

EAST AFR. PROT

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REC'D 4 MAY 12

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236

PETITION TO H. M. THE KING  
FROM SONS OF CHIRAGH DIN

ring

Date.

1912

April

previous Paper

formerly a Sub-Permanent Way Inspector on the Uganda

Trs with copies of judgments. It would not  
prima facie that there are any strong grounds for a  
reduction of the sentence passed.

*Buller*

*Kealy*

*propounding to all*

*that the ... of being a ...*

*the former, and that I'm ...  
interpret with  
not desire to [take note in] ...  
of the former's ...*

*to ... dispatch is not ...*

*Satisfactory It would not appeal ...*

*that there are any thing ...*

*... of the ...*

the O.A.C. in this case and with the  
letter a full report and under definite  
advice as to the manner of dealing with  
the matter

W.B.  
S.S.

W. Butler  
in Read.

W.B.

May 8

The final report seems to constitute a  
sufficient report in this case and para 3  
of the report indicates the O.A.C. views

J.R. 9/5

at once

H. J. R.

9/5

W. Butler

H. J. R. has approved & held as proposed

W.B. S.S.

W.B.

May 15

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95630  
GOVERNMENT HOUSE, NAIROBI, MAY 12  
BRITISH EAST AFRICA.

EAST AFRICA PROTECTORATE.

April 2nd 1912.

No. 236

Sir,

I have the honour to transmit herewith a petition addressed to His Majesty, the King Emperor of India by the sons of one Chirag Din, formerly a Sub-Permanent Ways Inspector on the Uganda Railway, at present undergoing a sentence of three years imprisonment.

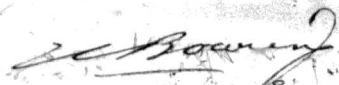
Petition  
Judgments  
2. Copies of the judgments given in the Court which originally tried Chirag Din, and in the Court of Appeal are enclosed for your information.

3. It is also enclosed for your information a copy of the judgment of the Court of Appeal in the case of Chirag Din and his sons against the Government of India.

I have the honour to be,

Sir,

Your humble, obedient servant,

  
ACTING GOVERNOR.

THE RIGHT HONOURABLE

LEWIS HARCOURT, P.O., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S.W.

C O  
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REC: OSURE  
664330 MAR-12 1912

APPEAL FOR MERCY

To

His Imperial Majesty The King Emperor of India  
through H.E. The Viceroy of India.

Our Most Merciful Sovereign,

I most humbly and respectfully beg to approach  
Your Majesty by means of this appeal  
and submit as follows:

We are three sons five years, three years and  
one year of age respectively, of a father who was  
a resident in Mombasa, British East Africa. He was  
Chief Permanent Wage Inspector on the Uganda Rail-  
road there for three years without any  
charge against him. He was  
connected with his father's business in  
East Africa. He was  
employed to work hard and some of the native  
labourers became his enemy and got up a criminal  
case against him under Section 420, Indian Penal  
Code. The case was tried in the High Court at  
Nakuru, British East Africa.

Although the assessors reported our father not  
guilty and reliable evidence was produced in  
defence, our father was sentenced to five years  
rigorous imprisonment on 16th February 1911. We  
preferred an appeal to Your Majesty's Court of

Appeal





men were in truth and in fact. The men who were engaged as Karyoki, Mwanza and Juwana and brings evidence of that, by certain Jamadars. The fact of Karanja being employed in November is not proved by the prosecution and it is confuted by the book of Dhanpat, which has an entry that a boy of that name was discharged on September 4th. I may say that I regard that entry with the utmost suspicion but having regard to the absence of evidence that Karanja was not Karyoki I have to find that prosecution has failed to establish this case. I acquit them on the first charge.

The other two cases are on a very different footing, the corroboration was independent and as strong as could be expected. I did not believe the evidence of Jamadar with ~~whom~~ who testified in the previous services of these boys. I find Chirag Din guilty of abetting that one coachangi was entitled to receive Rs. 5 from the Uganda Railway and that ~~being~~ the paying officer to deliver the amount to coachangi and I find Kassim Jamadar guilty of the abetment of this offence.

I also find Chirag Din guilty of cheating in a similar manner in the case of Juma wa Mameta (or Metcha) and Kassim Jamadar guilty of abetment of this offence.

