

that section 34 of the Indian Penal Code is clearly applicable to the case of the appellants Nos. 2 to 4. For these reasons we hold that they had been rightly convicted by the court below.

The appeals of all the appellants are dismissed. We confirm the death sentence passed upon Irshad Ullah Khan and direct that it be carried out according to law. As regards the sentences against appellants Nos. 2 to 4 we direct that the sentences under section 307 will run concurrently with those under section 302 read with section 34 of the Indian Penal Code.

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 EMPEROR  
 v.  
 IRSHAD  
 ULLAH  
 KHAN
 

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*Before Mr. Justice King and Mr. Justice Iqbal Ahmad*

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 March, 27
 

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EMPEROR v. SHIB LAL\*

*Indian Penal Code, sections 97, 99 and 326—Right of private defence of property against illegal attachment—Attachment of property under an invalid warrant—Does not amount to theft or robbery—"Good faith".*

Although an attachment of property made by an amin and his party under a time-expired warrant of attachment is illegal, such attachment does not amount to an offence of theft or robbery, there being no dishonest intention of causing wrongful gain or wrongful loss to any person; and no question of mischief or criminal trespass arises in such a case. Therefore, upon such attachment there is no right of private defence of property under the terms of section 97 of the Indian Penal Code.

If, however, a right of private defence of property had accrued in such a case, it would not have been taken away by section 99 of the Indian Penal Code, as the amin, in acting under a time-expired warrant, could not be deemed to have acted "in good faith", as defined in the Indian Penal Code.

Where an amin with a party of constables, mukhia and patwari went to a village to make an attachment, but the warrant had become invalid by lapse of the time limited thereby, and the owner of the property resisted and caused grievous hurt to one of the party, it was *held* that he could not plead any right of private defence of property and was rightly convicted under section 326 of the Indian Penal Code.

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\*Criminal Appeal No. 767 of 1932, by the Local Government, from an order of K. N. Wanchoo, Sessions Judge of Muttra, dated the 8th of July, 1932.

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The Government Advocate (Mr. *Muhammad Ismail*), for the Crown.

Mr. *Debi Prasad*, for the accused.

KING and IQBAL AHMAD, JJ.:—This is an appeal by the Local Government against the acquittal of one Shib Lal, who was convicted by a Magistrate of the first class under section 326 of the Indian Penal Code, but was acquitted on appeal by the learned Sessions Judge.

The facts of this case are practically undisputed. An extra amin named Karan Behari Lal went to the village of Nandgaon on the 18th of February, 1932, for the purpose of collecting certain arrears of canal dues from Shib Lal and others. As he apprehended resistance, he took with him two constables, named Pohap Singh and Manzur Ahmad, in addition to his peon Kadir Bakhsh. On arrival at the village he was joined by Parshadi Lal, patwari, and Ajairam, the mukhia of the village, and another man. In all there were seven persons of the amin's party including himself. When the party reached Shib Lal's house the amin sent for Shib Lal and showed him the warrant of attachment and demanded payment of the arrears due. Shib Lal refused to pay and also stated that he would not allow his property to be attached. Thereupon the amin ordered the attachment of Shib Lal's buffalo. The amin's peon and Pohap Singh, constable, advanced to seize the buffalo. Then Shib Lal and some men with him began to throw bricks at them, and Shib Lal, who had a sword, struck the constable Pohap Singh a severe blow upon the arm wounding him grievously. Other villagers came to the help of the amin's party, whereupon Shib Lal and the others ran away.

Shib Lal admitted that the amin, together with his peon, the constables and others, went to his house on the day in question, but he denied that any warrant of attachment was shown to him and denied that the

amin made any demand for payment of arrears. He said that they tried to catch him, whereupon he told them to leave him alone. He admits that when the constable Pohap Singh advanced to seize the buffalo, he struck Pohap Singh a blow with his sword.

