

Birdha and ors. Vs. State

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Court : Rajasthan

Decided On : Dec-09-1958

Reported in : AIR1959Raj124; 1959CriLJ770

Judge : J.S. Ranawat, J.

Acts : [Cattle Trespass Act, 1871](#) - Sections 10; Rajasthan Forest Act, 1952 - Sections 17; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 97, 99, 325 and 333

Appeal No. : Criminal Jail Appeal Nos. 134 and 160 of 1957

Appellant : Birdha and ors.

Respondent : State

Advocate for Def. : B.C. Chattarjee, Adv.

Advocate for Pet/Ap. : P.N. Dutta and; Ratanlall, Adv.

Disposition : Appeals partly allowed

Judgement :

J.S. Ranawat, J.

1. These are two appeals by Birdha and others from the judgment of the additional Sessions Judge of Kishangarh dated the 28th of October, 1957, convicting the four appellants under Section 333 I. P. C. and sentencing Devkaran Sahadev and

Birdha to 2 years' rigorous imprisonment each and Sarwan to 6 months rigorous imprisonment.

2. The prosecution case was that Johari P.W. 1 was a Forest Guard having protected forest of Mohanpura under him. On the 25th of October, 1956, he went to village Khatoli from Kishangarh and on his way back he passed through the protected forest of Mohanpua-ki-ghati at about 10 a.m. He saw cattle grazing in the protected forest and as no cattle were allowed to graze in that area he tried to round them up. The accused Devkaran and others drove the cattle outside the boundaries of the protected forest in order to prevent their seizure. Devkaran then grappled with Johari and made him fall down on the ground. He sat on the fore-part of Johari's body and by that time the other accused persons Birdha, Sarwan & Shadev who were also with the cattle, came near them. They were asked by Devkaran to beat Johari and they accordingly started beating him by sticks and hit several blows on his legs.

Suwa Jat, Suwa Regar and Ganga Singh happened to come there from different directions and when they saw Johari being beaten by the accused they raised an alarm and challenged the accused persons, who thereupon, left Johari and ran away. Johari was then made to sit on a pole and carried by Suwa Jat, Gangasingh and others to a place called 'Nariya Nada' from where he was taken to Yagya Narain Hospital, Kishangarh where he was admitted as an indoor patient.

Harish Chander, Forest Ranger, Kishangarh having come to know about the beating given to Johari went to see him at the hospital, and after enquiring from him lodged the first information report at the Police Station, Kishangarh, in which Devkaran, Birdha and Sarean were named as the accused and one more person was stated to have taken part in the beating, whose name Johari did not know. The police took up the investigation and arrested Devkaran and three others.

On medical examination, the doctor suspected that one of the bones of Johari's leg was fractured. He, therefore, sent him for X-ray examination to Ajmer, and it was confirmed by the X-ray examination that one of the bones of his leg had been broken. The police challaned all the four accused appellants to the Court of the Sub-Divisional Magistrate, Kishangarh, who committed them to session, to stand

their trial under Section 333 I. P. C.

3. The defence of the accused was that Johari went to Devkaran in the field of Jairam in village Sardarsingh-ki-dhani and demanded money for drinks and on Devkaran refusing to comply with the demand, he grappled with him. The cattle of the accused were driven away by Suwa Jat. The accused did not admit that their cattle had trespassed into the protected forest or that they gave a beating to Johari,

4. The learned Sessions Judge believed the testimony of the prosecution witnesses Johari, Suwa Jat, Suwa Regar and found that it was established that Johari saw the cattle of the accused grazing in the protected forest of Mohanpura-ki-ghati and when he wanted to round them up the accused Devkaran grappled with him and made him fall down on the ground and the other accused came to the assistance of Devkaran and gave a beating to Johari with lathis breaking one of the bones of his leg. It was also held that Johari was a public servant and that he was discharging his duty in rounding up the cattle when he was given a beating by the accused persons. All the four accused were, therefore, con-victed and sentenced as noted above.

5. (After dealing with the case of accused Sada-shiv and discussing some evidence his Lordship proceeded.) The argument of the learned counsel of the appellants is that Johari cannot be supposed to be performing his duty while seizing cattle from Jairam's field and if he was beaten at that place, the accused were well within their rights of self-defence of their property to offer resistance to him.

6. Mr. Chattarjee for the State has replied that as Johari had seen the cattle trespassing in the protected forest and as he had pursued them in order to round them up, he had a right to seize them even after they had run away from the area of the protected forest and entered Jairam's field and Johari being a public servant and a Forest Guard was duty bound to do so. The decisions in *Waryami v. Emperor*, AIR 1928 Lah 692 *Faiyaz Khan v. Rex*, AIR 1949 All 180 *Hansa v. State*, AIR 1954 All. 381 and *Jagannath Singh v. Emperor*, AIR 1934 Nag, 258 have been cited in support of the contention.

7. Mr. Dutta has referred to the decisions in *Bhagwant Rao v. Champat Rao*, AIR 1925 Nag 50 and *Jiwana v. Emperor*, AIR 1947 Lah 380.

8. It may be observed that as per the evidence of Suwa Jat P. W. 5 it may be accepted that the occurrence took place in Jairam's field and not as stated by Johari within the area of the protected forest. It may also be held proved that Johari saw cattle grazing within the area of the protected forest of Mohanpura-ki-ghati, and before he could round them up the accused drove them away out of the area of the forest. From the statement of Johari and that of Suwa Jat it may be concluded that after the accused drove away the cattle, Johari pursued them and was beaten when he had gone in Jairam's field. In this context of the facts of the case, the question arises whether Johari lawfully pursued the cattle up to and within the field of Jairam after the cattle had left the area of the protected forest.

