Murray Vs. the Queen-empress

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Court : Kolkata

Decided On : Jun-28-1893

Reported in : (1893)ILR21Cal103

Judge : Prinsep and ;Trevelyan, JJ.

Appellant : Murray

Respondent : The Queen-empress

Judgement :

Prinsep, J.

1. A very large number of coolies, more than 90 in number, made a complaint, of a somewhat general character, of various kinds of ill-treatment against the manager of the tea garden at Rangamati, in which they were under engagement to work. The Magistrate thereupon directed the District Superintendent of Police to hold an enquiry into these matters. The District Superintendent of Police accordingly proceeded to the tea garden and reduced the statements of the principal parties complaining into definite form, disclosing complaints of wrongful restraint and wrongful confinement. On his report the Magistrate summoned a large number of persons, some of whom only attended, and he eventually convicted George Murray, the Manager of the Tea Garden, of wrongful restraint and wrongful confinement, and he has sentenced him for the former offence to a fine of Rs. 500, or in default, to one month's simple imprisonment, and for the latter, to one

month's simple imprisonment.

2. An appeal has been made direct to this Court by the accused, George Murray, who is a European British subject. The learned Counsel who appears for the appellant does not attempt to object to the findings of the Magistrate, or that they are not in accordance with the evidence. Indeed, the examination of the accused, George Murray, before the District Magistrate amounts to a confession on his part. Put the learned Counsel contends that the Magistrate was without jurisdiction, inasmuch as the two persons Govindo and Mukundo, against whom the offences of which the accused has been convicted were committed, had compounded those offences in the presence of the District Superintendent of Police after his investigation had been completed, the offences being compoundable under Section 345, Code of Criminal Procedure. The learned Counsel also contends that the sentences passed are inappropriate by reason of their severity.

3. The District Magistrate, in convicting George Murray, the Manager of the Rangamati Tea Garden, has found that he wrongfully restrained the coolies employed in that garden by surrounding the line? in which they resided with a barbed wire fence of about 3 feet in height, securing the exit from that enclosure by guards regularly posted. He has also found that under orders of the Manager, George Murray, Govindo, one of the coolies, was for two or three days confined within a shed on the premises, locked from the outside. The excuse alleged for such ill-treatment is the absconding of a large number of coolies employed in this tea garden, and the necessity for preventing others also from running away. The evidence shows that practically the coolies employed on this tea garden were always in a state of duress. When off work they were kept within the guarded enclosure, and even when they were at work on the tea garden they were watched by guards. It appears even that they were not allowed freedom to go to the bazar when not at work,--at least without special permission, and then only under certain conditions. It is alleged that Govindo was arrested outside the premises, when, as he says, he was about to go to the bazar. But, on the other hand, it is stated that he was then attempting to escape. He was taken before the manager (Murray), and under Murray's order he was locked up in what is called the tin house, a shed about 10 feet by 10 feet, for several days. The justification attempted for the

conduct of the manager is altogether unreasonable. He apparently arrogated to himself absolute control over the coolies employed on the tea garden so long as the engagements which they had entered into to work in the garden continued, in such a manner as completely to deprive them of any freedom of action, and he thus practically reduced them for the term of their engagements to a state of slavery. Such conduct cannot be too strongly condemned, and if, as it is suggested, it exists in other tea gardens, it must render the persons adopting it liable to the severe penalties of the law. It is only under certain circumstances that the law (Act XXI of 1883) permits the employer of labourers under engagements to work for a specified term who may abscond from such service to arrest them, and even in that case, certain conditions are prescribed. Under no circumstances is it justifiable to subject labourers to restraint against their declared wishes in order to prevent the possibility of escape. It is hardly necessary to add that the law does not permit any employer of labourers under such engagements to subject them to confinement for any alleged misconduct. The accused states that he was not aware that he was acting contrary to law. That is no valid excuse. It is to be observed that he is above 30 years of age, and has been about six years in this management. So far, therefore, as to the severity of the sentence, we think that there is nothing to be said. We observe, however, that the sentence for wrongful restraint under Section 341, Penal Code, so far as it directs that in default of payment of fine the accused shall suffer one month's simple imprisonment, is excessive, being beyond the limit provided by law, viz., one week (see Section 65, Penal Code).

4. Great stress has also been laid on the delay in making this complaint. It appears that the petition was made to the Magistrate about one month after Govindo and Mukundo had left the Rangamati tea garden, on expiry of their engagements, and that the confinement of Govindo, of which the Manager, George Murray, has been convicted, took place more than one year before that time. This delay is in our opinion sufficiently explained. In some measure it was due to the restraint to which the petitioners were subjected, and it would seem that the more recent delay of one month in making the complaint after the coolies had obtained their freedom was due to their disinclination to press the matter until they had learnt that the manager was about to take proceedings in the Criminal Court against them. We

have little doubt that the helpless condition of these ignorant coolies, who were in a strange part of India at a considerable distance from their homes and amongst strangers who speak a different vernacular, sufficiently explains the difficulties of their position, their reluctance to complain, and the delay in making any complaint of ill-treatment.