The offence is a most serious one and a great danger to the community, it is perfectly impossible to estimate how much money may have been obtained in this manner. I sentence Chirag Din to 10 years rigorous imprisonment on each charge the same

365  
to run concurrently Section 420 Indian Penal Code and I sentence Kassim Jamadar to three Years Rigorous Imprisonment on each charge the sentences to run concurrently Section 109/420 Indian Penal Code.

Sd/- A.T.B. CARTER

Judge

16. 2. 1911

Supplied free of charge

Sd/- J.N. Desai

18. 2. 11

Certified true copy

Sd/- A.T.B. Carter

18. 2. 11



IN H.M.COURT OF APPEAL FOR EASTERN AFRICA

Criminal Appeal No.5 of 1911.

(From Criminal Case No.9 of 1911 of)  
(H.M.High Court of E.Africa at Nakuru.)

Chirag Din ..... Appellant (Original accused)  
(No.1)

Versus

Crown ..... Respondent.

Before Judges R.W.Hamilton, G.F.Morris  
Wm.Morris-Carter.

JUDGMENT

This is an appeal from a conviction and a sentence of 5 years imprisonment passed by Bonham-Carter, Judge of East Africa, on an Indian Inspector on the Uganda Railway of the Southern Division.

It has been argued on behalf of the victim has been held on the many of accomplices. It is the native labourers, who though perhaps technically accomplices in the sense that they carried out his instructions in answering false names when called up to receive their pay, were in fact merely the tools with which he accomplished his designs.

Further than this it appears that owing to the system of payment in vogue on that section of the line that the fact was that by obeying instructions as to the false names were enabling the

Appellant

RECORD OFFICE LONDON

Appellant to defraud both the Railway and themselves.

Their evidence is therefore clear from the taint attaching to accomplice evidence, added to which it is corroborated in certain important points by independent evidence.

The learned Judge had ample grounds for coming to the conclusion at which he arrived and we dismiss the appeal against the conviction.

As regards the sentence of 2 1/2 years rigorous imprisonment we are of opinion that it is somewhat too severe. It is clear from the judgment of the learned Judge that he was influenced in imposing this sentence by the thought of what similar undetected frauds the accused might have committed. He says "It is perfectly impossible to estimate how much money may have been obtained in this manner". There is no evidence on this point apart from the facts of the conviction at the trial.

We reduce the term to Three Years Rigorous Imprisonment and to that extent the appeal is allowed.

Sd/- R.W. Hamilton  
SENIOR JUDGE.

April 26th 1911.

I certify that this is  
a true copy of the original.

W.S. Wright  
Registrar.  
27.4.11

18680

368

C. D.
R. 73
D. 14.

May 1912

DRAFT.

Mr Secretary Warrent,

With kindest regards to  
the King, I beg to submit

to Your Majesty the

accompanying copy of a

copy of the Acting Genl

of the following

addressed to

by the son

of one ~~Thomas~~ <sup>John</sup> ~~Dein~~,  
formerly a ~~Sub~~ <sup>Sub</sup> ~~Warrent~~

who has been in the

service of the

London Railway, at

presently employed as

Enclosure to the  
10 5

11  
12  
13

2 April  
No 186  
No 187

of this year's improvement  
in a charge of cheating.

Copies of the judgments  
given in the Court which  
originally tried through  
Dun, and in the Court  
of appeal are enclosed

in the former's despatch,  
I have submitted herewith  
in separate papers,

if your Majesty approves

to all that your Majesty's

indulgence notes the

...  
improvement of many in

the few of the last;

and that your Majesty

... desire to improve  
the law of the land

Appd - G.R.S

369

Mr. Secretary Harcourt, with his  
The King, begs to submit to Your Majesty  
ing copy of a despatch from the Acting  
East Africa Protectorate forwarding  
addressed to Your Majesty by the gentleman  
formerly a Sub-Commissioner, Fwy Inspector  
Railway, and pressing for going a series  
years as a person on charge of  
the judge as given in the Court of  
Chiragh, and in the Court of  
in the Governor's despatch, and are

Mr. Harcourt proposes, if Your Majesty  
to reply that Your Majesty's prerogative  
prerogative of mercy in the Government  
Protectorate, and that Your Majesty  
interfere with

110.5111

g Street,

14<sup>th</sup> May, 1912

L. Harcourt

AFRICA PROTECTORATE

Government House,

Nairobi,

British East Africa

April 2nd, 1912.

