

(1880) 03 AHC CK 0011

Allahabad High Court

Case No: None

Empress of India

APPELLANT

Vs

Ram Kuar

RESPONDENT

Date of Decision: March 8, 1880

Citation: (1880) ILR (All) 723

Hon'ble Judges: Robert Stuart, C.J; Straight, J; Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Final Decision: Disposed Of

Judgement

Robert Stuart, C.J.

The conviction in this case u/s 370, Indian Penal Code, cannot for a moment stand. The offence, if any, appears to have been one of kidnapping or abduction, but there is not a single element of the legal conception of slavery to be found under the facts. The Judge, in coming to his utterly mistaken conclusion that Deoki had been treated as a slave within the legal meaning of that status, was probably influenced by what I must call the extraordinary ruling by a Bench of this Court in the case of Queen v. Mirza Sikundur Bukhut 1871 H.C.R. N.W.P. 146. That was indeed really a much stronger case than the present, and yet it too was obviously a case not of slavery but of kidnapping or abduction. It is exceedingly difficult to understand what is meant by Section 370, Indian Penal Code. That section provides that "whoever imports, exports, removes, buys, sells, or disposes of, any person as a slave, or accepts, receives, or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine." This appears to assume the condition of slavery as a possible fact within the cognizance of the law, but such a condition is as much ignored by the law of this country as it is by the law of England. A slave is a creature without any rights or any status whatsoever, who is or may become the property of another as a mere chattel, the owner having absolute power of disposal by sale, gift, or otherwise, and even of life or death, over the slave, without being responsible to

any legal authority. Such is the determinate and fixed condition of the slave, and it is not, as ruled in the above case, a condition capable of degrees.

2. But such a position for any human being under the Government of India was utterly repudiated by an Act passed in 1843, Act V of 1843, entitled, "An Act for declaring and amending the law regarding the condition of slavery within the territories of the East India Company." And the Act, which is a short one, containing only four brief sections, provides as follows:--(1) " No Public Officer shall, in execution of any decree or order of Court, or for the enforcement of any demand of rent or revenue, sell or cause to be sold, any person, or the right to the compulsory labour or services of any person, on the ground that such person is in a state of slavery." (2) "No rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any Civil or Criminal Court or Magistrate within the territories of the East India Company." (3) " No person who may have acquired property by his own industry or by the exercise of any art, calling or profession, or by inheritance, assignment, gift or bequest, shall be dispossessed of such property or prevented from taking possession thereof on the ground that such person or that the person from whom the property may have been derived was a slave." (4) " Any act which would be a penal offence if done to a free man shall be equally an offence if done to any person on the pretext of his being in a condition of slavery." There is by this Act a thorough repudiation by the law of India not only of the condition of slavery as a possible state of things, but of any rights or interests or estate which could be asserted in respect of it, and therefore, as I have said, it is exceedingly difficult to understand what is meant to be intended by Section 370, Indian Penal Code. The actual accomplishment of placing a human being in the condition of a slave could not have been contemplated, inasmuch as the possibility of accomplishing anything unknown to the law cannot be supposed to have been meant or intended; Section 370 therefore can only be understood as directed against attempts to place persons in the position of slaves, or to treat them in a way that is inconsistent with the idea of the person so treated being free as to his property, services, or conduct, in any respect.

3. Here the girl Deoki appears simply to have been enticed away by the accused Ram Kuar for the purpose of a marriage, which owing to an objection on the score of caste did not take place, and she was sent back to Ram Kuar. Whether in any case the marriage could have been carried out must be more than doubtful, as she herself states she had previously been married to Nangha, a fact which in all probability was not known at the time to Ram Kuar. But, whether that be so or not, it is perfectly clear that on the facts there is not the slightest pretence for holding that any offence whatever under s. 370 was committed.

Pearson, J.

4. It is apparent upon the surface of the case that Deoki was sold to Udai Ram's brother and purchased by him not as a slave but for the purpose of becoming his

wife. I therefore concur with the learned Judge who made the reference to the Full Bench in the opinion that the conviction of Ram Kuar u/s 370, Indian Penal Code, cannot be maintained. But I do not think that the decision of this Court in *Queen v. Mirza Sikundur Bukhut* H.C.R. N.W.P. 1871, p. 146, affords any support to the view taken by the Sessions Judge in this case.

Spankie, J.

5. I am still of the same opinion as I was when I referred the case, that s. 370 of the Penal Code does not meet it.

6. The Sessions Judge makes the following observations in his judgment "Apparently by this Section (370) the traffic in all human beings is prohibited, and when the substance of the transaction is an attempt to give a property in the person and services of a human being, that person is disposed of as a slave within the meaning of this section, whatever force the parties to the transaction may attempt to give it."

7. The precedent of this Court H.C.R. N.W.P. 1871 p. 146, to which I referred in submitting the case to the Pull Bench, appears to me to support this view. The learned Judges say that a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or guardian, or jailor. This doubtless is so. But the Judges go further and say: "The offence of which the appellant has been convicted is, we are informed, one of which instances are not uncommon in this country. Children are purchased from their parents or strangers, and are brought up as domestic servants, having little or no personal liberty conceded to them. These children are practically slaves, and it cannot be too widely known that their condition is such as will not be tolerated by English law, and that persons who detain them in their houses are liable to punishment under the Penal Code."

8. I have examined the records of Government with a view to ascertain the circumstances under which the section was framed.

