

1904.

February 29.

NICHOLAS APPU v. KURUAYYA.

P. C., Colombo, 85,092.

*Cruelty to animal—Ordinance No. 7 of 1862, s. 1—Ordinance No. 16 of 1865, s. 53—Sentence—Gratification for screening accused from punishment for cruelty to animal—Penal Code, s. 211—Sentence of imprisonment—Legality of punishment.*

Upon a charge of cruelty to animal laid under section 1 of the Ordinance No. 7 of 1862 it is competent to a Magistrate to pass a sentence of imprisonment, though only a fine is imposable under it, because the Ordinance No. 16 of 1865, section 53 (2), sanctions imprisonment for such an offence.

THE accused was charged with offering one rupee to the complainant, a police constable, as gratification to screen him from legal punishment for cruelty to a bullock.

It appeared that the accused, when arrested for using a bull in a cart with a sore neck, stuck two 50-cent pieces into the belt of the constable, who, notwithstanding, brought him up before the Municipal Court and had him fined Rs. 2.50 for such cruelty under section 1 of Ordinance No. 7 of 1862. 1904.  
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The constable then prosecuted the accused before the Police Court of Colombo under section 211 of the Penal Code for offering him the gratification. The Magistrate (Mr. W. E. Thorpe) found the accused guilty and sentenced him to one month's rigorous imprisonment.

The accused appealed.

*Watson*, for appellant.—The charge of cruelty to appellant is punishable with fine only under section 1 of Ordinance No. 7 of 1862. The police officer could not arrest the accused without a warrant in such a case under clause 3 of schedule 2 of the Criminal Procedure Code. The alleged offer of gratification could not be considered an offence, because it is said to have been made to free him from an illegal arrest. Section 53 (2) of Ordinance No. 16 of 1865 provides imprisonment for cruelty to animal, but that provision must be considered to have been repealed impliedly by the later enactment contained in the Criminal Procedure Code.

29th February, 1904. MCNTCREIFF, J.—

It seems that the appellant was fined Rs. 2.50 in the Municipal Court of Colombo, in terms of Ordinance No. 7 of 1862, section 1, for cruelty to a bull. A person committing an offence under the Ordinance is liable to a fine not exceeding £5.

He was then charged in the Police Court of Colombo with giving Re. 1, as a gratification to screen him from legal punishment for the offence of cruelty to an animal, to a constable who took him into custody in Kollupitiya, an offence which may be punished under section 211 of the Penal Code (if the offence to escape punishment for which the gratification was given is punishable with imprisonment not extending to ten years) "with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both."

Now, there is no "term of imprisonment provided for the offence" by the Ordinance under which the appellant was convicted, No. 7 of 1862. Nevertheless, the Magistrate of the Police Court sentenced him to a month's imprisonment.

1904. The charge against the appellant in the Municipal Court was  
*February 29.* that of cruelly ill-treating and torturing a black bull by using  
MONCREIFF, it in his single bullock cart while the animal was suffering from  
J. a sore on its neck. Although the offence is not punishable with  
imprisonment under Ordinance No. 7 of 1862, "any person who,  
within the limits of any town, wantonly or cruelly abuses, beats,  
or tortures any animal," is liable to a fine not exceeding £5, or  
to imprisonment not exceeding three months, under the Police  
Ordinance No. 16 of 1865, section 53 (2). The later provision  
certainly includes the offence for which the appellant was  
convicted in the Municipal Court, and makes it punishable with  
imprisonment.

I think that, although the appellant was not charged under  
Ordinance No. 16 of 1865, the offence committed was, nevertheless,  
one "punishable with imprisonment," and that the Magistrate  
could in this case have sentenced the appellant to imprisonment  
for a fourth of three months. The sentence seems to be in excess  
of the Magistrate's powers. I think that the case would be met  
by setting aside the sentence and substituting a fine of Rs. 10, and  
in default of payment fourteen days' imprisonment.

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