OSHI v Mauritius Meat Authority

2023 IND 27

Cause Number 39/2020

In the Industrial Court of Mauritius
(Criminal side)

In the matter of:

OSHI

v.

Mauritius Meat Authority

Judgment

Accused being an employer is charged under Section 5(1) and Section 94(1) (i) (vi) of the Occupational Safety and Health Act – Act No.28 of 2005 coupled with Section 44(2) of the Interpretation and General Clauses Act with unlawfully failing on or about the 18th day of March 2016 to ensure the safety, health and welfare of its employees at work to wit: one Mohammad Iqbal Imamane sustained deep laceration over the left side of his face when the hook from a pulley block hit his face while he was helping in the slaughtering of a cattle.

The Accused represented by Ms. Malika Dinnoo in her capacity as Safety and Health Officer pleaded not guilty to the information and was assisted by Counsel at its trial.

The case for the Prosecution rested on the evidence given in Court by Mrs. T. Ramsurrun Baznauth in her capacity as Occupational Health and Safety Officer, Mr.

Mohammad Iqbal Imamane who is the injured employee, Mr. Nazir Khan Aukauloo, the Head Butcher and Mr. L. E. Moutou, the one manipulating the equipment for halal purposes.

Mrs. T. Ramsurrun Baznauth in her capacity as Occupational Health and Safety Officer enquired and investigated into an accident at work which occurred on 18 March 2016 at the Mauritius Meat Authority situated at Roche Bois where one Mr. Mohammad Iqbal Imamane sustained deep laceration over his left cheek as per Docs. A & A1.

The accident happened while he was helping in the slaughtering of an animal from cattle category when a hook of chain hooked to the metal block of a pulley escaped and hit his left cheek.

She visited the locus on 21.6.2016 and she took a set of 7 photographs which she bound in a booklet with explanatory notes as per Docs. B1- B6. She recorded two statements from Accused's representative under warning as per Docs. C and C1. Upon completion of her investigation, she drew up a report dated 20.8.2019 as per Doc. D.

<u>The unrebutted evidence led by all the Prosecution witnesses boils down to the following</u>:

1. There is only one anchorage point at the slaughterhouse of Accused in order to activate the mechanism for slaughtering.

2. It means that a chain which has a hook at each end, one of which is attached to the tied feet of the animal and the other has to be properly anchored in the metal block of a pulley and then only, the mechanism for slaughter is activated so that the animal is being lifted in an upright vertical position. Such an exercise is in conformity with the safety procedures put in place by the Accused following a risk assessment exercise.

3. Such a safe exercise in place caters for two categories of cattle viz. the healthy ones and the weak or sick ones. As for the healthy animals, they are kept outside the slaughterhouse overnight for stabilization in a fenced yard and then on the following day, they are brought inside through a door giving

into a corridor known as "*couloir de la mort*" leading directly to the halal box for slaughtering which is the only halal box found in that slaughterhouse as the rest is just open space.

4. In the present case, it concerns an overweight weak animal weighing about 800 pounds and which belongs to the second category. For the safe exercise to have been met, the weak animal ought to have been treated as an emergency so that the slaughter mechanism ought to have been activated at another entrance namely at gate level itself catered for that purpose which is in between that metallic gate and a two-flap metal door as per Doc.B4 opening into the slaughterhouse so that the animal would have been lifted in an upright and vertical position for slaughter.

5. That weak animal was not slaughtered at gate level as an emergency which was the established safety practice, but it was found inside the slaughterhouse in a corridor of 60 cm wide which would not have made room for two animals to be put one next to each other and it was not far from the halal box.

6. It had no right to be there and given that it was a weak animal, its feet got stuck so that it fell down, it had to be removed for slaughter as an emergency. Although seven slaughter men including Mr. M.I. Imamane were involved in moving the animal for that purpose, it did not move at all which necessarily showed extreme weakness which is tantamount to the animal having collapsed. Thus, the hook of the chain at one end attached to the tied animal at its feet and the hook found on the other end of that chain was properly anchored to the metal block of the pulley by them prior to the mechanism for slaughter being activated. However, because of the place where the animal was, it could only be lifted in a diagonal position unlike the expected upright vertical position so that at some stage in the process, the anchored hook at the pulley block was bound to have loosened out and escaped which was the cause of the accident so that it hit the left cheek of Mr. Imamane.

7. Although such practice was done a few times before that incident, no one got injured as the animals involved were at most weighing about 300 pounds and as such the risk assessment exercise done by Accused did not cater for a

procedure to attend to weak animals when left by their clients at the slaughter place.

Accused did not adduce any evidence in Court and has denied the charge in its unsworn statements produced in Court as per Docs. C and C1.

I have given due consideration to all the evidence put forward before me including the documentary evidence and the submissions of learned Counsel for the Defence.

