

Kerala High Court

Gopalakrishna Kediloya vs Krishna Bhatta on 24 June, 1959

Equivalent citations: AIR 1960 Ker 74, 1960 CriLJ 228

Author: T Joseph

Bench: T Joseph

JUDGMENT T.K. Joseph, J.

1. This is an appeal against an acquittal. The complainant is the appellant. The case against the accused is that they caused injuries to a cow belonging to the complainant by stabbing it with a sharply pointed stake of arecanut palm and piercing its nostrils. Although the learned Magistrate held that the acts alleged against the accused were proved, he acquitted the accused holding that such acts would not constitute an offence punishable under Section 426, Indian Penal Code.

2. Ex. P 2 and the deposition of the Veterinary Doctor Pw. 5 show that the cow had 4 injuries : (1) A punctured wound at the region of middle of 5th rib 1/2" deep on right side. (2) A punctured wound 4" behind the point of shoulder on right side 1" deep. (3) A subcutaneous wound about one square inch area on right shoulder. (4) A punctured wound through the nasal septum exhibiting raw borders. Pw. 4 gave the cow a penicillin injection and some other medicine for internal and external use as a result of which the cow recovered. The question is whether the ingredients of an offence punishable under Section 426 exist. The three points which the prosecution has to prove are : (1) The intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person. (2) Causing the destruction of some property or any change in it or in its situation and (3) Such change must destroy or diminish its value or utility or affect it injuriously.

The learned Magistrate was of opinion that the evidence did not disclose any of the above ingredients. I am unable to uphold this view. The evidence is that while accused 2 and 3 held the cow, down, the 1st accused stabbed it with the pointed stick and caused injuries Nos. 1 and 2. Intention has to be gathered from the facts proved in the case. The acts done by the accused necessitated treatment of the animal by the Veterinary Doctor. Even if the accused had no intention to cause wrongful loss or damage to Pw. 1, the nature of the acts is such as to lead to the conclusion that they had knowledge that wrongful loss or damage would be caused to Pw. 1.

It is clear that the act done affected the cow injuriously. To constitute an offence under Section 426 it is not necessary that the animal should be destroyed or its value or utility diminished; it is sufficient if it is affected injuriously. If permanent injury had been caused to the animal the offence would have been one under Section 429. *King Emperor v. Subrao Sukal*, 3 Bom. LR 503 is a case in which the accused was convicted under Section 426 I, P. C. for wounding an ox without disabling it. On the proved facts in this case I have no hesitation in holding that the accused are guilty of an offence under Section 420 I. P. C. The acquittal must therefore be set aside.

3. In the result I set aside the acquittal of the accused and convict them under Section 426 I. P. C. Each accused is directed to pay a fine of Rs. 10/- and in default of payment, he should undergo simple imprisonment for 7 days.