

Emperor Vs. Abdul Latif

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Court : Mumbai

Decided On : Nov-04-1946

Reported in : AIR1947Bom438; (1947)49BOMLR340

Judge : Leonard Stone, Kt., C.J. and Lokur, J.

Appeal No. : Criminal Revision Application Nos. 582 and 586 of 1946

Appellant : Emperor

Respondent : Abdul Latif

Judgement :

Leonard Stone, Kt., C.J.

1. We have before us three revisional applications, each being in respect of the conviction of the accused for carrying a knife in a public place contrary to a notification made by the Commissioner of Police under Sub-section 23(2) of the Bombay City Police Act, 1902, which has been extended from time to time, the relevant extension being by order dated September 30, 1946.

2. In Revision Application No. 582, the accused Abdul Latif, who is employed in the weaving department of the Swadeshi Mills, was found in possession of a knife, which it is alleged he uses in the course of his employment, about 40 yards, from the gates of the Mill at 3-30 in the afternoon of October: 9. He was brought before Mr. Muranjan, Presidency Magistrate, 10th Court, Andheri, and sentenced to four

months' rigorous imprisonment.

3. In Revision Application No. 583 accused, Samandarkhan Firdomkhan, who is a farmer and grows vegetables, was found in possession of a knife alleged by him to be used in connection with his business, when he was stopped with his brother in a motor car about two miles from his home at 11-30 a.m. in the morning of October 17. He was taken before Mr. J.M. Barot, Presidency Magistrate, Second Court, Bombay, and sentenced to six months' rigorous imprisonment.

4. In Revision Application No. 599 the accused Mangal Nanoo, who is a cowherd and over 60 years of age, was found in possession of a knife some time after he had arrived at Andheri Station by train with about 15 buffaloes which having detained he was escorting to their destination. He was arrested at 2-15 p.m. on October 23 and taken before Mr. Muranjan who sentenced him to four months' rigorous imprisonment.

5. Sub-section 23(2) of the Bombay City Police Act, 1902, as amended by the City of Bombay Police (Amendment) Act, 1942, provides:-

The Commissioner of Police may also, whenever and for such time as he shall consider necessary for the preservation of the public peace or public safety by a notification publicly promulgated or addressed to individuals, prohibit-

(a) the carrying in any public place of:

(i) swords, spears, bludgeons, guns, knives, sticks, or lathis, or

(ii) any other weapon which is capable of being used as a weapon of offence.

(b) the carrying, collection and preparation of stones or other missiles or instruments or means of casting or impelling missiles.'

6. The 1942 Amending Act substantially enlarged the scope of Sub-section 23(2), since formerly the words which followed the specified weapons, were, 'or any other offensive weapon', which words, as the English cases show, (see for example Johnson's case (1822) Russ. & Ry. 492 and Hex v. Palmer (1831) 1 M. & R. 70 give rise to a consideration of the circumstances in which articles such as a stick

and a crutch, which are not intrinsically offensive weapons, can be held to be such. But on a construction of Sub-section 23(2) as amended, it is now apparent that it is the intention of the Legislature that all the specified articles including knives, are to be regarded as weapons, 'capable of being used as a weapon of offence', and it is in our opinion clear, that anything which is normally designated as a knife, the condition of which renders it capable of being used as a weapon of offence, falls within the class of objects which may be prohibited.

7. By Section 127 of the Bombay City Police Act, 1902, it is provided that whoever contravenes a prohibition made under Sub-section 23(2) is punishable with imprisonment for a term which may extend to one month or with a fine which may extend to Rs. 100 or with both, but by the City of Bombay Police (Amendment) Act, 1946, the penalty of imprisonment was enlarged to one year and it is provided that the minimum sentence which is to be passed in any such case shall be four months except for reasons to be recorded in writing.

8. On July 30, 1946, the Commissioner of Police promulgated an order which so far as it is material is as follows :

I hereby prohibit under sec. 23(2), (a) and (6) of the Bombay City Police Act, IV of 1902, in the Greater Bombay for a period of one month from the 1st August 1946 any person-not being a person in the service or employment of the Crown, required by his superiors or by the nature of his duties to carry weapons-from carrying swords, spears, bludgeons, guns, knives, sticks, lathis or any other similar weapon which is capable of being used as a weapon of offence in any public place in the Greater Bombay.

9. Except for the introduction of the word 'similar' before the word 'weapon', this order follows verbatim the language of the amended sub-section, and this order which was originally to be in force for one month has been extended from time to time by monthly periods and is still in force.