9. In the draft Penal Code published by command in 1837, in the chapter on kidnapping, except in Clause 357, now represented by Section 367, there is no reference to slavery. The report, however, of the Commissioners recognizes slavery as existing. They say that they had collected information on the subject from every part of India, and that the documents collected have satisfied them that there is at present no law whatever defining the extent of the power of a master over his slaves, that everything depends on the disposition of the particular functionary who happens to be in charge of a district, and that functionaries who are in charge of contiguous districts, or who have at different times been in charge of the same district, hold diametrically opposite opinions as to what their official duty requires. The result was that the Law Commissioners recommended to the Governor-General in Council that no act falling under the definition of an offence should be exempted

from punishment because it was committed by a master against a slave.

10. It may be thought, they say, that by framing the law in this manner they do in fact virtually abolish slavery in British India. But their object was to deprive slavery of those evils which are its essence, and to do so would ensure the speedy and natural extinction of the whole system. "The essence of slavery," they observe, "the circumstance which make slavery the worst of all social evils, is not in our opinion this, that the master has a legal right to certain services from the slave, but this, that the master has a legal right to enforce the performance of those services without having recourse to the tribunals."

11. The Hon^{ble} Court of Directors in 1838 directed that the Government of India should lose no time in passing an enactment to the effect of the recommendation just referred to. The majority of the Commissioners framed a draft Act, but Mr. Cameron differed from them, and afterwards the Commissioners again differed amongst themselves in submitting another report on the subject in 1841. At last, in 1843, Act V of that year was passed which carried out the original recommendation of the Law Commissioners. The first section forbade the public sale by any public officer in execution of any decree or order of Court, or for the enforcement of any demand of rent or revenue, of any person, or of the right to the compulsory labour or services of any person on the ground that such person is in a state of slavery. Section 2 declared that no rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any Civil or Criminal Court or Magistrate within the territories of the East India Company. Section 3 provides that no person shall be deprived of any property whatsoever, however obtained, on the ground that such person, or that the person from whom the property may have been derived, was a slave. Section 4 enacted that any act which would be a penal offence if done to a free man shall be equally an offence if done to any person on the pretext of his being in a condition of slavery.

12. After this in 1846 the Indian Law Commissioners again submitted a report on the Penal Code. In Clauses 426 to 438 of their report, the Commissioners refer to kidnapping and sale of children. In Clause 435 they refer to Act V of 1843, and observe that the private sale of a free person for the purpose of being dealt with as a slave is not prohibited by this law. But as, u/s 4 of it, no person so sold could be dealt with as a slave against his will, it amounts to a virtual prohibition which may be effectual as regards adults who can avail themselves of the law, without any further provision. But with respect to children, it should be made penal to sell or purchase a child under any circumstances. I can obtain no clue to what happened after this report. This recommendation in the report of 1846 appears to have borne fruit, for Sections 370 and 371 were prepared.

13. Looking at the former law, V of 1843, and specially at Section 4, I conclude that, so far as we are concerned in the case referred to, it would be necessary for the prosecution to show that the prisoner Ram Kuar asserted a right to dispose of the

girl's liberty, and under pretext of her being a slave sold her as such and to continue such. The case before us does not present any such features. The section, therefore, does not apply.

14. The observations of the learned Judges in the latter part of the judgment in *Queen v. Mirza Sikundur Bukkut* H.C.R. N.W.P. 1871, p. 146 appear to me to go beyond the section. Sections 365, 366, 367, 368, 372 and 373 seem to provide for the cases of kidnapping children, whilst Section 374 declares that any one who unlawfully compels any person to labour against his will shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both. But s. 370 must be read as providing for the specific offence which it includes, i.e., (i) the importation and exportation of a person as a slave; (ii) the disposal of a person as a slave (and here the presumption is that the act is against the will of the person); (iii) the acceptance, reception or detention of any person against his will as a slave, that is, it must be shown that the act done was done against the will of the person, who cannot be accepted, received or detained as a slave. When these conditions are not seen in any case, Section 370 does not appear to me to apply.

Oldfield, J.

15. I apprehend that the sections of the Penal Code with which this reference deals were enacted for the suppression of slavery, not only in its strict and proper sense, viz., that condition whereby an absolute and unlimited power is given to the master over the life, fortune and liberty of another, but in any modified form where an absolute power is asserted over the liberty of another.

16. Slavery had the sanction of the Muhammadan and Hindu laws, and a form of slavery was prevalent in this country at the commencement of our rule, and Mr. Justice SPANKIE, whose written opinion on this reference I have had the advantage of reading, has abundantly shown that the law we are dealing with was enacted to suppress that practice.

17. To bring the act of the accused in the case before us within the meaning of Section 370, there must be a selling or disposal, of the girl as a slave, that is, a selling or disposal whereby one who claims to have a property in the person as a slave transfers that property to another.

18. But the facts in this case do not show anything of the kind; no such right of property in the girl appears to have been set up by the accused. The girl appears to have come under the protection of accused when in a state of destitution, and she was given over to Udai Ram in order that she might become his brother's wife, the accused receiving a gratification for her trouble. The facts do not, therefore, appear to me to constitute an offence u/s 370.

Straight, J.

19. Upon the facts as disclosed in the judgment of the Sessions Judge, I am of opinion that the conviction of Ram Kuar u/s 370 of the Penal Code cannot be sustained. There is no sufficient evidence that the girl Deoki was "sold or disposed of" to the brother of Udia Ram for the purpose of her being dealt with as a slave, or, in other words, that a right of property in and over her should be asserted by her purchaser in employing her in menial and enforced services against her will and by restraining her liberty. On the contrary, the proof appears to be, that the Rs. 4 and the buffalo were given by Udai Ram's brother under the belief that Deoki was a Jat, and his admitted object and intention in reference to her was marriage. Moreover, the moment it was discovered she was a Gararia, Udai Ram started to take her back to Ram Kuar and was only prevented from doing so by his arrest. Under all the circumstances, I think that the decision of the Sessions Judge should be set aside.