

(1918) ILR (Bom) 406

Bombay High Court

Case No: None

Emperor

APPELLANT

Vs

Amirsaheb Balamiya
PatilRESPONDENT

Date of Decision: Jan. 15, 1918**Acts Referred:**

- Forest Act, 1878 - Section 25(i)

Citation: (1918) ILR (Bom) 406**Hon'ble Judges:** Shah, J; Marten, J**Bench:** Division Bench

Judgement

Shah, J.

The accused in this case has been convicted u/s 25, Clause (i), of the Indian Forest Act VII of 1878. He is found to have successfully tracked and shot a tiger without a license in a reserved forest to which the rules made by the Local Government u/s 25(i) and Section 31, Clause (j) have been duly applied.

2. The case for the accused was that some of his cattle were killed by a tiger and that with a view to prevent further injury to his property he wanted to trace the tiger in the forest. Both the lower Courts have proceeded on the assumption that the accused's cattle were killed by a tiger; and from the arguments before us, it is clear that the accused's cattle were killed by a tiger and that his object in going to the forest and shooting the tiger was to prevent further injury to his property.

3. In dealing with the question of self-defence, the learned Magistrate in appeal seems to me to have taken a somewhat narrow view of its scope. It may be, as the learned Magistrate points out, that the accused went; in search of the tiger and shot the animal, not to avert the attack by the animal on him but probably because he wanted to kill the animal. The point as to whether the accused shot the tiger to avert the attack by the animal on him or whether he found it does not seem to me to be of any importance for the

purpose of this case. Broadly speaking it is a case in which the accused, with a view to protect his property, went to the forest, tracked out and shot the tiger. He did this, however, without a license as required by the rules to which I have referred, and the whole point in the case is whether the prohibition under Rule 3(a) against hunting and shooting without a license is absolute. After a careful consideration of the rules, it seems to me that under Rule 3(a) hunting and shooting are prohibited except under a license to be obtained from the Conservator of Forests. Such a license was not obtained.

4. Whether it is necessary for the purpose of strict conservation or for the preservation of animals which are becoming rare or for both these purposes, to prohibit hunting and shooting in a reserved forest except under a license, so as to prevent a person from hunting and shooting without a license a tiger or any other wild animal even for the protection of his property or, person, is a question, which the Local Government have to consider and decide. It is really a question of policy under the Indian Forest Act upon which I express no opinion.

5. I feel clear, however, that without a license even under the circumstances under which the accused is found to have acted he cannot hunt or shoot in a reserved forest to which these rules have been made applicable. I am, therefore, of opinion that the conviction u/s 25(i) must be affirmed.

6. Having regard to the fact that the accused acted in a manner, in which a person, whose cattle were killed by a tiger, would naturally act, I think that a nominal sentence would be sufficient in this case. Accordingly I reduce the fine to one rupee and direct the excess, if paid, to be refunded.

7. I see no reason to disturb the order relating to the skin.

Marten, J.

8. I think the accused here has committed a technical offence for which a nominal penalty or fine is adequate. He committed an offence, namely, that of hunting and shooting in a reserved forest, because he deliberately went into this forest in search of this tiger which he eventually shot. Whether at or about the actual moment of shooting, the tiger attacked him or he attacked the tiger seems to me irrelevant. Personally I rather read the Magistrate's observations as to self-defence to refer to a hypothetical case where a man is walking in a reserved forest quite innocently though possibly armed with a gun and is then suddenly attacked by a wild animal which he has no license to shoot. Even in such, a case the Magistrate raises the doubt whether technically an offence would not be committed under this Act. But turning to the facts of the present case, I call it a technical offence because this man, viz., the accused, did not go into the forest in the more ordinary sense of hunting and shooting, viz., for sport. He went for the protection of his property for it appears to be uncontradicted that he had already suffered very serious loss in his cattle and other animals by the attacks of this particular tiger. I do not know how

much longer he can reasonably be supposed to go on suffering these losses, and under all the circumstances of the case, I think the justice of the case will be met by reducing the fine to one rupee.

9. The order as regards the skin of course stands.