



LAW amusements



Horse is a Bird!

Fred Ojibway, an Indian, was riding his pony through Queen's Park on January 2, 1958. Being impoverished, and having been forced to pledge his saddle, he substituted a downy pillow in lieu of the said saddle. On this particular day the Ojibway's misfortune was further heightened by the circumstance of his pony breaking its right foreleg. In accord with Indian custom, the accused then shot the pony to relieve it of its awkwardness.

The accused was then charged with having breached the Small Birds Act, s.2 of which states: - "Anyone maiming, injuring or killing small birds is guilty of an offence and subject to a fine not in excess of two hundred dollars". The learned Magistrate acquitted the accused holding, in fact, that he had killed horse and not a small bird. An appeal was preferred to Mr. Justice Blue's Court.

Blue J.: With respect, I cannot agree, with the Learned Magistrate. In light of the definition section my course is quite clear. Section 1 defined "bird" as "two legged animal covered with feathers". There can be no doubt that this case is covered by this section. Counsel for the accused made several ingenious arguments to which, in fairness, I must address myself. He submitted that the evidence of the expert clearly concluded that the animal in question was a pony and not a bird, but this is not an issue. We are not interested in whether the animal in question is a bird or not in fact, but whether it is one in law. Statutory interpretation has forced a horse to eat birdseed for the rest of its life!

Counsel for the accused also argued that since there was evidence to show accused had ridden the animal, this pointed to the fact that it could not be a bird but as actually a pony. Obviously this avoids the issue. The issue is not whether the animal was ridden or not, but whether it was shot or not, for to ride a pony or a bird is of no offence at all. I believe counsel now sees his mistake!

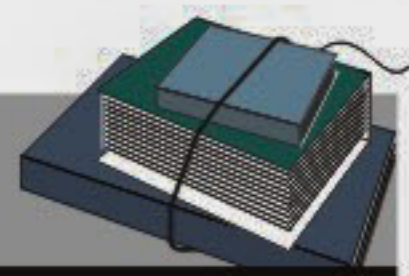
Counsel then contends that the iron shoes found on the animal decisively disqualify it from being a bird. I must inform counsel, however, that how an animal dresses is of no concern to this court. Counsel relied on the decision in *Re Chicadee*, where he contends that in similar circumstances the accused was acquitted. However, this is a horse of a different colour. A close reading of that case indicates that the animal in question there was not a small bird, but, in fact, a midge of a much larger species. Therefore, that case is inapplicable to our facts.

Counsel finally submits that the word "small" in the title Small Birds Act refers not to "Birds" but to "Act", making it The Small Act relating to Birds. With respect counsel did not do his homework very well, for the Large Birds Act, R.S.O. 1960, c 725, is just as small. If pressed, I need only refer to the Small Loans Act R.S.O. 1960, 727 which is twice as large as the Large Birds Act.

Therefore, a horse with feathers on its back must be deemed for the purposes of this Act to be a bird, and *a fortiori*, a pony with feathers on its back is a small bird. Counsel posed the following rhetorical question: If the pillow had been removed prior to the shooting, would the animal still be a bird? To this let me answer rhetorically: Is a bird any less of a bird without its feathers."

From Criminal Law Quarterly of Canada.

LAW lexicon



Bench - The seat occupied by the judge. More broadly, the court itself.

Bench trial - (Also known as court trial.) Trial without a jury in which a judge decides the facts.

Bench warrant - An order issued by a judge for the arrest of a person.

Beneficiary - Someone named to receive property or benefits in a will. In a trust, a person who is to receive benefits from the trust.

Bequest - To give a gift to someone through a will.

Bequests - Gifts made in a will.

Best evidence - Primary evidence; the best evidence available. Evidence short of this is "secondary." That is, an original letter is "best evidence," and a photocopy is "secondary evidence."

Beyond a reasonable doubt - The standard in a criminal case requiring that the jury be satisfied to a moral certainty that every element of a crime has been proven by the prosecution. This standard of proof does not require that the state establish absolute certainty by eliminating all doubt, but it does require that the evidence be so conclusive that all reasonable doubts are removed from the mind of the ordinary person.

Bill of particulars - A statement of the details of the charge made against the defendant.

Source: Jurist International

LAW news



European Court of Human Rights receives four freedoms award

The Roosevelt Stichting of Middelburg, the Netherlands, has granted the European Court of Human rights the Franklin D. Roosevelt International Four Freedoms Award for 2010.

