

**Somu Vs. the Queen**

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**Court :** Chennai

**Decided On :** Apr-13-1883

**Reported in :** (1883)ILR6Mad316

**Judge :** Charles A. Turner, Kt., C.J.

**Appellant :** Somu

**Respondent :** The Queen

**Judgement :**

Charles A. Turner, Kt., C.J.

1. The petitioner complained to the Magistrate that, in consequence of her having widened a path by which her cattle were taken to pasture, K. Sankara Bhatta, I). M. Sankara Narayana Bhatta, Shambu alias Muttu Bhatta, and Sanku came to her verandah, inquired why she had widened the path, and abused her for it; that Sankara Bhatta pushed her on the neck, and, taking a switch of Maderi, struck her twice with it on the back; and that, fearing the other accused would also strike her, she entered the house. She added that the marks left by the blows were still visible.

2. She was examined on her complaint; and it is recorded that she repeated her charge against Sankara Bhatta, that she admitted the other persons accused had not assaulted her, but explained that she included them in the complaint because they had stood by and abused her while Sankara was striking her.

3. The Magistrate made a note that there were marks of blows on the complainant's back.

4. It will be seen that the offence imputed to Sankara Bhatta in the complaint and examination of the complainant was the offence of voluntarily causing hurt, and that, if any offence was imputed to the other accused, it was abetment of that offence.

5. The Magistrate issued summonses requiring the accused to answer a charge of assault, punishable under Section 352. Indian Penal Code. The petitioner was examined at the hearing of the complaint, and the statements in her petition, which are material to the present question, are as follow:

I was sweeping the courtyard of my house. Defendants 1, 2, and 3 came together to my house, and the first and second defendants asked me who had repaired the lane. I told them I had done it, as one of my bullocks while coming by that passage had fallen down and died. The first defendant then abused me saying 'Widow ! Did you make those repairs because you thought the land belonged to your father ?' Having thus abused me, the first defendant pushed me by the neck. I then told him ' You are a Brahman. Do not abuse and strike me. Do not put your hands on a woman.' The second defendant then suggested to the first defendant that he should strike me. The first defendant, therefore, picked up a Maderi switch from the courtyard and struck me two blows with it on my back. The third defendant did not beat me, but abused me. The fourth defendant was in a paddy field. He arrived there after the other defendants, He did not strike me. \* \* \* The offence was committed in the courtyard to the east of my house. \* \* \* As soon as the first defendant struck me, I entered my house and took my seat there. \* \* \* The first, second, and third defendants came from the east up to my courtyard. \* \* \* The fourth defendant \* \* followed the first defendant, because the latter called him there. Defendants 1, 2, and 3 came first to my courtyard, stood there, and inspected the lane; next they abused and struck me, After I entered my house, I was abusing my sons and crying. Being afraid that I would be struck if I remained outside, I got into my house.

6. The complainant, it will be seen, when fully examined, charged the defendants with criminal trespass, the first defendant with voluntarily causing hurt, and the second defendant with abetment of that offence.

7. Four witnesses supported the complainant's statement that the accused had entered her courtyard and abused her, and that the first defendant had pushed and struck her.

8. The Magistrate, for reasons recorded by him, which are not to my mind conclusive, held the complaint false and discharged the accused. He also ordered the petitioner to pay to each of the accused 40 rupees as compensation.

9. Of this order, the petitioner complained to the Magistrate of the district, praying that the case might be sent to the High Court for Revision. The Magistrate at first determined to submit the case but subsequently recalled his order, and thereupon the petitioner applied to the High Court.

10. It is contended by Mr. Powell that, inasmuch as the complaint and examination of the petitioner and the evidence offered for the prosecution showed that the offences committed by the accused were (if any) criminal trespass, voluntarily causing hurt, and abetment of the causing hurt, the Magistrate had no power to try the case as a summons case, nor to award compensation under Section 209, Act X of 1872.

11. It was held by the High Court of Bombay in the Queen v. Gurningapa 7 Bom. H.C.R. 58 on the construction of Act XXV of 1861 that, where a complaint had been made to the Magistrate of an offence not triable as a summons case under Chapter XV of that Act, and the Magistrate altered the charge made to a charge triable under that chapter, he could not award compensation to the accused under Section 2701 of the Act, the offence originally complained of not being one for which compensation could be awarded.

12. Act XXV of 1861 did not contain the provisions which are to be found in Section 2032 of Act X of 1872, that neither the complaint nor the summons shall be regarded as otherwise than notice to the accused persons of the facts to be

inquired into, and that the Magistrate may convict the accused person of any offence coming under Chapter XVI, which, from the facts proved, he appeared to have committed, whatever might be the nature of the complaint or summons.

13. These provisions enabled the Magistrate, if after further examination of the complainant he ascertained that the offence was not properly described in the complaint or summons, to convict the accused on any other charge proved by the facts, provided it was triable as a summons case. But I do not find anything in the Act which empowered the Magistrate to deal with the case as a summons case when the complaint and the proof adduced in support showed that the accused, if guilty of the offences imputed, were guilty of offences which were not triable under Chapter XVI. I must, therefore, hold that the award of compensation was not warranted by law, that it must be set aside, and the moneys, if paid, collected and returned to the petitioner.

1 Magistrate may award amends in cases of frivolous and vexatious complaints.

[Section 270 : In any case where the Magistrate shall dismiss the complaint as frivolous and vexatious, it shall be lawful for him, in his direction, by his order of dismissal, to award that the complainant shall pay to the accused person such amends not exceeding fifty rupees, as to such Magistrate shall seem just and reasonable. The sum so awarded shall be recoverable by distress and sale of the moveable property belonging to the complainant which may be found within the jurisdiction of the Magistrate of the District, and in default of such distress, by imprisonment in the civil gaol for any time not exceeding thirty days unless, such amends shall be sooner paid.]

2 Procedure in summons cases.

[Section 203 : The following procedure shall be observed in the trial of summons cases.

Object and effect of complaint.

No formal charge need at any time be made against the accused person, and neither the complaint nor the summons shall be regarded otherwise than as notice

to the accused person of the facts to be inquired into. The Magistrate may convict the accused person of any offence (coming under this chapter) which, from the facts proved, he appears to have committed, whatever may be the nature of the complaint or summons.

When notice is defective.

No defect in the complaint or summons shall affect the validity of the proceedings unless it appears that the accused person was actually misled by such defect, and in considering whether or not he was so misled the Court shall have regard to the manner in which the accused person conducted his defence.]

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