5. It does not appear, nor is it even suggested, that they ever had a reasonable opportunity of complaining, and this is a matter of some surprise, as I am under the impression that under the orders of Government some system of inspection and supervision is in force. If I am misinformed, the facts elicited in this case show the necessity for some system of periodical inspection so as to give labourers, who may desire it, an opportunity to bring such matters as are made the subject of trial in this case to the notice of those whose duties it is to afford protection and redress.

6. It becomes necessary, therefore, to consider only whether Mukundo and Govindo, against whom the offences were committed, did lawfully compound those offences so as to have deprived the Magistrate of jurisdiction to hold this trial. No doubt the offences of which the appellant has been convicted are offences which can be lawfully compounded by the person restrained or confined. Mr. Gouldsbury, the District Superintendent of Police, states that a Bengali paper was given to him by three persons who had signed it, a fourth person whose name was attached to it who, he thinks was Bonomali, being absent; that he asked these persons as to its contents in order to ascertain whether they had signed it voluntarily; that they stated that they had signed it voluntarily and stated its purport; that an English document was simultaneously given to him; that Govindo was one of the persons present, and that Mukundo, the other complainant in this case, was not present. He identifies these two papers which are on the record, and he states that, so far as he can remember, he had the Bengali document read out by a writer-constable, but his recollection is not certain. These papers were presented to Mr. Gouldsbury at Sipaobari, at some distance from the Rangamati tea garden. He adds, that one of the men stated in the presence of the other that it was a razinama, that is, a compromise. Govindo admits that he wrote some words at the foot of the Bengali paper which was presented to Mr. Gouldsbury. These

words are, 'I will not carry on the case.' He clearly referred by these words to the complaint which had been made by him and which had just been under investigation by the District Superintendent of Police. There can be no doubt, notwithstanding his equivocation, that be was one of the persons who presented the paper to Mr. Gouldsbury.

7. The compounding of an offence signifies that the person against whom the offence has been committed has received some gratification, not necessarily of a pecuniary character, to act as an inducement for his desiring to abstain from a prosecution, and the law (Section 345, Code of Criminal Procedure) provides that if the offence be compoundable, a composition shall have the effect of an acquittal. In the case before us it is for the accused, who raises an objection to the jurisdiction of the Magistrate, to show that there was a composition valid in law. Here the alleged composition is contained in the two papers given be the District Superintendent of Police. The Bengali paper purports to come from the complainant and other coolies, and it should be recollected that he cannot read or write Bengali. When Govindo gave evidence a few days later to the Magistrate, it seems clear that he had no intention to withdraw his complaint. The question is, therefore--Do his acts to the District Superintendent of Police, Mr. Gouldsbury, amount to the intimation of a compounding of the offence under investigation on his complaint so as to deprive the District Magistrate of jurisdiction to hold the trial? An act of compounding is different from the withdrawal of a complaint made to a Magistrate. A withdrawal must be by intimation to the Magistrate holding the trial, and is permissible only in a summons case, and the complainant is required in such a case to satisfy the Magistrate that there are sufficient grounds for permitting him to withdraw it (Section 248, Code of Criminal Procedure). The offence of wrongful confinement is not a summons case but a warrant case, and the law does not provide for the withdrawal of such a case by the complainant, and the District Magistrate records that he is ignorant of Bengali. It is in the following terms: (reads Exhibit 1 ante, p. 105). The last words 'I will not carry on the case' are in the handwriting of the complainant Govindo. They are written in Uriya, the words of the paper being in Bengali.

8. The English paper simultaneously presented is in the handwriting of the accused Murray and signed by him. It is in the following terms:(reads Exhibit 2 ante, p. 106).

