

KULUGAMMANA v. BABA SINHO.

P. C., Hatton, 29,587.

1900.

January 17.

*Ordinance No. 16 of 1865, s. 53—Meaning of “imprisonment”—Interpretation of statute—Criminal Procedure Code, s. 353—Case stated by Police Magistrate.*

In laws imposing punishment, the more lenient interpretation is to be preferred to the more severe.

Hence, the term “imprisonment” used in section 53 of the Ordinance No. 16 of 1865 must be taken to mean simple imprisonment.

If a special case is stated by a Police Magistrate under section 353 of the Criminal Procedure Code, it should be set down for argument and notice of the day should be given by the Registrar to the parties and the Magistrate.

IN this case the Police Magistrate after convicting the accused of wantonly and cruelly beating a cow, an offence punishable by section 53 of the Ordinance No. 16 of 1865, and sentencing him to one month’s rigorous imprisonment, recorded as follows:—

“ I have not charged the accused under the Cruelty to Animals Ordinance, No. 7 of 1862, for a conviction thereunder carries punishment by fine only, or simple imprisonment in default of payment, which is manifestly inadequate to meet this case. The brutality practised by the accused deserves, I consider, exemplary punishment, but I understood it is doubtful whether imprisonment, where no kind is specified (as in the section of the Police Ordinance under which the charge is laid), can legally be rigorous.

“ I will therefore state a case to the Supreme Court under the provisions of section 353 of the Criminal Procedure Code.

“ I so inform the accused and admit him to bail.”

The case stated by the Police Magistrate was that for wantonly and cruelly beating a cow, the property of one Kidir Mohideen, an offence punishable under section 53 of the Ordinance No. 16 of 1865, he had found the accused guilty, but was in doubt whether the accused was liable to be punished with rigorous imprisonment. The Magistrate said: “ I being of opinion that ‘ rigorous imprisonment ’ is ‘ imprisonment ’ under section 53 of the Ordinance No. 16 of 1865, held that the accused was liable to be punished with hard labour. The question for the opinion of the Supreme Court is whether the said determination was correct in point of law, and what should be done in the premises.”

There was no appearance of counsel.

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The Supreme Court remitted the case to the Police Magistrate, 17th January, 1900. LAWRIE, J.—

The 353rd section contemplates that the special case shall be set down for argument in the Supreme Court.

Notice for the day fixed for the argument should be sent by the Registrar to the Judge or Magistrate and to the parties (complainant and accused).

In the present case, the Magistrate ought to have framed a charge not under No. 16 of 1865, but under the Ordinance No. 7 of 1862, which makes cruelly beating an animal an offence punishable by a fine not exceeding £5.

In answer to the question put by the Police Magistrate, I say that "imprisonment" means simple imprisonment. In all laws imposing punishment and penalties, the more lenient is to be preferred to the more severe interpretation. Taking this view, I do not think it necessary to give notice of a day for argument.

The Magistrate would exceed his powers if he added in his sentence anything to the words of the Ordinance. All he can do is to sentence to fine or imprisonment, leaving to the executive to decide what "imprisonment" means. In my opinion (as I have said), it means the most lenient kind of imprisonment known to the law, but whether it does or not, the Magistrate may not in his sentence do more than the Ordinance permits, viz., to sentence to "imprisonment."

BROWNE, A.P.J.—

In the Police Ordinance, No. 16 of 1865, different punishments were prescribed for different offences, *e.g.*, "imprisonment" by sections 53, 54, 68; "imprisonment at hard labour" by section 87; "imprisonment with or without hard labour," by sections 70, 73, 75, &c.; fine only by sections 65, 67, 76, &c. Each of these differs from the other, and the term "imprisonment" cannot therefore be construed to mean or include "imprisonment" at [or "with"] hard labour," when such words of aggravation of the punishment of incarceration are not expressly enacted. The maximum punishment under section 53 is therefore a fine of Rs. 50, or simple imprisonment for three months. I therefore agree in my brother's answer to the question proposed in the special case.

