 1 wanted to see the account books accused 1 replied that the books were not there. Seeing the books in a bag inside the open room P. W. 2 entered the room and brought it out. According to the learned defence counsel accused 1's reply that the books were not there is only a polite way of expressing his refusal to show the books. We do not think accused 1's reply will permit of such an interpretation in view of the fact that accused 1 made no protest whatsoever either by word or by deed, when the officers entered the room brought out the books and began to scrutinise them. In fact the only protest made was by accused 3 who came to the shop when the books were being inspected and demanded their return on the ground that they were his and not the first accused's. Therefore the contention that the books were taken against the wishes of accused 1 cannot be accepted. Consequently the argument that taking possession of the books by the officers amounted to seizure and was therefore illegal must fail.

[1] 61 Bom LR 1161 : AIR 1960 Bom 146

[2] AIR 1962 SC 496

8. Another objection taken by the learned defence counsel against the action of the Sales Tax Officers is based on the circumstance that while the prosecution alleges that the shop in question belongs to accused 1, it is seen from the records that two others Saidali and Abubacker are the registered dealers. The learned counsel argues that the officers had no right to enter the shop and inspect the books belonging to one dealer when their avowed purpose was to check the books of another. This contention also cannot be accepted. Section 17(2) provides :

> "All accounts and registers maintained by dealers in the ordinary course of their business, the goods in their possession and their offices, shops, godowns, vessels or vehicles shall be open to inspection at all reasonable times by such officers as may be authorized in this behalf."

It is clear that the books, godowns etc. of any dealer can be inspected by competent authorities. Therefore the fact that they entered the shop of one dealer in the mistaken belief that it belonged to another cannot make their action illegal. It is also to be noted that in this case though the evidence adduced is not sufficient to support a positive finding that the shop belonged to the first accused, the very conduct of the first accused must have strengthened the impression of the officers that he was the real owner of the shop.

9. We shall now consider the question whether the evidence in the case is sufficient to sustain the conviction of the accused under Section 332. The case against the third accused may be dealt with first. The allegation is that when P. Ws. 2 and 3 were inspecting the books he entered the shop and demanded that the books be handed over to him. When the officers refused to do so, he hit their hands causing them to drop the books and papers. These were collected by some other persons and handed over to accused 3 who walked away with them. Though the prosecution witnesses speak about accused 3's participation in the incident, the early records of the case do not indicate clearly that he was so involved. The prosecution case is that as soon as accused 3 was given the books he went off without taking any part in the scuffle that followed. However a reading of the complaint Ext. P-4 filed by P. W. 1 immediately after the incident shows that the person who snatched away the books also participated in the assault on the officers. It is stated in Ext. P-4

> "Immediately one Mohammed rushed to the spot of inspection.....Sri. K. P. Moosa the dealer (accused 1) and one Mohammed took part in the scuffle. Sri Mohammed was identified and was shown to the Sub-Inspector of police."

The above seems to indicate that the person named Mohammed who took part in snatching away the books also assaulted the officers and this person was later identified before the Sub-Inspector of police. Though accused 2 and accused 3 are both named Mohammed the only per son of that name identified before the Sub-Inspector was accused 2. That the Sub-Inspector understood the complaint to mean that only one person named Mohammed was involved, is clear from the First Information Report where the accused persons are given as "Moosakutty, Mohammed and some others". The officers do not claim to have known accused 3 previously and no identification parade was conducted. Again the act now attributed to accused 3 is that he hit P. Ws. 2 and 3 on their hands causing them to drop the books which were then picked up from the floor whereas in the complaint the allegation is that he and some others snatched the books away. Under these circumstances we do not think that the prosecution has proved its case against accused 3 beyond doubt. Moreover the conviction of accused 3 under Section 322 without a direct charge, is faulty. The conclusions we have reached regarding the prejudice :caused to accused 1 due to defective charge against him which we shall presently describe, apply with equal force in the case of accused 3 also.

10. The conviction of accused 1 under Section 332 also cannot stand. The specific charge against accused 1 was under Section 307 for having attempted to murder P. W. 1 by throttling him. This case was found against by the learned Sessions Judge who acquitted accused 1 of the charge. The charge under Section 332 was laid directly against accused 2 and by the application of Sections 149 and/or 34 against the other accused. However the learned Sessions Judge convicted accused 1 and 3 not under Section 332 read with Section 34 but under Section 332 itself. According to the learned defense counsel the failure to frame a charge under Section 332 has caused prejudice to accused 1. We are inclined to agree. The charge against accused 2 reads thus :

> "That you the 2nd accused on or about the same place and time and during the course of the same transaction voluntarily caused hurt to Sri P. Narasimhan, Intelligence Inspector, a public servant in the discharge of his duties as such public servant and thereby committed an offence punishable under Section 332 of the Indian Penal Code and within my cognizance."

and against the others :

> "That you the accused 1 and 3 to 7 on or about the same place and time and during the course of the same transaction were members of an unlawful assembly and in prosecution of the common object of which, to wit to assault the aforesaid Abubacker, Narasimhan and Unikrishnan Poduval, public servants, one of the members viz., the 2nd accused caused hurt to the aforesaid Narasimhan in the discharge of his duties as such public servant and you have thereby committed an offence punishable under Section 332 read with Sections 34 and 149 of the Indian Penal Code and within my cognizance."