Sir,

I have the honour to transmit herewith a petition addressed to His Majesty the King Emperor of India by the sons of one Chiragh Din, formerly a Sub-Permanent Ways Inspector on the Uganda Railway, at present undergoing a sentence of three years imprisonment.

2. Copies of the judgments given in the Court which originally tried Chiragh Din, and in the Court of Appeal are enclosed for your information.

3. It would not appear prima facie that there are any strong grounds for a further reduction of the sentence passed.

I have the honour, etc.

(Sd.) J. C. BOWRING,

Acting Governor.

Right Honourable

LEWIS HARCOURT, P.C., M.P.

Secretary of State for the Colonies,

Downing Street, London, S.W.

APPEAL FOR MERCY.

To

His Imperial Majesty The King Emperor of India  
Through H.E. The Viceroy of India.

Our Most Merciful Sovereign,

Most humbly and respectfully we beg to approach  
Your Most Gracious Majesty by means of this appeal and  
submit as follows:

We are three infants five years, three years and  
one year of age respectively, of a father who is now in  
prison in Mombasa, British Africa. He was a Sub-Permanent  
Way Inspector on the Uganda Railway. He worked there for  
three years without any complaint being made against him.  
His superiors were always pleased with his work, being him-  
self a hard worker and pressing his subordinates, natives of  
Africa, to work hard when by some of the native labourers  
some complaint was made against him  
under section 40, Indian Penal Code. The case was tried  
in the High Court at Nairobi, British East Africa.

Although the assessors reported our father not  
guilty and reliable evidence was produced in defence, our  
father was sentenced to five years Rigorous Imprisonment on  
16th February 1911. We preferred an appeal to Your  
Majesty's Court of Appeal for Eastern Africa.

Your Majesty's Court, though upheld the convic-  
tion, found the sentence too severe and reduced it to three  
years.

years. Even the reduced sentence is still too severe, having regard to the trivial nature of the offence, and serious discrepancies in the evidence for prosecution and the previous good conduct of our father.

We were with our father on the Uganda Railway and when he was sent to prison we were left there without any means, either to support ourselves there or to return to India, because all our father's savings were spent in defending the criminal charge. Thus our mother was forced to borrow money from some of the Indians there and brought us here in her father's house who is a poor parent and has no means to support us all.

Under the above circumstances we most respectfully beg Your Imperial Majesty to be merciful to our father and order his release as a boon to our poor family of Your Imperial Majesty's Colonies East.

The attested copies of the records are:

Your Most Excellent Majesty's  
Infant Subjects of India

ZAHUR UD-DIN - 5 years old

BARKAT ALI - 3 years old

NAZIR AHMED - 1 year old

C/o Mauj-ud-Din, Peasant Grantee,

Chak No.130, R.B.District, Lyallpur,

Post Office, Aruri, Punjab, India.



IN THE HIGH COURT OF EAST AFRICA  
SITTING HELD AT NAKURU.

Criminal Case No. 9 of 1911.

Crown  
Chirag Din and Kassim Jamadar

Prosecutor  
Defendants

J U D G M E N T

The accused are respectively a Sub-Permanent Way Inspector and a Jamadar on the Uganda Railway. The story told by the Prosecution is that three boys named Karanja, Koachangi and Juma wa Metchi were engaged by the Sub-Permanent Way Inspector Chirag Din in the first days of December 1910 and were respectively told to take the names of Karyoki, Mwanza and Juwana and answer to these names on the pay-train. The pay-train came to Londiani on December 18th with the pay from the 1st November to 30th November on it. The three boys who answered to the names they were told received pays Rs.5, Rs.5 and Rs.7.50. They were entitled to none of this November pay. As soon as the pay-train left the Jamadar took this money from them saying that the money was Government money. The prosecution brings evidence that these boys were all employed outside the Railway in November and that the two boys truly named Mwanza and Juwana left the Railway on November 19th. There is no evidence to corroborate Karanja's statement that he is not Karyoki. The defence alleges that these three men were in truth and in fact

The men who were engaged as Karyoki, Wanza and Juwara and bring evidence of their identity by certain Jawadars. The fact of Karanja being employed in November is not proved by the prosecution and is refuted by the book of Dhanpat, which has an entry that a boy of that name was discharged on September 4th. I may say that I regard that entry with the utmost suspicion but having regard to the absence of evidence that Karanja was not Karyoki I have to find that prosecution has failed to establish this case and acquit them on the first charge.

