1918.

In re CRAWFORD.

on behalf of the prosecution. The question of jurisdiction was for the Magistrate to decide, and counsel's opinion, whether correct or not, was irrelevant.

Rule made absolute.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Shah and Mr. Justice Marten.

EMPEROR *v.* AMIRSAHEB BALAMIYA PATIL.*

1918.

January 15.

Indian Forest Act (VII of 1878), section 25, clause (i), Rule 3 (a)†—*Shooting in a reserved forest without license—Tracking and shooting a tiger to preserve one's property.*

The accused, finding that his cattle were killed by a tiger, tracked and shot the animal in a reserved forest without a license.

Held, that the accused was guilty of a technical offence under Rule 3 (*a*) framed under the provisions of section 25, clause (*i*) of the Indian Forest Act, 1878.

THIS was an application in revision against conviction and sentence passed by M. G. Ghode, Third Class Magistrate at Bhiwandi, confirmed on appeal by the First Class Magistrate at Thana.

The accused had several head of cattle killed by a tiger. To prevent further injury, he armed himself with

* Criminal Application No. 353 of 1917.

† The material portion of the rule runs as follows:—

3. (*a*) In any Reserved or Protected forests or portions of Reserved or Protected forests to which the Local Government may, for the purpose of strict conservation or for the preservation of animals which are becoming rare, or for both of these purposes, apply this and the following rules by a Notification published in the *Bombay Government Gazette*, hunting and shooting are prohibited except under a license to be obtained from the Conservator of Forests.

a gun, tracked the animal in a reserved forest and shot it there. He had taken out no license for the purpose. He was, therefore, tried and convicted for an offence punishable under Rule 3 (*a*) framed by the Government of Bombay under the provisions of section 25, clause (*i*) of the Indian Forest Act, 1878.

On appeal, the conviction and sentence were confirmed on the following grounds:—

It is very unlikely however that a tiger would of his own accord attack harmless and inoffensive people who had done nothing more than get up on tree to avoid him. How had accused time to climb the tree and take his gun with him? The natural view to take is that accused waited for the tiger up on tree till his followers had beaten the jungle and driven the animal to him and then shot it. Any way the burden of proof that he acted innocently in killing the tiger rests upon accused and I consider his statement unreliable on the face of it. Thus he is considered guilty even without the argument in the previous paragraph. Even if accused had killed the tiger on *bona fide* self defence it is doubtful whether he would not still be guilty. This sounds rather paradoxical as obviously it is no man's duty to let himself be killed by a wild animal. But it must be remembered that the offence is not in the killing but in the absence of license. There seems no reason why a man who has had the excitement and glory of killing a tiger should not pay his license fee simply because he acted in self defence. If accused had got a license immediately afterwards there would doubtless have been no case against him. The Forest Act and the Notifications say nothing whatever about acts of self defence and make no such exception.

The accused applied to the High Court.

W. B. Pradhan, for the applicant:—In this case, there was no hunting within the meaning of section 25, clause (*i*) of the Indian Forest Act, 1878: see *Emperor* v. *Malu Hiru Bagara*.[1]

The term "offence" is defined in section 40 of the Indian Penal Code. It would include the act complained of here. We are thus protected by either section 80 or 97 of the Code, which gives us a right of private defence.

[1] (1910) 12 Bom. L. R. 520.

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EMPEROR v. AMIRSAHEB BALAMIYA.

S. S. Patkar, Government Pleader, for the Crown:—The act of the applicant amounts to hunting. He went into a reserved forest after arming himself with a gun, in search of the tiger, which he successfully found out and shot. His act, therefore, falls under section 25, clause (*i*) of the Indian Forest Act, 1878.

SHAH, J.:—The accused in this case has been convicted under section 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 under section 25 (*i*) and section 31, clause (*j*) have been duly applied.

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.

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.

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.

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 under section 25 (*i*) must be affirmed.

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.

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

1918.

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v.
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BALAMIYA.

MARTEN, J.:—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.

The order as regards the skin of course stands.

Sentence reduced.

R. R.