

been stayed. Before the Begum's property was declared evacuee property, time had already begun to run for the purpose of article 182 of the Limitation Act and as provided by section 9, no subsequent disability or inability to sue could stop it. Section 9 has been applied even to execution proceedings. At any rate, even if it be assumed that section 9 is not applicable, deduction can be allowed from the prescribed period of limitation only under some provision of the Limitation Act itself. There is no provision in the Act to that effect and the learned counsel for the respondent has not been able to point to any provision other than section 15(1). As the case does not fall under section 15(1), I am constrained to hold that the execution application was barred by time.

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and another

Grover, J.

In the result, the appeal is allowed, the orders of the Courts below are set aside and it is ordered that the application for execution be dismissed as barred by time. In the circumstances, I leave the parties to bear their own costs throughout.

K. S. K.

REVISIONAL CRIMINAL

Before Tek Chand, J.

REMAL DASS AND ANOTHER,—*Petitioners.*

versus

THE STATE,—*Respondent.*

Criminal Revision No. 1383 of 1962,

Penal Code (XLV of 1860)—S. 336—Rashly—Meaning of—Drunken person firing a gun—Whether acts rashly.

1963

April, 5th.

Held that the phrase "rashly" means something more than mere inadvertence or inattentiveness or want of ordinary care. A person who acts rashly shows indifference to obvious consequences and to the rights of others, and does not mind whether a danger will result or not.

A rash act is indicative of disregard of consequences. A drunken person firing a gun in the dark in a manner which created awe or fear in the mind of those present who had to take shelter, acts rashly or negligently within the meaning of section 336 of the Indian Penal Code.

Petition under Section 439 of Criminal Procedure Code for the revision of the order of Shri S. C. Mital, Sessions Judge, Hissar, dated 19th July, 1962, affirming that of Shri Onkar Nath, Magistrate 1st Class, Fatehabad, dated 30th March, 1962, convicting the petitioners.

N. S. KEER, ADVOCATE, for the Petitioners.

A. C. HOSHIARPURI, ADVOCATE, for ADVOCATE-GENERAL, for the Respondents.

JUDGMENT

Tek Chand. J.

TEK CHAND, J.—This is a petition of revision on behalf of two accused-petitioners from the order of the learned Sessions Judge, Hissar, rejecting their appeal. The Magistrate, 1st Class, Fatehabad, had found the two accused guilty under section 336, Indian Penal Code, and had sentenced each of them to pay a fine of Rs. 100 or in default to undergo simple imprisonment for two weeks.

The prosecution allegations against the two petitioners were that on 13th February, 1962, at about 8.30 p.m. in the area of village Aharwan they were armed with guns. At that time the complainant Joginder Singh along with his friends had arrived there in a jeep. On seeing them the two petitioners fired shots in the air in a rash and negligent manner so as to endanger the public safety and human life. The complainant and his companions had concealed themselves behind the jeep and on this the petitioners went away on their tractor. The complainant and his companions followed them and the petitioners again fired shots in the air. It is stated that ultimately Joginder Singh

complainant struck a *lathi* blow on the but of the gun of Ramchand Singh petitioner and overpowered him. The other petitioner was also overpowered.

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In the examination of the accused Ramchand Singh, the following question was put by the Magistrate:—

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“There is accusation against you that on 13th February, 1962, at about 8-30 p.m., in the area of village Aharwan you along with your co-accused Remal Dass, Jit Singh and another person were present armed with your gun and Remal Dass had his own gun. At that time Joginder Singh complainant along with his party reached there in jeeps and cars and stopped near you. On seeing them halting you fired shots in the air in a rash and negligent manner so as to endanger public safety and human life. On it the P.W.s took their positions behind jeeps, etc., and you along with your co-accused made good escape by riding on tractor No. P.N.W. 1777 belonging to you and went towards the canal road of Munshiwala minor where you and your co-accused were surrounded by the P.W.s. Again you fired a shot in the air but Joginder Singh hit a *lathi* blow on the but of your gun as a result of which the gun fell down on the ground and you and your co-accused were overpowered by the P.W.s. What have you to say about it?”

To this the accused replied as under—

“It is correct. I do not want to contest the case. I was in a drunken state at that time. I may be excused.”

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A similar question was put to Remal Dass the other petitioner who also admitted the correctness of the allegations and sought to be excused as he was in a drunken state. The two accused declined to offer any defence. The Magistrate found both the accused guilty and sentenced each one of them to pay a fine of Rs. 100. Their conviction and sentence was maintained by the Sessions Judges.

Mr. Keer learned counsel for the petitioners has contended that on the assumption that the prosecution allegations along with the admissions of the two accused are correct, no offence under section 336 has been made out in this case because the gun had been fired in the air and it cannot be assumed that this was done rashly or negligently so as to endanger human life or the personal safety of others. It is admitted by the accused that they were in a drunken condition. It is not denied that the complainant had to take shelter behind the jeep. The question is that when a person who is admittedly in a drunken state, uses a fire-arm, whether such a conduct could be termed as rash or negligent. The circumstances of this case do suggest to me that the act was both rash and negligent. The phrase "rashly" means something more than mere inadvertence or inattentiveness or want of ordinary care. A person who acts rashly shows indifference to obvious consequences and to the rights of others, and does not mind whether a danger would result or not. A rash act is indicative of disregard of consequences. A drunken person firing a gun in the dark in such circumstances as are attendant in this case does so negligently. It is not the plea of the defence that they were sober and that they discharged fire-arms deliberately in order to scare away the complainant. As they were in a drunken condition when they started firing shots, their impugned act is covered by the ingredients of the offence under section 336. In the circumstances. I am

not persuaded by the argument that the conduct of the petitioners was neither rash nor negligent. I am satisfied that they were rightly convicted. The sentence of fine of Rs. 100 on each petitioner is not excessive.

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I maintain the conviction and the sentence of both the petitioners. The revision petition fails and is dismissed.

R.S.

REVISIONAL CIVIL

Before Harbans Singh, J.

SHIV CHARAN LAL,—*Petitioner.*

versus

R. L. DHINGARA AND ANOTHER,—*Respondents.*

Civil Revision No. 604-D of 1960.

Arbitration Act (X of 1940)—S. 11(2)—Whether applicable to proceedings under section 54 of the Bombay Co-operative Societies Act, 1925, as extended to Delhi.

1963

April, 18th.

Held, that the Registrar's nominee to whom the dispute is referred under section 54 of the Bombay Co-operative Societies Act, 1925, as extended to Delhi, cannot be removed by the Court under section 11 of the Arbitration Act, 1940. The Registrar and his nominee occupy a special position under the Act, and reading sections 54, 54-A and rule 35 together no doubt is left in one's mind that the power of the Court to remove the Registrar or his nominee is excluded by necessary implication, if not expressly.

Petition under Section 115 of the Code of Civil Procedure for the revision of the order of Shri H. S. Ahluwalia, Sub-Judge, 1st Class, Delhi, dated the 22nd July, 1960, dismissing the application making no order as to costs.

R. P. DANSAL, ADVOCATE, for the Petitioner.

O. P. GUPTA, ADVOCATE, for the Respondents.