

CALCUTTA HIGH COURT

Romesh Chunder Sanyal

Vs

Hiru Mondal

(Norris and Macpherson, JJ.)

15.04.1890

JUDGMENT

Norris, J.

1. The facts of this case are as follows:

At the ceremony of the Adya Sradha of the mother of Raja Jogendra Nath Rai of Nattore, which was performed about twenty months ago, a bull was dedicated and set at large after being branded on the hind part. After the dedication and setting at large the Rajbari cowherd tended the bull under the supervision of the Rajbari sirdar; he gave it a seer of rice a day and used to drive it away if he found it eating any one's crops. The bull was used by the villagers for breeding purposes, and there is some evidence to show that it was not so used without permission having been obtained from the Rajbari. Some eighteen months after the bull had been so dedicated and set at liberty, Hiru Mondal, and Modhu Mondal, both Mahomedans, with others killed it. The killing took place at night in a straw-field some distance from the village, and was not witnessed by any Hindu.

2. Information of the slaughter of the bull reaching the Rajbari, a complaint was made to the Deputy Magistrate, and Hiru and Modhu were sent up for trial under Section 295, Indian Penal Code. The Deputy Magistrate, after taking the depositions of two witnesses called for the prosecution, discharged the accused under Section 253, Code of Criminal Procedure.

3. The Deputy Magistrate's judgment, so far as it is material to set it out, is as follows: "It appears that the bull was killed by some Mahomedans, including the two accused, for the sake of the meat. It has been held that the word 'object' in Section 295 of the Penal Code does not include animate objects [Queen Empress v. Imam Ali I.L.R. 10 All. 150]; hence Section 295, Indian Penal Code does not apply to the present case. Nor do I think that the case comes under the definition of 'mischief.' To constitute the offence of mischief the act done must be shown to have caused destruction of some property or such a change in the property, or the situation of it, as destroys or diminishes its value or utility or affects it injuriously. Now it has been held that a bull

so dedicated and set at large is nullius in terris and it is therefore, in my opinion incapable of being made the subject of mischief. For the same reason it is not 'property' which is capable of being made the subject of criminal misappropriation or larceny. [Queen Empress v. Bandhu I.L.R. 8 All. 51; Queen Empress v. Nihal I.L.R. 9 All. 348]. No doubt the killing of such a bull is simply outrageous to the religious feeling of a Hindu and specially of one who dedicated it, but the rulings cited above leave me no option but to discharge the accused ".

4. On the motion of the Advocate-General we granted a rule calling upon the two discharged persons to show cause why the order of discharge should not be set aside and the case sent back for re-trial.

5. The rule was argued before us a few days ago; Mr. Kilby showing cause and the Advocate-General supporting it.

6. Mr. Kilby contended that the evidence conclusively negated any "intention" on the part of the discharged persons "to insult the religion of any class of persons." The bull, he pointed out, was killed secretly at night at a distance from the village in the presence of none but Mahomedans for the sake of the meat and for the value of the skin which the evidence showed was sold for Rs. 2.

7. The learned Counsel further contended on the authority of Queen Empress v. Imam Ali I.L.R. 10 All. 150 that the bull was not an "object" within the meaning of Section 295, Indian Penal Code; and he relied upon the two other cases decided by the Allahabad High Court referred to by the Deputy Magistrate and upon an unreported case decided by McDonnell and Field, JJ. [Dwarka Moochi v. Queen-Empress Criminal Motion No. 86 of 1884, unreported] as establishing that the bull was not "moveable property" within the meaning of Sections 378 and 403, Indian Penal Code, nor "property" within the meaning of Section 425,* Indian Penal Code, and therefore he contended the discharged persons could not properly have been convicted of an offence under either of these sections. The Advocate-General contended that the case of Queen-Empress v. Imam Ali I.L.R. 10 All. 150 was wrongly decided; that Edge, C.T., had misapprehended the rule of ejusdem generis, and had misapplied it; that the evidence showed that those who had dedicated the bull and set it at large still retained such a "property" in the animal as to make it capable of being the subject of theft, or criminal misappropriation, or mischief.