True it is that the injured person while testifying in Court stated that the hook which hit his face emanated from the feet of that weak animal and not from the metal block of the pulley as opposed to the unrebutted testimonies of the other prosecution witnesses. However, I do not accept his version as it cannot be relied upon as he himself admitted that the animal did not move at all so that it is more plausible that the hook escaped from the metal block of the pulley, that is, from the pulley block because the animal was lifted in a diagonal position causing the hook to loosen out from its anchorage point at the pulley block upon the activation of the mechanism for slaughter which would not have happened had the animal been lifted in the upright and vertical position at gate level as per the established safe exercise.

Again, true it is that the injured person admitted that he did not wear a helmet and that he was alone with the animal at the material time so that he admitted having put himself at risk, however such omission on his part is not sufficient enough to absolve the Accused from liability for the following reasons:

(a) As per the safe procedures in place for weak animals, they were treated as emergencies bearing in mind that even healthy animals had to be stabilized overnight before being slaughtered on the following day. That weak animal which was treated as an emergency was not dealt with in conformity with the safe exercise in place to have the slaughter mechanism activated at gate level itself so that the animal would have been lifted in an upright vertical and safe position.

(b) The risk assessment done by the Accused had to be followed closely so that it is untenable that although animals being found inside the slaughterhouse in

that manner a few times before, were lifted in such diagonal position, no accident occurred.

(c) That objective would have been met had the accused employer not utterly failed to address its mind on the dangers of having allowed weak animals unattended when left by clients outside the slaughterhouse so that the weak animals ought to have been hooked before the clients left. Then only, those weak animals would have been treated at gate level as an emergency as per the safe practice in place. Although no one was injured before does not mean that the risk was not foreseeable as had the weak animal found in the corridor of 60 cm wide, when 7 slaughter men were trying to move it, then it moved a little and fell again squeezing the 7 persons causing them to get stuck bearing in mind that it weighed about 800 pounds, but that could happen even if it had weighed about 300 pounds because of the limited space. Those persons would have got injured as it was not safe although they would have worn protective equipment *inter alia* like boots or helmet. Furthermore, it is common ground that the weak animal had no right to be inside the slaughterhouse where it was found to be on the material day.

(d) Therefore, as rightly pointed out by the enquiring officer, the slaughter men did not know exactly how to tackle the situation and they gave priority to that animal without knowing exactly what were the risks associated with the process.

(e) Had weak animals been attended to at the initial stage when being left by their clients, the accident would have been avoided.

Thus, it cannot be construed that the risk taken by the injured person was commensurate with the situation where the negligence of that injured person has reached the threshold where it is so overwhelmingly gross that its effect is tantamount to having nullified the fault of his accused employer analogous to the situation in the Supreme Court case of **Sham v The Queen** [1982 MR 224]. It is relevant to note that in the Supreme Court case of **The D.P.P. v Flacq United Estates Ltd** [2001 SCJ 301], it was held that the primordial issue that the Court has to decide is whether the particular system of work adopted by the accused employer

was found to be safe and which is not the issue of whether the injuries caused to the employee was because of his own negligence.

At this stage, I find it most relevant to reproduce both Section 5(1) of the Occupational Safety and Health Act 2005 which has been qualified by Section 96(6) of the said Act which read as follows:

> *"**5. General duties of employers***
> *(1) Every employer shall, so far as is reasonably practicable, ensure the safety, health and welfare at work of all his employees.*
> (…)
> ***96. Special provisions as to evidence***
> *(6) In any proceedings for an offence under any provision of this Act consisting of a failure to comply with a duty or requirement to do something so far as is practicable, or so far as is reasonably practicable, or to use practicable means or to take practicable steps to do something, it shall be for the accused to prove that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means or step than was in fact used or taken to satisfy the duty or requirement, as the case may be."(**emphasis added)***

At this particular juncture, it is significant to note that the information as couched against Accused, the words "*so far as is reasonably practicable"* have been omitted. The question that is called for consideration is whether those omitted words constitute the omission of an essential element of the offence. I take the view that the words *"so far as is reasonably practicable"* represent a constitutive element of the offence as expressly stipulated in Section 5(1) of the said Act so that they ought to have been set out in the information in order to create a complete criminal offence known to law. This is because although it has been averred in the information that the accused employer has *"failed to ensure the safety, health and welfare of its employees at work",* such prohibited act would only constitute a criminal offence when it meets the criterion of *"so far as is reasonably practicable"*.

Thus, the words *"so far as is reasonably practicable"* constitute an element of the offence with which the Accused stands charged and which had to be averred in the information in order to create a complete criminal offence known to law. The failure

of the prosecution authorities to aver this essential element of the offence in the information is fatal to the case of the Prosecution (see – **Backreelall v R** [1970 MR 180]).

Hence, given that the Accused stands charged under a defective information disclosing an offence unknown to law, the information is dismissed against the said accused party.

S.D. Bonomally (Mrs.) *(Vice President)*
12.5.23