9. Under English Law cattle can be seized while still on the land actually trespassing and not afterwards. Vide *Salmond's Law of Torts* (Tenth Edition, page 197) and the cases of *Vaspor v. Edwards*, (1701) 12 Mod. 658, and *Clement v. Milner*, (1800) 3 Esp. 95. According to Salmond, 'the thing must be seized while still on the land. There is no right of following it, even in fresh pursuit, and even if it is purposely removed by its owner in order to avoid distress.' The law on the subject in India is contained in Section 10 of the Cattle Trespass Act, which has been made applicable to the reserve and protected forests by virtue of Section 17 of the Rajasthan Forest Act of 1952. Section 10 of the Cattle Trespass Act runs as follows ;

'The cultivator or occupier of any land, or any person who has advanced cash for the cultivation of the crop or produce on any land, or the vendee or mortgagee of such crop or produce or any part thereof, may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto or to any crop or produce thereon. and (send them or cause them to be sent within twentyfour hours) to the pound established for the village in which the land is situate.

Police to aid seizure -- All officers of police shall, when required, aid in preventing (a) resistance to such seizures, and (b) rescues from persons making such seizures.'

The Courts in India have interpreted Section 10 differently. According to the decisions referred to by Mr. Chatarjee on behalf of the State, the right, under Section 10 of the Cattle Trespass Act, to seize cattle trespassing on land and doing damage thereto is not limited to the period when the trespass continues and extends even after the cattle leave the land, provided notice of trespass is taken at once.

10. A contrary opinion that there is no right of seizure after the cattle leave the land has been expressed in the cases cited by Mr, Dutta. In AIR 1954 All 381 the case in AIR 1925 Nag 50 which supported the contrary view was distinguished on the ground that in that case the cattle had gone to their shed or very near it so as to have reached into the physical possession of the owners. It seems difficult to draw a line upto which the right of seizure may be taken to be available after the cattle leave the land.

The plain language of Section 10 gives a right of seizure of cattle trespassing on the land and doing damage thereto. The terms 'trespassing' and 'doing damage' appearing in Section 10 are in the present continuous tense and ordinarily they can only be understood to restrict the right of seizure to the period when the cattle are trespassing and are doing damage. It would amount to stretching the meaning of the language of Section 10 to read therein the provision for the right of seizure even after cattle had left the land and ceased to commit trespass.

The learned Single Judge, who gave judgment in the case of AIR 1954 All 381, has observed that it was undesirable to restrict the right of seizure to the period when the cattle commit trespass when notice of trespass is taken immediately and the cattle are chased for being taken to the cattle pound. With due respect to the learned Judge it may be noted that there appears nothing unreasonable in restricting the right of seizure to the period of trespass only, The law in England is also to the same effect.

The plain grammatical meaning of Section 10 is that there is a right of seizure of cattle trespassing on land and doing damage thereto and which must be taken to come to an end after the cattle leave the land. It may not be reasonable to stretch the meaning of Section 10 in favour of the owner of the land so as to create

uncertain situation inviting conflicts between the owners of cattle on the one hand and the occupiers of land on the other. I am, therefore, inclined to hold that the right of seizure only extends within the period the cattle are on the land and it ceases after they leave such land.

Taking this to be the law, it may be observed that Johari had no right to chase the cattle outside the area of the protected forest and the accused persons being owners of the cattle had a right to obstruct the seizure of the cattle in their own field or in the field of Jairam, who was their neighbour outside the area of the protected forest. The accused persons would have had a right of self-defence of their property and would have escaped the liability for having caused injuries to Johari if they had not exceeded their right by indulging in the act of beating Johari even when not required for the purpose of the exercise of the right of private defence.

Johari had fallen down on the ground and Devkaran was sitting on him. Under these circumstances there could be hardly any justification for the other accused beating Johari and continuing to do so for some time, for Johari while he was lying down could not have persisted in rounding up the cattle. Causing injuries to Johari in that situation can only be understood to have been done aggressively and not in exercise of the right of private defence of property of the accused persons.

11. It is in the evidence of Suwa Regar that Devkaran asked the other accused persons to beat Johari while he was holding him and the others in pursuance of Devkaran's call gave a beating with lathis on the legs of Johari. This circumstance is sufficient to warrant the application of the provisions of Section 34 against all the accused for indulging into the occurrence in pursuance of common intention.

12. The medical evidence on the record shows that one of the bones of the legs of Johari got fractured due to the beating. Johari had in all 11 injuries of which a few were on his ribs. There were two contusions and nine abrasions on his body.

13. As Johari had no lawful right to seize the cattle in Jairam's field, it cannot be held that he was acting in discharge of his duty while seizing the cattle at that place. The offence under Section 333 I. P. C. would, therefore, be not proved

against the accused persons. However, the offence would fall within the scope of the provision of Section 325 read with Section 34I. P. C. as the accused persons Devkaran, Birdha and Sarwan joined together in beating Johari in pursuance of the common intention of beating him.

14. The appeals are partly accepted. The conviction and sentence passed by the lower court against Sahadev are set aside and he is acquitted, He is on bail and need not surrender to it. The convictions of Devkaran, Birdha and Sarwan are reduced from Section 333 I. P. C. to S, 325 I. P. C. and the sentences of 2 years' rigorous imprisonment in cases of Birdha and Devkaran are reduced to one year's rigorous imprisonment each only and the sentence of Sarwan already undergone is deemed sufficient to meet the ends of justice, in view of the fact that he is a young boy. Both Birdha and Devkaran are on bail, and they shall surrender to it and be sent to jail to undergo their remaining terms of sentences.

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