

Wazuddi Vs. Rahimuddi and ors.

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Court : Kolkata

Decided On : Jun-29-1917

Reported in : 41Ind.Cas.817

Judge : Teunon and ;Shamsul Huda, JJ.

Appellant : Wazuddi

Respondent : Rahimuddi and ors.

Judgement :

Teunon, J.

1. On the general question of applications made to this Court by complainants in respect of the acquittal of persons whom they have charged with the commission of offences I adhere to the views expressed in my dissentient judgment in the case reported as Faujdar Thakur v. Kasi Choudhuri 27 Ind. Cas. 183***, 19 C. W. N. 184 : 21 C. L. J. 53 : 16 Cr. L. J. 122 : 42 C. 612. I need add nothing to what I then said beyond this that to lay down as a hard and fast Rule that such applications are to be discouraged is for this Court to abdicate its functions and in present conditions in India must necessarily result in denials of justice. Every such application should, in my view, be considered on its own facts.

2. As to the merits on the evidence of the acquittal with which we are now concerned it is unnecessary and in my opinion undesirable to express any decided

opinion.

3. It is sufficient to show that the decision of the Magistrate is vitiated by a series of misconceptions which pervade his judgment.

4. He has misappreciated the whole of the evidence regarding the position of Chawk No. 3, and it is not enough to say that if we substitute Fulchara for Chawk No. 3 the error is corrected. That argument overlooks the contention that in Fulchara north of dona there is no grazing ground.

5. Further, the Magistrate has laboured throughout under the impression that the lessee of grazing land is not entitled to impound cattle whose owner, while obstinately refusing to come to any arrangement with the lessee or to pay the customary or any fee, yet insist on feeding on the lessee's pasture. This under the provisions of Section 10 of the Cattle Trespass Act the lessee is clearly entitled to do, and the fact that he may hope that in order to prevent the impounding the owners will make a payment does not make the lessee's conduct unlawful, nor convert the seizure, as the Magistrate seems to think, into an attempt at distraint. How far this misconception of the lessee's rights, the consequent erroneous view that even on his own showing the lessee's conduct was high-handed and the gratuitous assumption that pasture land is 'waste' has coloured and vitiated the Magistrate's estimate of the value of the evidence we are not in a position to say.

6. There is a large body of positive evidence in support of the prosecution case that while complainant and his companions were engaged in rounding up the cattle grazing on the lessee's land the accused and others, Some 100 or more in number, armed with spears, split bamboos and lathis assembled and attacked them, with the result that seven of the complainants' party were injured.

7. The Magistrate on his reading of the evidence has disbelieved the prosecution as to the site of the seizure. Apart from the misconceptions under which he was labouring, and certain suggestions seemingly unfounded against the conduct of the Police, the Magistrate has given no adequate reasons for this disbelief. Further, how far even on their own case and with knowledge of the fact that Police Officers were on their way to the spot the accused and their companions were

justified in forming what was prima facie an unlawful assembly, and in their subsequent use of the weapons with which they were armed are 'matters which the Magistrate has apparently failed to take into his consideration. Still less has he considered the case of those who on the; evidence inflicted individual injuries.

8. In short, in my view, everything in this case points to a serious miscarriage of justice, and for the reasons I have given I am satisfied that the case has not been properly tried. I am, therefore of opinion that the proper order is to make the Rule absolute, but as my learned colleague has on the merits intimated a different view, and as this is a case of acquittal I am not of opinion that I ought to insist upon a reference to a third Judge I, therefore, assent to the discharge of the Rule.

Huda, J.

9. This is a Rule issued at the instance of the complainant calling upon the District Magistrate of Noakhali and the aroused to show cause why the order of acquittal under Section 258 of the Criminal Procedure Code, passed by Babu Chandra Sekhar Mukherjee, first Class Magistrate, Noakhali, should not be set aside on grounds specified in the Rule. Two questions arise for consideration, viz.:

10. Whether the order of acquittal is Wrong on the merits?

11. Assuming that it is so, whether in the exercise of the discretion vested in this Court under Section 439 of the Criminal Procedure Code, this is a (it case for our interference?

12. My answer to both the questions is in the negative. The facts are shortly these:

13. There is a newly formed char called Char Alzaluddin belonging partly to Government and partly to Mrs. Delawney. The char is bounded on the north and west by a dona, on the east by a small river and on the south by the big Feni river. The accused are Batbanias, or owners of cattle who have their cattle sheds on land immediately to the north of the dona and themselves reside there during the grazing season with their cattle. Since July 1916, Government and Mrs. Delawney have been in possession of separate plots as representing their respective shares.

Plot No. 3 among others is in possession of Mrs. Delawney and the plot to the east of it belongs to Government. The land of the whole char is of the same nature and seems only fit for pasturage (P. W. No. 2).

14. The story of the complainant as told in the first information was to the effect that complainant's master Minnat Ali had taken a settlement; from Government of Char Afzaluddin in order to realise rent from those who grazed their cattle in the char, that he found great difficulty, in realising such rent as the owners of cattle not only refused to pay rent but threatened Minnat Ali's men with violence whenever rent was demanded of them, that on the day of the occurrence Minnat Ali having first informed the Police of his difficulties and of his apprehensions of a breach of the peace, deputed some of his men, about 12 or 14 in number, including the complainant, to realise arrears of gore-kati or grazing rent, that with this object Minnat Ali's men surrounded about 250 or 300 heads of cattle in the char about 3/8ths of a mile to the south of the northern half of Chair Afzaluddin, when Some 200 men armed with lathies attacked them and began to snatch away the cows and buffaloes, that Minnat Ali's men thereupon raised a hue and a cry that the Police were coming and on hearing this, the attacking party begun to run away and the complainant's party began to drive away Some 20 or 25 heads of cattle, that at this stage Jaloo chowkidar belonging to the party of the accused came running and shouted, ' where is the Police? It is all false. Beat the salas.' Upon this the rioters numbering about 50 or 60 men came back with lathies, etc., and snatched away the cattle after inflicting injuries on the men on complainant's side.

