APPELLATE CRIMINAL.

Before C. C. Ghose and Guha JJ.

SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL

v.

CHAUTHMALL AGARWALLA.*

1930

April 1, 2.

Nuisance—"Ease oneself," meaning of—"Making water" in a public place if an offence—Indian Police Act (V of 1861), s. 34, cl. 7.

The expression "easing oneself" in clause 7 of section 34 of Act V of 1861 means "evacuating the bladder or bowels" and "making water" in circumstances contemplated by that section is an offence under the Act, for which the offender is liable to be arrested without a warrant.

Where, however, there is no evidence of annoyance or inconvenience caused to any body, no offence is made out.

CRIMINAL APPEAL on behalf of the Government of Assam.

The material facts are stated in the judgment of the High Court.

The Officiating Deputy Legal Remembrancer, Debendranarayan Bhattacharya, for the appellant.

Ramendrachandra Ray, as *amicus curiæ*, for the accused.

C. C. GHOSE J. This is an appeal by the Government of Assam and it arises out of the following circumstances :—

On the 9th March, 1929, at about 10 p.m., two constables of Jorhat Town Police, in the district of Sibsagar, named Phanidhar Aham and Bibhuram Chutia, while on duty, were passing along the Trunk Road. They saw the accused No. 1, Chauthmall, making water by the side of the road. The constable, thereupon, went up to the said accused and told him

*Government Appeal, No. 8 of 1929, against the order of D. C. Patterson, Sessions Judge of the Assam Valley Districts, dated Sept. 23, 1929, reversing the order of B. Rajkhawa, Magistrate of Jorhat, dated July 4, 1929.

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that he had committed an offence punishable under the Police Act and asked for his name. The accused refused to give his name and, thereupon, the constable, Phanidhar, gave him a piece of paper and pencil and asked him to write his name thereon. The accused, having refused to do that either, the constables arrested the accused by seizing his two hands. The constables, thereafter, asked the accused to go with them to the *thânâ*; and he, having refused to go to the *thânâ*, the constables tried to take him by force. It is said that, thereupon, Chauthmall called out to his friends, who, with the accused No. 2, came up, assaulted the constables and rescued the accused No. 1 from their custody. The accused were thereafter placed under their trial before the Magistrate, 1st class, Jorehat, under sections 147 (rioting), 225B (escaping from lawful custody) and 353 (assaulting a public servant) of the Indian Penal Code. The trying magistrate, by his order, dated the 4th July, 1929, negatived the case against the accused under section 147. He, however, was of opinion that the accused had committed the offences punishable under sections 225B and 353, Indian Penal Code, and he, thereupon, convicted them under those sections and sentenced them to pay certain fines. The accused then preferred an appeal to the learned Sessions Judge of the Assam Valley Districts and that officer by his judgment and order, dated the 23rd September, 1929, acquitted both the accused, holding that "making water" was not included within the expression "commits nuisance by easing himself" as used in the 7th clause of section 34 of Act V of 1861. Now, having regard to the view which we have taken, it is only right and proper that we should set out herein a short extract from the judgment of the learned Sessions Judge Mr. Patterson, dealing with this question. The Sessions Judge observes as follows :—

The act, in respect of which Chauthmal was arrested by the constable, was that of making water by the side of the public road, and the only point that has been discussed before me on appeal is, whether this was, or was not an offence under section 34 of Act V of 1861. Under that section, a person who "commits nuisance by easing himself," is under certain circumstances, liable to punishment, and may be arrested without a warrant

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by any police officer in whose view the offence is committed. The section is, however, silent as to whether, "making water," in similar circumstances, is an offence, or not. The question is, therefore, whether the act of making water is, or is not covered by the term "easing himself." I am definitely of opinion that it is not covered thereby. "Easing oneself" means "evacuating the bowels," whereas "making water" means "evacuating the bladder." The two things are quite distinct, and there are obvious reasons why the former has, in certain circumstances, been made a cognizable offence under the Police Act, while the latter has not been declared to be punishable and cognizable under that Act, though it might be, and often is, declared so to be under bye-laws framed by the local authorities.

It is argued, on behalf of the Local Government, in this appeal that the learned Judge's construction of the expression referred to above is much too narrow and is indeed wrong in law and that such construction has occasioned a failure of justice. The accused did not appear by an advocate before us, but we invited Mr. Ramendrachandra Ray to assist us in this matter as an *amicus curiæ*. Mr. Ray has contended that the learned Sessions Judge's construction is by no means to be summarily rejected and has further argued that, on the evidence on record, there is no case for action under section 34 of the Police Act, inasmuch as there is no evidence of any obstruction, inconvenience, annoyance, risk, danger of damage, or resistance of passengers. He has, therefore, submitted that it was not lawful, in the circumstances, to take the accused No. 1 into custody without a warrant. Now the expression "easing oneself" means "relieving nature" and the expression "relieving "nature" means "evacuating the bladder or bowels" (see Fowler's Concise Oxford Dictionary), the underlying idea being that of relief or comfort to one's person or freedom from strain. If that is so, then it is difficult to hold that "making water" is not within the ambit of the expression "easing oneself." I am not unaware that, in Murray's Oxford Dictionary, the expression "to ease nature" is put down as being obsolete, but equivalent to the expression "to ease oneself" which again is put down as equivalent to "to relieve the bowels." The word "ease" is of French origin and the word "nature" is of Latin origin; and, going by the etymological meaning of the word "nature," it would include the

bowels as well as the bladder. In an ancient book called Potter's Antiquities of Greece (1715), the expression occurs "Whoever easeth nature in Appollo's "Temple shall be indicted." Having regard to the context in which it appears, the expression would include "evacuating the bladder as well as the "bowels." It is, however, not necessary for us to go into the lexicographical meaning of the expression in olden days. It is sufficient to observe that the expression in modern times means what has been given in Fowler's Oxford Dictionary. We are, therefore, of opinion that the learned Sessions Judge, in the view he has taken, has placed an unduly narrow construction on the expression and, to that extent, he is wrong in law.

The question, however, arises whether, on the evidence on record, this is a fit and proper case for interference by this Court with an order of acquittal. We have, therefore, made ourselves acquainted with the entire record and we are satisfied that, in this case, there is no evidence on record of any annoyance or inconvenience caused to any body, having regard to the hour of the occurrence alleged. Therefore, on the facts, we are of opinion that this is not a fit and proper case for interference with an order of acquittal. The result, therefore, is that the present appeal stands dismissed on the facts, it being held that the learned Judge's constructions of the expression in the 7th clause of section 34 of Act V of 1861 is wrong.

The accused who are on bail will be discharged from their bail bonds forthwith.

GUHA J. I agree.

Appeal dismissed.

A. C. R. C.