8. The case is one of considerable importance, affecting as it does the religious feelings of the Hindu population of the Empire; I have given it the most careful consideration, and as the result have arrived at the following conclusion, viz.-

1st.-That the killing of the bull was not a "destroying" within the meaning of Section 295, Indian Penal Code.

2nd.-That the bull was not an "object" within the meaning of the same section.

3rd.-That the bull was not "moveable property" within the meaning of Sections 378 and 403, Indian Penal Code, and could not therefore be the subject of theft, or of criminal misappropriation.

4th.-That the bull was not "property" within the meaning of Section 425, Indian Penal Code, and could not therefore be the subject of mischief.

5th.-That if the killing of the bull was a "destroying," and if the bull was an "object" within the

meaning of Section 295, Indian Penal Code, there is no evidence that the discharged persons "destroyed that object with the intention of thereby insulting the religion of any class of persons."

9. The correctness of the first conclusion depends upon the soundness of the second, for it is clear that if the bull is an "object" within the meaning of the section, the person who kills it "destroys" it. My reasons for holding that the bull is not an "object" within the meaning of Section 295 are the same as those to be found in the judgments of Edge, C.J., and Brodhurst and Mahmood, JJ., in *Queen-Empress v. Imam Ali* I.L.R. 10 All. 150.

10. I think that by the word "object" the Legislature meant something, "ejusdem generis" with a place of worship, such as an idol, or a picture which was the subject of litigation in *Gossamee Sree Greedhareejee v. Rumanlolljee* Gossamee L.R. 16 I.A. 137 : I.L.R. 17 Cal. 3; something that is capable of "destruction" in the sense in which that word is ordinarily used, or of "damage," or of "defilement." Had the Legislature intended to make the killing of a dedicated bull an offence under Section 295, I think that they would have used language clearly expressing that intention.

11. I cannot agree with the Advocate-General that EDGE, C.J., has either misapprehended or misapplied the rule of ejusdem generis in construing the section, nor do I think that the passages cited from Maxwell on Statutes support the contention. The Advocate-General, in support of his argument as to the intention of the Legislature, referred to the Notes to the Penal Code prepared by the Indian Law Commissioners and submitted by them, to the then Governor-General of India in Council. In note J, being the note on "the chapter of offences relating to religion and caste," the Commissioners say of Section 275 of the Penal Code, which corresponds with Section 295 of the present Code:

We have prescribed a punishment of great severity" (the proposed punishment was rigorous imprisonment for a term which might extend to seven years) "for the intentional destroying or defiling of places of 'worship, or of objects held sacred by any class of persons. No offence in the whole Code is so likely to lead to tumult, to sanguinary outrage, and even to armed insurrection. The slaughter of a cow in a sacred place at Benares in 1809 caused violent tumult, attended with considerable loss of life. The pollution of a mosque at Bangalore was attended with consequences still more lamentable and alarming. We have therefore empowered the Courts in cases of this description to pass a very severe sentence on the offender." The Advocate-General contended that this passage showed that the Commissioners intended that the word "object" should include a cow.

12. I am unable to place, this construction on the passage, What caused "the violent tumult at Benares in 1809" was not the slaughter of the cow, but its slaughter in a sacred place. The naming of two instances, one the defilement or pollution of a sacred place, the other the pollution of a place of worship, and then the use of the words "cases of this description," so far from helping the learned Advocate-General's contention, seems to me to militate against it.

13. With reference to the reading of this note, I may observe that when the Advocate-General proposed to refer to it, I was of opinion that he was not entitled to do so; MACPHERSON, J., however, thought that he was so entitled, and so the note was read. I wish to say that upon consideration I think the Advocate-General was entitled to read the note, which seems to stand in

much the same position as the Report of the Select Committee on the Evidence Act, which was referred to by the Full Bench in *Queen-Empress v. Kartick Chunder Das* I.L.R. 14 Cal. 721.

