
(1912) 06 CAL CK 0079
In the Calcutta High Court

Amanullah and Another

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 05-06-1912

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 384

Citation : 16 Ind. Cas. 165

Hon'ble Judges : Imam, J;Holmwood, J

Bench : Division Bench

Judgement

1. This is an appeal from the judgment and sentence of the learned Sessions Judge of Sylhet who, agreeing with both the assessors as regards the charge u/s 376 against Amanullah and u/s 342 against Amanullah and Sujatullah, and apparently differing from the assessors as regards the charge u/s 379, has convicted, Amanullah and Sujatullah u/s 342, Indian Penal Code, and sentenced them to one year's rigorous imprisonment each, Amanullah u/s 376 and sentenced him to four years' rigorous imprisonment and Sujatullah u/s 384, extortion, and sentenced him to one year's rigorous imprisonment.

2. Now, the first point which we have to animadvert upon in this conviction, is that there was no charge of extortion u/s 384, and it is wholly illegal to punish a man for a grave offence, involving many totally different ingredients to a charge of theft, on a charge u/s 379. Such a conviction cannot stand for one moment. The conviction u/s 384 must, therefore, go.

3. As regards the charge of rape, the evidence is utterly contradictory both as to time, place and whether the woman was heard to make any outcry. The charge was not mentioned in the telegram, which is the earliest reference to the occurrence, which itself was not sent till the Thursday after the occurrence which took place on Monday, and all the independent witnesses clearly say that they did not hear the cry in the woman's voice. The woman says she was dragged out into the field in one part of her evidence; in another place, she says she was raped under the eaves of the verandah, having been taken out of the room, in

which she was alone with Amanullah and where the rape could very well have taken place, apparently for the purpose of creating evidence. There is a cock-and-bull story that Amanullah took her two miles on the way to the station at 1 o'clock in the morning and left her there in the rain and darkness, yet we find that the other two coolies immediately re-joined her; and how did they get out? They simply broke through the matting of the cook-room in which they were sitting voluntarily waiting to return to the garden. Shankar clearly says that he accompanied the constable to the thana, that the constable said that you would have to be taken back to Kasinagar in the morning and he expressed his perfect willingness to remain and go back to work next day. He, therefore, was sleeping at the thana in the cook-room of his own free will; and it being proved by independent evidence that there was no such cry of the woman as he says induced him to break through the mat wall, it is clear that the three coolies departed together in the middle of the night and probably the chowkidars, who had arrived at the thana at 10 o'clock in the evening, departed with them. The chowkidars story is as absurd as that of the coolies. The chowhidars and the three coolies were together from Monday to Thursday and the story which they told the manager, which appears to differ to a great extent from that told in Court, was apparently concocted during that time.

4. There remains only the charge of wrongful confinement, and we have already said it appears to us that the coolies remained at the thana voluntarily and the only question would be whether the constables exceeded their duty in taking them to the thana at all. But the constable did not arrest these coolies. The Babu at the station arrested the coolies, and he handed them over to the constables; and as the practice under the Apt appears to be that run-away coolies are always stopped and taken back to the garden for the sake of the reward which the manager gives, it does not appear to us that the conduct of the constables in taking these coolies to the thana where they were willing to go was in any way criminal. The story that the Babu took Rs. 8-4 from Shankar and took nothing from the other man, seems to point to the fact that the extortion, if any, was the act of the Babu and not of the Police. However, there was no charge of extortion, and, as we have said, this cannot lie.

5. We had great difficulty in getting hold of the Act by which the detention and arrest of these coolies is governed. We must say that both the Crown and the defence ought to have been prepared to lay before us Act VI of 1901, Labour and Emigration Act, Assam, where it is clearly laid down that where any labourer deserts from his employer's service, the employer or any person authorised by him in this behalf may, without a warrant and without the assistance of any Police officer, arrest the labourer wherever he may be found; provided that, if the labourer is found within five miles of the place where a Magistrate resides or in the service of another employer, he shall not be arrested without warrant. Every Police officer shall assist in arresting any such labourer, if so required by the employer or a person authorised by him in this behalf. Whoever arrests a labourer under this section shall without delay take him to the Police station

nearest to the place of the arrest; and if he fails to do so, shall be punishable with fine which may extend to two hundred rupees. Further, Section 196 gives the Police officer in charge of a station power to return the labourer to the estate to which he is under contract to labour, if the labourer admits the contract and does not claim to be forwarded to a Magistrate.

6. The only unexplained circumstance, therefore, in this case is how these coolies got away before the Sub-Inspector returned from the moffusil or before the head constable was aroused from his sleep to take their statements. The only evidence we have on the subject is that of Shankar himself, and he says that they got out by the simple process of breaking through the mat-wall of the cook-room in which they were allowed to sleep.

7. The next thing we find is that the male coolies and the female coolies are reunited on the road to the station; and we do not believe for one moment the story that Amanullah

took the woman two miles out in the rain and darkness and left her alone. Had he done so, they would have had much more difficulty in finding her.

8. The whole story bristles with suspicion. The evidence is contradictory and to a very large extent carries falsehood on the face of it. The Police officers, in detaining these coolies, appear to have acted in the discharge of what they bona fide considered their duty and what appears to be their duty under the provisions of the Act to which we have just referred.

9. The convictions and sentences are set aside and the appellants will be acquitted and released.