

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

QUEEN-EMPRESS

1893.
October 25.

v.

FAKIRA.*

*Penal Code—Act XLV of 1860, s. 224—Escape from custody of village officers—
Regulation XI of 1816, s. 5.*

On a charge under Penal Code, s. 226, it appeared that the accused had been apprehended on a hue and cry being raised as he was running away after committing robbery, and that he was handed over to the village magistrate and was by him placed in the charge of taliyaries for detention till the next morning when he was to be taken to the police station, and that he escaped from the custody of the taliyaries :

Held, distinguishing Queen v. Bojjigan (I.L.R., 5 Mad., 22), that the accused was rightly convicted of the offence charged.

CASE referred for the orders of the High Court under Criminal Procedure Code, s. 438, by the District Magistrate of Bellary.

The case was stated as follows :—

“One Korcha Fakira *alias* Donga Hanuma took to his heels on 8th November last after robbing two Marwari merchants on the tank bund of Hanisi, a village in Kudlighi taluk. He was pursued, arrested and brought to the village chavadi by a washerman, who made him over to the village magistrate. Korcha Fakira was illegally tied to a post of the chavadi and two taliyaries and two madigas were placed to watch him with a view to make him over to the police. Before sunrise, while it was still dark, the accused Fakira, on the pretence that he wanted to go out for purposes of nature, was loosened and at once ran away. He was thereupon charged before the Stationary Sub-Magistrate, Kudlighi, under section 224, Indian Penal Code. The sub-magistrate convicted the accused and sentenced him to undergo imprisonment for four months.

“The custody of the taliyaries and madigas in this case does not constitute lawful custody, inasmuch as the offence of dacoity was not committed in their presence. *Queen v. Bojjigan*(1).

* Criminal Revision Case No. 487 of 1893.

(1) I.L.R., 5 Mad., 29.

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“Under these circumstances the conviction appears to be bad in law, and I respectfully recommend that it may be reversed.”

Counsel were not instructed.

BEST, J.—It appears that the accused had been apprehended on a hue and cry being raised as he was running away after committing a robbery. He was handed over to the village magistrate and was by the latter placed in charge of the taliyaries for detention till next morning, when he was to be taken to the police station. Early in the morning he asked to be allowed to go and ease himself, and availing himself of this opportunity, made his escape. He has been convicted under section 224 of the Penal Code and sentenced to four months' rigorous imprisonment. The district magistrate has referred the case under section 438 of the Code of Criminal Procedure with a view to the conviction being set aside as illegal on the authority of *Queen v. Bojjigan*(1).

In that case the accused had escaped from the custody of a taliyari and a toti by whom he had been arrested on suspicion. The custody was held to be not lawful, because the taliyari and toti, not being police officers, could not legally make the arrest for an offence not committed in their presence.

The present case is distinguishable, in that the prisoner on being arrested on the hue and cry was handed over to the village magistrate and was in custody of the taliyaries under his orders with a view to being handed over to the police. See *Queen-Emress v. Potadu*(2).

I do not think the conviction is illegal.

MUTTUSAMI AYYAR, J.—I am of the same opinion. By section V, Regulation XI of 1816, heads of villages are authorized and directed to apprehend all persons charged with committing crimes and to forward them to the police officer of the district. The arrest being legal and the detention at night being necessary to his being forwarded to the police officer, the principle laid down in *Queen v. Bojjigan*(1) is not applicable. There it was the village taliyari and toti who arrested the accused, and the arrest and therefore the subsequent custody were unlawful.

(1) I.L.R., 5 Mad., 22.

(2) I.L.R., 11 Mad., 480.