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The learned Sessions Judge has accepted the facts stated by the prosecution witnesses but has acquitted the accused on the ground that the warrant of attachment was invalid and that the amin's procedure in attaching the property under an invalid warrant was illegal and that Shib Lal was justified in the exercise of the right of private defence of property in treating the amin and his party as robbers and in resisting the attachment of the buffalo by force. The learned Government Advocate has argued that the view taken by the learned Sessions Judge regarding the exercise of the right of private defence in the circumstances of this case was erroneous.

In our opinion, the learned Sessions Judge was wrong in holding that the amin and his party could justifiably be treated as robbers. It is conceded by the prosecution that the warrant for the attachment of Shib Lal's property was invalid on the 18th of February. The warrant had been issued on the 11th of January and was valid for fifteen days only and had therefore expired on the 26th of January. It is admitted, therefore, that the warrant had no force on the 18th of February. On this admission we think it would be difficult to hold that the accused was deprived of the right of private defence by reason of the provisions of section 99 of the Indian Penal Code. Under that section he would not have the right of private defence if the seizure of the buffalo was done or attempted to be done by the amin acting in good faith under colour of his office. As the duration of the warrant had admittedly expired, it must be conceded that the amin was negligent in failing to observe that the duration of the warrant had expired and that it

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was no longer in force. The amin was obviously acting "in good faith" in the *popular* sense of that expression, because there is no suggestion that he was actuated by any malice or that he had any dishonest intention. The expression "in good faith" is, however, used in the Penal Code in a very special sense, and we doubt whether it could be held that the amin acted with due care and attention in the exercise of his duties when he admittedly failed to look at the date of his warrant and to observe that its period had expired.

It is, however, for the accused to show that he was justified in inflicting such a serious injury upon the constable in the exercise of the right of private defence of property. Unless the accused can show that he had a right of private defence under section 97, it is unnecessary to consider to what extent and subject to what restrictions the right could be exercised. Under section 97 the accused had a right, subject to the restrictions contained in section 99, to defend his property against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or is an attempt to commit any of those offences. No question of mischief or criminal trespass arises. We only have to consider the question of theft or robbery.

In the circumstances of the present case we think it is quite apparent that the amin had no intention of committing theft because he had no dishonest intention. He was negligent in failing to observe that his warrant was no longer in force, but he clearly did not intend to cause wrongful gain to any person or wrongful loss to any person. Therefore, he cannot be held guilty of committing theft or of attempting to commit theft by ordering the attachment of the buffalo. As he could not be held guilty of committing theft, it follows that he could not be held guilty of committing robbery. We dissent from the view taken by the learned Sessions Judge on this point. He

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seems to think that as the amin and his party were armed with lathis and proceeded to seize the buffalo belonging to the accused and as their action was not strictly warranted by law, they must be held to be guilty of robbery. The learned Sessions Judge is wrong in failing to observe that a man cannot commit robbery unless he acts with dishonest intention. In this case a dishonest intention is conspicuously wanting on the part of the amin and also of his party. We may note that the accused himself has never suggested that he believed the amin and the persons with him to be thieves or robbers or that he believed that they were acting with any dishonest intention. The party came to his house in broad daylight, he knew that Karan Behari Lal was an amin, and he was accompanied by two constables, by the mukhia and by the patwari of the village. It must have been obvious to the meanest intelligence that the party did not come as a band of robbers or thieves, and the accused does not even suggest that he believed them to be robbers or thieves. He did not even notice any defect in the warrant of attachment. In such circumstances we hold that the accused had no right of private defence of his property under section 97. It would indeed be a strange state of things if an amin, who through inexperience or negligence failed to notice that the duration of his warrant had expired but who proceeded to attach property honestly believing that he was entitled to do so under the warrant, could be treated as a robber and could be grievously hurt or even killed by the owner of the property in justifiable exercise of the right of private defence.

We set aside the order of acquittal and restore the order of conviction and the sentence passed by the learned Magistrate.