14. In support of the 3rd and 4th conclusions at which I have arrived, I rely upon the judgment of Straight, J., in *Queen-Empress v. Bandhu* I.L.R. 8 All. 51. That was a case of a "bull dedicated and set at liberty," as was the bull in this case. The learned Judge says:

It was not only not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor and had given it its freedom to go whithersoever it chose; it was therefore *nullius in terris propter*, and as incapable of larceny being committed in respect of it as if it had been *fera natura*." In *Queen-Empress v. Nihal* I.L.R. 9 All. 348, the same learned Judge again expressed the same opinion.

15. In opposition to these cases, the Advocate-General relied upon a Madras case, *Queen-Empress v. Nalla* I.L.R. 11 Mad. 145. In that case two persons had been convicted of mischief and criminal misappropriation in respect of a bull described as "the Kamatchi Amman temple bull." On appeal, the Sessions Judge, "having regard to the principle on which the case of *Queen-Empress v. Bandhu* I.L.R. 8 All. 51 was decided, namely, that a bull set at large in accordance with Hindu religious usage, when the original owner abandons all proprietary right in such animal, cannot be the object of larceny, and being of opinion that no material distinction in principle could be drawn between the case of a beast so abandoned by its former owner and dedicated or attached to a temple, not however without considerable hesitation, held the bull in the latter case to be a, *fera bestia*, and as *res nullius* to be incapable of being the object of the offences in respect of which the accused were convicted," and quashed the conviction. On the case coming before the Court in the exercise of its revisional Jurisdiction, the learned judges, Muttusami Ayyar and Brandt, JJ., said: We do not think it necessary to interfere in revision, not because we agree with the Sessions Judge that there is no material distinction between the case of an animal, property in which is wholly renounced or abandoned, and allowed, in accordance with religious or superstitious usage, to roam at large free from all control, and that of such an animal so abandoned and at large after dedication to a temple, but because the accused have undergone three months' rigorous imprisonment for the offences of which they were convicted. We consider there is a material distinction between the two cases * * * * If on the evidence it appeared that the animal was turned loose after dedication to the temple, and that it was actually or inferentially accepted as so dedicated on behalf of the temple, then, though the animal were allowed to be at large free from all control, it would, *prima facie*, be the property of the temple."

16. I fail to see anything in this judgment in the least degree impeaching or questioning the correctness of the law laid down by Straight, J., in *Queen-Empress v. Bandhu* I.L.R. 8 All. 51. I do not think that the fact that the bull in this case still receives some attention from the Rajbari cowherd and is daily fed by him by the direction of his employers is at all inconsistent with "a total surrender" by those who set him at liberty "of all their rights as proprietors."

17. A bull thus dedicated and set at liberty is regarded as sacred by all Hindus, and it is a religious, and meritorious act on the part of strangers even to feed it; but it is peculiarly sacred in the eyes of the person who performed the *Sradha* and set the animal at liberty, and he regards it as a moral duty to feed it after it has been set at liberty.

18. Even if it be true that the villagers do not use the bull for breeding purposes without asking permission of the Rajbari people, I think this is only a matter of courtesy on their part, and ought not to be construed as evidence of any property in the animal remaining in those who set him at large.

19. In support of the 5th conclusion at which I have arrived, I rely upon Mr. Kilby's argument which I have summarised above, and to which I have nothing to add. I am therefore of opinion that the rule should be discharged.

Macpherson, J.

20. I agree and would discharge the rule.

* Mischief.

[Section 425: Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public, or to any person, causes the destruction of any property, or any such change in any property, or in the situation thereof as destroys or diminishes its value or utility, or effects it injuriously, commits "mischief."

Explanation 1.-It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.- Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.]