The other two cases are on a charge of abetting the commission of an offence and as a result of the corroboration was independent and as a result of the evidence of Jawadar witnesses who told me of one previous case of this kind. I find that the evidence of the witnesses attending court was not sufficient to establish the offence and I find that the evidence of the Jawadars who were present at the scene of the offence and I find that the evidence of the Jawadars who were present at the scene of the offence.

I also find Chirag Din guilty of abetting in a similar manner in the case of Juma wa Mameta (or Metcha) and Kasim Jawadar guilty of abetment of this offence.

The offence is a most serious one and a great danger to the community, it is perfectly impossible to estimate how much money may have been obtained in this manner. I sentence Chirag Din to five years rigorous imprisonment on each charge the sentence

313  
to run concurrently Section 420 Indian Penal Code and  
I sentence Kassim Jamadar to Three Years Rigorous  
Imprisonment on each charge the sentences to run con-  
currently Section 109/420 Indian Penal Code.

(Sd.) A.T.B. CARTER,

Judge,

16. 2. 1911

IN H.M. COURT OF APPEAL FOR EASTERN AFRICA.

Criminal Appeal No. 5 of 1911.

(From Criminal Case No. 9 of 1911 of - )  
(H.M. High Court of E. Africa at Nakuru.)

Chirag Din.....Appellant (Original accused)  
(No. 1)

Versus

Crown.....Respondent.

Before Judges R. W. Hamilton, G. F. Ennis and  
Mr. Morris-Carter.

JUDGMENT.

This is an appeal from a conviction for cheating and a sentence of 5 years Rigorous Imprisonment passed by Morris-Carter, Judge of the High Court of East Africa, on an Indian Sub-Permanent Works Inspector on the Uganda Railway.

It has been argued on his behalf that the conviction has been held on the uncorroborated testimony of accomplices. It is, however, clear that the native labourers, who gave evidence against him, though perhaps technically accomplices in the sense that they carried out his instructions in answering false names when called up to receive their pay, were in fact merely the tools with which he accomplished his designs.

Further

Further than this it appears that owing to the system of payment in vogue on that section of the line they were not aware that by obeying instructions as to the false names they were enabling the Appellant to defraud both the Railway and themselves.

Their evidence is therefore clear from the taint attaching to accomplice evidence, added to which it is corroborated in certain important points by independent evidence.

The learned Judge had ample grounds for coming to the conclusion at which he arrived, and we dismiss the appeal against the conviction.

As regards the sentence of five years Rigorous Imprisonment we are of opinion that it is somewhat too severe. It is clear from the judgment of the learned Judge that he was influenced in imposing this sentence by the thought of what might have been committed had the accused not been convicted, and that "It is perfectly impossible to estimate the money that would have been obtained in this manner," there being no evidence on this point apart from the actual convictions at the trial.

We reduce the term to Three Years Rigorous Imprisonment and to that extent the appeal is allowed.

(Sd.) R.W. HAMILTON,

April 26th 1911.

Senior Member.

C. D.  
R  
D

for last

23 May 1902

Sir

I have the honor to

DRAFT.

at no 283  
174

ack. the receipt of your

desp. no 286 of the 2<sup>nd</sup> of

Aprils forwarding a petition

addressed to Her Majesty

by the name of - Chicago

Div, at present embargo

a certificate of true year

impugnment.

MINUTE.

- Mr. 1576. 6. 5.
- Mr. Butler 16 f 3.
- Mr. Fiddes.
- Sir U. Just.
- S. J. Anderson.
- Lord Emmott.
- Mr. Harcourt.

2 ~~I have the honor~~

~~to acknowledge the receipt~~

~~of your letter of the 2nd~~

~~of April containing a petition~~

~~addressed to Her Majesty~~

king, but ~~the~~

I have to request that

the petition may be referred

that the proposition of being

has been asked in the

Prima (a ~~letter~~ document

of the East, and that

the does not desire

to interfere with the

interest of the persons

the