

that is to be regarded as mortal. That is a complete illusion and would be cured by a perusal of any elementary text-book on Criminal Law. This case is so horrible that I feel constrained to take the course which I dislike, namely, of directing that these sentences be enhanced and the accused be sentenced to death.

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GADD,
In re.
—
GOOTS-
TROTTER,
C.J.

PAKENHAM WALSH, J.—I agree with my Lord the Chief Justice. I myself do not like enhancing of sentence in these cases unless it appears to be absolutely called for. But in this case I think the murder is such a brutal one that we have no other course but the one we adopt.

PAKENHAM
WALSH, J.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Curgenvven.

T. S. RAGUPATHI AYYAR (COMPLAINANT IN ALL), PETITIONER, 1928,
September 5.

v.

NARAYANA GOUNDAN AND TWO OTHERS, (ACCUSED),
RESPONDENTS.*

*Indian Penal Code, sec. 425—“Destruction of any property”,
“Such change in any property or in the situation thereof as
destroys or diminishes its value or utility or affects it
injuriously”—Implication of—Goats allowed to graze in
mitta forest—Grazing rights reserved to permit holders—
If “mischief.”*

The expressions “destruction of any property” and “such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously” in section 425 of the Indian Penal Code carry the implication that something should be done contrary to the natural use and serviceableness of such property.

* Criminal Revision Cases Nos. 996, 998 and 997 of 1927.

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The offence of mischief is not committed where a person unauthorizedly allows goats to graze in a forest, the grazing rights in which are restricted to holders of permits, as by such an act the grass is only put to its normal use.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgments of the Court of the Joint Magistrate of Tiruppattur in Criminal Appeals Nos. 36, 38 and 39 of 1927 preferred against the judgments of the Court of the Sub-Magistrate of Tiruppattur in Calendar Cases Nos. 110, 112 and 113 of 1927.

V. L. Ethiraj and *P. Krishnamachari* for petitioner.

C. Veeraraghava Ayyar for respondents.

Public Prosecutor for the Crown.

JUDGMENT.

The respondents in these Criminal Revision Petitions and in two or three others which have since been withdrawn, were convicted of mischief, under section 426, Indian Penal Code, by the Sub-Magistrate, Tiruppattur, and sentenced to pay fines, but the convictions were reversed by the Joint Magistrate, Tiruppattur, on appeal. The petitioner is agent to the mittadar of Bommai Kuppam, and was complainant in the criminal prosecutions. The case against each respondent was that he unlawfully allowed goats to graze in the mittaforest, grazing rights being restricted to holders of permits, and in this way committed the offence in question. Arguments for revision have been based upon the terms of the judgments to which Civil Revision Petition No. 996 of 1927 relates.

In order to establish the offence of mischief, as defined in section 425, Indian Penal Code, it must be shown that the accused "with intent to cause, or

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knowing that he is likely to cause, wrongful loss or damage to the public or to any persons, 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 affects it injuriously." The only passage in the Sub-Magistrate's judgment on the question of wrongful loss or damage is this: "In cases of goat browsing in forests, it is an accepted principle that the damage caused is detrimental to tree growth and it is very difficult to arrive at any valuation of the damage caused." At that stage of the case, it was believed that tree growth was involved. But before the Joint Magistrate it was conceded that no cutting of branches or damage to trees had been made out, so that the question which the learned Joint Magistrate had to consider was whether the grazing of of goats in the forest—using 'grazing' in its strict sense of allowing cattle to feed upon growing grass—necessarily occasioned such damage to the grass—as would satisfy the terms of section 425, Indian Penal Code. The conclusion expressed was that the damage caused was "only incidental to the business of goat-grazing and of the sort committed by other (sic) licensed graziers," and that complainant's remedy was the civil one of enforcing the payment of grazing fees.

Now it will be seen that whatever knowledge the Court might be entitled to import—as the Sub-Magistrate imported it—as to the havoc wrought by goats in browsing on trees, bushes, etc., that is not in question. All that I am asked to decide is whether the grazing of goats—or, for the matter of that, any species of cattle—necessarily causes to the grass grazed such damage—by destruction, etc., as will constitute the offence of mischief. For the petitioner some reliance is placed upon an old case of this High Court in *Gurram*

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Siddugadu(1) in which the facts were that the accused grazed their cattle upon Government's lands which it was under contemplation to reserve under the Forest Act, and on which therefore the grazing of cattle had been prohibited. The evidence showed that Government were in the habit of selling the grass grown on the lands, and the learned Judges found that the consumption of the grass caused the destruction of it, so far as the Government's right was concerned. "The grass on the land," they observe, "in the possession of the Government, by their officer, was a crop, though perhaps of little value, but one which was preserved." It appears to me that this circumstance in some measure differentiates the facts from a case, like the present cases, where profit is derived from the grass not by cutting or selling it but by allowing it to be grazed; and the question arises whether the offence of mischief is committed when property is dishonestly put to a use of the kind for which it is intended. In a case decided by the Calcutta High Court, *Shekur Mahomed v. Chunder Mohun Sha*(2), the point arose whether the cutting and removal of bamboos, provided it were done with the necessary intention or knowledge, was mischief. In referring the case, the Sessions Judge observed: "The mischief of which the accused was convicted consists in cutting and taking away certain bamboos the right to which was disputed. The essence of the offence of mischief is that the offender must cause the destruction of property or such change in it or in its situation as destroys or diminishes its value or utility or affects it injuriously. Now as bamboo is a thing which is grown to be cut, the cutting and removing it does not amount

(1) (1886) 1 Weir, 492.

(2) (1874) 21 W.R. (Crl.), 38.

to its destruction or other injury defined above." The Bench which disposed of this reference concurred in this view of the law and quashed the conviction. The same reasoning was adopted by a learned Judge of the Patna High Court in dealing with a case of cutting the branch of a tree in *Sardar Singh v. Emperor*(1); and was the basis of a distinction drawn between cutting an unripe crop, which might constitute mischief, and cutting a crop ready for reaping, which would not; *Mahomed Foyaz v. Khan Mahomed*(2) and *In the matter of Miras Cowkidar*(3).

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The expressions "destruction of any property" "such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously," contained in section 425, Indian Penal Code, appear to me to carry the implication that something should be done to the property contrary to its natural use and serviceableness. It may be mischief to throw the contents of a pot of food upon the fire, but it is not mischief, though it may be theft, to eat the food. And so here, since the graziers, by allowing their goats to graze, did no more than put the grass to its normal use, by the same reasoning their act would not amount to mischief, though it may have amounted to theft. As to this, that offence not having formed the subject of the charge, I do not wish to express a more definite opinion.

The Criminal Revision Petitions are dismissed.

B.C.S.

(1) (1917) 44 I.C., 451.

(2) (1872) 18 W.R. (Cr.), 10.

(3) 7 C.W.N., 713.