9. The District Magistrate finds--and we agree with him--that the contents of the Bengali paper were not read out and explained by Mr. Gouldsbury to Govindo so as to make them intelligible, for he records that Bengali is a language of which he, the complainant, is ignorant. It is not stated that the English paper was ever explained to Govindo. It is, therefore, impossible to find that the nature of the agreement under which the composition was settled was ever made intelligible to Govindo, who is a rude and ignorant cooly coming from the Ganjam district on the further side of Orissa and within the Madras Presidency. It is also very remarkable that there is little or no evidence of the circumstances under which this agreement to compound was arrived at. The accused Murray in his examination states that the Bengali paper was written by the Damdiu Darogah, that is, by the Police officer of the police station of the locality of the tea garden. Govindo's examination shows that the accused Murray was then present. But in other respects there is no evidence, so that we have no means of knowing what led to the alleged agreement, and how it was made or why the darogah was instrumental to it. Having regard to the ignorance and inferior intelligence of the cooly Govindo, this was of vital importance, and this the accused, if he relied on the compounding, was bound to show. The gratification alleged to induce Gobindo to compound was a forbearance on the part of Murray to institute criminal proceedings, not against him (for he had served out the time of his engagement), but against other coolies who had absconded and had thus broken their engagements to labour for the tea garden, provided that they returned to work by a particular date. It is not easy to understand how such forbearance towards others of only a few days could have had such an influence on Govindo. We should certainly not feel justified in accepting such uncertain and vague evidence to operate as barring the Courts of Justice to a person of the position and ignorance of the cooly Govindo, whose acceptance of their terms is contradicted, prosecuting his complaint without any hesitation a few days afterwards. It is impossible to accept the evidence on the record as sufficiently clear to satisfy us that there was a deliberate act of compounding on the part of Govindo, and we accordingly disallow this objection.

10. The other complainant, Mukundo, is not proved to have been one of those who were present before Mr. Gouldsbury. He states that he signed the Bengali paper because the sahib (Murray) told him to put his name to it, but that it was not read to him; and he adds that there was no talk of withdrawing the case. Therefore, so far as Mukundo is concerned, it is not proved that he ever consented to withdraw his complaint, and there is certainly nothing to show that he consented to any arrangement amounting to a composition.

11. For these reasons I am of opinion that there is no compounding such as would deprive the Magistrate of jurisdiction.

12. The sentence under Section 341 must be amended to one of fine of rupees 500, or in default to one week's simple imprisonment. The other sentence is appropriate, and the appeal must be dismissed.

Trevelyan, J.

13. I agree with Mr. Justice Prinsep. On the question of composition it is for the accused to prove that the offence was compounded, and that therefore the trial ought not to have proceeded. Compounding an offence is more than a mere promise to withdraw a prosecution. It supposes an arrangement by which the parties have settled their differences, and in the more usual acceptance of the term implies that the prosecutor has received some consideration or gratification for dropping the prosecution. Although the provisions of the Contract Act may not apply, the proof of the arrangement must be similar to that which the Court requires for the proof of any agreement which is in issue. Unless it appears that the parties were free from influence of every kind and were fully aware of their respective rights, it would be impossible to give effect to a so-called arrangement or composition.

14. In this case the person who drew out the document, namely, the Damdin Darogah, has not been called. The contracting parties are, on the one side, ignorant coolies, strangers to the land and to the language in which the document is written; on the other, a, European, probably of some education, assisted by his Bengali clerk. Mr. Murray had also the assistance of the Police. There is no doubt

that the document was drawn by the darogah. The darogah has not been called. The omission to call him is, to my mind, a circumstance of the strongest suspicion. I cannot help thinking that if it had been possible that his evidence would have supported the story of a bona fide arrangement, he would have been called. In making this observation I have regard to the fact that the onus on the question is on the accused. Where the burden is on the prosecution, it is rarely right to comment on the omission of the accused to call evidence. It is perfectly true that Govindo has written on the paper that he will give up the prosecution. This by itself is not enough. We are in reality entirely in the dark as to the circumstances under which that document came to be written, and it is contradicted by the fact that Govindo appeared soon after before the Magistrate and readily prosecuted his case.

15. The defence relies on Mr. Gouldsbury's evidence; but I do not think that Mr. Gouldsbury's evidence by any means shows that these men knew what they were about and were fairly contracting. Mr. Gouldsbury may have been satisfied as to this; but it is for the Court to arrive at a conclusion on this question.

16. I entirely agree in thinking that it has not been proved that there was any composition such as to exclude the jurisdiction of the Court.

17. The alternative sentence of imprisonment is, as Mr. Justice Prinsep has pointed out, illegal. With that exception, I think that the punishment inflicted is by no means excessive.

18. The Magistrate has taken into fair and full consideration all the circum- stances said to be in mitigation which were urged before him. The same arguments have been addressed to us. I cannot assume that the manager of a tea garden, aged 31, has so little education that he considers that he is entitled to treat his fellow-subjects like cattle, to let them go and come only at his will, and at his pleasure to sentence them to imprisonment.

19. Mr. Murray has endeavoured to reduce his coolies to a state of slavery. He ought to have known that slave-holding in any form is repugnant to every right-minded British subject. I do not think that there are any mitigating circumstances. I

think the fact that he used barbed wire for imprisoning these wretched men much aggravates his case. The effect, if not the object, of using wire of this kind would be to injure coolies trying to leave the coolie lines.

20. In my opinion this appeal should be dismissed. The circumstances of this case go to show the necessity for efficient inspection of ten gardens. It is intolerable that the accused should have been permitted without prosecution to act as he had done for so long a time.