
(1869) 06 CAL CK 0051

Calcutta High Court

Case No: None

The Queen

APPELLANT

Vs

Punaifattama and Another

RESPONDENT

Date of Decision: June 14, 1869

Judgement

Norman, J.

The prisoners have been convicted by the Judge of Purnea concurring with the Assessors, of the offences of culpable homicide not amounting to murder, of three persons, Jatru, Menghan and Jikri, and of causing grievous hurt by means of dangerous weapons and means to Itwari Musahar, and sentenced to five years" rigorous imprisonment. They appeal. From the evidence as taken before the Judge, it appears that the prisoners who said they were gurus and came from Caragola joined a gang of coolies employed in making bricks and doing other work for the Darjeeling and Caragola Road, and offered to teach them snake incantation. Ten or twelve coolies, amongst whom were the three deceased and Itwari the injured man, were learning the incantation. They were to have paid Rs. 2 or 1-8 each to the prisoners. After some days the prisoners wished the deceased and their other pupils to allow themselves to be bitten by snakes. They produced from an earthen pot two koraitis and a keranti. The witness Bachu Sirdar says, "they began to make the snakes move about in front of us all. We became afraid. They said, why do you fear, we are gurus, and will soon restore you. After this they made us place our right hands on the ground and began to make the big korait move towards our hands. We immediately from fear raised our hands. After this the prisoners struck us with rattans, and when the snake moved to a distance, we again placed our hands on the ground. Then the prisoners took the snake near to Jitru, Menghan, Jikri and Itwari, and by striking it with a rattan made the snake bite Jitru on the fore-finger of the right hand. The throat; of Jitru immediately became dry, and he became senseless. Then the snake was made to bite Menghan on the fore-finger of the right hand; but Menghan did not suffer or become senseless. After this the snake was made to bite Jikri on the right hand; he did not either become senseless, but remained tottering.

Then the snake was made to bite Itwari on the right wrist. He did not appear to suffer. Then Jitru died two hours before dawn, and the prisoners then ran away." The witnesses went in search of them, arrested them at 10 o'clock the following morning, brought them back and made them over to the police. The story told by the witness Bachu Sirdar is corroborated by Itwari, Lalu and Lochan. There is no substantial difference in their statements, except as one or another gives fuller details on particular points.

2. The examination of the prisoners before the Magistrate shows, that they were fully aware of the deadly character of the bite of a korait. The prisoner Punai says, he broke out the fangs of the korait and squeezed out the venom a week before the occurrence. He admitted that he knew the korait was a deadly snake. Jumai said he knew nothing about its teeth being extracted. He said "when the snake was brought in, a pang of fear shot through my vitals, and I was afraid of its biting."

3. When the first man Jitru had been bitten and was suffering from the effects of the bite, the prisoners did not at once desist, but went on urging the snake to bite others. When they found Jitru suffering, they apparently did not occupy themselves with uttering over him their mantra, which, according to the statement of Jumai before the Magistrate, is nothing more than "O mother, one of your children has bitten this person, heal, &c." When the snake was exhausted and could bite no longer, their attention was directed not apparently to the sufferers but to the snake. They took it up, rubbed it, and, having partially restored it, painted it on the head with vermilion and turned it out in a paddy field.

4. The motive for the act of the prisoners does not seem to have been the desire of gain. Though they were to have got from their pupils two rupees and one rupee and eight annas each for teaching, they do not seem to have actually received anything or even to have pressed for payment. The deceased did not force the experiment on the prisoners. They did not desire to have the value of the charm tested in their own persons.

5. They did not willingly allow themselves to be bitten. It is proved by all the witnesses that the coolies were afraid of the snake, and it was by repeated assurances from the prisoners that they were gurus, and would protect them from harm, and even by actual force, for the prisoners are said to have struck and twisted the ears of some of them, that the coolies submitted to be bitten.

6. It is a most extraordinary case. The Judge thinks that the act was not done with the intention of causing death, but to show that the prisoners possessed the power of restoring to health persons who may have been bitten by venomous snakes. Looking at the ignorance and superstitious practices which seem to prevail amongst the low caste coolies, to which the prisoners and the deceased belonged, the conclusion arrived at by the Judge upon the evidence, as it stood before him, was probably correct.

7. The Judge finds the prisoners guilty of culpable homicide not amounting to murder. The Judge seems to assume that the case does not come within section 300. He refers to clause 1, and says that the act was not done with the intention of causing death, and that none of the illustrations apply. But clause 2 applies to the case, and clause 3 still more expressly. The act was done with the intention of causing such bodily injury, that is a bite by a deadly snake, which the offenders knew to be likely to cause the death of the person to whom the harm was caused, Clause 3 appears to have been enacted to obviate any doubt which, in a case like the present, might exist under clause 2. It says it is murder if the act is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death. Illustration C is as follows: "A intentionally gives Z a sword cut, or club wound sufficient to cause the death of a man in the ordinary course of nature. Here A is guilty of murder, though he may "not have intended to cause Z's death."

8. The two clauses explained by this illustration show that the act of the prisoners in wilfully and intentionally causing the deceased to be bitten on their naked bodies by a deadly snake, an injury sufficient in the ordinary course of nature to cause death, is not the less murder, though they may have believed that they could remove, and intended to remove by their incantations, the effects of the injury.