10. On behalf of the three accused, counsel, who have adopted each other's arguments, have made various submissions against the validity of the convictions passed in these cases. These submissions can be summarised as follows:-

- (1) that the order of the Commissioner of Police was not promulgated in accordance with Section 137 of the Act,
- (2) that there is no right to stop and search anybody in a street and that accordingly a conviction resulting from the subsequent arrest is invalid,
- (3) that a 'street' is not a public place having regard to the definitions contained in Section 2 of the Act,
- (4) that to carry a weapon means to display it openly and that having a knife folded in a closed position in a pocket is not 'carrying' within the meaning of the section or the order.

11. With regard to the first of these submissions, the learned Advocate General,, who appears on behalf of Government, stated before us that the order of the Commissioner of Police has been posted at street corners in various parts of the City and has been proclaimed at various places by beat of drum. He had in Court a Police Officer who was prepared to prove this, and on this statement by the Advocate General being made, counsel for the accused very properly did not press this point further, especially as it is a matter of common knowledge that the orders of the Commissioner of Police have been announced in some of the newspapers of this City, one of the extension orders being in fact included in the newspapers as a news item on the day on which this case was argued before us. In our opinion promulgation within the meaning of Section 137 has undoubtedly taken place.

12. With regard to the second submission, without embarking upon any elaborate discourse on the nature of police powers under Section 23 of the Act it is only necessary to say that even if an irregularity had taken place in the method of obtaining proof that an offence has been committed, it would be no reason for setting aside the conviction.

With regard to the third submission, a street is defined in Section 2 of the Act as follows:

'street' shall mean any road, footway, square, court alley or passage, whether a thoroughfare or not, to which the public have permanently or temporarily a right of access.

And a 'public place' is defined as:

'Public place' shall include the foreshore, the precincts of every public building or monument, and all places accessible to the public for drawing water, washing or bathing, or for purposes of recreation.

13. It is to be noted that whereas the definition of 'street' is exclusive the definition of a 'public place' is only an inclusive definition and does not prevent other places which are in fact public places from being excluded, though not specifically mentioned in the definition, nor does the fact, that whilst in some of the sections of the Police Act, 1902, a street and a public place are used conjunctively while in others a street alone or a public place alone are referred to, affect the question, because the exclusive definition of a street includes places to which the public have only temporarily a right of access which would not normally be a public place. It is in our opinion clear, that any street which is a public highway, is a public place.

14. With regard to the fourth submission, Sub-section 23(2) says nothing about weapons being displayed nor does it even use the expression to be found in some of the English statutes of 'being armed with'. The word 'carry' is of the widest import and in our opinion covers the transportation of a weapon with or by the person concerned however he may attach it to his person. A somewhat faint suggestion was put forward by Mr. Haji, on behalf of the accused Samandarkhan Firdomkhan, that to have a weapon in a motor car which is admittedly private property, is not to carry it in a street, even if the motor car is in a street. It would in our opinion be equally ineffective to urge that because a man was standing up in a street in his private shoes he was not in the street. There is nothing in this submission.

15. Accordingly all these arguments fail, and it follows that in each case the accused was rightly convicted. But that leaves in each case the question of

sentence, with regard to which it is very relevant to observe that by the amending Act of 1946 the Legislature has provided that the minimum sentence is to be four months' rigorous imprisonment except when reasons in writing' are recorded for passing a lesser sentence. At their trial before the Magistrate none of the accused called any evidence and the statements of the accused themselves in each case have been recorded with the utmost brevity. So that, at any rate in two of the cases, it is impossible to say, from the statements and the judgments of the learned Magistrate, whether the offence was committed through inadvertence or not. In all cases of this character the nature of the weapon itself is a most material circumstance and must be taken into account when assessing the sentence which the law demands. During the course of the arguments before us counsel has in each case, on instructions, made a statement of the circumstances in which his client was found with a knife in his pocket.

16. The statement of Abdul Latif is as follows: that he is an employee in the weaving department of the Swadeshi Mill and that the knife in question is used by him in the course of his employment and had been so used on the morning of October 9, on which day at about 3-30 p.m. he went out from the Mill to get some refreshment with the knife folded up in his trouser pocket, that he was going to his own house for the refreshment, which is only distant about 50 yards from the mill gates and forgetting the knife in his pocket he proceeded to go to his house but was stopped and searched about 40 yards from the mill gates and that in normal course he would have returned to the mill after his refreshment to continue his work using this knife.

17. The statement of Samandarkhan Firdomkhan is as follows: that he is a farmer and lives on the farm growing vegetables there, that before 11-30 a.m. on the morning of October 17, he had been using the knife in question for cutting vegetables, that he put it in his trouser pocket and went out with his brother in his motor car forgetting to leave the knife behind, that the object of going out in the car was to send a money order from the Post Office, which was not the nearest to his home, and also to buy some cloth, that the total distance to which he proceeded from his home was about two miles and that he was stopped and searched on the way back, having the cloth in his car and having despatched the money order.