15. The accused Persons, 16 in number, were accordingly placed on their trial, of Whom 7 were discharged after the close of the evidence for the prosecution and the Remaining 9 were charged under Section 147, Indian Penal Code with rioting with the common object of enforcing by use of criminal force their supposed right of grazing cattle free of rent and of preventing Minnat Ali from realising such rent from them.

16. The defense was that the accused had obtained the right of grazing cattle in the plots belonging to Mrs. Delawney, that they grazed their cattle on Mrs. Delawney's land but still Minnat Ali demanded rent from them but they refused to

submit to the demand and on the day of the occurrence, hearing of the expected visit of the Police, they kept their cattle near their own houses on the north bank of the dona when at' About 10 or 11 O'clock About 150 men, with the help of the Police, seized their cattle and carried them across the dona to the south, that a cow was killed and the other cattle were removed with the object of realising the arrears of grazing rent improperly demanded from them, that they opposed the seizure of their cattle and were beaten and they also in their turn beat the complainants' men.

17. The medical evidence shows that men on both sides had received injuries, two, such injuries on each side being severe.

The Trying Magistrate has acquitted the accused finding---

18. that the seizure of the cattle by the complainant's party took place on the north of the dona in plot No. 3;

19. that the seizure was illegal as the complainant had no right to seize the cattle in order to realise arrears of grazing rent from their owners;

20. that the accused were justified in using force to resist such seizure.

21. The first finding is vitiated by a misapprehension on the part of the Magistrate regarding the position of plot No. 3 which is to the south and not to the north of the dona and I do not' rely on this finding. But an examination of the evidence convinces me that Minnat Ali's men in seizing the cattle did not confine themselves to those grazing in Government khas land but seized them indiscriminately including cattle grazing in plot No. 3. This plot, is not separated from Government land by any ails and although it is demarcated by boundary pillars, the pillars are at considerable distance from one another and the two lands are, as I have already said, of the same nature and not distinguishable except by these distant pillars.

22. The evidence shows that Minnat Ali's whole object was to get hold of the cattle grazing in the char, irrespective Of the place where at the time of the seizure they may have been grazing. The witnesses for the prosecution generally start their

story by vaguely stating that on coming to the char' they surrounded About 300 heads of cattle grazing in it? They speak of the settlement of Char Afzaluddin with Minnat Ali and try to ignore the distinction between the plots of char land belonging to Government and those belonging to Mrs. Delawney. In cross-examination they admit the existence of plots belonging to Mrs. Delawney and say they confined the seizure of cattle to Government khas land.' Several prosecution witnesses had to admit in cross-examination that there were cattle grazing both over Government khas land and plot No. 3. The Police Sub-Inspector saw from a distance cattle scattered all over 'the char. As a matter of fact Minnat Ali's kabuliyat is for the whole char and ignores the zemindar's share in it. The same tendency to ignore the existence of land belonging to Mrs. Delawney is shown in the first information, as well as in Minnat Ali's application for taking proceedings against the owners of cattle under Section 107, Criminal Procedure Code, and although this absurd claim was abandoned in Court by the witnesses for the prosecution, Minnat Ali himself was reluctant to give up his pretensions. In his evidence in Court he claimed the whole of Char Afzaluddin as included in his lease and said he did not know if any other person had any right to the land in this char. It is most likely, therefore, that Minnat Ali's servants and adherents did not in seizing the cattle observe any distinction between those grazing in Government land and those grazing in zemindar's demarcated share of the char of which plot No. 3 is the largest. I am, therefore, of opinion that the cattle were seized south of the dona indiscriminately and irrespective of the question whether they were grazing on Government land or zemindar's land, and that Minnat Ali was claiming rent for the whole char.

23. The next question is with what, object; the cattle were seized by Minnat Ali's men. The witnesses on the prosecution side have generally stated that they surrounded the cattle in order to compel their owners to pay their grazing fees. The evidence to my mind is clear that there was no intention to take the cattle to a pound. This is clear from the first information also. The seizure of the cattle for the purpose of coercing their owners to pay the arrears of rent was clearly illegal and amounted to an attempt at theft. *Queen-Empress v. Sri Churn, Chungo* 22 C. 1017 : 11 Ind. Dec. (N.S.) 676) which the accused were entitled to resist by use of force. If this view is correct it is immaterial where the cattle were seized. Whether more

force was used than was necessary I need not discuss. The charge of rioting under Section 147 with the common object mentioned in the charge having failed, the order of acquittal is correct.

24. Except, therefore, as regards the place of occurrence I agree generally with the view of the case taken by the Trial Court and I need not repeat the reasons assigned by the Magistrate for disbelieving the story told by the prosecution.

25. For these reasons I do not think there has been any failure of justice in this case much less such a grave failure of justice as would, having regard to the ruling in *Faujdar T'kakur v. Kasi Choudhuri* 27 Ind. Cas. 183, 19 C. W. N. 184 : 21 C. L. J. 53 : 16 Cr. L. J. 122 : 42 C. 612, justify this Court in interfering with the order of acquittal. The practice of this Court has always been to discourage such applications when presented on behalf of private parties and this practice should not, in my opinion, be departed from.

26. I would, therefore, discharge the Rule

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