

Emperor Vs. Shib Lal

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Court : Allahabad

Decided On : Mar-27-1933

Reported in : AIR1933All620; 147Ind.Cas.809

Appellant : Emperor

Respondent : Shib Lal

Judgement :

King, J.

1. This is an appeal by the Local Government against the acquittal of one Shib Lal, who was convicted by a Magistrate of the First Class under Section 326, Penal Code, but was acquitted on appeal by the learned Sessions Judge. The facts of this case are practically undisputed. An extra amin named Karan Behari Lal went to the village of Nandgaon on 18th February 1932, for the purpose of collecting certain arrears of canal dues from Shib Lal and others. As he apprehended resistance, he took with him two constables, named, Pohap Singh and Manzur Ahmad, in addition to his peon, Kadir Bakhsh. On arrival at the village he was joined by Parshadi Lal, patwari, and Ajairam, the mukhia of the village and another man. In all there were seven persons of the amin's party including himself. When the party reached Shib Lal's house the amin sent for Shib Lal and. showed him. the warrant of attachment, and demanded payment of the arrears, due. Shib Lal refused to pay and also stated that he would not allow his property to be attached.

Thereupon the amin ordered the attachment of Shib Lal's buffalo. The amin's peon and Pohab Singh, constable, advanced to seize the buffalo. Then Shib Lal and some men with him began to throw bricks at them and Shib Lal, who had a sword, struck the constable, Pohab Singh a severe blow upon the arm wounding him grievously. Other villagers came to the help of the amin's party whereupon Shib Lal and the others ran away. Shib Lal admitted that the amin, together with his peon, the constables and others, went to his house on the day in question, but he denied that any warrant of attachment was shown to him and denied that the amin made any demand for payment of arrears. They said that they tried to catch him whereupon he told them to leave him alone. He admits that when the constable, Pohab Singh, advanced to seize the buffalo, he struck Pohab Singh a blow with his sword. The learned Sessions Judge has accepted the facts stated by the prosecution witnesses but has acquitted the accused on the ground that the warrant of attachment was invalid and that the amin's procedure in attaching the property under an invalid warrant was illegal and that Shib Lal was justified in the exercise of the right of private defence of property in treating the amin and his party as robbers and in resisting the attachment of the buffalo by force. The learned Government Advocate has argued that the view taken by the learned Sessions Judge regarding the exercise of the right of private defence in the circumstances of this case was erroneous.

2. In our opinion, the learned Sessions Judge was wrong in holding that the amin and his party could justifiably be treated as robbers. It is conceded by the prosecution that the warrant for the attachment of Shib Lal's property was invalid on 18th February. The warrant had been issued on the 11th January and was valid for fifteen days only and had therefore expired on the 26th January. It is admitted therefore that the warrant had no force on the 18th February. On this admission we think it would be difficult to hold that the accused was deprived of the right of private defence, by reason of the provisions of Section 99; Penal Code. Under that section he would not have the right of private defence if the seizure of the buffalo was done or attempted to be done by the amin acting in good faith under colour of his office. As the duration of the warrant had admittedly expired, it must be conceded that the amin was negligent in failing to observe that the duration of the warrant had expired and that it was no longer in force. The amin was obviously

acting 'in good faith' in the popular sense of that expression, because there is no suggestion that he was actuated by any malice or that he had any dishonest intention. The expression 'in good faith' is however used in the Penal Code in a very special sense, and we doubt whether it could be held that the amin acted with due care and attention in the exercise of his duties when he admittedly failed to look at the date of his warrant and to observe that its period had expired.

3. It is however for the accused to show that he was justified in inflicting such a serious injury upon the constable in the exercise of the right of private defence of property. Unless the accused can show that he had a right of private defence under Section 97, it is unnecessary to consider to what extent and subject to what restrictions the right could be exercised. Under Section 97 the accused had a right, subject to the restrictions contained in Section 99, to defend his property against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or is an attempt to commit any of those offences. No question of mischief or criminal trespass arises. We only have to consider the question of theft or robbery. In the circumstances of the present case we think it is quite apparent that the amin had no intention of committing theft because he had no dishonest intention. He was negligent in failing to observe that his warrant was no longer in force, but he clearly did not intend to cause wrongful gain to any person, or wrongful loss to any person. Therefore he cannot be held guilty of committing theft or of attempting to commit theft by ordering the attachment of the buffalo. As he could not be held guilty of committing theft, it follows that he could not be held guilty of committing robbery. We dissent from the view taken by the learned Sessions Judge on this point. He seems to think that as the amin and his party were armed with lathis and proceeded to seize the buffalo belonging to the accused and as their action was not strictly warranted by law, they must be held to be guilty of robbery.

4. The learned Sessions Judge is wrong in failing to observe that a man cannot commit robbery unless he acts with dishonest intention. In this case a dishonest intention is consequently wanting on the part of the amin and also of his party. We may note that the accused himself has never suggested that he believed the amin and the persons with him to be thieves or robbers or that he believed that they

were acting with any dishonest intention. The party came to his house in broad daylight, he knew that Karan Behari Lal was an amin, and he was accompanied by two constables, by the mukhia and by the patwari of the village. It must have been obvious to the meanest intelligence that the party did not come as a band of robbers or thieves, and the accused does not even suggest that he believed them to be robbers or thieves. He did not even notice any defect in the warrant of attachment. In such circumstances we hold that the accused had no right of private defence of his property under Section 97. It would indeed be a strange state of things if an amin who through inexperience or negligence failed to notice that the duration of his warrant had expired, but who proceeded to attach property honestly believing that he was entitled to do so under the warrant, could be treated as a robber and could be grievously hurt or even killed by the owner of the property in justifiable exercise of the right of private defence. We set aside the order of acquittal and restore the order of conviction and the sentence passed by the learned Magistrate. The accused is on bail. He must surrender to his bail and serve the remainder of his sentence.