

Hari Mandle Vs. Jafar

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Court : Kolkata

Decided On : Feb-14-1895

Reported in : (1895)ILR22Cal457

Judge : Norris and ;Beverley, JJ.

Appellant : Hari Mandle

Respondent : Jafar

Judgement :

Beverley, J.

1. In April last three persons were detected in the act of butchering and skinning a calf. One of them, a boy named Doman, was arrested at the time; the other two, Shaik Jafar and Shaik Narain, escaped, and were not arrested till some time afterwards. Doman was convicted on the 26th April by the Deputy Magistrate of Contai of an offence under Section 429 of the Indian Penal Code, and was sentenced to undergo six weeks' rigorous imprisonment. Upon appeal, the Sessions Judge, Mr. Pratt, upheld the conviction, but in consideration of the youth of the appellant and the fact that he appeared to be a tool in the hands of the other two men, reduced the sentence to three weeks' rigorous imprisonment. On the 4th July, Jafar and Narain were tried in respect of the same occurrence by the same Deputy Magistrate at Contai, and they were convicted by him of the offence of theft under Section 379 of the Indian Penal Code, and were sentenced to suffer

rigorous imprisonment for one year. Upon appeal the Officiating Sessions Judge, Mr. Kedar Nath Roy, held that the finding under Section 379 could not stand, inasmuch as it was not shown that the calf had been moved out of the possession of the complainant. He held, however, that the offence of mischief had been committed, but that such offence would not fall under Section 429 of the Indian Penal Code, but under Section 426 of that Code, and he accordingly reduced the sentence to three months' rigorous imprisonment, the maximum punishment provided by that section. In his judgment he remarks as follows: 'The subject of slaughter was admittedly a calf of the value of eight rupees. The complainant said so in his first information and deposition. All the witnesses describe it as a calf. It has been held, and it is now widely known to all Magistrates,; that a calf, which is valued under fifty rupees, does not come within the provisions of Section 429 of the Indian Penal Code.'

2. The case having been reported to this Court with reference to another matter, an order was made on the 4th December last, calling upon the accused to show cause why' the order of the Appellate Court should not be set aside, and the sentence passed by the Deputy Magistrate restored. The rule has been served upon Shaik Jafar, but Shaik Narain is reported to have died. No cause has been shown before us.

3. We are of opinion that the decision of the Officiating Sessions Judge is erroneous. We think that the words 'bull' and 'cow' in Section 429 include the young of those animals, and that the expression 'any other animal' in that section does not mean an animal of the kind already mentioned, but refers to an animal of a different genus altogether such as a dog or a goat. It is stated in Mayne's Commentary of the Indian Penal Code that, at the fourth Madras Sessions of 1864, Scotland, C.J., hold that a calf does not come within the terms 'bull, cow, or ox.' So far as we are aware, that decision is not reported, and we are not prepared to follow it. It seems to us that the section specifies the more valuable of the domestic animals without any regard to age, but in respect of other kinds of animals not so specified the section would not apply, unless the particular animal in question was shown to be of the value of fifty rupees or upwards.

4. Accordingly, setting aside the order of the Officiating Sessions Judge, we alter the finding of the Deputy Magistrate in this case to a conviction under Section 429 of the Indian Penal Code, and we restore the sentence of one year's rigorous imprisonment which he imposed. Shaik Jafar must accordingly be re-arrested and undergo the unexpired portion of the sentence. *

* The same point was similarly decided in the case of Jaga Bundhoo Mythee v. Golam Ali Sha Criminal Miscellaneous case No. 53 of 1894, which was heard by the same Judges (Norris and Beverley, JJ.) on the same day. Rep. note.

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