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In Re: Kulandaivelu

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Court : Chennai

Decided On : Aug-07-1968

Reported in : AIR1969Mad408; 1969CriLJ1406; (1969)1MLJ92

Judge : Krishnaswami Reddy, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 224

Appeal No. : Criminal Revn. Case No. 1554 of 1966 and Criminal Revn. Petn. No. 1522 of 1966

Appellant : In Re: Kulandaivelu

Advocate for Def. : Asst. Public Prosecutor

Advocate for Pet/Ap. : Fyzee Mohammed, Adv.

Judgement :
ORDER

Krishnaswami Reddy, J.

1. The revision petitioner is accused 6 in S. C. No. 72 of 1966 on the file of the IIIrd Assistant Sessions Judge, Tiruchirapalli. Ho was originally charged along with several other accused under Sections 147, 148, 224, 225, I. P. Code etc. etc. and tried by the IIIrd Assistant Sessions Judge. Accused 5 and 7 and the petitioner alone were convicted and the rest were acquitted. The petitioner was convicted

under Sections 224 and 323, I. P. C. and sentenced to under R. I. for one year and three months respectively by the Assistant Sessions Judge. On appeal, accused 5 and 7 were acquitted of all the charges and the petitioner was also acquitted under Section 323, I. P. C. but his conviction and sentence under Section 224, I. P. C. were confirmed.

2. The relevant facts for the purpose of appreciating the contentions raised by the learned counsel for the petitioner are these: On the 20th February 1966 at about 8 p. m. the Sub-Inspector of Police, Turiayur, while he was on his rounds with a police party, arrested one culprit on suspicion and sent him to the police station under the escort of a constable. When the rest of the police party was proceeding towards Palle street in Turiayur, they noticed the petitioner coming in the opposite direction pushing a bicycle. He was stopped on suspicion and on search, it was found that he was in possession of I. IX arrack in a bag. The Sub-Inspector of Police arrested the petitioner and was escorting him to the Police station with the help of a Head-constable and two other constables. When they were proceeding with the petitioner, on the way 40 or 50 villagers formed themselves into an unlawful assembly with the object of rescuing the petitioner and pushed the head constable and the constables who were escorting the petitioner, whereupon the petitioner made good his escape and joined the crowd. The crowd began to attack the head constable and the constables with deadly weapons. Soon thereafter, the petitioner who had earlier escaped from the police custody came up with a stick and assaulted the head constable on his shoulders, with the result that the head constable fell down. The petitioner thereafter escaped. The petitioner was subsequently arrested by the police on 5-3-1966, nearly about a fortnight after his escape. On these facts, the conviction of the petitioner under Section 224, I. P. C. was confirmed by the appellate Court.

3. The learned counsel for the petitioner was unable to challenge the finding of the appellate Court on merits. But, however, he contended that on the facts of this case, the conviction of the petitioner cannot be sustained as the prosecution has not established that the petitioner intentionally escaped from the lawful custody of the police officer, inasmuch as, he was forcibly rescued by the crowd and taken away. In other words, he would contend that at the time of the alleged escape from

the lawful custody of the police officer, the prosecution should show that the petitioner had the intention to escape and if he was taken by the crowd by using force, even if he had not submitted to the custody of the police officer after he was released by the crowd, still he would be committing an offence under Section 224, I. P. C. as the gravamen of the offence 15 the intention of the person at the time of escape from the lawful custody.

4. To appreciate this contention, it will be necessary to note carefully the language of Section 224. I. P. C. which runs as follows-

'whoever intentionally offers any resistance or Illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.'

This section deals with two distinct offences committed independently of each other. The first branch of the section deals with intentionally offering resistance or illegal obstruction to the lawful apprehension of himself for any offence and the second branch deals with escaping or attempting to escape from any custody in which he is lawfully detained for any such offence.

5. In this case, we are concerned with the second part of the offence under this section. The first part of the section requires the following ingredients, namely

(1) the person to be apprehended must have been charged for an offence or convicted of an offence;

(2) such apprehension must be lawful, and

(3) resistance or illegal obstruction offered must be intentional, whereas the ingredients of the second part under the section are

(1) the detention must be for an offence;

(2) it must be lawful; and

(3) escapes or attempts to escape from such lawful custody. So far as the first part of the section is concerned, it is very clear that unless it is proved that the resistance or illegal obstruction offered is intentional, the offence under that part is not made out. But it is very significant to note that in the second part of the section, before the word 'escape', the word 'intentionally' is not used. It becomes, therefore, necessary to consider, even in the absence of the word 'intentionally' in the second part, whether it has to be read with the word 'escape' and that the escape must be intentional. I am of the view that the word 'intentionally' is deliberately omitted in the second part as the word 'escapes' by itself will connote something sinister. The word 'escape' is defined in the Shorter Oxford English dictionary as 'to gain one's liberty by flight.' Running away implies a voluntary act on the part of the man who runs. If a person is forcibly taken away from the custody of another, it cannot be said that the person taken away has gained his liberty by his running away namely, flight and hence such person does not escape. A person voluntarily running away from the lawful custody, escapes from such custody. If the word 'escape' is understood in this sense, it is not necessary to read the word 'Intentionally' with the word 'escape' in the second part of the section where the word 'intentionally' is omitted.