18. The statement of Mangal Nanoo is as follows: that he is a cowherd and came from Anand, some three to four days journey, in the train to Bombay, that he brought 15 buffaloes in a waggon to Bombay and arrived at Andheri station on October 23 at about midday, that the knife in question is used by him in the course of his employment as it is sometimes necessary to cut the cords which tie the buffaloes to the waggon when they become frightened and entangle the cords with the consequent risk of strangulation, that having arrived at Andheri station at about midday, he proceeded to deliver the buffaloes to the consignees and that at about 2-15 p.m. whilst walking behind some of the buffaloes with a load of hay on his head he was stopped and searched and the knife found. It is also stated on his behalf that being a countryman and a newcomer to Bombay he knew nothing about the order.

19. Before the Magistrate Mangal Nanoo was not represented by any advocate or pleader and it is clear that, if the facts approximate to the statement which has been made on his behalf in this Court, the learned Magistrate who tried him did not appreciate at all the circumstances of his case. The time of his arrival at Andheri station is now cleared up as a certificate from the railway company, which even shows the number of the waggon in which he arrived and which certificate has been produced in this Court.

20. It is now necessary to consider the weapons in respect of which the three accused were convicted. The knife of Abdul Latif has an overall measurement of 6 1/2 inches, the blade is 3 inches long and not more than half an inch in width, the point of it is blunt though the edge is sharp. It has a single blade and folds up. It has no contrivance to keep the blade rigid when opened. It is what in ordinary language is 'called a pocket knife, such as most people carry about in normal times for the purpose of sharpening pencils and for other domestic reasons.

21. The knife of Samandarkhan has an overall measurement of 10 1/2 inches, the blade is nearly 5 inches long and is more than an inch in width in the middle. It has a spring with a ratchet which enables the blade to be held rigid when opened. The blade is cut away and tapered to a fine point of needle sharpness.

22. The knife of Mangal Nanoo is very similar to that of Abdul Latif, except that it is old, worn and very dirty.

23. In the case of Abdul Latif and Mangal Nanoo we are of the opinion that if the statements which their counsel have been instructed to make on their behalf are true, and having regard to the nature of the knives carried by each of them, the sentences of four months' rigorous imprisonment would be excessive and that their cases would come within the power which the Legislature has provided for passing a lesser sentence than four months. Accordingly the course which we adopt in these two cases is to send them back to the learned Magistrate of the tenth Court, Andheri, for him to record further evidence, and as it is desirable that cases such as these should be dealt with with the utmost expedition, we direct that the record of the further evidence in each case is to be returned to this Court before 10-30 a.m. on Tuesday November 12 when both these cases will be at the head of our board. In both cases the prosecution as well as the defence are to be at liberty to call further evidence before the learned Magistrate, and in the case of Abdul Latiff we desire to know whether the knife in his case is his own property or whether it belongs to the Swadeshi Mills. If it is the former, we also require to know whether the mill has made any arrangements for their employees to leave their knives at the mill in a place of security, during the temporary absence of the employees from their work.

24. The case of Samandarkhan stands in our opinion on a wholly different footing. Even if the statement made by his counsel on instructions be accepted, there remains the indisputable fact that the knife in this case unlike the pocket knives in the two other cases is a formidable and dangerous weapon. It has a long tapering blade and point of needle sharpness, the ratchet arrangement which enables the blade to be held in a rigid position makes it the type of weapon suitable for the commission of criminal assaults. Its weight and size, even when closed, also makes it an object which cannot be normally and conveniently carried in a pocket.

25. It is the very type of knife which any reasonable and prudent man must know that in troubled times, when assaults and stabbings are taking place, it is his duty as a citizen to guard with particular care. It is indeed such a weapon that if even

from forgetfulness it is taken to a public place in times when the carrying of weapons is prohibited the person so taking it has only himself to blame if he is made liable for the penalty which the law requires.

26. We see no reason in this case to disagree with the sentence passed by the learned Magistrate. 'We agree with him and application No. 583 is dismissed. Rule for enhancement discharged.

27. It cannot be too clearly understood, nor can the information be too widely disseminated, that under the order promulgated by the Commissioner of Police, any one who has on or about his person in any public place in Greater Bombay, any knife, the blade or point of which is from its solidity and sharpness capable of cutting or puncturing human flesh so as to inflict an injury, commits an offence.

