

(1869) 06 CAL CK 0011
In the Calcutta High Court

Bakar Halsana

APPELLANT

Vs

Dinobandhu Biswas and Others

RESPONDENT

Date of Decision : 01-06-1869

Acts Referred:

Citation : (1869) 06 CAL CK 0011

Judgement

Norman, J.—The prisoners, servants of the zamindar of Bally, have been convicted of committing mischief by destroying a bar of bamboo laid across a watercourse. The Deputy Magistrate finds that there is a dispute about a right of fishery in the watercourse, between the zamindar of Bally and the zamindar of Moharajpore; that the zamindar of Moharajpore having set up a bar across the watercourse which obstructs the egress and ingress of fish while it allows the water to pass freely, the defendants being unable to induce the Police to interfere, threw down the bar. Before the Deputy Magistrate the defendants produced a decision of the Sudder Ameen of Moorshedabad, affirmed by the Judge on appeal, to show that the fishery belonged to the zamindar of Bally. The Deputy Magistrate said, it was unnecessary for him to go into a question of title, and adds that the decision to which the zamindars of Moharajpore were not parties, is not evidence against them. He says, the evidence does not clearly establish the fact of exclusive possession in either party; that even supposing the zamindar of Bally to have been in exclusive possession, it does not follow that the removal of the bar was justified. He says, that the prisoner Dinobandhu should not have taken the law into his own hands. He fined the prisoners rupees 10 each. The Magistrate, Mr. Hankey, has sent up the case u/s 434. We think that the conviction cannot be sustained. The conviction does not show that the prisoners threw down the bar with intent to cause or knowing that they were likely to cause wrongful loss within section 425. Wrongful loss is defined to be the loss by unlawful means of property to which the person losing it is legally entitled. The conviction does not show, on the face of it, whether the mischief, for which the defendants have been convicted, is the damage to and loss of the bar, or the mischief to the fishery. Suppose it to be the injury to and loss of the

bar. If the fishery belonged to the zamindars of Bally, and they were in possession, servants acting under order might lawfully remove an obstruction newly set up to the passage of fish to prevent injury to their property and interference with its enjoyment.

2. In Blackstone's Commentaries, Book III, Chapter I, it is said:

Whatsoever unlawfully annoys or doth damage to another is a nuisance, and such nuisance may be abated, that is taken away by the party aggrieved thereby, so that he commits no riot (or breach of the peace) in doing it. If a new gate be erected across a public highway, which is a common nuisance, any of the king's subjects passing that way may cut it down and destroy it.

3. It is not found that the defendants wantonly destroyed or injured the bar, the whole cost of which is stated to have been about a rupee in removing it. Suppose the mischief for which the Deputy Magistrate intended to convict is mischief to the fishery. First, the Deputy Magistrate has not found, or even enquired whether the zamindars of Moharajpore are legally entitled to the fishery. If not, no wrongful loss was inflicted on them. Secondly, it is entirely consistent with the finding of the Deputy Magistrate that the defendants were acting in good faith for the protection of their master's interests, and repelling what they believed to be an unlawful intrusion on the part of the zamindars of Moharajpore. If the defendants really acted in the belief that the fishery belonged to their masters, the zamindars of Bally, it cannot be said that in removing a bar which interfered with that fishery they acted with intent to cause or knowing they were likely to cause injury to the zamindars of Moharajpore, Admitting that the decision of the Sudder Ameen is not evidence on a question of title as against the zamindars of Moharajpore, it may well have led the defendant to suppose that their masters had a legal right to the fishery, and should have been considered by the Deputy Magistrate with reference to the question of the good faith of the defendants, whether they acted with intent to cause or knowing they were likely to cause injury to the zamindars of Moharajpore. The Deputy Magistrate finds that the parties were jointly in possession. If the act had been in its nature malicious and wanton one which could have had no other object than that of the injury or destruction of the property, or to prevent the title to the property being ascertained, or otherwise to injure the zamindars of Moharajpore, we have no doubt that the parties might have been convicted as in the illustration:

When A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z, A has committed mischief. In the present case, we think no intent to injure, or knowledge that injury would be caused to the zamindars of Moharajpore, appears. The act is even presumably done with a totally different object. The conviction is, therefore, bad, and must be quashed, and the fines repaid.