Noting its remarkable record in establishing solid foundations for the rule of law in the field of human rights, the Roosevelt Institute has expressed its appreciation for the Court's contribution to the protection of individual human rights in post-war Europe, offering in particular an accessible tool to strengthen an effective democracy.

The President of the Court, Jean-Paul Costa, will attend the award ceremony to receive the Four Freedoms Medal on the Court's behalf in May 2010 in Middelburg, the Netherlands.

Commenting on January 18, 2010 in Strasbourg, Erik Fribergh, the Court's Registrar, said: "This recognition reaffirms at international level that the Court has a major role to play in the protection mechanism of human rights, notably as an independent body empowered to call States to account for any breach of the European Convention on Human Rights and its Protocols."

The Freedom Medal was created to honour individuals and institutions whose work has given special meaning to the freedoms which President Roosevelt described in his memorable speech of 1941 in which he outlined four essential human freedoms: the freedom of speech and expression, the freedom of religion, the freedom from want and the freedom from fear. Among the recipients of the award in the past years have been Nelson Mandela, Vaclav Havel, the Dalai Lama and Kofi Annan.

Source: European Court of Human Rights Press release

LAW letter

INLAND SHIPPING LAWS

BIWTA must carry out primary duties

Negligence of inland water transport service operators every year causes death of hundreds of passengers. And concerned authority let it happen. When such a shipping casualty occurs, governments take it as a routine work; they form an inquiry to make report thereon, the report held the ship owner and operator responsible, it makes a recommendation also which is never carried out. Because it spares the other side to continue negligence, that is to say BIWTA (Bangladesh Inland Water Transport Authority). For example, when the last massive casualty at Bhola happened, government sued the ship owner. Responsible ship owners and operators must be tried. Although the opposition took its old position by claiming the proceedings politically motivated, but it's a good job undoubtedly. Ship owners, who carry passengers four times of capacity and drown them, must be tried. But holding BIWTA accountable also seems to be inevitable. Because it was the duty of BIWTA to ensure that shipping laws are being followed accordingly, which it failed to perform; this failure ultimately results in the loss of hundreds of citizen life every year.

The last affected Ship 'Coco 4' had its fitness certificate declaring it to be capable of carrying 370 passengers. But on 27th November at night when 'Coco-4' sank near Uzirpur Ghat of Lalmoan upazilla under Bhola district, about 1,400 passengers were on board. Only 86 passengers were formally declared to be rescued. Rescue work was undertaken by Local Administration, and relatives of dead passengers were given Tk.3000/ as consoling sum.

BIWTA launched rescue after 24 hours of accident. Two relief ships could not complete rescue mission because of their low capacity, mission was finished unsuccessfully.

At all, it's a total failure of BIWTA, this authority firstly failed to prevent breaking of law, secondly it has failed to protect the victims. The statute relating to inland ship-

protective measures against fire and other explosives and insurance with a company. The government may send inspecting officers to inspect the inland ships their machinery, equipments, certificate of registry, certificate of survey, route permit, competency of master and all other necessary documents.

In addition a Mobile

After every accident, name of a court come to news-marine court. Because it helps the negligent authority to say- O! We are taking steps! You see, we have already sued the responsible. Although because of poor investigation and evidence authority can hardly prove the accused as guilty before the marine court. But the other court- mobile Court, which is for preventive



ping is Inland Shipping Ordinance, 1976. The Ordinance deals with the provision of survey, registration and control relating to vessels. Section 47 of the Ordinance provides for the constitution of Marine Court consisting of a Magistrate of the First Class to try the offences under this Ordinance. Chapter V says about protective measures for vessels and passengers, that is an inland ship before voyage must ensure that it has route permit, telecommunication equipment,

Court established under the Mobile Court Ordinance, 2009 is to be operated for the purposes of this Inland Shipping Ordinance. The Mobile Court shall be conducted by an Executive Magistrate or District Magistrate to ensure that ship owners and operators are complying with the provisions of law. Provisions of imprisonment and fine as punishment have been made for violators of this law. At the same time Magistrate can sue the concerned ship owner for compensation.

legal actions are hardly seen on work. The Court seems to be active at the time of Eid occasions and at Dhaka terminal only. But news report say during last Eid the Court did not work regularly even at the Dhaka terminal. So ship operators got the opportunity to carry passengers beyond their capacity. And after such a massive casualty inland shipping are undergoing without any activities of Mobile Court yet.

Mohammad Arju Journalist and regular passenger of Dhaka-Bhola route.