9. If the offence is not murder, it is because it falls within the 5th exception in section 300, namely, where the deceased takes the risk of death with his own consent. Section 90 provides that a consent is not such a consent as is intended by any section of this Code, if the consent is given under misconception of fact, and if the person doing the act knows or has reason to believe that the consent was given in consequence of such misconception. No doubt the deceased gave their consent under a misconception of fact, namely, a belief that the prisoners by incantations could heal, or protect them from the effects of the bites of venomous snakes.

10. But if as the Judge held the prisoners believed, though erroneously, that they had the power of restoring to health persons who might have been bitten, in that case they did not know that the consent of the deceased was given "in consequence of a misconception." They must in that case have acted in the belief that the deceased gave their consent with a full knowledge of the facts and in the belief of the existence of powers which the prisoners asserted and believed themselves to possess. It is because on the finding of the Judge, the case appears to come fairly within exception 5, that I think the conviction of culpable homicide u/s 304 must be taken to be correct, and in that view of the case the sentence of five years" rigorous imprisonment seems to me a very proper one.

11. There are, however, circumstances in this case which lead to a suspicion that the guilt of the prisoners in causing the snake to bite the coolies may have been of a far deeper dye than the Judge supposes. Itwari, says Punai and Jumai, held a puja of Bischari, in the angin of Musan"s house. If by Bischari is meant Bisseswari, the puja

was a puja to Kali or Bhowani, the goddess of the Thugs, the goddess of whom is said that the blood of a human being delights her for a thousand years. But it has been suggested that the puja was what is called a Beshari puja, from (sic)bish (poison). But if that is so, the question still remains who was the goddess to whom the puja was addressed. Jumai says, "we did puja to the snake-deities, offering flowers and sweetmeats." The snakes were brought in and put in an earthen vessel on the mandab, or puja place, and were taken from thence and made to bite the deceased. The prisoners cherished the snake, when exhausted by biting and not only did it do injury themselves, but carried it off to a place of safety, painted its head with vermilion, as if to indicate that it was a sacred object, and to protect it from all harm, and then ran away.

12. It looks as if in causing the death of the coolies the prisoners were performing some religious rite, or doing an act in honor or for the gratification of their goddess. It seems to me that some inquiry should be made by the police as to the prisoners' associates and their habits. Jumai says that he was bitten by a korta the Dussara before last, and showed the marks on his arm. He also says that he saved the life of Brihaspati, a gariwan, by his mantra, in the previous year. The appeal is rejected.

E. Jackson, J.

13. I certainly would not interfere with the conviction of the prisoners or with the sentence passed upon them. The only doubt which I have regarding their case is whether they should not have been convicted of the offence of murder. The prisoners are snake-jugglers or charmers. The proceedings held upon this trial prove incontestably that they possess no charm or antidote against the bite of a deadly snake, and also that they have no belief in any charm. They, like all jugglers, impose upon the credulity of other persons by pretending to rely upon charms, and in this way endeavour to make money. From constant practice they are able to handle snakes without undergoing any particular risk, and the sole charm which they possess is the precaution which they take with venomous snakes of removing the poison from their fangs and sometimes of removing the fangs altogether. That is the only real defence which is made in this case. One of the prisoners states that they had broken the snake's fangs and destroyed its power of injuring others. From his own account, however, this had been done a week before the prisoners made the snake bite the coolies and most probably the poison fangs had not been totally destroyed and had filled again, and hence death followed upon the bite.

14. It seems to me that in trying this case we should deal with the prisoners in exactly the same manner as we should deal with any other person who acted as they have done. We should at once discard all idea that they have any charm over a snake bite or even that they believe they have, unless they can prove it. On the contrary the prisoners being in the constant practice of dealing with snakes, must be held to have a thorough knowledge of the deadly nature of the bite of a korait, and it is for them to show that when they made a deadly korait bite several people

and cause the death of three persons they had taken the most certain precautions to prevent the bite from being injurious. If they cannot prove this, they should be dealt with as any other person would be who made a poisonous snake bite any one. The consent of the coolies to be bitten, is in my opinion, under the law, no consent, because it was founded on a misconception of facts, and the prisoners knew that the consent was given in consequence of such misconception. The coolies believed that the jugglers had power by charms to cure snake bites. The jugglers pretended that they had such power, when they had no such power, and the consent to be bitten was given by the coolies only under the misconception that the jugglers possessed some such power. The jugglers then knew that the consent of the coolies was given under a misconception of facts as to their power over snakes. I concur with Mr. Justice Norman that the offence of the prisoners comes under the 4th clause of section 300. Culpable homicide is murder, if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, and commits such acts without any excuse for incurring the risk of causing death. Any person who makes a poisonous snake bite another, must be held to know that he is likely to cause death, and must be held to know that it is an act imminently dangerous; and there was no excuse for incurring the risk of death in this case. The prisoners being snake-charmers must be held to know the effect of snake bites better than other people. It is no sufficient answer for them to say that they thought that they had made the snake safe by destroying his poison fangs and bag a week previously. The evidence proves that one of the men bitten suffered from the snake-bite even before the snake had been made to bite the others, and still the prisoners went on and made the snake bite another "person. Even if the prisoners supposed when they commenced that the snake was at the time innocuous, they must have seen when the first cooly was so immediately affected by the bite, how dangerous it was to go on with their proceedings. They must have known that the act they were committing was likely to cause death. I do not see that there is any thing to be gained by further inquiry. The prisoners seem to me to have been mere snake jugglers imposing upon the people, in order to make money, and pretending to teach snake-charms or incantations in return for which they were to obtain money from the persons whom they were teaching.