

Girdhari and anr. Vs. Emperor

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Court : Allahabad

Decided On : Nov-09-1917

Reported in : 43Ind.Cas.110

Judge : Henry Richards, C.J.

Appellant : Girdhari and anr.

Respondent : Emperor

Judgement :

Henry Richards, C.J.

1. In this case two Police constables were in charge of a dangerous prisoner whom they were conveying from one place to another in a camel cart. The charge against them is that they negligently suffered the prisoner to escape. The facts as found by the trial Court are as follows: The constables had put on their prisoner two sets of handcuffs. One set bound his hands together and by the other set he was hound to the side of the camel cart. In addition to these precautions there was a rope round the prisoner's waist. Daring the course of the journey the prisoner demanded to be let down from the cart to answer the call of nature. One set of handcuffs was taken off in order to enable the prisoner to leave the camel cart for the purpose mentioned. The rope remained round his waist and one set of handcuffs remained on his hands. The prisoner raised a sudden alarm of a snake and in the momentary confusion jerked away the rope and managed to get a way.

The night was cloudy and the prisoner could not be caught. The learned Magistrate most expressly states that there was no suggestion against the accused that they deliberately connived at the escape of their prisoner. Nevertheless the Magistrate held that the accused had been guilty of carelessness and that negligence included carelessness; and he accordingly convicted both the accused and sentenced them to six weeks rigorous imprisonment. The accused appealed and the learned Sessions Judge held not only that the accused had been guilty of carelessness, but he went on to say that they had been guilty of gross negligence and that he was inclined to think that the accused intentionally abetted the escape. I hardly think the learned Sessions Judge was entitled to make the last mentioned remark having regard to what the learned Magistrate said, namely, that it had never been suggested that the accused had connived at the escape of their prisoners. The accused furthermore, were not charged with having helped the prisoner to escape. I hardly see how he could arrive at the conclusion that the accused had been guilty of gross negligence.

2. Dealing with the Magistrate's judgment (which I think is the fair thing to do in the circumstances of the present case), I proceed to consider whether or not the accused on the admitted facts can be said to have negligently suffered their prisoner to escape. The case is of some importance to the accused as possibly a conviction means their loss of service and disgrace. There cannot be any doubt, I think, that the initial precautions taken by the accused were amply sufficient. The prisoner not only was handcuffed, but he was attached to the camel cart and he had a rope round his waist. The only negligence suggested by the Magistrate is that the accused may have been half asleep and that they were thoroughly frightened at the cry of snake. To be frightened at the cry of snake may be very foolish, but it is not negligence and there does not appear to be any evidence that they were half asleep. If the accused helped the prisoner to escape they should have been charged with this offence, If it was alleged that they had been guilty of negligence the latter had to be proved. If they had merely shown themselves to be somewhat inefficient police-men the matter should have been dealt with departmentally. I allow the application, set aside the convictions and acquit the two accused of the offence with which, they are charged. Their bail bonds will be discharged.

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