HUMAN RIGHTS monitor

A grim picture of conditions of world's indigenous peoples

The world's 370 million indigenous peoples suffer from disproportionately, often exponentially, higher rates of poverty, health problems, crime and human rights abuses, the first ever United Nations study on the issue reported today, stressing that self-determination and land rights are vital for their survival.

Startling figures contained in The State of the World's Indigenous Peoples include:

- In the United States, a Native American is 600 times more likely to contract tuberculosis and 62 per cent more likely to commit suicide than the general population.

- In Australia, an indigenous child can expect to die 20 years earlier than his non-native compatriot. The life expectancy gap is also 20 years in Nepal, while in Guatemala it is 13 years and in New Zealand it is 11.

- In parts of Ecuador, indigenous people have 30 times greater risk of throat cancer than the national average.

- Worldwide, more than 50 per cent of indigenous adults suffer from Type 2 diabetes a number predicted to rise.

"Every day, indigenous communities all over the world face issues of violence and brutality, continuing assimilation policies, dispossession of land, marginalisation, forced removal or relocation, denial of land rights, impacts of large-scale development, abuses by military forces and a host of other abuses," the report's authors said in a news release.

Although indigenous peoples make up only 5 per cent of the global population, they constitute around one third of the world's 900 million extremely poor rural people. In both developed and developing countries, poor nutrition, limited access to care, lack of resources crucial to maintaining health and well-being and contamination of natural resources are all contributing factors to the terrible state of indigenous health worldwide.



At the report's launch at UN Headquarters in New York, UN Permanent Forum on Indigenous Issues Chairperson Vicki Tauli-Corpuz said its value would be far-reaching because it comprises for the first time very clearly aggregated data.

"We believe this is going to be crucial for Governments and for the UN to address more seriously and comprehensively the issues of indigenous people," she told a news briefing. "It's very daring and bold in a sense because it does identify countries and the situation of indigenous peoples in various countries both in the developed world as well as in the developing world."

Indigenous peoples experience disproportionately high levels of maternal and infant mortality, malnutrition, cardiovascular illnesses, HIV/AIDS and other infectious diseases such as malaria and tuberculosis (TB), while suicide rates, particularly among youth, are considerably higher in many countries, for example up to 11 times the national average for the Inuit in Canada. The Inuit TB rate is over 150 times higher.

assert their rights, they have suffered physical abuse, imprisonment, torture and even death," it says, stressing that their rights to their own lands and territories must be respected while they need to develop their own definitions and indicators of poverty and well-being.

"Indigenous peoples suffer from the consequences of historic injustice, including colonization, dispossession of their lands, territories and resources, oppression and discrimination, as well as lack of control over their own ways of life. Their right to development has been largely denied by colonial and modern States in the pursuit of economic growth," it adds, warning that the importance of land and territories to indigenous cultural identity cannot be stressed enough.

Of the world's 6,000 to 7,000 languages, a great majority are spoken by indigenous peoples, and many, if not most, are in danger of becoming extinct, with some 90 per cent possibly doomed within the next 100 years. About 97 per cent of the world's population currently speaks 4 per cent of its languages, while only 3 per cent speaks 96 per cent of them.

Indigenous peoples, who are the stewards of some of the most biologically diverse areas, accumulating an immeasurable amount of traditional knowledge about their ecosystems, also face the dual and somewhat contradictory threats of discrimination and commodification.

They face racism and discrimination that sees them as inferior, yet they are increasingly recognized for their unique relationship with their environment, their traditional knowledge and their spirituality, leading to external efforts to profit from their culture which are frequently out of their control, providing them no benefits, and often a great deal of harm.



LAW week



16 jawans confess to BDR mutiny

Sixteen BDR jawans of 7 Rifle Battalion admitted to their involvement in mutiny and begged for mercy in writing before BDR Special Court-1 in Satkhira just a day after they pleaded not guilty. This is the first instance that any suspected BDR mutineers admitted to their guilt since the trial began in four BDR courts on November 24 last year. The three-member court headed by BDR Director General M Mainul Islam received sixteen petitions for mercy, reports our Satkhira correspondent. The court said it would consider the petitions as per the BDR Act. - *The Daily Star, January 21, 2010.*

JS passes nat'l ID registration bill

Parliament passed a bill keeping a provision for registration of national identity and issuance of identity cards to all citizens of Bangladesh. As per the bill, the government will issue national identity cards to all citizens and the cards will remain valid for 15 years since its issuance. However, no gazette notification will be issued making it mandatory for the citizens to show or submit the cards to get access to any service or facility before the completion of issuance of cards to all citizens, said a provision of the bill. Law Minister Shafique Ahmed proposed the bill and it was passed by voice votes. - *The Daily Star, January 21, 2010.*

