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R. v. JOHN HUON DE NAVRANCOURT.

J U D G M E N T.

Delivered by the Chief Justice  
on 21st February, 1958.

The facts investigated in this case were nearly three years old and allowance must be made for the imperfection of recollections of the witnesses. There were considerable discrepancies between the evidence given in the committal proceedings and the evidence given by the same witnesses during the hearing before this Court; accordingly a fairly broad view must be taken of the evidence which cannot be subjected to the close refinement of analysis.

The accused is before the Court on a charge of assault. The alleged assault consists of fastening the hands of a native KUTOI by a rope and leading him from horseback from one village to another, a distance of something like three miles.

The Crown case is in substance that this amounted to a usurpation of authority which the accused did not possess and that there were some circumstances suggesting unnecessary cruelty to the native, apart from the unlawfulness of the particular acts.

The acts of the accused were openly performed by him in carrying out a purposeful plan, and there is nothing to suggest that deliberate cruelty was any part of that plan or that he was in any way enraged.

The native KUTOI described the commencement of the journey thus:-

"Accused tied one end of the rope and mounted his horse, he struck the horse and it walked away and I followed them."

At some stage of the journey the native fell over, possibly due to the condition of the road. The horse was, at that particular time, travelling faster than a walk, and its overall speed was more than a native's normal walking speed, but the evidence does not support any inference that either the horse or the native was hard pressed. When the native fell over, the horse was immediately stopped, and there cannot be any fair inference that the incident was anything but an unforeseen accident without any ill treatment being involved.

I am not greatly impressed by the defence of consent. I think that the accused was imposing his own idea on the native and that it never occurred to either that he would or could either consent or object. On the other hand, the native gave a clear indication of his general support and approval of the measures employed by the accused in overcoming local dispute and making it safe for natives to travel about in the neighbourhood. He knew what the accused was doing and why, and did not actually protest beyond indicating disappointment that accused believed that he had done wrong.

I think the real case is to be found in the relationship existing between the accused and the native. Accused was head of the local Mission School, and in that capacity represented, in an ill-defined way, the new concept of civilisation being established in this remote region of the Kunimaipa headwaters. To get his schools going he had to establish some common understanding amongst the inhabitants of the little scattered hamlets and villages served by his school. Many of these local communities had histories of mutual hostility.

Accused had made much progress when KUTOI was suspected of making improper advances to the wife of a native in another, and to some extent hostile, village. Both villages were under the care of the accused, and both KUTOI and the complaining husband were student teachers being trained by the accused.

I do not think that there is much to suggest the likelihood of open fighting between villages, but if the situation were allowed to go unchecked, there was no way of predicting what incidents might occur as opportunity presented itself to various natives who might feel themselves involved. Many of these incidents might be directly harmful to the school, apart from the question of whether the alleged conduct of the student teacher could, with propriety, be ignored by the accused.

In an English Public School of a generation ago, the student, if found guilty, might have been caned and expelled, and any suggestion of assault would have been out of the question. In the upper Kunimaipa area three years ago, with no firm school discipline yet established and the villagers as scholars, something much more dramatic and theatrical (to adopt Defence Counsel's expression) was called for. Accused led the native in obvious bondage to the other village and after investigation, made everyone involved work on the section of the road near the second village. Accused first explained what he was doing and why. The evidence does not warrant any finding that he acted otherwise than with kindness and from a real understanding of the people and problems involved and of the value of the little parable he was enacting. I think that what he did was by no means an unreasonable action on the part of the person charged with the duty and responsibility of bringing education and enlightenment to these people.

I think that in this case there is no real question of the accused attempting to usurp authority which he did not possess. He made his purpose clear at the time, and in view of the fact that the native directly concerned gave a very fair indication of his approval of the work of the accused in the district and his appreciation of the results achieved, I would be sorry if the evidence compelled me to find that the accused had committed a technical assault in the course of carrying out his plan. I think that on the true analysis of the facts, this is not the case. 243