

1932

MUNI
KANTIVIJAYAJI
v.
BAI
LILAWATI

Beaumont C. J.

returned within a month after the record reaches the lower Court. Interim stay of the lower Court's order.

BROOMFIELD, J. :—I agree.

Case sent back.

J. G. R.

CRIMINAL REFERENCE.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Broomfield.

G. G. MUNSHI (ORIGINAL ACCUSED) v. EMPEROR.*

1932
January 21.

Prevention of Cruelty to Animals Act (XI of 1890), section 3 (a)—Overloading—Load in excess of load fixed—Cruelty, test of overloading—Public Conveyances Act (Bom. Act VII of 1920), section 36.

Under section 3 (a) of the Prevention of Cruelty to Animals Act, 1890, overloading would be an offence only if it is cruel and unnecessary. Such overloading must be proved. It cannot be assumed merely from the fact that the load was in excess of the maximum load prescribed for animals drawing public conveyances under the Public Conveyances Act, 1920.

Per Beaumont C. J. :—“The construction of section 3 (a) [of the Prevention of Cruelty to Animals Act] which best gives effect to the intentions of the Legislature is to read the adverbs ‘cruelly and unnecessarily’ as governing the three verbs ‘beats, overdrives and overloads’ the primary test of overdriving or overloading for the purposes of this Act must be the test of cruelty. No fixed distance or weight can be taken as the test, because much may turn upon the surface and gradients of the road on which the overdriving or overloading is charged.”

CRIMINAL REFERENCE made by the Sessions Judge at Ahmedabad.

A bullock belonging to the accused was yoked to his private cart which was loaded with soda water bottles. The weight of the load was alleged to be 35 maunds.

In exercise of the powers conferred on him under section 36 of the Bombay Public Conveyances Act VII of 1920, the Commissioner of Revenue, Northern Division, notified in the Gazette that the maximum load for labour carts carrying goods drawn by one bullock should not exceed 27 maunds.

* Criminal Reference No. 138 of 1931.

A complaint having been made against the accused under section 3 (a) of the Prevention of Cruelty to Animals Act, 1890, on the ground that he had loaded his bullock cart with a load of 35 maunds the First Class Magistrate of Ahmedabad convicted the accused and sentenced him to pay a fine of Rs. 7.

The accused applied to the Sessions Judge of Ahmedabad who made a reference to the High Court under section 438 of the Criminal Procedure Code, 1898, with a recommendation that the conviction of the petitioner should be set aside and a retrial ordered. His reasons were as follows :—

“ The authorised weight fixed for public conveyances are necessarily more or less arbitrary and the same standard is laid down for all bullocks, whether strong or weak. Such an arbitrary standard cannot be applied to a private bullock. If it be a weak bullock, even 27 maunds might be too much for it and there may be strong bullocks capable of easily drawing a load of 35 maunds without any effort. Hence no standard of the weight being fixed by law in the case of private conveyances, the question whether such a private bullock is overloaded must be decided on its merits, having regard to the capacity of that particular bullock.”

P. B. Shingne, Government Pleader, for the Crown.

H. V. Divatia, for the complainant.

No appearance for the accused.

BEAUMONT, C. J. :—This is a reference by the Sessions Judge of Ahmedabad under section 438 of the Criminal Procedure Code who invites us to set aside the conviction of the accused passed by the Stipendiary Magistrate, First Class, Ahmedabad, under section 3 (a) of the Prevention of Cruelty to Animals Act, XI of 1890.

The accused was convicted under section 3 (a) of having overloaded a cart drawn by a single bullock, and the ground on which the learned Magistrate convicted was that inasmuch as the regulations framed by the Commissioner of Revenue, Northern Division, under the Public Conveyances Act, VII of 1920, prescribe the weight of 27 maunds as the maximum weight to be drawn by a single bullock, and as the weight

1932

MUNSHI

v.

EMPEROR

Beaumont C. J.

in this case was 35 maunds, it must be assumed that the bullock was overloaded.

The learned Sessions Judge referred the matter to us because he considered that the weight which the Commissioner of Revenue has fixed for the purposes of the Public Conveyances Act is wholly irrelevant for the purpose of deciding whether an offence has been committed under the Prevention of Cruelty to Animals Act. I entirely agree with the learned Sessions Judge. Mr. Divatia who appears for the Secretary of the Society for the Prevention of Cruelty to Animals tells us that the conviction in this case is in accordance with the practice which prevails in the Magistrates' Courts in this Presidency, and if that is so, I think that the practice is wrong.

