

In dealing with the general plea of provocation the Judge read out to the Jury the provisions of exception 1 to section 294 of the Penal Code and then proceeded to say—

“Provocation must be some kind of passion as will make the person not master of his mind. That is implicit in the words ‘deprived of the power of self-control’. He must not know what he is doing, in order to bring the offence of murder down to the offence of culpable homicide not amounting to murder”.

There is no doubt that the sentence in that passage which an ordinary Juror would have most easily understood and remembered was “He must not know what he is doing”. That passage would have given the Jury an incorrect view of the law.

On the question of the relevancy of good character the learned Judge remarked :—

“That is a circumstance which you can take into account but, in this case, it is not necessary to go into that because he had admitted the fact that he stabbed. You have to decide in what circumstances did he stab. Did he have the intention of killing? If he did what are the circumstances?”

This is a misdirection. The evidence of good character would have been relevant when the Jury was considering whether the act of stabbing was or was not an unprovoked act.

In no part of the charge has the learned Judge given a direction to the Jury as to the nature of the burden that rested on the defence to prove the facts necessary to support the pleas of intoxication and provocation.

For these reasons we quash the conviction and order a fresh trial.

Fresh trial ordered.

1949

Present: Palle J.

MISILIN, Appellant, and BABUNHAMY, Respondent.

S. C. 142—C. R. Tangalla, 17,557

Damages—Tort—Defence of bona fides.

Defendant shot plaintiff's trespassing cow in the mistaken belief that it was a wild boar.

Held, that the plaintiff was not entitled to recover damages.

APPEAL from a judgment of the Commissioner of Requests, Tangalla.

Vernon Wijetunge, for plaintiff appellant.

A. K. Premadasa for defendant respondent.

Cur. adv. vult.

November 10, 1949. PULLE J.—

The plaintiff-appellant instituted this action to recover a sum of Rs. 200 alleging that the defendant-respondent caused the death of a cow belonging to the plaintiff on the night of the 29th October, 1947, without lawful cause. The learned Commissioner of Requests accepted the evidence given by the defendant to the effect that he heard the sound of an animal destroying his plantation at about 3 or 4 a.m., on the night of the 29th October, 1947, and that he shot at it thinking it was a wild boar. He discovered in the morning that the animal that he had shot was a cow. Counsel for the appellant submitted that the learned Commissioner was wrong in accepting the evidence of the defendant. The appellant had not, however, obtained leave to appeal on the facts and therefore the argument was confined solely to the question whether the shooting of the animal in the circumstances deposed to by the defendant gave rise to a cause of action to the plaintiff.

The point is covered by two local authorities cited at the argument, namely, Grenier's Reports (1873-1874, Page 36) C. R. Ratnapura 9108-9220 and the case of *Sittappu v. Sinnappu*¹ which have held that the shooting of a cow in the mistaken belief that it is a wild animal and for the purpose of protecting one's own plantation is not actionable. I would, therefore, dismiss the appeal with costs.

Appeal dismissed.

¹ (1900) 3 N. L. R. p. 345.