Now accused 1 would have understood the charge to mean that while accused 2 was to be tried for causing hurt to Narasimhan the other accused are to be held vicariously liable for being members of an unlawful assembly the common object of which was to assault Narasimhan and/or for having shared with accused 2 a common intention to assault the officers. In other words what accused 1 is called upon to do in order to escape conviction and punishment is only to show that he was not a member of an unlawful assembly and that he shared no common intention with the others to assault the officers. He was not given notice that he was being tried for having personally assaulted Narasimhan. Indeed that charge is in clearest terms laid against accused 2 and accused 2 only. One cannot but agree with the learned defence counsel that the charge as framed is misleading in the extreme. Nor could it be said that in spite of the defects in the charge accused 1 had notice that he was being tried for assaulting Narasimhan. Even the question put to him by the Judge under Section 342, Criminal Procedure Code does not seem to have made matters any the clearer. The question is to the following effect.

> "That you together with the other accused caused hurt to P. Ws. 1 to 3 in order to prevent them from discharging their official duties. Have you anything to say regarding that?"

Even at this stage the accused is not called upon to meet the charge of having personally

assaulted any particular person. The question could have only indicated to him that the court considered the prosecution evidence as showing that he is guilty of assaulting all the three officers and that presumably by the application of Section 149 or Section 34. Therefore his contention that he was prejudiced in his defense by the defective charge cannot be held to be unfounded. It may also be mentioned here that on the evidence on record accused 1 cannot also be convicted under Section 332 read with Section 34. As held by the Supreme Court in a recent decision :

> "It is now well-settled that the common intention required by Section 34 is different from the same intention or similar intention. As has been observed by the Privy Council in *Mahbub Shah v. Emperor*[3], -, common intention within the meaning of Section 34 implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan and that the inference of common intention should never be reached unless it is a necessary inference deductible from the circumstances of the case." (Vide *Mohan Singh v. State of Punjab Supreme Court*[4] published in the blue print.)

There is no evidence in this case regarding the pre-arranged plan or prior meeting of minds. Indeed the indications are to the contrary. The officers were on a surprise inspection and even according to the prosecution only accused 1 was present in the shop at that time. Accused 3 came to the scene afterwards and accused 2 still later. Nor does the evidence show that a common intention came into existence on the spot through shouted instructions among the accused. The learned Sessions Judge himself does not seem to have come to the conclusion that the conditions necessary for the application of Section 34 have been made out which probably was the reason why the learned Judge convicted all the accused under Section 332 simpliciter.

11. As for the case against accused 2 we think that his conviction under Section 332 has to stand. All the three officers, P. Ws. 1, 2 and 3 have given evidence about the part played by accused 2. They swear that as soon as the books were struck down from the hands of P. Ws. 2 and 3 accused 2 entered the shop and gave two blows to P. W. 2 on his neck. When the police arrived at the scene after the incident he was pointed out to them by the officers and he was arrested on the spot. There are no significant discrepancies or contradictions in the evidence of P. Ws. 1 to 3 regarding the act done by accused 2. An objection raised by the learned defense counsel is that

[3] 72 Ind App 148 : AIR 1945 PC 118

[4] Criminal Appeal No. 186 of 1960, D/- 15-3-1962 : AIR 1963 SC 174

there were no injuries on the person of P. W. 2 corresponding to the alleged blows. We do not think there is anything in this. Two blows with bare hands on a person's neck need not invariably leave any discernible marks. Another argument advanced by the defense is that as the witnesses were found to be untruthful in their story regarding the attempt to murder, their evidence on other matters also is not fit to be accepted. We do not think that a mere exaggeration of a detail would be sufficient reason to brand these witnesses, all responsible officers of the Sales Tax Department, as untruthful. We have already negatived the defense contention that the officers were acting illegally in entering the shop and inspecting the books. The charge under Section 332 has therefore been made out.

12. In the result the conviction of all the appellants under Section 477, I. P. C. is set aside. The

conviction of accused 1 and 3 under Section 332 is also set aside. The conviction and sentence of accused 2 under Section 332 are confirmed.
Order accordingly.