28. Although in none of the cases before us is the accused charged with carrying a stick, we feel that while we have this order before us we should make the following observations. Unlike a knife, the sole purpose of which is to cut or sever solid matter and which is easily definable, a stick can be used for a multiplicity of domestic, occupational and recreational purposes. Such articles as walking sticks, umbrellas, sweeper's brooms, hockey sticks and cricket stumps have been mentioned in this Court and it is with no surprise that we have heard it stated at the bar that there are conflicts of opinion as to whether such articles are prohibited by the notification, as falling within the category of sticks which are capable of being used as weapons of offence. Also it is stated that articles such as we have mentioned are being openly carried in the streets, sometimes with, and sometimes without, police interference. It is a well-known principle that the penal law should be clear and certain so that all may know what they may and what they may not do. Further, there is nothing more calculated to bring the administration of law and order into disrepute than that offences should be openly and extensively committed without restraint. It appears that some authoritative clarification is required with regard to the prohibition against the carrying of sticks, in order that the executive officers of Government and the public may know to what extent the preservation of public peace and public safety requires the curtailment of such a normal action as taking out an umbrella, and whether, for example, the cripple is to

be deprived of his crutch. (If it be not the intention to prohibit the use of such articles, it is not beyond the realms of linguistic definition so to say.

29. The cases were sent back to the Magistrate. On receipt of the record, the cases were further argued on November 12, 1946.

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30. The first of these cases before us is that of Abdul Latif, the weaver in the Swadeshi Mills who was searched and arrested for having this pocket knife in his possession, and we have already held that he was rightly convicted, and there remains only the question of sentence which must, as we have already laid down, depend primarily on the nature of the weapon itself and secondly on the surrounding circumstances of the case.

31. As we have already said, this is a pocket knife without a sharp point, and it is not intrinsically a dangerous weapon. The further evidence which has been returned to us by the learned Magistrate shows the true circumstances to be these. Abdul Latif was on the night shift, which means that he reports himself at the mill at 3-15 in the afternoon for duty at 3-45 p.m. on October 9. He must have taken this knife home with him on the previous day and he was approaching the mill, being some 40 paces from the mill gate, when he was searched at about 3-15 to 3-30 p.m. As the evidence originally was recorded by the learned Magistrate, it appears that he had been warned not to take his knife home. The further evidence now discloses that that warning was not given until after he had left the mill on the previous day and therefore he could know nothing about it. It in fact was given as the result of another operative of this mill having been searched and arrested at 12-30 p.m. on October 9. It also appears from the further evidence that it is essential as part of his employment that he should have a knife and that the mill did not on this day supply their operatives with knives so that the workmen had to provide' them themselves. It also appears from the further evidence that no facilities on this relevant date or before had been arranged whereby the operatives could leave their knives in a place of security at the mill. We are happy to note that as the result of this case apparently all that has been changed and that a new implement called a patti has now been provided to take the place of these knives,

the patti is the property of the mills company and is being left at the mill. So that henceforth there will be no excuse whatever for a millhand to carry his knife. Taking all these circumstances into consideration, although the accused has committed an offence, we do not regard it as one of a serious character and the proper sentence to have been passed in his case would be rigorous imprisonment for one week, and as Abdul Latif has already served. a longer sentence than that, we order his immediate discharge. We also order that this knife exhibit A be returned to him by the police by delivering it at his house.

32. In this case also the further facts which we directed to be taken by evidence disclose a wholly different position than that which the papers showed when this matter first came before us. It now appears perfectly clear not only from the evidence of independent people like the clerk of the railway station and. the representative of the consignee but also from the railway documents themselves that the accused Mangal Nanoo did not arrive at Andheri station before midday on October 23 and that the formalities of clearing the buffaloes from the train out on to the road and the signing of the necessary papers with regard to them took some time, which would mean that the accused with the buffaloes and the other man who came to meet him were at the spot about a mile from Andheri station where the accused was searched at about 2-15 p.m. It is absolutely apparent from the independent and documentary evidence that the accused was still with some of the buffaloes at the time when he was searched and arrested, and it is with considerable regret that we notice that the further evidence which has been given by the police constable Bhaskar Anant P.C. 5990/G is not only inaccurate but inaccurate to such an extent that it must be false and we draw the attention of the authorities to the evidence of this constable in order that proper action may be taken. It is absolutely essential at the present time, when there are disturbances in this City, that law and order should be firmly enforced, but it is equally essential that in enforcing law and order all executive officers of Government should act with complete impartiality and fairness. It is no part of the duty of a police constable to give false evidence in order to bolster up the points which he has made. Such conduct is most reprehensible.

33. We propose in this case, now that we have seisin of the true facts, to make the same order as in the other case. The accused had only been in Bombay for two hours. He is an illiterate countryman who had come on a four days' journey in the train. 'Accordingly, the proper sentence in his case also is one week's rigorous imprisonment, and as he has already served that sentence, we order his immediate discharge. The knife which in his case also is an ordinary pocket knife used in the course of his employment is to be returned to him by the police.

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