Govt to enact law to regulate civil service

The government will enact a civil service act to regulate appointment, promotion, transfer and terms and conditions in the public service, LGRD Minister Syed Ashrafur Islam told parliament. Though the constitution prescribes that the House legislate to regulate the appointment and conditions of service for those working for the republic, there has not yet been any act to that end. In the absence of a law, successive governments exercised the rules made by the president regarding appointments and terms of jobs of the public servants. - *The Daily Star, January 20, 2010.*

HC bench feels 'embarrassed' to hear Sircar's writ petition

A High Court bench felt "embarrassed" to hear the writ petition filed by former speaker Jamiruddin Sircar challenging the legality of a parliamentary probe body's decision to recover "misappropriated" money from him through the Anti-Corruption Commission (ACC). The HC bench comprised of Justice Nozrul Islam Chowdhury and Justice Mamnoon Rahman sent a petition to Chief Justice Md Tafazzul Islam for an appropriate order in this regard. Sircar repeatedly urged the bench to hear his petition partly and adjourn the hearing for two weeks. - *The Daily Star, January 20, 2010.*

Govt moves to open VoIP

The government has decided in principle to issue more VoIP licences for handling international calls to trigger a price war and bring illegal VoIP operators under a legal framework. As per an amended policy, illegal VoIP (voice over internet protocol) operators will get a chance to make their business legal by routing calls through legal exchanges. Earlier, international calls through VoIP were completely prohibited under the International Long Distance Telecommunications Service Policy. The government did not legalise the existing illegal VoIP business. However, it expects that when more exchanges are launched, VoIP calls will be routed through legal channels due to competitive pricing. - *The Daily Star, January 19, 2010.*

Clemency petitions rejected

President Zillur Rahman has rejected the clemency petitions filed by three of the five convicts of Bangabandhu Sheikh Mujibur Rahman assassination case. "The president has rejected their mercy petitions," a senior Bangabandhu official told BSS. He said the presidential decision came immediately after the petitions of condemned Lt Cols AKM Mohiuddin (lancer) and Mohiuddin Ahmed (artillery) and Major Bazul Huda reached before him through the official channel. Two other convicts Lt Cols Syed Faruq Rahman and Sultan Shahriar Khan are yet to file the clemency petitions as their lawyers said they might consider seeking the mercy only after exhausting the last legal process of review of the verdict by the Appellate Division. - *The Daily Star, January 19, 2010.*

2 petitions filed against hearing

Two petitions were filed with the Supreme Court (SC) for adjourning scheduled hearing on the earlier pending petitions against the High Court (HC) verdict that declared illegal the Fifth Amendment to the constitution of Bangladesh. The Fifth Amendment had legitimised all governments that had been in power following the coup of August 15, 1975 till April 9, 1979 including late president Ziaur Rahman's ascension to the presidency. With the two new petitions, a total of six petitions against the HC verdict are now pending with the SC. - *The Daily Star, January 18, 2010.*

Case filed for seizure of head office

An employee of Proshika filed a case with a Dhaka court against nine supporters of former chairman of the organisation Qazi Faruque on charges of the seizure of the head office last week. Metropolitan Magistrate Rokhana Begum Happy took the case into cognisance and directed the officer-in-charge of Pallabi Police Station to investigate the matter and submit a report by March 4, 2010. The accused--Sheikh Shahid Hossain, Mohammad Motiur Rahman, Mohammad Abu Sayeed, Dulal Chandra Dey, Kazi Mohammad Saifuddin, Kazi Khazay Alam, Abdul Haq Howlader, Shahtab Hossain and Afzal Hossain Bhuiyan--were earlier sacked from Proshika. - *The Daily Star, January 18, 2010.*

Govt to ensure int'l standard war crimes trial

State Minister for Law, Justice and Parliamentary Affairs Quamrul Islam urged people not to go for wholesale filing of cases across the country against war criminals as that may hamper the trial of the criminals. "Have confidence in the government. It will make sure that the trial is held as per international standards," he told a seminar at Nawab Ali Chowdhury Senate Bhaban of Dhaka University organised by Bangladesh Awami Ain Chhatra Parishad. The minister also assured the people of a fair trial of the individuals who were involved in any kind of war crimes under the International Crimes (Tribunal) Act, 1973, which was amended last year. - *The Daily Star, January 17, 2010.*

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