The words of section 3 (a) of the Prevention of Cruelty to Animals Act are :—

“If any person . . . cruelly and unnecessarily beats, overdrives, overloads or otherwise ill-treats any animal, . . . ”

I think that grammatically the words “cruelly and unnecessarily” may be read either as qualifying only the verb “beats”, or as qualifying the verbs “beats”, “overdrives” and “overloads”. That is to say, I think the section might be read “If any person cruelly and unnecessarily beats or overdrives or overloads” or it might be read “If any person cruelly and unnecessarily beats, cruelly and unnecessarily overdrives, cruelly and unnecessarily overloads or otherwise ill-treats any animal.” If the words of an Act of Parliament are capable grammatically of two meanings the Court must look at the whole of the Act in order to determine which meaning best gives effect to the intentions of the Legislature. Here it is clear from the preamble and from the terms of sections 3, 4 and 5 that the Act is aimed at preventing unnecessary cruelty to animals. That being so, I think that the construction of section 3 (a) which best gives effect to the intentions of the Legislature is to read the

adverbs "cruelly and unnecessarily" as governing the three verbs "beats, overdrives and overloads".

Even if that be the wrong construction, I think, the primary test of overdriving or overloading for the purposes of this Act must be the test of cruelty. No fixed distance or weight can be taken as the test, because much may turn upon the surface and gradients of the road on which the overdriving or overloading is charged. Therefore, in whichever way one reads the section the primary test is whether the act is cruel. In the construction which I think is the right one to be placed on the Act, there is the further test of necessity, but that will probably seldom arise in practice because it can be very rare that cruelty is necessary.

I think we must accept the reference, but inasmuch as the case is obviously not of a grave character and the penalty imposed is only Rs. 7 I do not think it necessary to order a new trial. I think we must set aside the conviction and direct the fine to be repaid.

BROOMFIELD, J. :—I agree. The object of the Act is the prevention of cruelty to animals, as appears from the title and the preamble. The Act contains no definition of overdriving or overloading, and there seems to be no practical means of determining what is overdriving or overloading, as an offence deserving punishment, except by considering whether under the circumstances the overloading or overdriving was cruel and unnecessary. If mere overdriving or mere overloading were intended to be made punishable, one would have expected the terms to be defined. It may be suggested that to drive or load an animal beyond its capacity must necessarily be cruel, but I am not sure that that is so. It is a question of degree and of what is meant by capacity. Again it may very occasionally be necessary to overdrive an animal, for instance, to save human life, or to overload an animal for some purpose of extreme

1932

MUNSHI
G.
EMPEROR

Baumont C. J.

1932
 MUNSHI
 v.
 EMPEROR
 Broomfield J.

urgency, and the Legislature can hardly have intended to make it an offence in such cases.

Lastly, looking to the balance of the sentence the more natural grammatical construction seems to be to take the two adverbs with all the verbs following and not the first only. If the meaning suggested by Mr. Divatia had been intended, I should have expected the word "or" after "beats and overdrives" or that the words would have been transposed so as to read "overdrives or overloads or cruelly and unnecessarily beats," and so on. Therefore, though the language is no doubt capable of both constructions, I think the proper construction is the one which would make overloading an offence only if it is cruel and unnecessary. There is no finding in this case that the act of the accused was either the one or the other. Even on the other construction overloading must be proved. The fact that the load was in excess of the load fixed for animals drawing public conveyances under the Public Conveyances Act would perhaps be evidence of overloading but clearly not sufficient or conclusive evidence.

I think the learned Sessions Judge is right in his view and I agree with the order proposed by the learned Chief Justice.

Answered accordingly.

J. G. R.

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Rangnekar.

RAMANLAL SHANTILAL & Co. (ORIGINAL DEFENDANTS), APPELLANTS v.
 CHIMANLAL DAMODARDAS (ORIGINAL PLAINTIFF), RESPONDENT.*

1931
 September 28.

Letters Patent of Bombay High Court, Cl. 15—Judgment—Order granting leave to defend on certain terms in summary suit—Bombay High Court Rules (Original Side), 1930, rules 205, 206—Civil Procedure Code (Act V of 1908), Order XXXVII, rule 2.

An order, under Order XXXVII, rule 2, of the Civil Procedure Code, directing a defendant to deposit a certain amount as a condition precedent to giving him leave

*O. C. J. Appeal No. 44 of 1931 ; Suit No. 1287 of 1931.