

notice, *i.e.* L, we find Boikanta Nath making an application for a copy of L. He and Koilash take this copy to the pleader, and Boikanta reads it out to the pleader. Boikanta before the Magistrate says that he got the copy at the instance of Gooroo Pershad, and that Gooroo Pershad paid the costs. This is absurd, and is inconsistent with his showing it to the pleader.

Koilash declined to say anything to the Magistrate as to the documents. We think that the action of Koilash and Boikanta Nath with regard to the written statement and the procuring of the copy of L makes it clear that they were cognizant of the substitution of L for A, and corroborates the story told by Gooroo Pershad as to the parts taken by these persons in the perpetration of the crime.

So far as Koilash is concerned, there is also the fact that he was Ishan's employer and must have known what was going on. This by itself would be worth little, but taken with regard to the other circumstance, it may well be considered.

We dismiss the appeals of all the accused.

J. v. w.

Appeals dismissed.

CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Ameer Ali.

GANGA CHARAN SINGH (PETITIONER) *v.* QUEEN-EMPRESS
(OPPOSITE PARTY)*

1893

Dec. 21.

Escape from lawful custody—Penal Code (Act XLV of 1860), s. 224.

An offence was committed in 1866. In 1893 a person of the same name as the offender was arrested, tried, and acquitted. Whilst under arrest the accused escaped from custody. *Held* that he was not liable to conviction under s. 224 of the Penal Code. An escape from custody when such detention is not for an offence is not punishable under that section.

THE facts of this case were as follows:—

An offence was committed in 1866 by one Ganga Charan Singh, and a warrant was issued for his arrest. The offender, however,

* Criminal Revision, No. 694 of 1893, against the order passed by S. J. Douglas, Sessions Judge of Tipperah, dated the 10th of October 1893, affirming the order passed by Babu Khetro Gopal Roy, Deputy Magistrate of Comilla, dated the 16th September 1893.

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was never arrested or brought to trial. On the 16th of August 1893 a person of the name of Ganga Charan Singh was arrested by the police who suspected that he was the Ganga Charan Singh who had committed the offence in 1866. He managed to make his escape from custody, but was re-arrested and brought up before the Deputy Magistrate of Comilla, when he was acquitted on the ground that he was not the person who was charged with the offence committed in 1866, but was a person bearing the same name as the person accused. Subsequently the accused was tried and convicted under s. 224, Penal Code, by the Deputy Magistrate of Comilla, and was sentenced to two months' rigorous imprisonment and to pay a fine of Rs. 25 for escaping from lawful custody. The accused appealed to the Sessions Judge of the district, but he upheld the conviction and sentence.

From that decision the accused petitioned the High Court for the exercise of its powers of revision.

Mr. P. L. Roy and Babu Atulya Charan Bose for the petitioner.

The *Deputy Legal Remembrancer* (Mr. Kilby) for the Crown.

Mr. Roy:—The conviction is under s. 224, Penal Code. It is alleged that the petitioner escaped from lawful custody, but it is admitted by the Sessions Judge that he was arrested by mistake; that being so, he clearly had the right to resist such arrest. It may be that under s. 54 of the Code of Criminal Procedure the police have the right to arrest persons under the circumstances therein mentioned, and probably if an innocent person is arrested by mistake, but in good faith, that section might so far as the officer who makes the arrest is concerned be a sufficient answer to a charge of wrongful confinement, but ordinarily if a police officer were to arrest an innocent person, it would be at his peril.

Section 224 says that a person is not to offer any resistance or illegal obstruction to his *lawful* apprehension. The emphasis is on the word *lawful*. It cannot be contended that the arrest of a person who has not committed any offence is a *lawful* arrest. In Roscoe's *Criminal Evidence*, 11th edition, p. 453, it is laid down "that it must be proved that the party was in custody upon a criminal charge, otherwise the escape is not a criminal offence." Again, at

page 454, "The arrest must be justifiable, in order to render the escape criminal." If the law were otherwise, the consequences would be most serious to the community. In the present case the petitioner was arrested merely because another man of the same name was wanted for a trivial offence committed more than 20 years ago. It has been held in England that when a warrant is issued for the arrest of a person and without the warrant a police officer arrests the person and is assaulted whilst making the arrest, that such person cannot be convicted of an assault—*Codd v. Cobe* (1). In the case of *Empress v. Shasti Churn Napat* (2), it was held by Mitter and Maclean, JJ., that an escape from custody by a person who was being taken before a Magistrate for the purpose of being bound over to be of good behaviour is not punishable under s. 224, Penal Code, on the ground that he was not lawfully detained in custody for any offence. In the present case the petitioner was not lawfully taken into custody for any offence that he had committed, and therefore his escape was justifiable.

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The *Deputy Legal Remembrancer* for the Crown:—All that is necessary to bring the present case under s. 224, Penal Code, is to show that the petitioner was charged with an offence, which, as a matter of fact, he was. It is true that when placed upon his trial he was acquitted, but that makes no difference to the offence. The fact that he was acquitted is immaterial. It is sufficient to show that he was arrested by a police officer under the provisions of s. 54, Criminal Procedure Code. It is clear that a person has not the right of private defence as against a police officer acting in the *bond fide* exercise of his duty, and if it is held that under s. 54 of the Criminal Procedure Code the arrest of the petitioner was lawful, it follows that the escape from the custody of such officer, after arrest, is an offence. [PRINSEP, J.—Would the arrest and custody of a person innocent of any offence be legal, having reference to the terms of s. 224, Penal Code?] Yes; s. 54, Criminal Procedure Code, lays down that a police officer may arrest on suspicion. It is not necessary that the person arrested should be guilty, but if the police officer was justified in arresting

(1) L. R., 1 Ex. D., 352.

(2) I. L. R., 8 Calc., 331.

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him, and the arrested person escape, he is guilty of an offence under s. 224.

The judgment of the Court (PRINSEP and AMBER ALI, JJ.) was as follows:—

In this case the petitioner escaped from custody, after arrest by a police constable under the belief that he was a man who had been charged with an offence and could not be arrested on warrants issued. He was subsequently brought to trial, and was acquitted on the ground that he was not the person who was charged with that offence, but was another person bearing the same name as the person accused. The question raised before us is whether, under such circumstances, it could be properly said that he was lawfully detained for any offence so as to make him liable to punishment for his escape. In our opinion he is not liable to punishment under section 224, Penal Code, because he was not lawfully detained for any offence. Whether the police were or were not justified in arresting this man is a matter which does not concern the point raised before us. We accordingly set aside the conviction and sentence, and direct that the fine, if paid, be refunded.

C. S.

APPELLATE CIVIL.

Before Mr. Justice O'Kinealy and Mr. Justice Ameer Ali.

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June 6.

ROHNI SINGH AND OTHERS (PLAINTIFFS) v. J. HODDING,
ADMINISTRATOR OF THE ESTATE OF THE LATE L. COSSERAT,
AND ANOTHER (DEFENDANTS).*

Execution of decree—Execution pending appeal of decree set aside on appeal—Restitution of rights by motion, where the Appellate decree does not mention restitution—Civil Procedure Code (Act XIV of 1882), s. 523.

Where a decree made by a Court of the first instance is executed pending an appeal, and on appeal such decree is set aside, the appellant is entitled by motion to obtain restitution, even though the decree of the Court of Appeal is silent as to such restitution.

* Appeal from Order No. 334 of 1892, against the orders of Babu Ananta Ram Ghose, Subordinate Judge of Saran, dated 25th June, 13th July, and 13th and 27th of August 1892.