6. That the word 'intentionally' is deliberately omitted in the second part will be clear from certain provisions In the Indian Penal Code where the word 'intentionally' is repeatedly used in each part of the offence in the said provisions.

7. Section 222, I. P. Code is as follows:--

'Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of justice, for any offence or lawfully committed to custody, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows.....' In this provision, the word 'intentionally' is used in every part of the three offences mentioned in the said section. Similarly, Section 221, I. P. C. uses the word 'intentionally' repeatedly in three parts of the offences mentioned therein.

8. Section 221, I. P. C. is as follows-- 'Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement shall be punished as follows:-

It is, therefore, clear from these provisions that whenever the intention is made the gist of the offence, it is said so, clearly in each part of the offence. If it was intended to make the intention as the gist of the offence of escaping from the lawful custody, the second part of Section 224, I. P. C. would have said so. As already pointed out by me, the word 'escape' connotes a voluntary act on the part of the person who gains liberty by flight, namely, by running away and, therefore, the intention of the person at the time when that person leaves the custody is not material. If a person is taken away by force from lawful custody by other persons, the person taken away does not voluntarily escape from such custody; but though a person is taken away by force for which he is not responsible, yet, when he is set free, he must submit to the custody as he continues to be in the lawful custody of the officer who had lawfully detained him. even while he was taken away by force by others and after he is released.. The gravamen of the charge in the second part of the offence is 'escape from the lawful custody'. Wherever the person is, after he had been lawfully detained, he is deemed to be under custody. The lawful custody of the person does not cease, the moment he is taken away by force by someone else. It continues wherever he goes by whatever means. The custody cannot be narrowed down to physical custody. It refers to legal custody. A person who has been lawfully detained cannot gain his liberty by other means excepting by due course of law. It cannot be an excuse for a person in custody to say that he has been taken away by someone and that he has not escaped from the lawful custody at the time when he was taken, after he is set at liberty by the persona who had taken him away.

9. The learned counsel for the petitioner relied upon the following two decisions-- (1) In Re: Retta Koravan, : AIR1957 Mad714 and (2) King Emperor v. Lacchu Kamara, : AIR1950 Ori62 . The latter decision was followed in the former. In the

former decision, Somasundaram, J. held in relation to the facts of that case that 'if the accused was forcibly snatched away from the custody it cannot be said he intentionally escaped from the custody.' There is no discussion in that judgment about the language used in Section 224, I. P C but I find that the observations made in : AIR1950 Ori62 , were merely incorporated. There is no assistance in that decision as to what happens to the person forcibly taken away, after he is set at liberty whether he should submit to the custody or not. In : AIR1950 Ori62 the discussion proceeded mainly on the facts of that case that the person who was prosecuted under Section 224, I. P. C. was not proved to have been under lawful custody when he was taken away and that was the main reason for holding that the offence under Section 224, I. P. C. was not made out. It is true, an observation was made that if a person was forcibly snatched away from the custody, it could not be said that he intentionally escaped from the custody and the key word in Section 224 I. P. C. is 'imentionally.' With great respect, I am unable to agree with the last sentence in the observation that the key word in Section 224 I. P. C. is 'intentionally' for the reasons I have already given in the earlier portion of this judgment.

10. The following decisions held a different view from the decisions mentioned above; In Queen Empress v. Muppan, (1895) ILR 18 Mad 401. the following observations were made-

'The custody of a prisoner does not necessarily come to an end because the custodian absents himself for a few minutes. A man legally arrested for an offence must submit to be tried and dealt with according to law. If he gains his liberty before he is delivered by due course of law, he commits the offence of'escape'. It has been long established that even when the escape is effected by the consent or the neglect of the person that kept the prisoner in custody, the latter is no less guilty, as neither Buch illegal consent nor neglect absolves the prisoner from the duty of submitting to the judgment of the law.'

With great respect, I agree with these observations and I am bound by them, Unfortunately, this decision was not brought to the notice of the Court in : AIR1957 Mad714 , This decision was later followed in the Public Prosecutor v, Ramaswami

Konan, (1908) 31 Mad 271. Again, the Division Bench of the Madras High Court in the Public Prosecutor v. Sennimalai Gounden, 1919 MWN 695 AIR 1919 Mad 864 followed the earlier decisions.

11. In Attiya v. Emperor, AIR 1923 Rang 133, the Madras decisions were followed. The facts of that case are similar to the present case. The accused in that case who was in lawful custody of the process server was rescued by number of his friends and he took advantage of this and disappeared. He surrendered on the next day. It was held that the offence under Section 224, I. P, C, was committed.

12. In the result, I am of the view that the petitioner, though he was forcibly taken awav by a crowd vet his having not submitted to the custody till be was re-arrested, namely, for about a fortnight, has committed the offence under Section 224, I. P. C. by escaping from the custody of the Sub-Inspector who lawfully detained him for the offence. Even on the facts, I find that after the petitioner was rescued, he again came and used force on the officers and ran away. The conviction under Section 224, L P. C. is confirmed.

13. So far as the sentence is concerned, it appears that the petitioner has been in jail for about three weeks. The offence took place 2 1/2 years ago. Most of the accused who have been charged along with him were acquitted for one reason or other. Taking all these circumstances into consideration, 1 reduce the sentence to the period already undergone by him.

14. The revision petition is dismissed, with the above modification in the sentence.

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