

Radhey and ors. Vs. Emperor

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Court : Allahabad

Decided On : Mar-07-1923

Reported in : 73Ind.Cas.975

Judge : Ryves, J.

Appellant : Radhey and ors.

Respondent : Emperor

Judgement :

Ryves, J.

1. In this case five persons were convicted by the Trial Court under Section 323 of the Indian Penal Code and sentenced to pay fine.

2. They appealed. The learned Sessions Judge found categorically that these five persons had been attacked and that they had a right of private defence of property and were perfectly entitled to take the cattle which were trespassing on and damaging their field to the pound, and that they were entitled, if resisted, to use sufficient force to prevent the rescue of the cattle. The Appellate Court goes on to find that, inasmuch as 'twelve injuries were inflicted upon Bindra, I do not think that it would be right to hold that the accused kept within their right.' The Appellate Court has not found which accused exceeded the right of private defence, but having regard to his finding that ' Bindra was an obstinate fellow it probably

required all the blows which he received and which cause only simple hurt to enable the accused to effect their purpose. At any rate, when once the Court has found that a right of private defence exists it is very difficult to expect the accused to weigh 'with golden scales' what maximum amount of force is necessary to keep within that right.

3. In my opinion, on his own finding, the learned Judge should have allowed the appeal.

4. I, therefore, allow this application, set aside the conviction and acquit the applicants. The fines, if paid, will be refunded.

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